

# Voluntary Assisted Dying Bill 2021

## Explanatory Notes

### Short title

The short title of the Bill is the Voluntary Assisted Dying Bill 2021.

### Policy objectives and the reasons for them

The objective of the Voluntary Assisted Dying Bill 2021 (the Bill) is to establish a legal framework for voluntary assisted dying in Queensland, allowing eligible people who are suffering and dying to choose the timing and circumstances of their death.

Voluntary assisted dying refers to the administration of a voluntary assisted dying substance with the purpose of bringing about a person's death.

The Bill establishes a voluntary assisted dying scheme in Queensland based on the recommendations of the Queensland Law Reform Commission's (QLRC's) report: *A legal framework for voluntary assisted dying* (Report No. 79) (the QLRC report) and draft QLRC legislation. The QLRC aimed to develop a draft law for Queensland that is compassionate, safe and practical.

Each year, more than 20,000 Queenslanders die of life-limiting conditions. This number will continue to increase significantly with population growth. People with life-limiting conditions deserve choice about how, when and where they die.

Access to high-quality palliative care is a right that all Queenslanders should expect. The Queensland Government has committed an additional \$171 million investment from 2021-22 to 2025-26 to lead reforms to palliative care. This additional investment is dedicated to delivering better access and equity of access to palliative care services to ensure all Queenslanders can access high quality palliative care and achieve their goals for care at the end of life, through the development of a new Palliative and End-of-Life Care Strategy, investing in community-based services, employing sufficient staff and supporting practitioners, and delivering public education and advocacy.

However, for some Queenslanders suffering from a life-limiting condition, palliative care is unable to effectively manage their pain, symptoms or suffering. For people who wish to hasten their death to avoid suffering, the only options currently available are to refuse medical treatment, refuse food or hydration, palliative sedation or suicide. This takes a toll on the person, their loved ones and the health practitioners who are supporting them.

Attempting suicide is not an offence in Queensland. However, under section 311 of the Criminal Code, aiding or counselling another person to commit suicide is unlawful. Under section 300 of the Criminal Code, it is also a crime to unlawfully kill a person, whether or not the person consents. Consequently, loved ones are legally unable to assist a person in Queensland to end their life and the defences for medical practitioners are limited.

Voluntary assisted dying legislation has been enacted in three Australian states: Victoria, Western Australia and Tasmania. Several overseas jurisdictions, including New Zealand and Canada, have enacted similar legislation. This reflects an overall trend especially in industrialised countries toward increased emphasis on individual autonomy in health care. This has also been accompanied by a general trend toward greater community support for a person who is suffering and dying to choose the manner and timing of their death.

Facing dying and death as a result of a life-limiting condition is a deeply personal experience. The Government can support these Queenslanders by allowing them to choose voluntary assisted dying if it is right for them.

Access to the voluntary assisted dying scheme will be limited to individuals who are suffering and dying. It will not be available to individuals who are seeking to die because they are tired of life or in decline and are not dying.

Legalising voluntary assisted dying in Queensland will introduce significant changes to the current law in defined circumstances, providing people, in certain circumstances, with access to more options at the end of life and affording them dignity by empowering them to exercise greater choice in the timing and manner of their death. Criminal Code offences relating to homicide and other laws will continue to apply to conduct falling outside the scheme in addition to the creation of specific offences under the voluntary assisted dying legislative scheme.

### **Government consideration**

In November 2018, the Legislative Assembly referred an inquiry into aged care, end of life and palliative care and voluntary assisted dying to the former Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (the former Committee).

In March 2020, the former Committee tabled *Voluntary assisted dying* (Report No. 34, 56th Parliament) (the Committee report). After considering the evidence given to the inquiry, and the experiences of governments and individuals in other jurisdictions with operating voluntary assisted dying schemes, the former Committee found that, ‘on balance, the Queensland community and health practitioners are supportive of voluntary assisted dying and for it to be legislated in Queensland’.

The former Committee made 21 recommendations in its report. The key recommendation was that the Queensland Government introduce a legislative scheme for voluntary assisted dying based on the draft legislation submitted to the inquiry by Queensland University of Technology Professors Ben White and Lindy Willmott. The other recommendations related to specific aspects of the proposed voluntary assisted dying scheme, including the eligibility criteria for access, the request and assessment process, the inclusion of safeguards, qualifications and training requirements for health practitioners, conscientious objection for health practitioners, and oversight and review mechanisms.

In May 2020, the Queensland Government referred the development of an appropriate legislative scheme for voluntary assisted dying in Queensland and the preparation of draft legislation to the QLRC. The QLRC is an independent statutory body that undertakes law reform reviews referred to it by the Attorney-General and makes recommendations based on the review.

The terms of reference asked the QLRC to have regard to the following matters in making its recommendations about an appropriate scheme:

- the best legal framework for people who are suffering and dying to choose the manner and timing of their death in Queensland;
- identifying who can access voluntary assisted dying;
- the process for access to voluntary assisted dying to be initiated, granted or denied;
- the legal and ethical obligations of treating health practitioners;
- appropriate safeguards and protections, including for treating health practitioners;
- ways in which compliance with the Act can be monitored;
- timeframes for implementation of a scheme in Queensland, if progressed.

The terms of reference also required the QLRC to have regard to the following in preparing draft legislation:

- the former Committee's report, including:
  - the draft legislation in Appendix A of the report (submitted to the Committee inquiry by Professors White and Willmott (the White and Willmott Model)) and
  - Information Paper No. 5, *Summary of the findings and recommendations from Report No. 34 on Voluntary assisted dying*;
- the former Committee's Report No. 33, *Aged care, end-of-life and palliative care*;
- consultation with stakeholders and the community that occurred during the former Committee's consideration of the matter;
- views of experienced health and legal practitioners;
- views of the Queensland public;
- legislative and regulatory arrangements in other Australian and international jurisdictions.

In October 2020, the QLRC published *A legal framework for voluntary assisted dying - Consultation paper* calling for submissions on the issue, with submissions closing on 27 November 2020. 126 submissions were received, including from academics, professional bodies, peak bodies, religious organisations, unions, health practitioners, disability advocates, lawyers' groups, public authorities and members of the public.

During the 2020 General State Election, the Queensland Government confirmed its commitment to introduce a Bill for voluntary assisted dying in 2021.

## **Queensland Law Reform Commission Report**

On 18 May 2021, the QLRC report was tabled in the Legislative Assembly. The QLRC makes 197 recommendations for a voluntary assisted dying scheme in Queensland. The accompanying draft legislation at Appendix F of the QLRC report (the draft QLRC Bill) gives effect to QLRC's recommendations.

In formulating its recommendations, the QLRC undertook extensive research, analysis and consultation. The QLRC also considered the voluntary assisted dying schemes and experiences of other Australian and overseas jurisdictions, and the White and Willmott Model.

In developing the draft QLRC Bill, the QLRC were guided by the following set of general principles:

- the importance of upholding and respecting human rights and the dignity and autonomy of individuals;
- the need for safeguards to protect individuals who might be vulnerable to coercion or exploitation;
- recognising that health practitioners are subject to a comprehensive legal, regulatory and ethical framework;
- recognising, and not detracting from, the importance of high quality and accessible palliative care at the end of life;
- respecting the diversity of individuals' and health practitioners' views, values and beliefs, and avoiding value judgments about others' lives and choices;
- the need for the legislation to be clear and no more complex than it needs to be to achieve its purposes;
- the desirability of achieving reasonable consistency with the legislation in other Australian jurisdictions; and
- the need for the legislation to be well adapted to Queensland's geographic, cultural and health care environment.

The main purposes of the Bill are to:

- give persons who are suffering and dying, and who meet eligibility criteria, the option of requesting medical assistance to end their lives;
- establish a lawful process for eligible persons to exercise that option;
- establish safeguards to:
  - ensure that the process is accessed only by persons who are assessed to be eligible;
  - protect vulnerable persons from coercion and exploitation;
- provide legal protection for health practitioners who choose to assist, or not to assist, persons to exercise the option of ending their lives in accordance with the Act; and
- establish a Voluntary Assisted Dying Review Board and other mechanisms to ensure compliance with the Act.

In line with the Government's election commitment, the Bill incorporates the QLRC's draft Bill and updates the commencement provision to 1 January 2023 to reflect the Government's commitment to commence the scheme 15 months after assent of the Bill.

## **Achievement of policy objectives**

The Bill achieves the policy objectives by establishing a framework for voluntary assisted dying in Queensland that sets out the eligibility criteria for accessing voluntary assisted dying, the request and assessment process that must be followed, qualification and training requirements for participating practitioners, and matters to support the operation of the scheme.

In order to protect vulnerable people against coercion, abuse and exploitation, it is critical for the scheme to ensure a person:

- has decision-making capacity;
- makes decisions that are voluntary and made without coercion;
- makes choices that are informed about other end of life options, such as further treatment and palliative care; and
- demonstrates that the choice to request voluntary assisted dying is enduring.

Accordingly, the Bill embeds wide-ranging safeguards throughout the scheme to ensure the process is accessed only by persons assessed as eligible and to protect vulnerable people from coercion and exploitation, including: a strict eligibility criteria, staged request and assessment process, detailed administration process, requirements relating to the qualifications and training of participating practitioners, prohibition on health care workers initiating a discussion about voluntary assisted dying, independent oversight by a Review Board, offence provisions for non-compliance with the Act, and specific requirements for management of the voluntary assisted dying substance. The safeguards included in the Bill are detailed below.

It is also critical to ensure that voluntary assisted dying is accessible to people who are suffering and dying, and that the scheme does not become so complex and burdensome to apply in practice that it leads to adverse outcomes for people who wish to access it. The Bill appropriately balances these factors, giving effect to the QLRC recommendations and the underlying policy principle that a voluntary assisted dying scheme gives individuals who are suffering and dying an additional end of life choice and enables people to choose the timing and circumstances of their death.

Key elements of the Bill are outlined below. Further detail of the proposed scheme is included in the QLRC report.

### **Eligibility criteria to access voluntary assisted dying**

The terms of reference for the QLRC's review required the development of a legal framework for people who are suffering and dying to choose the manner and timing of their death. The QLRC report provides that the scheme is not intended to apply to individuals who wish to die because they are tired of life or in decline, but who are not dying.

The Bill requires a person to meet strict eligibility criteria to access voluntary assisted dying. A person is eligible only if they satisfy all of the eligibility criteria and each element within each criterion. The criteria are intended to provide a balance between enabling individual choice and access to the scheme with appropriate safeguards to protect vulnerable people from coercion and limit access to those who are suffering and dying.

Consistent with the QLRC recommendations, the Bill provides that to be eligible to access voluntary assisted dying, the person must (Recommendations 7-1 - 7-15):

- be diagnosed with a disease, illness or medical condition that:
  - is advanced, progressive and will cause death;
  - is expected to cause death within 12 months;
  - is causing suffering that the person considers to be intolerable;
- have decision-making capacity in relation to voluntary assisted dying;
- be acting voluntarily and without coercion;
- be at least 18 years of age;
- be an Australian citizen, permanent resident or have been ordinarily resident in Australia for at least three years immediately before making their first request (residency exemptions may apply where the person has a substantial connection to Queensland and there are compassionate grounds for granting an exemption); and
- have been ordinarily resident in Queensland for at least 12 months immediately before the person makes the first request (residency exemptions may apply, as above).

Each element of the eligibility criteria is discussed in more detail below.

### ***Eligible disease, illness or medical condition***

The Bill provides that one of the eligibility criteria to access voluntary assisted dying is that the person must be diagnosed with a disease, illness or medical condition that is advanced, progressive and will cause death; is expected to cause death within 12 months; and is causing suffering that the person considers to be intolerable.

The QLRC report states that this combination of eligibility criteria clarifies that voluntary assisted dying is an option only for people at the end of life who are suffering and dying, and strikes the right balance between the fundamental value of human life and the values of individual autonomy and reduced suffering (paragraph 7.71).

The QLRC report considers that *“the requirement that the person must be diagnosed with a condition that is ‘advanced, progressive and will cause death’ makes it clear that a person is eligible for voluntary assisted dying only if they have an eligible condition that is very serious, is on a deteriorating trajectory and will cause death. This term is consistent with the legislation in Victoria and Western Australia. It is clear, precise, and reflects contemporary medical terminology used and understood in Australia”* (paragraph 7.73).

The QLRC provides that it is not necessary to include the word ‘incurable’ in the eligibility criteria, as *“it does not materially add to the other eligibility criteria”* and *“could cause uncertainty and confusion about the extent to which a person must have exhausted all available treatment options before becoming eligible to access voluntary assisted dying, even though such an interpretation is inconsistent with a person’s right to refuse medical treatment that is not acceptable to them”* (paragraph 7.74).

The QLRC report also provides that referring to specific diseases, illnesses or medical conditions, such as ‘terminal’, ‘chronic’ or ‘neurodegenerative’ is not necessary or desirable. Instead, the report considers that practitioners assessing the person against the eligibility criteria will be required to make a clinical determination of whether the person has a disease, illness or medical condition that is ‘advanced, progressive and will cause death’, taking into account the person’s individual circumstances (paragraphs 7.75 – 7.76).

Based on the Victorian scheme, which commenced in June 2019, it is anticipated that the eligibility criteria is likely to capture people suffering from cancer, neurodegenerative conditions such as motor neurone disease, and other diseases such as pulmonary fibrosis, cardiomyopathy and chronic obstructive pulmonary disease.

To avoid any doubt, the Bill provides that a person is not eligible for voluntary assisted dying only because the person has a disability or mental illness. However, the Bill also provides that such a person may be eligible if they meet all elements of the eligibility criteria. This is consistent with the QLRC’s recommendation (7-2).

The QLRC report provides that *“this makes it clear that people who have a disability or who are diagnosed with a mental illness have the same rights and protections as other members of the community and therefore should not be denied access to voluntary assisted dying”* (paragraph 7.77). The QLRC report notes that in some circumstances, a person with a mental illness will lack decision-making capacity and that they would be ineligible on this basis (paragraph 7.78).

The QLRC report sets out the rationale for including a requirement that the person’s disease, illness or medical condition is expected to cause death within 12 months. The QLRC report provides that *“a specific timeframe until expected death makes it clear that voluntary assisted dying is an option only for those who are at the end of life”* and *“gives clear guidance to the community and the health profession about who is eligible”* (paragraph 7.146).

The QLRC report considers that a timeframe of 12 months is consistent with current health care practice and the end of life and palliative care framework in Australia, taking account of the clinical trajectories of different diseases, illnesses or medical conditions that are advanced, progressive and will cause death (paragraph 7.147). The QLRC report considers that while Victoria and Western Australia included a timeframe of six months until death, or 12 months for a neurodegenerative condition (noting that the Victorian Voluntary Assisted Dying Ministerial Advisory Panel, which was tasked with developing the framework for Victoria, had recommended a single timeframe of 12 months), a single timeframe of 12 months is preferable rather than discriminating between types of diseases, illnesses or medical conditions (paragraphs 7.148-7.149).

The QLRC report considers that “*adopting different policies for different diseases, illnesses or medical conditions is undesirable as a matter of principle. For example, it is hard to see why a person who is dying and experiencing intolerable suffering from chronic heart failure or cancer should have to wait longer to qualify for access than someone who is dying and experiencing intolerable suffering from a motor neurone disease like multiple sclerosis*” (paragraph 7.150).

The QLRC report considers that the requirement for intolerable suffering reflects the intention that voluntary assisted dying should be an option only for people at the end of life who are suffering and dying and is a crucial control over who is eligible for the scheme (paragraph 7.192).

The Bill provides that suffering caused by a disease, illness or medical condition includes physical or mental suffering, and suffering caused by treatment provided for the disease, illness or medical condition. This reflects the QLRC’s recommendation (7-3).

The QLRC report provides that whether the suffering is intolerable is a subjective assessment to be determined by the person requesting access to the scheme (paragraph 7.193). The suffering must be causally linked to the disease, illness or medical condition, but is not limited to physical pain or symptoms (paragraph 7.194). The QLRC report considers “*this approach recognises that suffering is a personal experience best determined by the sufferer and that it may take various forms. It respects personal autonomy and reflects a person-centred approach to care*” (paragraph 7.195).

### ***Decision-making capacity***

The Bill provides that one of the eligibility criteria to access voluntary assisted dying is that the person has decision-making capacity for voluntary assisted dying.

This is consistent with the QLRC recommendation (Recommendation 7-4). The QLRC report considers this a fundamental safeguard of the draft Bill, which “*recognises and protects individual autonomy*” and “*will help ensure that a person’s decision is voluntary and protect people who might be vulnerable to coercion or exploitation*” (paragraph 7.254). The requirement for decision-making capacity is consistent with other jurisdictions and generally consistent with the requirements about capacity to consent to or refuse medical treatment (paragraph 7.255).

The Bill provides that a person has decision-making capacity for voluntary assisted dying if the person is capable of:

- understanding the nature and effect of decisions about access to voluntary assisted dying;
- freely and voluntarily making decisions about access to voluntary assisted dying; and
- communicating decisions about access to voluntary assisted dying in some way.

The Bill provides that a person is presumed to have decision-making capacity for voluntary assisted dying unless shown not to have that capacity. The QLRC report considers this “*consistent with the law about consent, the presumption of capacity operating in Queensland’s guardianship legislation, and voluntary assisted dying legislation in other Australian jurisdictions*” (paragraph 7.268).



The Bill also sets out some of the relevant factors in determining whether a person has decision-making capacity. This list is not intended to be exhaustive, and includes:

- that a person may have decision-making capacity to make some decisions but not others;
- that capacity can change or fluctuate and a person may temporarily lose capacity and later regain it;
- it should not be presumed that a person does not have decision-making capacity because of a personal characteristic such as, for example, age, appearance or language skills because the person has a disability or an illness; or because the person makes a decision with which other people may not agree;
- a person is capable of doing one of these things if the person is capable of doing the thing with adequate and appropriate support, including, for example, giving a person information tailored to their needs, giving the person additional time and using technology that alleviates the effects of a person's disability.

The QLRC report provides that this is consistent with the legislation in Victoria and Tasmania and generally consistent with Queensland's *Guardianship and Administration Act 2000* and associated Capacity Guidelines (paragraph 7.271).

The QLRC report notes that the inclusion of a decision-making capacity requirement in the eligibility criteria will exclude some people from accessing the scheme but considers there is a need to "*prioritise adequate protection for vulnerable people*" (paragraph 7.313).

### ***Voluntarily and without coercion***

The Bill provides that one of the eligibility criteria to access voluntary assisted dying is that that person is acting voluntarily and without coercion.

This is consistent with the QLRC recommendation (Recommendation 7-8). The QLRC report considers that the requirement to ensure that a person is acting voluntarily and without coercion at all stages of the process is a fundamental safeguard that will protect individual autonomy and help ensure that access to the scheme is properly regulated (paragraph 7.338).

The QLRC report explains that this is in addition to the requirement for the person to have decision-making capacity, with one criterion relating to the person's actual condition when making decisions, and another ensuring their capacity to make such decisions (paragraph 7.341).

The Bill defines *coercion* to include intimidation or a threat or promise, including by an improper use of a position of trust or influence.

### ***Aged at least 18***

The Bill provides that one of the eligibility criteria to access voluntary assisted dying is that the person is at least 18 years of age.

This is consistent with the QLRC recommendation (Recommendation 7-10). The QLRC report states that limiting access to adults is consistent with other relevant laws in Queensland, and the voluntary assisted dying legislation in other Australian jurisdictions (paragraph 7.365). The requirement is “*designed to limit access to voluntary assisted dying to persons who are presumed, because of their age, to have access to sufficient understanding and intelligence to understand fully what is proposed, and to be able to give informed consent to a process that will end their lives*” (paragraph 7.367).

### **Residency**

The Bill includes a two-pronged residency requirement as one of the eligibility criterion.

The person must:

- be an Australian citizen, a permanent resident or have been ordinarily resident in Australia for at least 3 years immediately before the person makes the first request; and
- have been ordinarily resident in Queensland for at least 12 months immediately before the person makes the first request.

This is consistent with the QLRC recommendation (Recommendation 7-11). The QLRC report states that “*not having a residency requirement risks denying access by Queenslanders who qualify for voluntary assisted dying and who are enduring great suffering*” (paragraph 7.452) and that “*the individual rights of Queensland residents to access high-quality, end of life care, including palliative care and the option of voluntary assisted dying, might be compromised by open access to voluntary assisted dying in Queensland*” (paragraph 7.453).

However, the QLRC report recognises that a residency requirement may have harsh, and possibly unintended consequences for individuals who have a substantial connection with Queensland and who might be thought to be deserving of access to the scheme (paragraph 7.456). For this reason, the QLRC recommends (Recommendation 7-12) the inclusion of discretionary power to exempt the person from the residency requirement, where the person can demonstrate a substantial connection to Queensland and the circumstances justify granting an exemption on compassionate grounds.

This is reflected in the Bill, which provides that the person can apply to the chief executive for an Australian residency exemption or Queensland residency exemption. The chief executive must grant the exemption if satisfied that the person has a substantial connection to Queensland and there are compassionate grounds for granting the exemption. This may capture, for example, a person who resides outside Queensland but who is a former resident of Queensland and whose family resides in Queensland.

The QLRC report states that “*future developments, including the introduction of voluntary assisted dying schemes in other Australian jurisdictions and the operation of the scheme in Queensland may call into question the need to have a residency requirement at all*” (paragraph 7.498). The QLRC report therefore recommends (Recommendation 7-13) that the inclusion of a residency requirement in the Bill should be reviewed as part of a future review of the legislation’s operation.

## **Process for accessing voluntary assisted dying**

The Bill requires a person to follow a staged request and assessment process to access the voluntary assisted dying scheme, similar to the process set out in the Victorian, WA and Tasmanian Acts. This is consistent with the QLRC recommendations (Recommendations 8-1 - 8-67). The process requires a person to make three requests for access to voluntary assisted dying, and for two medical practitioners to assess the person's eligibility for access to voluntary assisted dying.

Key elements of the process are:

- the person may make a *first request* to a medical practitioner, who may accept or refuse the request. The first request must be clear and unambiguous, and made by the person personally and not by another person on their behalf;
- if the medical practitioner to whom the first request is made is qualified and willing to accept the request, they become the *coordinating practitioner* and must conduct an assessment against the eligibility criteria (the *first assessment*);
- if the coordinating practitioner is unable to determine whether the person meets an element of the eligibility criteria, they must refer the person to another registered health practitioner (in the case of assessing the disease, illness or medical condition, or decision-making capacity) or to another person (in the case of determining whether the person is acting voluntarily and without coercion) with appropriate skills and training to determine the matter (*referral for determination*). The coordinating practitioner may adopt the determination of the referee;
- if the coordinating practitioner assesses the person as meeting the eligibility requirements, they must then refer the person to another qualified medical practitioner for an independent assessment against the eligibility criteria (the *consulting assessment*). If the second medical practitioner accepts the referral, they become the *consulting practitioner*;
- the consulting practitioner must conduct a consulting assessment;
- the consulting practitioner must undertake a referral for determination, if required;
- the person may make a *second request*, which must be in writing and signed in the presence of two eligible witnesses. To be eligible as a witness, a person must be at least 18 and not be a beneficiary under the person's will or otherwise stand to benefit financially or in any other material way from the person's death; the person's coordinating practitioner or consulting practitioner; or an owner, or responsible for the management, of any health facility at which the person is being treated or resides. Each witness must certify in writing the person signed the request in the presence of the witness and appeared to sign freely and voluntarily;
- the person may make a third and *final request*. The first request must be clear and unambiguous, and made by the person personally and not by another person on their behalf;
- the coordinating practitioner must submit a *final review form* certifying that they are satisfied:
  - the request and assessment process was completed in accordance with the Act; and
  - the person has decision-making capacity in relation to voluntary assisted dying and is acting voluntarily and without coercion.

A waiting period of nine days between the person's first and final requests must be met, unless the person is likely to die or lose decision-making capacity in that time. The QLRC report states that the *"inclusion of a waiting period is appropriate as a means of ensuring that a person's decision is not rushed, and that a person has a period of time to reflect on their choices"* (paragraph 8.475). The QLRC report considers that waiting period of nine days represents an appropriate balance between ensuring the decision is well-considered and avoiding prolonging a person's suffering (paragraph 8.477).

However, the QLRC report states that the waiting period should be able to be reduced if the person is likely to die or lose decision-making capacity in that time, as requiring a person to wait would prevent the person from accessing the scheme and lead to further suffering (paragraphs 8.478-8.479).

At any stage of the request and assessment process, the person may decide not to continue.

The coordinating and consulting practitioner are required to provide the person with relevant information after assessing the person as eligible for the scheme, including the person's diagnosis and prognosis, the treatment options available and likely outcomes of that treatment, the palliative care and treatment options available and the likely outcomes of that care and treatment, the potential risks and expected outcome of self-administering or being administered a voluntary assisted dying substance, and that the person may decide at any time not to continue the process. The QLRC report states this is necessary to ensure the person can reach an informed decision (paragraph 8.270). The requirement for both practitioners to provide the information will ensure the person has all the necessary information and is offered multiple opportunities to discuss and develop their understanding of that information (paragraph 8.277).

The coordinating and consulting practitioner are required to undertake appropriate record-keeping and reporting to the Board throughout the process. The QLRC report states that this provides a safeguard for both people seeking access to voluntary assisted dying and participating medical practitioners, providing an ongoing system of checks to ensure compliance with the scheme (paragraph 8.527).

The QLRC report provides that a staged request and assessment process will operate as a key safeguard in the scheme, ensuring the person has decision-making capacity, is acting voluntarily and without coercion, and demonstrating that the person's decision to request access is enduring (paragraph 8.24). The QLRC report also considers that the staged process will ensure a clear structure that can be followed by a medical practitioner assisting a person to navigate the scheme, each step of the process is followed, and that a medical practitioner is aware of the requirements associated with assessing a person's eligibility (paragraph 8.26).

The eligibility requirements for coordinating practitioners and consulting practitioners are considered below.

### **Administration of voluntary assisted dying substance**

Consistent with the QLRC recommendations, the Bill sets out the requirements for accessing voluntary assisted dying via administration of a voluntary assisted dying substance (Recommendations 10-1 - 10-12).

Once a person has been assessed as eligible for voluntary assisted dying and completed the request and assessment process, they may choose to continue the process by making an administration decision. The person may choose not to continue with the process at any time – the Bill sets out the process for revoking an administration decision. The Bill provides that a person may make an administration decision if they have made a final request and the coordinating practitioner has completed the final review form.

The Bill provides that an administration decision must be made in consultation with and on the advice of the coordinating practitioner. Administration of the voluntary assisted dying substance may occur through a person taking the substance themselves (*self-administration*) or a health practitioner administering the substance (*practitioner administration*).

The QLRC report states that “*a person should be able to make an informed decision about the method of administration (self-administration or practitioner administration) best suited to them*” (paragraph 10.57).

Requirements relating to the prescription, supply, possession, storage and disposal of the voluntary assisted dying substance are considered separately below.

### ***Self-administration***

The QLRC report provides that self-administration should be the default method of administration and notes that self-administration of the substance demonstrates that the person is acting voluntarily (paragraph 10.58).

Where a person makes a self-administration decision, they are authorised under the Bill to self-administer the substance. They must take the substance themselves. As outlined below, it is a crime to administer a voluntary assisted dying substance to another person unless authorised to do so.

The QLRC report provides that offering the option of self-administration gives individuals who are suffering and dying autonomy and control over the timing of the death (paragraph 10.199). Some people may ultimately choose not to self-administer, and simply having the substance available and in their control can reduce their suffering (paragraph 10.198).

There is no requirement for the coordinating practitioner or another health practitioner to be present when the person self-administers (paragraph 10.197). This is consistent with other Australian jurisdictions. While people may choose to have their coordinating practitioner or another health practitioner present, the QLRC report notes that some people may wish for privacy and independence, and that this should be a decision for the person in consultation with and on the advice of their coordinating practitioner (paragraph 10.199). The QLRC report considers that including a requirement for the coordinating practitioner or another health practitioner to be present may also cause difficulties in rural, regional and remote areas where the medical workforce is limited and be a significant obstacle to access in many parts of Queensland (paragraph 10.200).

### ***Practitioner administration***

The QLRC report considers that practitioner administration should be available where appropriate, subject to additional safeguards to ensure voluntariness, and should not be limited to where the person is physically incapable of self-administering or digesting the substance (paragraph 10.59).

The Bill provides that practitioner administration may only be chosen if the coordinating practitioner advises the person that self-administration is inappropriate having regard to the person's ability to self-administer, the person's concerns about self-administering and the method that is suitable for the person.

The QLRC report states that this approach will allow a person to discuss their wishes and concerns with their doctor and make an informed choice about the method of administration that is best suited to them, and maximise the person's autonomy while ensuring the method is clinically appropriate and consistent with good medical practice (paragraph 10.62).

Additional safeguards apply where a person makes a practitioner administration decision:

- the administering practitioner is authorised under the Bill to administer the substance, in the presence of an eligible witness (who must be at least 18 years of age), if the practitioner is satisfied at the time of administration that the person has decision-making capacity in relation to voluntary assisted dying and is acting voluntarily and without coercion;
- after administering the substance, the administering practitioner must certify that the person made a practitioner administration decision and did not revoke the decision, and that they were satisfied the person had decision-making capacity and were acting voluntarily and without coercion;
- the witness is required to certify that the person appeared to be acting voluntarily and without coercion, and that the administering practitioner for the person administered the substance to the person in the presence of the witness.

### ***Transfer of the role of administering practitioner***

If the person makes a practitioner administration decision, the Bill provides that the coordinating practitioner becomes the administering practitioner who administers the substance, unless the role of administering practitioner is transferred to another practitioner.

If the coordinating practitioner is unable or unwilling to be the administering practitioner, the Bill sets out the process for transferring the role to another eligible person.

The eligibility requirements for administering practitioners are considered below.

### **Practitioners' qualifications and experience**

Under the Bill, health practitioners must meet minimum qualification, experience and training requirements to perform particular roles.

This reflects the QLRC recommendations (Recommendations 13-1 - 13-9).

Practitioners who do not meet the minimum qualification and training requirements under the Bill are not eligible to act in these roles. The Bill also provides that practitioners are not eligible if they are a family member of the person or may benefit financially or in any other material way from the person's death. The QLRC report states that these requirements are consistent with existing professional obligations and ensure there is no conflict of interest between the practitioner and the person requesting access to voluntary assisted dying (paragraph 13.206).

The QLRC report notes that scheme should ensure that practitioners involved in the process have appropriate skills and qualifications, but that the requirements are not so onerous as to act as a barrier to people accessing the scheme (paragraph 13.110).

### ***Eligibility to act as coordinating practitioner or consulting practitioner***

The Bill provides that a medical practitioner is eligible to act as a coordinating practitioner or consulting practitioner for a person if they:

- hold specialist registration, having practised in the medical profession for at least one year as the holder of specialist registration;
- hold general registration, having practised the medical profession for at least five years as the holder of general registration;
- hold specialist registration, having practised the medical profession for at least five years as the holder of general registration; or
- are an overseas-trained specialist who hold limited registration or provisional registration.

The QLRC report considers that the practitioners who meet these minimum qualification requirements will typically have spent many years in practice, gaining experience in end of life care.

This approach is similar to the approach in Western Australia, which the QLRC report notes has comparable geographical challenges to Queensland (paragraph 13.114). The QLRC report considers that requiring practitioners who conduct eligibility assessments to be a specialist practitioner in a specific disease, illness or medical condition would create an unnecessary barrier to a dying person's access to the scheme, particularly in rural, regional and remote areas.

The Bill requires a coordinating practitioner or consulting practitioner to refer a matter to another practitioner for determination if they are unable to determine a specific matter related to eligibility. The QLRC report considers that *"this balances the need for practitioners to meet specified eligibility requirements, including minimum qualification and experience requirements, and the need for access to the scheme, including in remote parts of Queensland far away from where most specialists in certain fields are based"* (paragraph 13.115).

The QLRC report provides that overseas-trained specialists with limited or provisional registration are included to capture suitably qualified specialists, including in areas of need, to improve accessibility in rural, regional and remote areas and notes that to hold limited or provisional registration, an overseas-trained specialist must be enrolled in a specialist pathway (paragraph 13.116).

The Bill provides that the practitioner must also complete training approved by the chief executive of Queensland Health and meet any additional requirements approved by the chief executive. These requirements must be made publicly available on the Department's website.

The QLRC report considers this would enable Queensland Health to ensure that any overseas-trained specialist has the necessary knowledge, clinical skills and professional attributes to perform the role and will facilitate having suitably qualified specialists in areas of need in regional, rural and remote areas (paragraph 13.116).

In addition to meeting the qualification and experience requirements in the Bill, the QLRC report notes that all medical practitioners have professional obligations to work within the limits of their medical competence and scope of practice (paragraph 13.117).

The QLRC report considers whether nurse practitioners should be eligible to act in the role of coordinating practitioner or consulting practitioner, and concluded that as voluntary assisted dying is a new scheme, responsibility for assessing people against the eligibility criteria should remain with medical practitioners (paragraphs 13.119 – 13.120).

### ***Eligibility to act as administering practitioner***

The role of administering practitioner is relevant where a person makes a practitioner administration decision. As outlined above, the person's coordinating practitioner will become the administering practitioner unless they transfer the role to another eligible health practitioner who accepts the transfer.

The Bill provides that a person is eligible to act as an administering practitioner if they are a:

- medical practitioner eligible to act as a coordinating practitioner, in accordance with the eligibility requirements outlined above;
- nurse practitioner who meets the approved nurse practitioner requirements; or
- registered nurse who has practised in the nursing profession for at least five years and meets the approved nurse requirements.

To be eligible to act as an administering practitioner, the person must have also completed training approved by the chief executive of Queensland Health.

The QLRC report considers that the training requirements, together with the nurse practitioner and nurse requirements approved by the chief executive, will ensure that nurse practitioners and registered nurses who participate in the administration of the substance will have relevant and current experience and expertise (paragraph 13.154).

The inclusion of nurse practitioners is similar to the Western Australia Act, which provides for a nurse practitioner with two years' experience to act as an administering practitioner. The QLRC report notes that authorising nurse practitioners to act as an administering practitioner may facilitate access to voluntary assisted dying, particularly for those Queenslanders residing in rural and remote areas where there are fewer medical practitioners (paragraph 13.149).



This also reflects the former Committee's recommendation that to support applicants in rural and remote areas of Queensland where medical practitioners are not available, the scheme should permit a registered nurse who meets the training and other requirements to participate in the scheme to administer the voluntary assisted dying medication (Recommendation 15, Committee report).

The QLRC report provides that expanded scopes of practice for registered nurses have been envisaged for many years to transform health services and enable people to access the care they need and that expanding the scope of practice of registered nurses to include administration of a voluntary assisted dying substance will require formal processes for continuing education, assessment of competence and authorisation through credentialling (paragraphs 13.152 – 13.153).

### **Conscientious objection**

A conscientious objection is a refusal by a medical or other health practitioner to provide, or participate in, a lawful treatment or procedure because it conflicts with that practitioner's personal beliefs, values or moral concerns.

#### ***Registered health practitioners***

The Bill provides for registered health practitioners who have a conscientious objection to voluntary assisted dying to have the right to refuse to participate in the process and imposes requirements on these practitioners. This reflects the QLRC recommendations (Recommendations 14-1 - 14-2).

The Bill provides that a registered health practitioner who has a conscientious objection to voluntary assisted dying has a right to refuse to:

- provide information about voluntary assisted dying;
- participate in the request and assessment process;
- participate in an administration decision;
- prescribe, supply, or administer a voluntary assisted dying substance;
- be present at the time of the administration of a voluntary assisted dying substance.

This recognises registered health practitioners' right to freedom of conscience and belief. This right must be balanced against the rights of an individual to autonomy in end of life choices and the right to be supported in making informed decision about those choices. The QLRC report states that "*the right of an individual, including a health practitioner, to conscientiously object to participating in voluntary assisted dying should be subject to reasonable provisions that respect the rights of other individuals*" (paragraph 14.81).

A practitioner who refuses to participate is therefore required under the Bill to:

- inform the person that other health practitioners, health service providers or services may be able to assist them; and
- provide the person with:
  - information about a health practitioner, health service provider or service who, in the practitioner’s belief, is likely to be able to provide the requested assistance; or
  - the details of an official voluntary assisted dying care navigator service which is able to provide the person with information, including the name and contact details of a health practitioner, health service provider or service who may be able to assist.

The QLRC report considers who the right to refuse to participate in voluntary assisted dying on the grounds of conscientious objection should apply to and concludes that the provisions should apply to registered health practitioners such as doctors and nurses, to whom requests are made and who might otherwise be expected to be involved in the assessment and administration processes (paragraph 14.90).

### ***Speech pathologists***

The Bill includes similar rights to refuse to participate and similar requirements to inform for speech pathologists, who are not registered health practitioners but who may play a role in facilitating communication between a health practitioner and a person seeking access to voluntary assisted dying. This reflects the QLRC recommendations (Recommendations 14-3 - 14-5).

The QLRC report states that speech pathologists “*may be asked to be involved in the request and assessment process, for example, to help a patient communicate a voluntary assisted dying request or to assist in patient-practitioner communications in the assessment process*” (paragraph 14.93).

The Bill provides that a speech pathologist who has a conscientious objection to voluntary assisted dying has a right to refuse to:

- provide information to another person about voluntary assisted dying;
- participate in the request and assessment process;
- participate in an administration decision;
- be present at the time of the administration or self-administration of a voluntary assisted dying substance.

A speech pathologist who refuses to do one these things for an employer or for any other person who has requested speech pathology services in relation to voluntary assisted dying must:

- inform the employer or other person of the speech pathologist's conscientious objection;
- inform the employer or other person of another speech pathologist or speech pathology service who, in the speech pathologist's belief, is likely to be able to assist in providing the speech pathology services requested;
- not intentionally impede the person's access to speech pathology services in relation to voluntary assisted dying.

Additionally, if a speech pathologist is employed or otherwise engaged by a health service provider and knows, or ought reasonably to know, the health service provider provides, or is likely to provide, services relating to voluntary assisted dying, the speech pathologist must:

- inform the health service provider of the speech pathologist's conscientious objection to voluntary assisted dying;
- discuss with the health service provider how they can practise in accordance with their beliefs without placing a burden on their colleagues or compromising a person's access to voluntary assisted dying under this Act.

The QLRC report provides that the different requirements for speech pathologists reflect the fact that medical practitioners are subject to a code of conduct which requires them to disclose their conscientious objection to patients and, if relevant, colleagues, and to not deny a patient access to the relevant service, which speech pathologists are not (paragraph 14.203).

Additionally, as a speech pathologist is likely to act as an intermediary between a medical practitioner and a patient and will not be engaged by the patient directly, the QLRC report considers that the speech pathologist should ensure that the person making the request (usually the health service or health practitioner who sought to engage their services) is assisted to find someone else to provide the services, ensuring that a person's access to information and assistance about a lawful end of life option is not denied or impeded (paragraph 14.204).

### **Participation by entities**

An entity is a non-natural person, typically a corporation or a body given legal status. Entities include, for example, residential aged care services, private hospitals and hospices.

An entity may choose not to provide certain services at a facility it operates. Decisions about the services an entity offers may be based on an entity's policy, financial considerations or available resources. An entity may also refuse to provide a service on the basis of what is sometimes known as an 'institutional conscientious objection'.

The QLRC report notes that non-participation by entities is one of the most complex issues it was required to consider but concludes that the complexity of the issue is not a reason to avoid regulation of processes by legislation. Rather, the QLRC report considers that this is a reason to not leave processes uncertain, governed only by non-enforceable policies (paragraphs 15.280 – 15.281).

The QLRC report considers that “*without a form of regulation which establishes a process to ensure that a person’s access to voluntary assisted dying is not unreasonably denied where institutional objections occur, confusion and uncertainty will prevail*” (paragraph 15.219).

Other jurisdictions do not address the issue of institutional objection through legislation. Victoria has issued policy guidelines to deal with the rights and responsibilities of non-participating entities. Western Australia is also in the process of developing a policy about the management of voluntary assisted dying by health service providers. The QLRC report considers that legislation, rather than policy, is the optimal regulatory response, as it will inform individuals and entities of the basic ground rules by which their respective rights and interests are reconciled and the process which applies (paragraph 15.226).

The QLRC report provides that to reconcile the competing rights and interests of entities to not provide voluntary assisted dying at a facility and individuals seeking access to voluntary assisted dying, the Bill should include a process by which certain rights and interests are assumed and reasonably accommodated (paragraph 15.282). The QLRC report includes detailed recommendations to ensure the rights and interests of both individuals and entities can be balanced and accommodated. (Recommendations 15-1 - 15-14).

The QLRC recommendations are reflected in the Bill.

The Bill provides that an entity is not obliged to provide or participate in voluntary assisted dying and sets out requirements for each stage of the voluntary assisted dying process, from requests for information to administration of the substance, to ensure that entities do not hinder a person’s access to the scheme. Requirements for each stage of the process are outlined below.

#### *Access to information*

The QLRC report states that it is difficult to justify denying an individual access to information and advice about voluntary assisted dying on the grounds of an entity’s conscientious objection (paragraph 15.233). The QLRC report provides that a person’s right to obtain information and receive visits from an official care navigator service or registered health practitioner who is prepared to provide information and advice about voluntary assisted dying should be confirmed and that an entity that objects to providing access to voluntary assisted dying should not hinder access by a person to information about it and not hinder such visits (paragraph 15.234).

Where a person receiving a health service, residential aged care or a person care service (*relevant services*) from a relevant entity at a facility asks the entity for information about voluntary assisted dying, and the entity does not provide the requested information at the facility, the Bill provides that the entity (and any other entity that owns or occupies the facility) must:

- not hinder the person’s access at the facility to information about voluntary assisted dying; and
- allow reasonable access by a registered health practitioner or a staff member of an official voluntary assisted dying care navigator service to provide the requested information to the person.

### *Making a first request and later requests*

The QLRC report considers that while an entity may not wish to be involved in receiving a request for voluntary assisted dying, it is hard to see why a patient or resident who is dying should be put to the trouble of being transferred outside of a facility to make a request for access (paragraph 15.235). Instead, the QLRC report states that there should be a requirement to allow reasonable access to the person at the facility by a registered health practitioner who is qualified and willing to receive a request for access and whose presence is requested for that purpose (paragraph 15.236). If such a practitioner is not available, only then should reasonable steps be taken to facilitate the person's transfer to a place where the request can be made, and their return to the facility (paragraph 15.237).

Accordingly, the Bill provides that where a person receiving relevant services from a relevant entity at a facility wishes to make a 'first request' for access to voluntary assisted dying and the entity does not provide access to the request and assessment process at the facility:

- the entity must allow reasonable access by a registered health practitioner who is qualified and willing to receive a 'first request' under the legislation; or
- if such a practitioner is not available to attend to receive a first request at the facility, then the relevant entity must take reasonable steps to facilitate the transfer of the person to a place at which the request may be made, and their return thereafter to the facility.

The Bill includes similar provisions in relation to subsequent requests and declarations required by the legislation.

### *Eligibility assessments*

The QLRC report considers that an entity that does not wish to provide access to voluntary assisted dying should not be required to do so (paragraph 15.253). The QLRC report states that a patient or resident at a facility operated by such an entity should have reasonable access to qualified health practitioners in order to undertake an eligibility assessment and that if the entity does not allow health practitioners engaged or employed by it to undertake such assessments at its facility, then the entity should not hinder the patient or resident undergoing such an assessment (paragraph 12.254).

Accordingly, the Bill provides that where a person wishes to undergo an eligibility assessment and the entity does not provide access to the request and assessment process at the facility:

- if the person is a permanent resident at the facility:
  - the entity must allow reasonable access to the facility by a registered health practitioner who is qualified and willing to undertake an eligibility assessment; or
  - if such a practitioner is not available, the relevant entity must take reasonable steps to facilitate the person's transfer of the person to a place where the eligibility assessment may be undertaken, and their return to the facility;

- if the person is not a permanent resident at the facility:
  - the entity must take reasonable steps to facilitate the person's transfer to a place outside the facility for the purpose of undergoing an eligibility assessment and, if requested, facilitate the person's return to the facility after the assessment is completed; or
  - in circumstances where transfer to a place outside the facility for the purpose of assessment would not be reasonable, the entity must allow reasonable access to the facility by a registered health practitioner who is qualified and willing to conduct the assessment.

For the purpose of the Bill, the term 'permanent resident':

- refers to a person who resides at the facility as their settled and usual place of abode, being the place where the person regularly or customarily lives;
- includes the resident of an aged care facility who has security of tenure by virtue of the *Aged Care Act 1997* (Cth) or on some other basis; and
- does not include a person who resides at the facility as a temporary resident, for example as an in-patient at a hospital or the resident of a hospice.

In considering the reconciliation of the competing interests of individuals and entities, the QLRC report notes that transfer of care comes at a human and financial cost (paragraph 15.242). For example, the person may be so ill that the transfer would be traumatic or painful, transfer may require pain medication that affects the person's decision-making capacity and renders them ineligible for voluntary assisted dying, or continuity of care may be affected. The QLRC report also notes that in some cases, the person requesting the assessment will not be able to be transferred to another facility because of their frail condition or because a suitable place at another facility is not available (paragraph 15.243).

As a result, the QLRC report recommends (Recommendation 15-8) that the reasonableness of the proposed transfer be determined by the coordinating practitioner, having regard to a number of factors.

The Bill provides that in determining whether it is reasonable for the person to be transferred to a place outside the entity's facility for the purpose of undergoing an eligibility assessment, regard must be had to whether:

- the transfer would be likely to cause serious harm to the person, for example, significant pain or a significant deterioration in their condition;
- the transfer would be likely to adversely affect the person's access to voluntary assisted dying; for example, because the transfer would be likely to result in a loss of capacity, or because the transfer would require pain relief or other medication that would affect the person's decision-making capacity for voluntary assisted dying;
- the transfer would cause undue delay and prolonged suffering in accessing voluntary assisted dying;
- there is an alternative place reasonably available; for example, whether another facility within a reasonable distance has a suitable place to which to admit the person and can provide the level of care required by the person for the relevant period;
- the person would incur financial loss or costs because of the transfer.

The coordinating practitioner should undertake the determination of whether it is reasonable for the person to be transferred unless another medical practitioner is agreed to by the person and the entity to decide the reasonableness of the proposed transfer.

The Bill includes similar provisions for access by the person's coordinating practitioner when the person wishes to make an administration decision.

*Administration of the voluntary assisted dying substance*

The QLRC report considers whether the position reached in relation to eligibility assessments should equally apply to administration of a voluntary assisted dying substance and concludes that while an eligibility assessment does not in any real or immediate sense cause the person's death, administration of the substance does, and that this difference may justify greater weight being accorded to the entity's objection at the administration stage (paragraphs 15.264 – 15.265).

Accordingly, the QLRC report states that an entity that does not wish to provide access to voluntary assisted dying in its facility should not be required to do so and that a person wishing to self-administer or receive administration of a voluntary assisted dying substance should transfer from the facility for the purpose of administration, unless transfer is unreasonable (paragraphs 15.272 – 15.273).

The Bill reflects this approach, providing that where a person receiving relevant services from an entity at a facility wishes to self-administer or have an authorised practitioner administer a voluntary assisted dying substance and the entity does not provide access to administration of a voluntary assisted dying substance at the facility:

- if the person is a permanent resident of the facility, the entity must:
  - for practitioner administration, allow reasonable access to the facility, by the administering practitioner to undertake practitioner administration, together with any person whose presence is required to witness the practitioner administration; and
  - for self-administration, not hinder access by the person to the voluntary assisted dying substance;
- if the person is not a permanent resident of the facility:
  - the relevant entity must take reasonable steps to facilitate the person's transfer to a place outside the facility for the purpose of administration; or
  - in circumstances where transfer for the purpose of administration would not be reasonable, the entity must allow reasonable access to the facility by the administering practitioner, together with any person whose presence is required to witness the practitioner administration, and not hinder access by the person to the substance required for self-administration.

In determining whether it is reasonable for the person to be transferred to a place outside the entity's facility for the purpose of administration of the voluntary assisted dying substance, the Bill provides that regard must be had to whether:

- the transfer would be likely to cause serious harm to the person, for example, significant pain or a significant deterioration in their condition;
- the transfer would be likely to adversely affect the person's access to voluntary assisted dying; for example, because the transfer would be likely to result in a loss of capacity, or because the transfer would require pain relief or other medication that would affect the person's decision-making capacity, thereby rendering the person ineligible for authorised practitioner administration;
- there is an alternative place reasonably available at which the person can self-administer or receive practitioner administration of the voluntary assisted dying substance.

As outlined above, the determination of whether it is reasonable for the person to be transferred should be made by the coordinating practitioner unless another medical practitioner is agreed to by the person and the entity.

*Notice that an entity does not provide access to voluntary assisted dying*

The QLRC recommends (Recommendation 15-14) that if an entity does not provide access to voluntary assisted dying, it must:

- inform the public, including persons that use the facility or may use the facility in the future, that it does not provide services associated with access to voluntary assisted dying (such as access to the request and assessment process, access to the administration of a voluntary assisted dying substance, or both) at the facility; and
- do so in a way that is likely to be brought to the attention of consumers or potential consumers of its services at the facility by, for example, placing the information on its website, in brochures and on signage at the facility.

The Bill reflects this recommendation.

The QLRC report considers that the inclusion of this requirement may avoid a person finding out after they have been admitted to, or taken up residence at, a facility that the facility objects to voluntary assisted dying (paragraph 15.278).

### **Additional safeguards**

In addition to the strict eligibility criteria, staged request and assessment process, detailed administration process, and requirements relating to the qualifications and training of participating practitioners, the Bill contains a range of other safeguards, outlined below.

#### ***Initiating a discussion about voluntary assisted dying***

The Bill prohibits a health care worker who provides health services or professional care services to a person from initiating a discussion with that person about voluntary assisted dying or suggest voluntary assisted dying to the person. This reflects the QLRC recommendation (Recommendation 6-1).



The QLRC report considers this an important safeguard to ensure that someone in a therapeutic relationship with the person who is likely to be influential and trusted by the person, but may not be clinically skilled or sufficiently qualified to adequately discuss end of life options, does not initiate a discussion about voluntary assisted dying (paragraphs 6.124 – 6.125).

Despite this prohibition, the Bill provides that a medical practitioner or nurse practitioner may initiate a discussion about voluntary assisted dying if, at the same, the practitioner also informs the person about:

- the treatment options available to the person and the likely outcomes of that treatment; and
- the palliative care and treatment options available to the person and the likely outcomes of that care and treatment.

This reflects the QLRC recommendation (Recommendation 6-3).

The QLRC report provides that a qualified prohibition protects the vulnerable from being informed about only one option, voluntary assisted dying, while facilitating the provision of high-quality health care by respecting a person’s autonomy and right to make informed choices about end of life choices (paragraph 6.121).

The QLRC report states that the exception only applies to medical practitioners and nurse practitioners to address concerns about allied health practitioners and professional care service providers initiating such discussions (paragraph 6.140). The QLRC report considers that while some other registered health practitioners (such as experienced registered nurses) might be well equipped to discuss end of life options in general terms, they cannot be expected to provide advice about various treatment outcomes and that the prohibition on initiating a discussion should therefore apply other than to medical practitioners and nurse practitioners (paragraph 6.139).

The Bill provides that the prohibition does not apply if information about voluntary assisted dying is provided to a person at the person’s request. This reflects the QLRC recommendation (Recommendation 6-2) and is consistent with other jurisdictions.

Breach of the prohibition may be dealt with under the Health Practitioner Regulation National Law (for registered health practitioners) or as a complaint investigated by the Health Ombudsman (for another individual who provides a health service).

### ***Voluntary Assisted Dying Review Board***

The Bill establishes a Voluntary Assisted Dying Review Board (Board) to provide independent oversight of the voluntary assisted dying scheme and provides for its operation.

This reflects the QLRC’s recommendations (Recommendations 18-1 - 18-2).

The QLRC report notes that that “*voluntary assisted dying involves the significant and final act of bringing forward a person’s death*” and a robust oversight mechanism will ensure transparency and accountability and enable compliance with the legislation to be monitored (paragraph 18.49). An independent Board is “*necessary to monitor the operation of the legislation, identify systemic issues and build a knowledge base about voluntary assisted dying in Queensland*” (paragraph 18.50). The QLRC report considers a Board will also “*provide for independent expertise and enhance community confidence in the scheme*” (paragraph 18.51).

The Bill sets out the detailed procedural steps and requirements that must be followed to access voluntary assisted dying. These steps form important safeguards, but the QLRC report states that “*the expertise of an independent oversight body with community engagement functions will help ensure that individuals, health practitioners, health service providers and others understand their rights and obligations under the legislation*” (paragraph 18.53).

The Bill provides that the functions of the Board include to:

- monitor the operation of the Act;
- review each completed voluntary assisted dying request to confirm compliance with the Act by relevant individuals such as the coordinating practitioner, consulting practitioner, administering practitioner, authorised suppliers and disposers, and contact person (this occurs retrospectively);
- refer issues to relevant entities, if required, such as the Commissioner of Police, State Coroner, chief executive of Queensland Health or Health Ombudsman;
- record and keep information about requests for and provision of voluntary assisted dying;
- analyse information and research matters related to the operation of the Act;
- provide information, reports and advice to the Minister or chief executive about the operation of the Act, the Board’s functions or the improvement of processes and safeguards of voluntary assisted dying;
- promote compliance with the Act;
- promote continuous improvement in the compassionate, safe and practical operation of the Act;
- consult and engage with the community about voluntary assisted dying and the Act; and
- any other function given to the Board under the Act.

This is consistent with the QLRC’s recommendation (Recommendation 18-1).

The Board is required to act independently and in the public interest in performing its functions.

The QLRC report notes that Board should not have an approval, dispute resolution or enforcement role to maintain its impartiality, and avoid unnecessary and costly duplication of functions (paragraph 18.224). The QLRC report also states that “*eligibility assessments are a matter for the person’s assessing medical practitioners; investigation and prosecution of offences are a matter for police; and health service complaints and professional discipline are matters for the Health Ombudsman, AHPRA and the national health practitioner boards. As part of its oversight role, the Board should be responsible for identifying and referring matters to such entities as appropriate*” (paragraph 18.224).

The Bill requires the Board to give the Minister an annual report about the performance of the Board's functions within three months after the end of each financial year. The Minister must table a copy of the annual report in the Legislative Assembly within 14 sitting days after receiving it.

The annual report must include information for the financial year about:

- the number of completed requests for voluntary assisted dying the Board has reviewed;
- the number of referrals, if any, the Board has made to other entities;
- recommendations of the Board relevant to the performance of its functions, including, for example, recommendations about systemic matters in voluntary assisted dying or the improvement of voluntary assisted dying; and
- a summary in de-identified form of the information required to be recorded and kept

The QLRC report notes that requiring the Board to prepare and provide its own annual report is essential to ensuring accountability and transparency and forms a core aspect of the Board's role in monitoring and promoting compliance with the legislation (paragraph 18.290).

The Bill also provides that the Board may at any time, and must on request, give the Minister or the chief executive of Queensland Health a report about the Board's functions. A copy of a report given to the Minister must be tabled by the Minister in the Legislative Assembly within 14 sitting days after receiving it. The QLRC report states "*this will ensure that the Board can report formally on significant matters, including the results of any research or systemic issues the Board has identified, on its own initiative or on request of the Minister or chief executive*" (paragraph 18.295).

The Bill also provides that the Board may establish committees to assist in the performance of its functions. The QLRC report notes "*this is a practical measure to help the Board manage its work effectively*" (paragraph 18.304).

The Bill sets out the Board's membership requirements. The Board will consist of between five and nine members appointed by the Minister. Board members will be required to have appropriate expertise, experience, knowledge or skills. The QLRC report at paragraph 18.100 notes this will "*provide adequate scope for the appointment of members from multiple disciplines with an appropriate cross-section of expertise and experience*". The QLRC report considers the Board membership should reflect Queensland's cultural and geographic diversity and a wide range of relevant expertise and experience (paragraph 18.116).

Accordingly, the Bill provides that the Minister may appoint a person as a member of the Board only if satisfied that the person:

- has expertise in medicine, nursing, pharmacy, psychology, social work, ethics, law or another area the Minister considers relevant to the performance of the Board's functions; or
- is otherwise, because of the person's experience, knowledge or skills, likely to make a valuable contribution to the work of the Board.

The Minister must also ensure that the membership of the Board:

- includes persons with a range of experience, knowledge or skills relevant to the Board's functions;
- takes into account the social, cultural and geographic characteristics of the Queensland community; and
- does not include a majority of persons who are public service employees.

The QLRC report considers that specifying matters the Minister must consider about the composition of the Board will ensure that the overall membership is suitably mixed, and the Board is not dominated by persons from a single profession or area of the State (paragraph 18.126). However, the QLRC report also notes that “*some flexibility is necessary to ensure the appointment process, and the Board's ability to carry out its functions, is not hampered by a lack of available persons suitable for appointment*” (paragraph 18.127). Accordingly, the Bill does not impose a ‘quota’ on representation.

A person may not be appointed as a member of the Board if they are an insolvent under administration under section 9 of the *Corporations Act 2001* (Cth), has a conviction (other than a spent conviction) for an indictable offence or are a member of the Legislative Assembly. This will safeguard the integrity of the scheme by ensuring suitable people are appointed as members of the Board.

The office of a member becomes vacant if the member completes their term and are not reappointed, resigns from office, becomes ineligible under the above appointment requirements or the Minister ends their appointment where satisfied that the member is incapable of satisfactorily performing their functions.

The Bill provides that the Minister must appoint a member of the Board to be the chairperson. The chairperson will hold office for the term stated in the instrument of appointment, with the possibility of reappointment. The person will cease to hold office as chairperson if they resign from the office of chairperson or cease to be a member of the Board. In accordance with the *Acts Interpretation Act 1954*, the Minister may remove a person from the office of chairperson at any time.

The Bill provides that the Minister may also appoint a member of the Board to be the deputy chairperson. The deputy chairperson is to act as the chairperson during any vacancy in the office of chairperson and all periods when the chairperson is absent or cannot perform the duties of that office.

The Bill provides that, subject to particular provisions relating to the conduct of meetings, minutes, disclosure of interests, and other matters, the Board may conduct its business, including its meetings, in the way it considers appropriate.

As outlined below, the Bill includes a protection from liability for a person who, acting honestly, gives information to the Board when requested.

### ***Prescribing, supplying and disposing of voluntary assisted dying substance***

The Bill provides that a voluntary assisted dying substance is a Schedule 4 or Schedule 8 substance, as defined in the Poisons Standard, or a combination of those substances, approved by the chief executive for use under the Act for the purpose of causing a person's death. This reflects the QLRC recommendation (Recommendation 11-1).

As outlined above, a person may make an administration decision if they are assessed as eligible for voluntary assisted dying and have completed all the steps in the request and assessment process. A person may decide whether to access voluntary assisted dying by self-administration or, if self-administration is inappropriate, practitioner administration. As outlined in the QLRC report, there is no requirement for the coordinating practitioner or another health practitioner to be present for self-administration, which may occur in an unregulated environment such as the person's home (paragraph 11.13).

The QLRC report provides that where a registered health practitioner does not maintain control of the voluntary assisted dying substance, there is a need to ensure its safe management. It is appropriate for this to occur through the Voluntary Assisted Dying framework and not the *Medicines and Poisons Act 2019*, given the distinct purpose the substance will be used for; that is, causing a person's death, which does not align with the Medicines and Poisons framework's regulation of medicines used for therapeutic purposes (paragraph 11.20).

To ensure the voluntary assisted dying substance is safely managed throughout the process and the roles and responsibilities of relevant parties are clear, the Bill includes provisions to regulate the prescription, supply, storage and disposal of the substance. This reflects the QLRC recommendations (Recommendation 11-2 - 11-13). Additional requirements relating to the regulation of the voluntary assisted dying substance, including prescriptive matters such as labelling, storage and disposal, will be prescribed in a Voluntary Assisted Dying Regulation. This reflects the QLRC recommendation (Recommendation 11-16).

The Bill also provides for a contact person to be appointed once a person has made an administration decision. The contact person will act as a point of contact for the Board and in the case of a self-administration decision, will be authorised to receive the substance from the authorised supplier on the person's behalf and return the substance, or any unused or remaining substance, to the authorised disposer after the person has died or revoked their self-administration decision.

This reflects the QLRC recommendation (Recommendation 11-14). The QLRC report provides that establishing the role of contact person in the Bill will ensure "*clear chain of responsibility for the substance once it has been supplied and in particular, the safe return and disposal of any unused or remaining voluntary assisted dying substance*" (paragraph 11.191). The report considers that enabling the contact person to supply the substance to the person is "*appropriate given Queensland's geographic and demographic profile and the need to ensure voluntary assisted dying is accessible to people in rural and remote areas of Queensland who may not be able to travel to receive the substance*" (paragraph 11.193).

## ***Offences***

The Bill includes specific offence provisions to capture unlawful conduct. The QLRC report considers that specific offences should be included in the legislation in order to secure key safeguards (paragraph 17.69).

### *Unauthorised administration of the substance*

The Bill provides that it is an offence for a person to administer a voluntary assisted dying substance to another person unless the person is authorised to do so under the Act. The offence is specified as a crime and has a maximum penalty of 14 years imprisonment (QLRC recommendation 17-5).

The QLRC report considers whether the maximum penalty for this offence should be life imprisonment, as is the case in Victoria and WA, and concludes that the offence should be distinguished from the offences in the Criminal Code that cover the same conduct (paragraphs 17.92-17.93).

The QLRC report notes that voluntary assisted dying would be unlawful under the Criminal Code except in the circumstances permitted under the legislation (paragraph 17.87). The QLRC report also notes that “*offences in the Criminal Code for unlawful killing and aiding suicide will continue to apply to the unauthorised administration of a voluntary assisted dying substance*” (paragraph 17.87).

The QLRC report states unauthorised administration of a substance under the scheme covers a range of potential conduct (paragraph 17.88). Examples include inadvertent breaches, such as where a family member or carer provides some assistance to the person in self-administering the substance or where a person, either knowingly or inadvertently, administers a substance when they are not qualified to do so. It would also include situations where a person knowingly or recklessly acts outside the scheme, for example, where the administering practitioner knows the person has not made or has withdrawn their request or does not have the required decision-making capacity (paragraph 17.88).

The QLRC report provides that given the range of possible circumstances in which conduct might fall outside the limits of the scheme, it is desirable for the Act to include a separate and specific offence, with a lower maximum penalty (paragraph 17.90). The QLRC report also notes that while “*most serious cases involving unauthorised administration would be dealt with under the Criminal Code, particularly in circumstances where a higher sentence up to life imprisonment may be imposed*”, the provisions in the Bill should be available when prosecution under the Criminal Code for murder, aiding suicide or another relevant offence is not considered appropriate (paragraph 17.98).

The QLRC report states “*this would provide additional flexibility for the prosecuting authority to exercise prosecutorial discretion on whether to prosecute and, if so, for which offence*” (paragraph 17.90).

#### *Inducement by dishonesty or coercion*

The QLRC report states that a key requirement of the scheme is that assisted dying must be voluntary. It goes on to note “*a request for and access to assisted dying is voluntary only if the person is exercising their own free choice*” (paragraph 17.70).

Accordingly, the Bill includes offences for a person, dishonestly or by coercion, to induce another person to:

- make or revoke a request for access to voluntary assisted dying (including a first request, second request, final request or administration decision); or
- self-administer a voluntary assisted dying substance (QLRC recommendation 17-1).

The Bill provides that the offence are misdemeanours, with a maximum penalty of seven years imprisonment. The QLRC report considers this “*reflects the seriousness of the conduct in undermining the autonomy and voluntary choice of the person*” (paragraph 17.73).

#### *Failing to give required information or giving false information*

The request, assessment and administration process set out in the Bill includes requirements relating to record-keeping and reporting.

The QLRC report notes that requirement to document requests, assessments and other stages of the process, and for that documentation to be given to the Board is an important safeguard and that failure to provide the required information, falsifying a document or otherwise providing false information about a person's request, eligibility or other matter would undermine the oversight and safe operation of the scheme (paragraph 17.74).

The QLRC report considers that while some conduct would be covered by the Criminal Code (if there is intent to defraud), "*specific offences with a lower penalty level would serve as visible disincentive and ensure there is an appropriate mechanism to deal with noncompliance, or take non-compliance into account in disciplinary proceedings, without needing to prove intent to defraud*" (paragraph 17.75).

The Bill makes it an offence for a person to fail to give a copy of a document or form to the Board that the person is required to give under the legislation (QLRC recommendation 17-2). The maximum penalty is 100 penalty units.

The Bill makes it an offence for a person to:

- give information to the Board, in the administration of the legislation, that the person knows is false or misleading in a material particular. This will apply to information provided to the Board in an approved form or a response given to a request for information from the Board;
- make a statement that the person knows is false or misleading in a material particular in a form or other document required to be made under the Act. This will cover, for example, a false certification by a witness in an approved form; or
- otherwise falsify a form or other document required to be made under the Act. This will capture the alteration or other falsification of a document or form, such as the production of a 'fake' prescription for a voluntary assisted dying substance, or a wholly false assessment record form where the person has not made a request for voluntary assisted dying.

These offences are specified as misdemeanours, with a maximum penalty of five years imprisonment (QLRC recommendation 17-3). The QLRC report considers that the penalty for these offences reflects the seriousness of the conduct in undermining the veracity of the process and the safe operation of the scheme (paragraph 17.78).

#### *Non-disclosure of personal information*

The *Human Rights Act 2019* provides that individuals have the right to protection of their privacy. Government agencies are required to comply with the privacy principles in the *Information Privacy Act 2009* when collecting and handling personal information. The privacy principles provide that agencies are not permitted to disclose personal information to another person unless an exception applies, for example, if an individual consents to the disclosure or the disclosure is authorised or required by law.

The QLRC report considers that individuals involved in the administration of the voluntary assisted dying scheme will acquire personal information in the course of performing their

functions that may often be of a sensitive nature, and that protection of privacy require such information to be protected from unauthorised disclosure (paragraph 17.102).

The QLRC report notes that “*other Acts commonly include provisions prohibiting the disclosure of personal or other information acquired by a person in performing a function or exercising a power, or in their capacity as an office holder*”, and non-compliance will generally be an offence (paragraph 17.101).

Consistent with the QLRC recommendation, the Bill prohibits disclosure of personal information obtained in the administration of the Act (Recommendation 17-6).

The Bill provides that a person must not make a record of or disclose personal information about an individual that the person obtains in the course of, or because of, the exercise of a function or power under the Act other than:

- for a purpose under the Act;
- with the consent of the person to whom the information relates;
- in compliance with a lawful process requiring production of documents to, or giving evidence before, a court or tribunal; or
- as authorised or required by law.

Failure to comply with the provision is an offence, with a maximum penalty of 100 penalty units.

The QLRC report states that “*the provision would apply, for example, to a person who is or has been a member of the Board or a person engaged to assist the Board, a coordinating practitioner, a consulting practitioner or an administering practitioner, an authorised supplier, a contact person or an agent of the requesting person who is authorised by the legislation to perform certain actions, a witness, or another person involved in administering the legislation such as an officer or employee of the Department*” (paragraph 17.107).

The QLRC report goes on to note that the prohibition on disclosure will only apply to information obtained through the exercise of a function or power (paragraph 17.108). Disclosure of personal information may be permitted in certain circumstances. The QLRC report states that disclosure of personal information may be permitted if necessary, for example, if the Board needs to refer a matter to another entity, to assess a person’s eligibility to access the scheme, for reporting obligations, or to supply or dispose of a voluntary assisted dying substance (paragraph 17.109).

#### *Failure to give voluntary assisted dying substance to authorised disposer*

The Bill requires a contact person to give any of the voluntary assisted dying substance that is unused or remaining after the person’s death to an authorised disposer. The contact person must do this as soon as practicable and in any event within 14 days after the person’s death.

The Bill also provides that if a person revokes a self-administration decision after the substance has been supplied, their contact person must give the substance to an authorised disposer as soon as practicable and in any event within 14 days after the self-administration decision is revoked.



Failure to comply with these requirements is an offence with a maximum penalty of 100 penalty units (QLRC recommendation 17-4).

The QLRC report notes the possibility of criminal liability for breach of this obligation may be a disincentive for people to accept, or continue, in the role of a contact person and that this may limit a person's access to the scheme (paragraph 17.84). However, this has been balanced with the need to ensure the voluntary assisted dying substance is safely managed.

### **Protections from liability**

The QLRC report considers that protections from liability should be included in the legislation to provide clarity and certainty for those who may act under, or interact with, the legislation (paragraph 17.150).

Consistent with the QLRC recommendation (Recommendation 17-8), the Bill includes protection for persons who assist a person to access to voluntary assisted dying or are present when the substance is administered. The protection from criminal liability applies to an act done or omission made in good faith.

The QLRC report notes this *“will ensure that a person who assists the requesting person to access voluntary assisted dying under the legislation will not be guilty of a criminal offence, including the offence of ‘aiding suicide’ under the Criminal Code”* (paragraph 17.164). The QLRC report also states that providing protections for people who are present when a voluntary assisted dying substance is administered *“will avoid the possibility that such a person may inadvertently be caught by the prohibition on aiding suicide”* and will *“provide reassurance that loved ones or others may be with the person”* (paragraph 17.166).

The Bill provides that no civil or criminal liability attaches to a person for an act done or omission made in good faith and without negligence in accordance with, or for the purposes of, the Act. This is consistent with the QLRC recommendation (Recommendation 17-7). This protection from liability will apply not only to a health practitioner but to any person who acts under the legislation, including the person's agent or contact person, or a witness (QLRC report, paragraph 17.152). The QLRC report notes that this *“will provide comfort to health practitioners and other persons who participate in the process”* (paragraph 17.153).

The Bill also confers protection from civil or criminal liability on health practitioners and ambulance officers who, in good faith, do not administer life sustaining treatment to another person in circumstances where:

- the other person has not requested the administration of life sustaining treatment; and
- the person believes on reasonable grounds that the other person is dying after self-administering or being administered a voluntary assisted dying substance in accordance with the legislation.

This is consistent with the QLRC recommendation (Recommendation 17-9). The QLRC report notes that the protections will address *“the concern that a health practitioner or ambulance officer might be civilly liable for failing to provide aid or assistance in an emergency”* (paragraph 17.171).

To remove any doubt, the Bill provides that a person who does an act or makes an omission that is covered by those protections does not commit an offence against sections 300, 302, 303, 305 and 310 (murder and manslaughter), 306 (attempt to murder), 307 (accessory after the fact to murder), 309 (conspiring to murder) or 311 (aiding suicide) of the Criminal Code (Recommendation 17-11).

The Bill addresses the onus of proof in proceedings about liability under the Act, providing that the party alleging that the protection does not prevent liability from attaching to a person bears the onus of proving that the person did not do the act or make the omission in good faith in the circumstances covered by the protection (Recommendation 17-10).

The QLRC report states that the protections from liability should not extend to disciplinary proceedings, the existing health practitioner disciplinary framework should be left to operate on its own terms, and the ability for concerns about the conduct of health practitioners in relation to voluntary assisted dying to be subject to disciplinary proceedings ensures strong oversight of the scheme (paragraphs 17.157 - 17.158).

Consistent with the QLRC recommendations, the Bill provides that the protections from liability provisions do not prevent the making of a mandatory or voluntary notification about a person under the Health Practitioner Regulation National Law (Queensland), or the making of a health service complaint or referral of an issue to the Health Ombudsman (Recommendations 17-12 - 17-13).

The Bill also includes a protection from liability for:

- a person acting honestly in giving information to the Board;
- members of the Board or persons engaged to help in the performance of the Board's functions for an act done, or omission made, honestly and without negligence under the Act.

The QLRC report states that this will help support the effective operation of the oversight body (paragraph 18.311).

### **Review of decisions by the Queensland Civil and Administrative Tribunal**

The Bill provides for the following decisions about a person's eligibility for the scheme to be reviewed by the Queensland Civil and Administrative Tribunal (QCAT):

- a decision of a coordinating practitioner in a first assessment relating to whether the person meets the residency requirements, has decision-making capacity in relation to voluntary assisted dying or is acting voluntarily and without coercion;
- a decision of a consulting practitioner in a consulting assessment relating to whether the person meets the residency requirements, has decision-making capacity in relation to voluntary assisted dying or is acting voluntarily and without coercion;
- a decision of a coordinating practitioner in a final review of whether the person has decision-making capacity in relation to voluntary assisted dying or is acting voluntarily and without coercion.

This reflects the QLRC's recommendation (Recommendation 16-1).

In considering the decisions that should be reviewable under the Act, the QLRC report states that some aspects of the residency requirements do not involve clinical assessment and may involve differing interpretations, making it appropriate for such decisions to be reviewable by QCAT (paragraph 16.84). In contrast, *“the eligibility criteria about the person’s disease, illness or medical condition are matters of clinical judgment that are best determined by a medical practitioner, rather than an administrative body”* (paragraph 16.85).

The QLRC report notes that decision-making capacity is a key feature and major safeguard in the legislation (paragraph 16.88). Accordingly, the QLRC considers it important that, in exceptional circumstances, there is a mechanism for independent review in the event of disagreement with a practitioner’s assessment of a person’s decision-making capacity (paragraph 16.88). The QLRC considers that QCAT already has jurisdiction under the guardianship legislation to make declarations about an adult’s capacity for particular matters and has a body of expertise upon which to draw (paragraph 16.88).

Similarly, the QLRC report notes that the requirement for the person to be acting voluntarily and without coercion is a major safeguard and feature of the scheme (paragraph 16.89). The QLRC considers that the decision of the assessing practitioner on this matter should be reviewable by QCAT as assessment requires consideration of a range of factors, some of which might be subtle or, depending on the circumstances, unknown to the practitioner (paragraph 16.89).

The Bill sets out processes for making an application for review of a decision, the effect of an application for review, what QCAT may decide and the effect of that decision on the request and assessment process, as well as other procedural matters.

Some of these provisions will modify aspects of the *Queensland Civil and Administrative Tribunal Act 2009* such as the constitution of the tribunal and the timeframes for considering a matter. The QLRC report notes that *“a shorter time limit will give greater certainty without the possibility of an application for review being made late in the voluntary assisted dying process”* and *“is consistent with the compassionate and practical aim of the legislation”* (paragraph 16.122). The Bill also provides that hearings of matters must be held in private, noting the private and potentially sensitive nature of voluntary assisted dying (paragraph 16.166).

## **Notification and certification of death**

### *Death certification process*

The *Births, Deaths and Marriages Registration Act 2003* requires a medical practitioner, under certain circumstances, to complete a cause of death certificate if they can form an opinion about the probable cause of a person’s death. The cause of death certificate is then given to the Registrar-General.

The Bill provides that a medical practitioner completing the cause of death certificate must:

- include the underlying disease, illness or medical condition as the cause of death on the cause of death certificate; and
- not include any reference to voluntary assisted dying on the cause of death certificate.

This is consistent with the QLRC's recommendation (Recommendation 12-1). The QLRC report states that the approach will ensure the privacy of the individual and their family, ensure consistency with the approach in Victoria and Western Australia and for data collection by the Australian Bureau of Statistics (paragraph 12.45).

#### *Notification of death to the Board*

The Bill includes requirements for the coordinating practitioner and administering practitioner to each notify the Board of a person's death in the approved form. Each practitioner must notify the Board within two businesses days of becoming aware of the person's death (Recommendation 12-2).

The QLRC report notes that the requirements apply upon the medical practitioner 'becoming aware' of the person's death which provides more certainty than requiring the medical practitioner to hold a 'reasonable belief' (paragraph 12.74). The requirement does not apply if the administering practitioner has already notified the Board of the person's death via the practitioner administration form.

The Bill also requires a medical practitioner who is giving a cause of death certificate for the person, and who reasonably believes or knows that the person self-administered or was administered a voluntary assisted dying substance in accordance with the Act to notify the Board of the person's death in the approved form. The medical practitioner must notify the Board within two businesses days of becoming aware of the person's death (Recommendation 12-3). However, the requirement does not apply if the medical practitioner is the coordinating practitioner or the administering practitioner. This will ensure the Board is receiving accurate notifications and information.

#### *Coroners Act 2003*

Under the *Coroners Act 2003*, coroners are responsible for investigating reportable deaths that occur in Queensland or have a connection with Queensland. A 'reportable death' includes amongst other things, a death that was violent or otherwise unnatural, occurred in care or in custody, was related to health care, or happened in suspicious circumstances

The QLRC report notes that the nature of a reportable death is generally one which is unexpected or where suspicious circumstances surround the death, and that by contrast, a death through access to lawful voluntary assisted dying is planned and expected (paragraph 12.92).

The Bill amends the Coroners Act to provide that a death which occurs as a result of administration of a voluntary assisted dying substance in accordance with the requirements of the Voluntary Assisted Dying Act is not to be a reportable death. This is consistent with the QLRC recommendation (Recommendation 12-4). The QLRC report states that "*any suspicions surrounding the death of a person through accessing voluntary assisted dying may still be reported to the coroner for investigation*" (paragraph 12.92).

#### **Voluntary assisted dying is not suicide**

The Bill provides that a person who dies as a result of self-administration or administration of a voluntary assisted dying substance does not die by suicide and is taken to have died from the disease, illness or medical condition from which they suffered. This is consistent with the QLRC recommendations (Recommendations 1-1 - 1-2).

The QLRC recommends that such a provision be included in the legislation to aid in the interpretation of the Commonwealth laws and avoid their unintended application to lawful and authorised voluntary assisted dying, and to clarify that conduct which is authorised by legislation in Queensland in connection with voluntary assisted dying does not constitute the offence of aiding suicide (Recommendation 20-3).

The Commonwealth Criminal Code (*Criminal Code 1995 (Cth)*) makes it an offence to use a carriage service (such as a telephone, videoconference, email or other forms of electronic communication) to publish or distribute material that counsels or incites committing or attempting to commit suicide. The QLRC report states concerns have been raised about whether providing information and advice about voluntary assisted dying via a carriage service would contravene these Commonwealth offences (paragraph 20.4).

The QLRC report notes that “*uncertainty about the possible application of the Commonwealth ‘carriage service’ offences to conduct that is authorised by state voluntary assisted dying laws is unsatisfactory*” (paragraph 20.74) and recommends that Queensland and other states with voluntary assisted dying laws raise the issue of legal uncertainty with the Commonwealth government (Recommendation 20-1).

As an interim measure, the QLRC also recommends the Commonwealth Director of Public Prosecutions be asked to consider issuing prosecutorial charging guidelines indicating that the Commonwealth Criminal Code offences will not be prosecuted where a doctor or other person is acting in accordance with the procedure outlined in state or territory voluntary assisted dying laws (Recommendation 20-2).

### **Regulation-making power**

The Bill includes a regulation-making power and provides for specific matters to be prescribed by regulation. This reflects the QLRC recommendation (Recommendation 19-3).

Matters that may be prescribed by regulation include:

- the statistical information about requests for, and provision of, voluntary assisted dying that the Board is required to record and keep
- any additional matter required to be certified by the administering practitioner following administration of a voluntary assisted dying substance;
- requirements for the use of the voluntary assisted dying substance, including labelling, storage and disposal requirements; and
- matters that must be included in an approved form under the Act.

This will ensure that any technical matters of detail can be prescribed by regulation to support the scheme.

## **Alternative ways of achieving policy objectives**

As outlined above, access to high-quality palliative care is a right that all Queenslanders should expect. The Queensland Government has committed an additional \$171 million investment from 2021-22 to 2025-26 to lead reforms to palliative care.

However, for some Queenslanders suffering from a life-limiting condition, palliative care is unable to effectively manage their pain, symptoms or suffering. For people who wish to hasten their death to avoid suffering, the only options currently available are to refuse medical treatment, refuse food or hydration, palliative sedation or suicide.

In order to provide these people with a greater range of end of life options by allowing them to choose voluntary assisted dying if it is right for them, the establishment of a legislative scheme is necessary. There are no alternative ways of achieving the policy objectives.

## **Estimated cost for government implementation**

The Government has committed additional investment of \$171 million for palliative care reform from 2021-22 to 2025-26 which builds on the Department's existing funding for palliative care.

Establishing and implementing the proposed voluntary assisted dying scheme will require additional resources, including resources to establish and provide administrative support to the Board, establish an official Statewide Care Navigator Service and Statewide Pharmacy Service, and develop comprehensive mandatory training, information technology systems, communication materials, policies and procedures. The QLRC report notes that effective implementation is essential for a compassionate, safe and practical scheme (Chapter 21, Chapter summary).

Government will put in place arrangements to address the additional costs associated with establishing the voluntary assisted dying scheme.

After establishing the scheme, ongoing costs will depend on the number of people accessing the scheme and demand for services. As a comparison, in Victoria, from commencement on 19 June 2019 to 31 December 2020 (an 18-month period):

- 581 people were assessed for eligibility to access voluntary assisted dying;
- 456 permit applications were made;
- 405 permits were issued;
- 224 people died from taking the prescribed medications; and
- 36 per cent of the applicants were from regional Victoria.

## **Consistency with fundamental legislative principles**

### **Overview**

The Bill has been drafted with regard to the fundamental legislative principles (FLPs) in section 4 of the *Legislative Standards Act 1992*.

However, a number of clauses in the Bill may potentially impact on particular FLPs. For example:

- the Bill establishes a new scheme for accessing voluntary assisted dying in Queensland. This requires the inclusion of standard provisions that raise FLP issues such as: new offences; administrative powers of the chief executive; powers of inspectors; and information-sharing provisions to support compliance with the scheme;
- the Bill includes conscientious objection provisions that could be seen to breach the rights of individuals and entities;
- as some aspects of the scheme, for example the substance management provisions, are technical in nature, it is necessary to prescribe a range of matters by regulation and to refer to external documents.

The potential breaches are discussed in further detail below and are considered justified to support the scheme.

### **Rights and liberties of individuals - *Legislative Standards Act 1992*, section 4(2)(a)**

The Bill contains a number of clauses that potentially impact on the fundamental legislative principle that legislation must have sufficient regard to the rights and liberties of individuals. Potential breaches are discussed in detail below.

#### ***Does the legislation make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?***

Section 4(3)(a) of the Legislative Standards Act states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Given the size and complexity of the scheme, the Bill contains administrative powers for the chief executive to support the operation and administration of the scheme. These powers are considered to be sufficiently defined and subject to appropriate limits, as outlined below.

#### *Administrative powers*

##### Power to grant residency exemption

The QLRC recommended that a residency requirement be included in the eligibility criteria a person must meet to access voluntary assisted dying (Recommendation 7-11). The QLRC considered that without such a requirement, the right of a Queenslanders to access the scheme and the quality of end of life care and treatment could be compromised by excessive demand, and that the requirement would "ensure access to high-quality care for Queenslanders, for whose benefit the scheme is principally enacted and supported by the State government" (paragraph 7.455).

Clause 10 (Eligibility) sets out the eligibility requirements and gives effect to this recommendation. One element of the eligibility criteria is that the person must be an Australian citizen, permanent resident of Australia or have been ordinarily resident in Australia for at least three years immediately before the person makes their first request for access. Where the person is unable to meet this element of the eligibility criteria, the Bill provides that the person can be granted an Australian residency exemption by the chief executive. The person must additionally have been ordinarily resident in Queensland for at least 12 months immediately before the person makes the first request, or alternatively have been granted a Queensland residence exemption by the chief executive.

The QLRC recommended that a power to exempt a person from the residency requirement should be included in the Bill (Recommendation 7-12). The QLRC considered that while a residency requirement can be justified, it is important to recognise that the requirement may have harsh, and possibly unintended consequences for individuals with a substantial connection to Queensland and who might be thought to be deserving of access to the scheme (paragraph 7.456).

On this basis, the QLRC favoured the conferral of a discretionary power to exempt a person from the residency requirement if the decision-maker is satisfied the person has a substantial connection to Queensland and an exemption is justified on compassionate grounds (paragraph 7.491). The QLRC considered the nature of the power would be best conferred on an official such as the Director-General of Queensland Health or the Director-General's delegate, rather than a review body such as the Board or QCAT (paragraph 7.492).

Clause 12 (Residency exemptions) gives effect to this recommendation, providing that a person may apply to the chief executive for an exemption from the Australian or Queensland residency requirements. The chief executive may grant the exemption if satisfied the person has a substantial connection to Queensland (for example, the person resides outside Queensland but is a former resident and their family resides in Queensland) and there are compassionate grounds for granting the exemption.

This power is considered justified on the basis that it provides the chief executive with the ability to apply the residency requirement flexibly where necessary to avoid adverse outcomes, ensuring that individuals who can prove a substantial connection to Queensland are not excluded from accessing voluntary assisted dying. The limits on this power are clearly defined, with the criteria for considering an exemption set out in the Bill.

#### Power to require report about Board's functions

Clause 135 (Report to Minister or chief executive on board's functions) provides that the Board may, and must on request, provide the Minister or chief executive with a report about the Board's functions.

The Office of the Queensland Parliamentary Counsel's (OQPC) FLP Notebook states that a power to direct persons and bodies that are otherwise required to act with independence in the exercise of their powers and functions is potentially inconsistent with that independence, and that any provision empowering the giving of directions to independent persons and bodies should be considered very carefully to ensure that their independence is not prejudiced.



The QLRC recommended that the Bill should provide for the Board to provide information, reports and advice to the Minister or chief executive, on the Board's initiative or on request, in relation to the operation of the Act, the Board's functions, or the improvement of the processes and safeguards of voluntary assisted dying (Recommendation 18-1(f)). The QLRC considered that this requirement will ensure the Board can report formally on significant matters, including the results of any research or systemic issues the Board has identified, on its own initiative or on request of the Minister or chief executive (paragraph 18.295). The QLRC considered the reporting and advice function to be central to its oversight role (paragraph 18.257) and that the Board should be accountable to the Minister and the chief executive and through them, to the Parliament and the community (paragraph 18.258).

A copy of the report provided to the Minister under this clause must be tabled in the Legislative Assembly within 14 sitting days after the Minister receiving it. This ensures transparency of any reports about the Board's functions provided to the Minister or chief executive under this clause.

Additional safeguards are included, with clause 136 (Reports not to include personal information) providing that an annual report or report provided under clause 135 must not include personal information about an individual unless the information was provided to the Board for the purpose of publication.

Requiring the Board to provide the Minister or chief executive with a report about the Board's functions is not seen to prejudice the Board's independence in any way.

Any potential breach of FLPs is considered justified on this basis.

#### Power to approve official voluntary assisted dying care navigator service

Clause 156 (Official voluntary assisted dying care navigator service) provides that the chief executive may approve a service to be an official voluntary assisted dying care navigator service for the Act. The service is to provide support, assistance and information to people relating to voluntary assisted dying.

The QLRC recommended that a Statewide Care Navigator Service be established to support the scheme in Queensland (Recommendation 21-3). The QLRC considered that the establishment of such a service would be crucial to the success of the scheme in Queensland (paragraph 21.68) and that the service should be established under the umbrella of Queensland Health, consistent with the approach in Victoria and Western Australia (paragraph 21.75).

Any potential breach of FLPs are justified on this basis. Providing for the care navigator service to be approved by the chief executive under the Bill will embed this service into the scheme, enable the service to be established under the umbrella of Queensland Health and ensure people are supported in accessing information about voluntary assisted dying.

The chief executive is required to publish such an approval on the Queensland Health website. This will ensure that individuals seeking information on voluntary assisted dying are able to find the support they need.

### Power to approve interpreters

The Bill provides for a person requesting access to voluntary assisted dying to do so with the assistance of an interpreter, if required. This will assist people seeking access to voluntary assisted dying who may not be fluent, or may be unable to communicate, in English.

Clause 157 (Interpreters) provides that an interpreter for a person requesting accessing must be either accredited by a body approved by the chief executive or have been granted an exemption from the accreditation requirements by the chief executive.

This provision is in place to ensure that interpreters involved in the scheme are appropriately accredited.

The QLRC recommended:

- appropriately qualified interpreters should be available to assist in communications between health practitioners and persons seeking access to voluntary assisted dying (Recommendation 21-8); and
- an interpreter for a person requesting access to voluntary assisted dying must be accredited by a body approved by the chief executive or have been granted an exemption by the chief executive (Recommendation 19-1).

The QLRC report provided that interpreters are essential to ensure the accessibility of the scheme and that the important and nuanced nature of the communications that must be facilitated requires them to be appropriately qualified and independent (paragraph 21.124).

The power for the chief executive to approve specific accreditation bodies for the purposes this clause is appropriate given this is a technical matter that may be subject to change and is not appropriate for inclusion in the Bill. This approach will allow Queensland Health with the flexibility to determine the appropriate accreditation bodies for the purposes of interpreters involved in the voluntary assisted dying process.

The QLRC recommended that the chief executive may grant an exemption from the accreditation requirement if satisfied that no accredited interpreter is available in a particular case, and there are exceptional circumstances for granting the exemption (Recommendation 19-2). The QLRC report considered that there may be exceptional circumstances where an accredited interpreter is not available, and that providing the chief executive with this exemption power will provide flexibility to accredit a person who speaks emerging or low demand languages for which National Accreditation Authority for Translators (NAATI) certification is not yet available (paragraph 19.32).

Any potential breach of FLPs is considered justified on this basis, to ensure that interpreters are appropriately accredited wherever possible and that the unavailability of accredited interpreters in a particular case does not preclude the person from accessing voluntary assisted dying where there are exceptional circumstances.

### Power to authorise authorised suppliers and authorised disposers

*Authorised supplier* and *authorised disposer* are defined in Schedule 1 of the Bill to mean a registered health practitioner, or persons in a class of registered health practitioners, authorised by the chief executive.

Clauses 158 (Authorised suppliers) and 159 (Authorised disposers) provide for the chief executive to authorise an appropriately qualified registered health practitioner, or person in a class of registered health practitioners, to supply (authorised supplier) or dispose of (authorised disposer) a voluntary assisted dying substance under the Act.

This is consistent with the Western Australian Act. The QLRC recommended the establishment of a Statewide Pharmacy Service to facilitate the supply of the voluntary assisted dying substance across Queensland and the development by the Queensland Government of a model for disposal of the substance with particular consideration given to accessibility by people in rural and remote areas (Recommendations 21-4 - 21-5).

Any potential breach of FLPs is justified as providing for this power to be exercised by the chief executive is appropriate to enable Queensland Health to determine the most appropriate service delivery model for the supply and disposal of the voluntary assisted dying substance. It would not be appropriate to prescribe matters of clinical and operational detail in the legislative framework.

The Bill contains appropriate safeguards. The chief executive is required to give a person's coordinating practitioner the name of one or more authorised suppliers or authorised disposers, on request. This will ensure that the person accessing voluntary assisted dying and their coordinating practitioner are aware of who the relevant authorised supplier and authorised disposer are for the purposes of collecting and disposing of the voluntary assisted dying substance in accordance with the requirements under the Act. Noting the substance will be lethal if ingested, this approach strikes a balance between ensuring the details of authorised suppliers and authorised disposers authorised by the chief executive are made available to individuals involved in the scheme, and ensuring security of the substance and safety of the general public by not publishing this information publicly.

### Power to approve a voluntary assisted dying substance

*Voluntary assisted dying substance* is defined in Schedule 1 of the Bill to mean a substance approved by the chief executive.

Clause 160 (Voluntary assisted dying substance) provides that the chief executive may approve an S4 or S8 substance, or a combination of those substances, for use under the Act for the purpose of causing a person's death. *S4 substance* and *S8 substance* are defined in Schedule 1 to mean a substance listed in the relevant schedule of the Poisons Standard.

This reflects the QLRC's recommendation (Recommendation 11-1). The QLRC report considered that the scheme should not limit or prescribe the substances that may be used for voluntary assisted dying (paragraph 11.7). This reflects the Parliamentary Committee's recommendation (Committee report, Recommendation 11).

It is considered justified for the chief executive to approve a substance for use under the Act from the range of S4 and S8 substances listed in the Poisons Standard. The particular substances, or combination of substances used, are a technical, clinical matter not appropriate for inclusion in the legislation. The substances used may also change over time and may differ according to the person's clinical needs. It is also a matter of public safety not to prescribe the particular substances in legislation or publish these details publicly.

In practice, the QLRC recommended the establishment of a Statewide Pharmacy Service to facilitate supply of the voluntary assisted dying substance and to provide a central source of information about the substance to individuals accessing voluntary assisted dying and registered health practitioners (Recommendation 21-4). This will ensure that registered health practitioners involved in the voluntary assisted dying process and individuals accessing the scheme are aware of the substance or combination of substances to be used, while maintaining the safety of the general public by not publishing this information publicly or including it in legislation.

Before prescribing the voluntary assisted dying substance to the person, the coordinating practitioner will be required to provide the person with particular information in writing, including details of the S4 or S8 substance, or combination of substances, constituting the voluntary assisted dying substance (clause 65(1)(a)) and the authorised supplier is subject to a similar requirement when supplying the substance (clause 70(2)(b)).

#### Power to approve practitioner eligibility requirements

Part 5 of the Bill provides for eligibility requirements for health practitioners participating in the scheme:

- Clause 82 (Eligibility to act as coordinating practitioner or consulting practitioner) provides that for a medical practitioner to act as a coordinating practitioner or consulting practitioner, they must meet particular eligibility requirements, including meeting the approved medical practitioner requirements;
- Clause 83 (Eligibility to act as administering practitioner) provides that in addition to medical practitioners who are eligible to act as a coordinating practitioner, nurse practitioners and nurses are eligible to act as an administering practitioner if they meet particular eligibility requirements. A nurse practitioner is required to meet approved nurse practitioner requirements and a nurse is required to meet approved nurse requirements.

The QLRC recommended that the chief executive have the power to approve additional eligibility requirements for medical practitioners, nurse practitioners and nurses (Recommendations 13-2 and 13-5). The QLRC noted that the medical practitioner requirements approved by the chief executive will ensure that any overseas-trained specialist has the necessary knowledge, clinical skills and professional attributes to perform the role (Chapter 13, chapter summary). In relation to additional requirements for administering practitioners, the QLRC noted this would ensure nurse practitioners and registered nurses who participate in the administration of the substance will have relevant and current experience and expertise.

This ensures flexibility for Queensland Health to set requirements and limit who is eligible to act as a coordinating practitioner, consulting practitioner or administering practitioner, providing an important safeguard for the scheme.

Accordingly, the Bill provides for the chief executive to approve:

- Clause 161 (Approved medical practitioner requirements) - medical practitioner requirements for the purposes of clause 82;
- Clause 162 (Approved nurse practitioner requirements) - nurse practitioner requirements for the purposes of clause 83;
- Clause 163 (Approved nurse requirements) - nurse requirements for the purposes of clause 83.

The chief executive is required to publish the approved requirements on the Queensland Health website, ensuring eligible practitioners are aware of what the requirements are.

#### Power to approve training

Clause 165 (Approved training) provides that the chief executive must approve training for the purposes of clauses 20 (Coordinating practitioner to have completed approved training), 31 (Consulting practitioner to have completed approved training) and 83 (Eligibility to act as administering practitioner).

The QLRC recommended the Queensland Government ensure comprehensive mandatory assessment training is developed and available to qualified practitioners prior to commencement of the legislation (Recommendation 21-6). The QLRC considered that a training package needs to be developed that is tailored specifically to Queensland's legislative framework (paragraph 21.118) and should be supplemented with information and support for health practitioners (paragraph 21.121).

It is therefore appropriate for the chief executive to approve training for the scheme rather than for the training to be provided for in legislation, and any breach of FLPs is justified on that basis.

The chief executive is required to publish the approved training on the Queensland Health website. This will ensure that eligible practitioners are aware of the training requirements.

#### Power to approve information

Clause 164 (Approved information) provides that the chief executive must approve information for the purposes of clause 16(3).

Clause 16(3) provides that if a medical practitioner accepts a person's first request for access to voluntary assisted dying they must give the person the approved information at the time of informing the person of their decision to accept the first request.

The QLRC recommended that a medical practitioner who accepts a first request must give the person the approved information at the and that the chief executive must approve information for this purpose and publish the information on the Queensland Health website (Recommendations 8-23 and 8-28). The QLRC report noted that this is consistent with the Western Australia Act and will enable information to be settled during implementation and changed over time if required (paragraphs 8.118-8.119). The QLRC report provided at paragraph 8.120 that the approved information might include:

- details of the official care navigator service that can give the person information, including the name and contact details of medical practitioners or health service providers who may be able to assist;
- details of a Government website giving information about voluntary assisted dying in Queensland; and
- fact sheets or other information about voluntary assisted dying in Queensland.

The QLRC report considered that publication of the approved information on the relevant website ensures that the information can be easily located by practitioners and others who might want to obtain it (paragraph 8.119). The Bill requires the chief executive to publish the approved information on the Queensland Health website (clause 164(2)).

***Is the legislation consistent with principles of natural justice?***

Section 4(3)(b) of the Legislative Standards Act states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation is consistent with principles of natural justice.

The requirements relating to appointment of members of the Board may be seen to breach the principles of natural justice. These provisions are considered necessary to support the operation of the scheme by ensuring members of the Board are suitable for appointment.

OQPC's FLP Notebook provides that one aspect of natural justice is procedural fairness, and that procedural fairness involves a flexible obligation to adopt fair procedures that are appropriate and adapted to the circumstances of the particular case. Matters to be considered in relation to procedural fairness include whether a person who is the subject of the decision will be provided with adequate notice of when any hearing will take place, adequate notice of any allegation being considered, adequate notice of any particular requirements of the decision-maker and a reasonable opportunity to present the person's case and respond to any adverse material.

Clause 127 of the Bill (Vacation of office) provides that the office of a member of the Board becomes vacant if the Minister ends the member's appointment. The Minister is empowered to terminate the member's appointment by signed notice given to the member, if the Minister is satisfied they are incapable of satisfactorily performing their functions. The office of a member also becomes vacant if the member becomes ineligible for appointment under clause 124(3), which provides that a person may not be appointed as a member if the person:

- is an insolvent under administration under the Corporations Act, section 9;
- has a conviction, other than a spent conviction, for an indictable offence; or
- is a member of the Legislative Assembly.

This could be seen to breach procedural fairness as there is no mechanism by which the member can present their case and respond to the notice to vacate. There is also no mechanism to respond where a person becomes ineligible for appointment under clause 124(3).

This is considered appropriate given the need to safeguard the integrity of the scheme by ensuring members of the Board are performing their functions effectively. The QLRC report noted that the provision setting out persons who are not eligible for appointment is consistent with other Queensland legislation, such as the Coroners Act, section 91L(2) and the *Family and Child Commission Act 2014* (Qld) section 29X(4) (paragraph 18.130). The QLRC also noted that the ability for the Minister to remove a member from office if satisfied the member is incapable of satisfactorily performing their functions is consistent with other legislation (paragraph 18.135).

Adequate safeguards are included in the provision, with the Minister only being able to exercise the power to terminate a member's appointment where satisfied that the member is incapable of satisfactorily performing their functions. Members of the Board will be fully aware of their responsibilities, with the functions of the Board clearly set out in clause 117 of the Bill (Functions).

Clause 125 (Conditions of appointment) provides that for any matters not provided for by the Bill, a member holds office on the terms and conditions decided by the Minister.

There is a need to ensure members of the Board are held to a high standard given their monitoring and oversight role in the scheme. Under clause 119, the Board is required to act independently and in the public interest in performing its functions. Accordingly, it is appropriate for the office of a member to be vacated if they become ineligible under clause 124(3) based on the criteria outlined above, and for the member not to have the ability to respond. The circumstances in which a member becomes ineligible is clearly defined in clause 124(3), and members will be aware of these requirements.

***Power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer***

Section 4(3)(e) of the Legislative Standards Act states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

***Inspectors' functions and powers***

Clause 151 of the Bill (Functions and powers of inspectors) provides that the functions of an inspector under the Medicines and Poisons Act extend to the investigation and enforcement of compliance with the Bill. For example, an inspector may be required to enter a place to ensure a voluntary assisted dying substance is being stored in accordance with the voluntary assisted dying legislation.

Potential FLP issues raised by these provisions were comprehensively addressed in the Medicines and Poisons Bill 2019 [Explanatory Notes](#). The Explanatory Notes provided that:

- generally, the inspectors' powers were consistent with the principles set out in OQPC's FLP Notebook and were considered necessary to support the effective and transparent exercise of inspectors' powers for monitoring, compliance and enforcement of the Medicines and Poisons Act;
- a range of safeguards were included in the provisions (see pages 37 – 47).

***Does the legislation confer immunity from proceeding or prosecution without adequate justification?***

Section 4(3)(h) of the Legislative Standards Act provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation does not confer immunity from proceeding or prosecution without adequate justification.

The former Scrutiny of Legislation Committee stated that one of the fundamental principles of the law is that everyone is equal before the law and should be fully liable for one's acts or omissions. However, the Committee recognised that the conferral of immunity is appropriate in certain situations, such as to persons carrying out statutory functions.

Clause 138 (Request for information by the board) provides that to help in performing its functions, the Board may consult with, and ask for information from, other entities. Clause 139 (Protection from liability for giving information) provides that a person acting honestly who gives information to the Board under clause 138 is not liable, civilly, criminally or under an administrative process, for giving the information. The person also cannot be held to have breached any code of professional etiquette or ethics, or departed from accepted standards of professional conduct, merely because they give information to the Board. The Bill provides that in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information, and that if the person would otherwise be required to maintain confidentiality about the information under the Act, oath or rule of law or practice, the person does not contravene the Act, oath or rule of law or practice by giving the information and is not liable to disciplinary action for giving the information.



Part 10 of the Bill (Protection from liability) also sets out a range of protections from criminal and civil liability:

- Clause 147 (Protection for persons assisting access to voluntary assisted dying or present when substance administered) provides that criminal liability does not attach to a person only because they, in good faith, do an act or make an omission that assists another person who the person believes on reasonable grounds is requesting access to or accessing voluntary assisted dying in accordance with the Act, or the person is present when another person self-administers or is administered a voluntary assisted dying substance under the Act;
- Clause 148 (Protection for persons acting under Act) provides that no civil or criminal liability attaches to a person for an act done or omission made in good faith and without negligence in accordance with, or for the purposes of, the Voluntary Assisted Dying Act;
- Clause 149 (Protection for health practitioners and ambulance officers) applies where a registered health practitioner, student under the Health Practitioner Regulation National Law (Queensland) or an ambulance officer (a protected person), in good faith, does not administer life sustaining treatment to another person in circumstances where the other person has not requested the administration of life sustaining treatment and the protected person believes on reasonable grounds that the other person is dying after self-administering or being administered a voluntary assisted dying substance in accordance with the Act. The clause provides that no civil or criminal liability attaches to the protected person for not administering the life sustaining treatment.

For the purposes of Part 10, to remove any doubt, the Bill declares that a person who does an act or makes an omission mentioned in clauses 147, 148, or 149 does not commit an offence against relevant provisions of the Criminal Code (sections 300, 302, 303, 305, 306, 307, 309, 310 or 311). If a question arises in a proceeding as to whether the Bill prevents liability for an act or omission attaching to a person, the party alleging that the Bill does not prevent liability attaching to the person bears the onus of proving the person did not do the act or make the omission in good faith (and for clause 148, without negligence) in the circumstances set out in the Bill.

These protections from liability reflect the recommendations of the QLRC (Recommendations 17-7 - 17-10, 18-2). The QLRC report considered that protections from liability should be included in the legislation to provide clarity and certainty for those who may act under, or interact with, the legislation, and should ensure adequate protection in appropriate circumstances, while recognising that there should continue to be consequences for inappropriate conduct outside the limits of the scheme [paragraph 17.150]. The QLRC noted that the operation of, and access to, the scheme will depend on the involvement of a range of persons, including medical and other health practitioners, and that participants should be confident they will not be exposed to criminal sanctions or civil liability if they act appropriately under the legislation (paragraph 17.151).

The QLRC considered that the protection from civil and criminal liability should extend to any person who acts in good faith and without negligence under the legislation, including the contact person or an agent of the person authorised by the legislation to perform certain actions, or a witness (paragraph 17.152). The QLRC noted that this protection will provide comfort to health practitioners and other persons who participate in the process (paragraph 17.153).

The protections from liability put beyond doubt that if someone is acting in accordance with the scheme, they do not commit an offence. If a person acts other than as authorised under the

scheme, for example, to unlawfully administer a voluntary assisted dying substance to a person, they will be subject to the offence provisions of the Bill.

Protection from liability is only provided to persons performing functions under the Bill and people who believe on reasonable grounds that the person is accessing voluntary assisted dying in accordance with the Act. The immunity is appropriately limited in scope, as it does not attach to acts done or omissions made that are reckless, unreasonable or excessive (and for clause 148, where there is negligence).

Clause 153 also provides that a member of the Board or a person engaged to help in the performance of the Board's functions is not civilly liable for an act done, or omission made, honestly and without negligence under this Act. The QLRC report states that this will help support the effective operation of the oversight body (paragraph 18.311).

The conferral of immunity on these persons is justified noting the former Scrutiny of Legislation Committee's recognition that conferral of immunity is appropriate in certain situations, such as to persons carrying out statutory functions.

Any potential breach of FLPs is justified on this basis.

Clause 150 (Nothing affects disciplinary proceedings, complaints or referrals) provides that nothing in Part 10 prevents the making of a mandatory notification or voluntary notification about a person under the National Law (Queensland), the making of a health service complaint under the Health Ombudsman Act or the referral of an issue to the health ombudsman under clause 117(1)(c)(iv). This ensures that although individuals may be protected from liability under Part 10, relevant professional consequences may still apply, if appropriate.

***Does the legislation in all other respects have sufficient regard to the rights and liberties of individuals?***

A number of FLP issues not specifically contained in the Legislative Standards Act are discussed below.

*Conscientious objection provisions*

#### Registered health practitioners

The QLRC recommended specific provisions be included in the Bill that deal with the consequences of a registered health practitioner's conscientious objection to voluntary assisted dying (Recommendations 14-1 - 14-2).

Part 6 of the Bill recognises that a registered health practitioner may have a conscientious objection to voluntary assisted dying. Clause 84 (Registered health practitioner with conscientious objection) provides that a registered health practitioner who has a conscientious objection to voluntary assisted dying has the right to refuse to:

- provide information to another person about voluntary assisted dying;
- participate in the request and assessment process;
- participate in an administration decision;
- prescribe, supply or administer a voluntary assisted dying substance;
- be present at the time of the administration or self-administration of a voluntary assisted dying substance.

Where a registered health practitioner refuses to do one of these things because of a conscientious objection, the Bill requires that they:

- inform the person that other health practitioners, health service providers or services may be able to assist the person, and
- give the person:
  - information about a health practitioner, health service provider or service who, in the practitioner's belief, is likely to be able to assist the person, or
  - the details of an official voluntary assisted dying care navigator service that is able to provide the person with information about a health practitioner, health service provider or service who may be able to assist the person.

These requirements may be considered to impact on the rights and liberties of registered health practitioners to practice according to their beliefs.

The QLRC report considered that recognition of an individual to freedom of conscience and belief warranted the inclusion of a provision in the Bill about an individual's conscientious objection to participating in voluntary assisted dying (paragraph 14.80). The QLRC were of the view that the right to make such a conscientious objection should be subject to other principles and other individual rights, including a person's autonomy in end of life choices and the right to be supported in making informed decisions about those choices and considered that the right of an individual, including a health practitioner, to conscientiously object to participating in voluntary assisted dying should be subject to reasonable provisions that respect the rights of other individuals (paragraphs 14.80-14.81). Any potential breach of fundamental legislative principles is justified on this basis.

### Speech pathologists

The QLRC recommended specific provisions be included in the draft Bill to deal with the consequences of a speech pathologist's conscientious objection to voluntary assisted dying (Recommendations 14-3 - 14-5).

The QLRC report noted that special provision would need to be made for speech pathologists, who are allied health professionals but not registered health practitioners, and who may be asked to be involved in the request and assessment process, for example, to help a person communicate a voluntary assisted dying request (paragraph 14.93).

Clause 85 (Speech pathologist with conscientious objection) provides that a person who has a conscientious objection to voluntary assisted dying has the right to refuse to:

- provide information to another person about voluntary assisted dying;
- participate in the request and assessment process;
- participate in the administration decision;
- be present at the time of the administration or self-administration of a voluntary assisted dying substance.

The QLRC report considered that as with registered health practitioners involved in the voluntary assisted dying process, similar rights and requirements should exist for speech pathologists, to recognise the role they typically play in facilitating communication between a health practitioner and patient, and the fact that they are likely to be employed or engaged by a health service, rather than by the person (Chapter 14, chapter summary).

Where a speech pathologist refuses to do one of these things for their employer or for any other person who has requested speech pathology services in relation to voluntary assisted dying, because of a conscientious objection, they must:

- inform the employer or other person of their conscientious objection; and
- inform the employer or other person of another speech pathologist or speech pathology service who, in their belief, is likely to be able to assist in providing the speech pathology services requested; and
- must not intentionally impede the person's access to speech pathology services in relation to voluntary assisted dying.

Where a speech pathologist is employed or otherwise engaged by a health service provider and knows, or ought reasonably to know, that the health service provider provides, or is likely to provide, services relating to voluntary assisted dying, the speech pathologist must inform the health service provider of their conscientious objection to voluntary assisted dying and discuss with the provider how they can practise in accordance with their beliefs without placing a burden on their colleagues or compromising a person's access to voluntary assisted dying under the Act.

As with registered health practitioners, this recognises the right to make a conscientious objection should be subject to other principles and other individual rights, including a person's autonomy in end of life choices and the right to be supported in making informed decisions about those choices.

Any potential breach of FLPs is justified on this basis.

#### Participation by entities

The QLRC recommended provisions be included in the Bill to address participation in voluntary assisted dying by entities (Recommendations 15-1 - 15-14).

These provisions could be seen as restricting the freedom of thought, conscience, religion and belief of practitioners working in these entities and the right of the entities to conduct business without interference.

The QLRC report considered that access to voluntary assisted dying depends on the extent to which entities allow access to information and services and noted that for a variety of reasons, entities may not be prepared to provide access to voluntary assisted dying (Chapter 15, chapter summary). The reasons for not participating may be based on an objection to providing or promoting voluntary assisted dying, sometimes known as 'institutional conscientious objection'. The QLRC considered that this gives rise to a potential conflict between, and a need to reconcile, competing rights and interests: the rights of individuals to access information about voluntary assisted dying, request voluntary assisted dying if they choose, and engage in voluntary assisted dying, and the rights and interests of entities not to provide services they do not wish to provide and to not facilitate their provision by others.

To balance these competing interests, the Bill regulates the participation of relevant entities in Part 6, Division 2 (Participation by entities), and captures relevant entities operating at facilities including private hospitals, hospices, public sector hospitals, nursing homes and residential aged care facilities.

The Bill sets out requirements on relevant entities in relation to the following stages of the voluntary assisted dying process:

- Clause 90 (Access to information about voluntary assisted dying);
- Clause 92 (First requests and final requests);
- Clause 93 (Second requests);
- Clause 94 (First assessments);
- Clause 95 (Consulting assessments);
- Clause 96 (Administration decisions);
- Clause 97 (Administration of voluntary assisted dying substance).

For example, requirements on relevant entities include not hindering a person's access at the facility to information about voluntary assisted dying, allowing reasonable access to the person at the facility by practitioners or representatives of an official voluntary assisted dying care navigator service, and taking reasonable steps to facilitate the transfer of the person to a place where the person may access voluntary assisted dying.

Clause 98 (Relevant entities to inform public of non-availability of voluntary assisted dying) requires a relevant entity that does not provide services associated with voluntary assisted dying to publish information about the fact that the entity does not provide those services at their facility. The information must be published in a way which is likely that persons who receive the services of the entity at the facility, or may in future, become aware of the information, for example by printing the information in brochures about the entity or placing the information on the entity's website.

The QLRC considered that the draft Bill should accommodate the rights and interests of individuals to access a process that is lawful and the rights and interests of an entity to not provide voluntary assisted dying at its facility (Chapter 15, chapter summary). These requirements are justified on that basis.

*Initiating a discussion about voluntary assisted dying*

Clause 7 (Health care worker not to initiate discussion about voluntary assisted dying) provides that a health care worker (defined to mean a registered health practitioner or another person who provides a health service or personal care service) must not, in the course of providing a health service or personal care service to a person, initiate a discussion with the person that is in substance about voluntary assisted dying or in substance, suggest voluntary assisted dying to the person.

An exception applies to a medical practitioner or nurse practitioner, who may initiate a discussion if, at the same time, they also inform the person about the treatment options available to the person and likely outcomes of that treatment, and the palliative care and treatment options available to the person and likely outcomes of that care and treatment.

The provision also provides that a health care worker is not prevented from providing information about voluntary assisted dying to the person at the person's request.

These requirements may be considered to impact on the rights and liberties of health care workers to exercise freedom of speech.

The QLRC report noted that a prohibition on a health practitioner initiating a discussion about voluntary assisted dying could be regarded by some as an extra safeguard against a person being unduly influenced but could also be seen by others as preventing health practitioners from doing their professional duty of telling patients about their end of life options, and could prevent a person from making properly informed decisions (Chapter 6, chapter summary). The QLRC report therefore recommended a qualified prohibition on initiating a discussion about voluntary assisted dying (Recommendations 6-1 - 6-4).

The QLRC report considered that a prohibition should not apply if information about voluntary assisted dying is provided to a person at their request. The prohibition also does not apply to medical practitioners and nurse practitioners who at the same time, inform the person about their treatment options and palliative care options and likely outcomes. The QLRC considered this preferable to a complete prohibition on all registered health practitioners initiating a discussion about voluntary assisted dying, which is included in the Victorian Act (paragraph 6.115).

The QLRC report noted that while the Victorian approach might allay concerns about the potential for undue influence and coercion regarding vulnerable patients, the importance of this issue does not justify a total prohibition on all health practitioners initiating discussions about voluntary assisted dying (paragraphs 6.116-6.117). The QLRC report considered the qualified prohibition would be consistent with professional standards and codes of ethics regarding informed consent and respect for patient choice and concluded that a qualified protection would protect the vulnerable from being informed by a practitioner about only one option: voluntary assisted dying (paragraphs 6.117, 6.121). It was also considered appropriate to only permit medical practitioners and nurse practitioners to initiate a discussion about voluntary assisted dying to ensure allied health practitioners and professional care service providers do not initiate a discussion (paragraph 6.140). A breach of the prohibition is not an offence under the Act but may be dealt with as unprofessional conduct under the National Health Practitioner Regulation Law or as a health service complaint under the Health Ombudsman Act (paragraph 6.148).

The Bill also reflects the recommendation of the Parliamentary Committee (Committee report, Recommendation 16).

The qualified prohibition on initiating a discussion about voluntary assisted dying appropriately balances the right of the person to make an informed decision about accessing voluntary assisted dying and the practitioner's ability to do their professional duty with the need to safeguard against undue influence and coercion. Any potential breach of FLPs is justified on this basis.

#### *Privacy and confidentiality rights*

The right to privacy, the disclosure of private or confidential information, doctor-patient confidentiality, and privacy and confidentiality issues have generally been identified by the former Scrutiny of Legislation Committee as relevant to consideration of whether legislation has sufficient regard to individuals' rights and liberties.

The Bill contains a range of provisions that may be seen to infringe upon the privacy of individuals, including provisions relating to collection of personal information and information sharing.

These provisions are considered justified as the provisions enable the effective operation of the Act. Adequate safeguards have been included in the Bill, as outlined below.

#### Recording steps in the person's medical record

The Bill sets requirements for medical practitioners and coordinating practitioners to record particular information relating to the voluntary assisted dying process in the person's medical record, including the person's first request (clause 17), a referral for a consulting assessment (clause 27), the second request (clause 40), final request (clause 44), transfer of coordinating practitioner's role (clause 47), administration decision (clause 50), revocation of administration decision (clause 51) and transfer of administering practitioner's role (clause 56).

This is appropriate given the need to ensure the various steps in the voluntary assisted dying process are appropriately documented. The QLRC report provided that this would ensure accurate record-keeping.

An offence provision is included in clause 146 (Personal information not to be recorded or disclosed) requiring a person who obtains personal information in the course of, or because of, the exercise of a function or power under the Act not to make a record of the personal information or disclose the personal information to a person, unless the record is made, or the personal information is disclosed, for a purpose under the Act, with the consent of the person to whom the personal information relates, in compliance with a lawful process requiring production of documents to or giving evidence before a court or tribunal, or as authorised or required by law. This ensures that any personal information obtained by a practitioner when exercising a function under the Act will not be misused. A maximum penalty of 100 penalty units applies.

### Providing information to the Board

The Bill requires practitioners to record particular information relating to steps in the voluntary assisted dying process in the approved form and send a copy of the form to the Board.

Information is required to be recorded and sent to the Board in relation to:

- Clause 24 (Recording of outcome of first assessment);
- Clause 35 (Recording of outcome of consulting assessment);
- Clause 45 (Coordinating practitioner to notify board of final request);
- Clause 55 (Certification by administering practitioner following administration of voluntary assisted dying);
- Clause 68 (Coordinating practitioner to notify board of administration decision and prescription of voluntary assisted dying substance);
- Clause 72 (Authorised supplier to record and notify of supply);
- Clause 76 (Authorised disposer to record and notify of disposal);
- Clause 78 (Administering practitioner to record and notify of disposal);
- Clause 80 (Notification of death).

The QLRC recommended that an oversight Board be established with functions including monitoring the operation of the Act, reviewing compliance with the Act by relevant individuals involved in a request for voluntary assisted dying, referring any issues identified to particular entities, recording and keeping information about requests for and provision of voluntary assisted dying, and analysing information given to the Board (Recommendation 18-1). The Board requires information on each completed request for voluntary assisted dying in order to carry out these functions effectively.

The record-keeping and reporting provisions are therefore considered justified as they are essential to ensuring the effective operation of the scheme, effective oversight by the Board and appropriate record-keeping by practitioners. Requiring practitioners to record key steps in the voluntary assisted dying process and providing the information to the Board is an important safeguard to ensure all relevant steps in the process are complied with and to enable the Board to retrospectively review compliance with the Act by all individuals involved in the process.

Appropriate safeguards have been included. As outlined above, clause 146 provides that it is an offence to make a record of or disclose personal information obtained in the course of the exercise of a function under the Act. This offence, with a maximum penalty of 100 penalty units, will safeguard personal information collected by practitioners and the Board in the course of the voluntary assisted dying process.



Additionally, clause 138 (Request for information by the board) provides that to help in performing its functions, the Board may consult with, and ask for information from, other entities. This is considered justified to assist the Board in performing its functions. The QLRC considered that such entities might include a government department, public or private hospital or other health service provider, a medical practitioner, or a contact person (paragraph 18.267).

Clause 139 (Protection from liability for giving information) provides that a person acting honestly who gives information to the Board under clause 138 is not liable, civilly, criminally or under an administrative process, for giving the information. The person also cannot be held to have breached any code of professional etiquette or ethics, or departed from accepted standards of professional conduct, merely because they give information to the Board. The Bill also provides that in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information, and that if the person would otherwise be required to maintain confidentiality about the information under the Act, oath or rule of law or practice, the person does not contravene the Act, oath or rule of law or practice by giving the information and is not liable to disciplinary action for giving the information. As outlined above in the discussion of protection from proceedings, this protection from liability is considered justified as the protection is conferred on individuals acting in accordance with the Act.

The QLRC (paragraph 18.310) considered that any person acting honestly who gives information to the Board as requested under the legislation should be protected from liability for giving that information and noted that similar provision is made in various other Queensland legislation, including the Coroners Act, section 91ZF, Family and Child Commission Act, section 29T and *Hospital and Health Boards Act 2011* (Qld) section 89. The QLRC considered that this protection will help support the effective operation of the Board (paragraph 18.311).

Where the person is not acting honestly in giving the information to the Board, the protection from liability in clause 139 would not apply and the offence provision in clause 146, which provides that it is an offence to make a record of or disclose personal information obtained in the course of the exercise of a function under the Act, may apply.

#### The Board's reporting requirements

Clause 134 (Annual report) provide that the Board must give the Minister an annual report in relation to the performance of the Board's functions. The Bill sets out particular information the annual report must include. The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving it.

Clause 135 (Report to Minister or chief executive on board's functions) provides that the Board may, and must on request, provide the Minister or chief executive with a report about the Board's functions. The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving it.

These provisions could be seen to be breaching the right to privacy by requiring the Board to issue report about the Board's functions, including the number of completed requests for voluntary assisted dying, and for these reports to be tabled in the Legislative Assembly.

The QLRC recommended that the Board's features should include annual and other reporting requirements (Recommendation 18-2). The QLRC report considered that the annual reporting function is an essential accountability and transparency measure and a core aspect of the Board's role in monitoring and promoting compliance with the legislation (paragraph 18.290). The QLRC considered the Board's reporting and advice function to be central to its oversight role (paragraph 18.257).

Appropriate safeguards are included. Clause 136 (Reports not to include personal information) provides that an annual report under clause 134 or a report under clause 135 must not include personal information about an individual unless the information was provided to the Board for the purpose of publication. This will ensure that any information published about individuals accessing the scheme is de-identified for the purposes of reporting.

As outlined above, clause 146 provides that it is an offence to make a record of or disclose personal information obtained in the course of the exercise of a function under the Act. This offence, with a maximum penalty of 100 penalty units, will safeguard personal information collected by the Board in the course of the voluntary assisted dying process.

Any potential breach of FLPs is justified on this basis.

#### Disclosure of interests

Clause 133 (Disclosure of interests) provides that members of the Board must disclose direct or indirect interests that could conflict with the proper performance of the member's duties in a matter being considered by the Board, or about to be considered, at a meeting.

The member is required to disclose the nature of the interest as soon as practicable after the relevant facts come to the member's knowledge. Particulars of the disclosure must be recorded by the Board in a register of interests kept for the purpose.

This may be seen to breach a member's right to privacy in requiring them to disclose information to the Board about their interests.

The QLRC considered that the inclusion of a disclosure requirement was appropriate to ensure a clear obligation of disclosure and clear procedures when a disclosure is made, and that provisions to the same effect are in other Queensland legislation, including the Coroners Act section 91X and *Family and Child Commission Act 2014* (Qld) section 29ZJ (paragraphs 18.305-18.306).

This is justified to ensure that Board members disclose any interest that could conflict with the proper performance of their duties. This will ensure the effective functioning of the Board in monitoring the voluntary assisted dying scheme.

As outlined above, clause 146 provides that it is an offence to make a record of or disclose personal information obtained in the course of the exercise of a function under the Act. This offence, with a maximum penalty of 100 penalty units, will safeguard the use of any personal information collected by the Board in accordance with clause 133.

Any potential breach of FLPs is justified on this basis.

#### Board member appointment requirements

Clause 124 (Appointment of members) provides that a person may not be appointed as a member of the Board if the person is an insolvent under administration under section 9 of the Corporations Act or has a conviction, other than a spent conviction, for an indictable offence. This provision may be seen to breach the person's right to privacy in relation to their personal information.

The QLRC noted that the provision setting out persons who are not eligible for appointment is consistent with other Queensland legislation, such as the Coroners Act, section 91L(2) and the Family and Child Commission Act 2014, section 29X(4) (paragraph 18.130).

The provision is considered justified given the need to ensure that persons appointed as members of the Board are suitable and reflect the high standards expected of members, noting the importance of the role of the Board in overseeing and monitoring the scheme. These factors are relevant to determining whether it is appropriate for a person to be appointed as a member of the Board.

The provision includes appropriate limits, noting that the restriction on appointment as a member who has a conviction does not apply to spent convictions.

Appropriate safeguards are included. As outlined above, clause 146 provides that it is an offence to make a record of or disclose personal information obtained in the course of the exercise of a function under the Act. This offence, with a maximum penalty of 100 penalty units, will safeguard the use of any personal information collected by the Board under clause 124.

#### *New offence provisions*

The inclusion of new offences in a legislative scheme has generally been identified as relevant to the consideration of whether legislation has sufficient regard to individuals' rights and liberties. New offences are required to be appropriate and reasonable in light of the conduct that constitutes the offence. Penalties are required to be consistent and proportionate to the offence.

The Bill establishes several new offences.

The QLRC considered that specific offences should be included in the draft legislation on the basis that the offences are needed to secure key safeguards in the scheme (paragraph 17.69).

### Unauthorised administration of voluntary assisted dying substance

Clause 140 of the Bill creates a new offence of unauthorised administration of a voluntary assisted dying substance to another person. A person is only authorised to administer a voluntary assisted dying substance to another person if they are an administering practitioner authorised under clause 53(6) of the Bill. Otherwise, the administration is unauthorised and a maximum penalty of 14 years imprisonment applies. An offence against this provision is a crime.

The Bill provides that a person does not commit an offence if the person administers a medicine to another person under the Medicines and Poisons Act. *Medicine* is defined in the Medicines and Poisons Act and does not include a substance that is treated as a poison under section 12(2) of that Act. The definition of poison provides that a medicine is treated as a poison under the Act if the medicine is not used, or is not intended to be used, for a therapeutic purpose. As outlined in the QLRC report, a voluntary assisted dying substance is treated separately to a medicine under the Medicines and Poisons Act as it is intended to cause a person's death, and is therefore not used for a therapeutic purpose within the meaning of the Poisons Standard (paragraph 11.20). This will ensure that anyone lawfully administering a medicine, including an S4 or S8 medicine, to another person under the Medicines and Poisons Act is not captured by the offence.

Although the Criminal Code includes relevant offences of unlawful killing and aiding suicide, the QLRC recommended the inclusion of a specific offence for unauthorised administration of a voluntary assisted dying substance (Recommendation 17-5). The QLRC report noted that the authorised unauthorised administration of a substance under the Bill covers a range of conduct (e.g. an inadvertent breach such as where a family member or carer provides some assistance to the person in self-administering the substance) and considered the separate offence would provide flexibility in the appropriate exercise of prosecutorial discretion on whether to prosecute and, if so, for which offence (paragraph 17.90).

The inclusion of this offence in the Bill is justified as it is a critical safeguard for the scheme, ensuring that administration of a voluntary assisted dying substance occurs only in accordance with an authorisation under the Act. It is fundamental to the scheme that a person must only administer a voluntary assisted dying substance to a person if they are authorised under the Act and all relevant requirements have been complied with.

The QLRC considered that given the range of possible circumstances in which conduct might fall outside the limits of what is authorised by the scheme, it was considered desirable to include a separate and specific offence, with a lower maximum penalty than the penalty applying to unlawful killing and aiding suicide.

The QLRC report considered that a maximum penalty of 14 years is appropriate, as it distinguishes the offence from relevant Criminal Code offences, which carry a maximum penalty of life imprisonment, while retaining a high maximum penalty indicative of the seriousness of the conduct (paragraph 17.97).

Any potential breach of FLPs is considered justified on this basis.

Inducing a person to request or revoke a request for voluntary assisted dying or self-administer a voluntary assisted dying substance

Clause 141 (Inducing a person to request, or revoke request for, voluntary assisted dying) creates a new offence for dishonestly or by coercion inducing another person to make, or revoke, a request for access to voluntary assisted dying. A request for access to voluntary assisted dying includes a first request, second request, final request or administration decision.

Clause 142 (Inducing self-administration of voluntary assisted dying substance) creates an offence for a person dishonestly or by coercion inducing another person to self-administer a voluntary assisted dying substance.

These offences carry a maximum penalty of 7 years and are misdemeanours.

The QLRC (Recommendation 17-1) recommended the inclusion of specific offences in the scheme relating to inducing another person to make or revoke a request for access to voluntary assisted dying or to self-administer the substance. The QLRC report considered that voluntariness is an important feature of the scheme and that the draft Bill should include safeguards to address the risk of potential coercion or exploitation (paragraph 17.70).

The QLRC report considered that the maximum penalty reflects the seriousness of the conduct in undermining the autonomy and voluntary choice of the person (paragraph 17.73). Any potential breach of FLPs is considered justified on this basis.

False or misleading information

Clause 143 (Giving board false or misleading information) creates an offence for a person giving the Board information the person knows to be false or misleading in a material particular.

The offence does not apply to a person if they tell the Board, when giving information in a document, to the best of their ability, how the document is false or misleading, and if the person has, or can reasonably obtain, the correct information, gives the correct information.

Clause 144 (Making false or misleading statement) creates an offence for a person to make a statement in a form or other document required to be made under the Act that the person knows to be false or misleading in a material particular.

Clause 145 (Falsifying documents) creates an offence for a person to falsify a form or other document required to be made under the Act.

The QLRC recommended the inclusion of such offences. The QLRC report considered it an important safeguard of the scheme to require requests, assessments and other stages of the process to be documented, and for that documentation to be given to the oversight body (Recommendation 17-3). The QLRC noted that failing to give the required information, falsifying a document or otherwise providing false information would undermine the oversight and safe operation of the scheme (paragraph 17.74).

These offences carry a maximum penalty of 5 years and are classed as misdemeanours. The QLRC report considered the inclusion of specific offences would serve as a visible disincentive and ensure there is an appropriate mechanism to deal with non-compliance, or take non-compliance into account in disciplinary proceedings, without the needing to prove intent to defraud under the Criminal Code (paragraph 17.75). The QLRC report considered the penalty reflects the seriousness of the conduct in undermining the veracity of the process and the safe operation of the scheme, and noted that the level of imprisonment is consistent with the Victorian Act (paragraph 17.78).

Any potential breach of FLPs is considered justified on this basis.

#### Providing relevant forms to the Board

The Bill provides that it is an offence not to complete a record of particular steps of the voluntary assisted dying process and provide a copy of the relevant form to the Board within two business days, for example:

- Clause 24 (Recording of outcome of first assessment);
- Clause 35 (Recording of outcome of consulting assessment);
- Clause 45 (Coordinating practitioner to notify board of final request);
- Clause 55 (Certification by administering practitioner following administration of voluntary assisted dying substance);
- Clause 68 (Coordinating practitioner to notify board of administration decision and prescription of voluntary assisted dying substance);
- Clause 72 (Authorised supplier to record and notify of supply);
- Clause 76 (Authorised disposer to record and notify of disposal);
- Clause 78 (Administering practitioner to record and notify of disposal);
- Clause 80 (Notification of death).

Non-compliance with these record-keeping and reporting requirements carry a maximum penalty of 100 penalty units.

The QLRC recommended the Bill include an offence for a person to fail to give a copy of a document or form to the Board that the person is required to give under the legislation (Recommendation 17-2).

This is justified given the importance of ensuring appropriate record-keeping by practitioners involved in the voluntary assisted dying process to ensure the process was completed in accordance with the Act, and to ensure the Board has access to all appropriate documentation in order to carry out its functions, including reviewing each completed request for voluntary assisted dying and whether or not relevant individuals acted in compliance with the legislation.

Personal information not to be recorded or disclosed

Clause 146 (Personal information not to be recorded or disclosed) creates an offence for a person who obtains personal information in the course of, or because of, the exercise of a function or power under the Act and makes a record of the personal information or discloses the personal information to a person. The offence carries a maximum penalty of 100 penalty units.

The offence does not apply if the record is made, or the personal information disclosed for a purpose under the Act, with the consent of the person to whom the personal information relates, in compliance with a lawful process requiring production of documents to or giving evidence before a court or tribunal, or as authorised or required by law.

The QLRC report noted that persons involved in the administration of the Act will acquire personal information while performing their functions, which may be of a sensitive nature, and that the protection of privacy requires such information to be protected from unauthorised disclosure (paragraph 17.102). The QLRC recommended the draft Bill should prohibit disclosure of personal information obtained in the administration of the legislation, noting that the establishment of a new legislative scheme creates new roles and new forms of personal information, and that it is desirable for non-disclosure of that information to be addressed in the same legislation (Recommendation 17-6) (paragraph 17.104).

Any potential breach of FLPs is considered justified on this basis.

Contact person returning voluntary assisted dying substance to authorised disposer

Clause 63 (Contact person to give voluntary assisted dying substance to authorised disposer) provides that the person's contact person is required to give the voluntary assisted dying substance to an authorised disposer as soon as practicable and in any event within 14 days of the person revoking their self-administration decision or the person's death. Non-compliance with this requirement carries a maximum penalty of 100 penalty units.

The QLRC recommended the inclusion of an offence for failure by the contact person to give the substance, or any unused or remaining substance, to an authorised disposer (Recommendation 17-4). The QLRC considered this a safeguard in ensuring that access to and provision of a voluntary assisted dying substance is appropriately restricted (paragraph 17.79).

This penalty is considered justified given the importance of ensuring the safe return of the substance, or any unused or remaining substance to the authorised disposer for disposal. This is a key component of the contact person's role where a self-administration decision has been made, and the contact person is made aware of their obligations when they are appointed. The contact person must be given information by the Board about the requirement to give the substance to an authorised disposer and support services available to them to assist in fulfilling this requirement (clause 60).

Any potential breach of FLPs is considered justified on this basis.

**Institution of Parliament - *Legislative Standards Act 1992*, section 4(2)(b)**

The Bill contains a number of clauses that potentially impact on the fundamental legislative principle that legislation must have sufficient regard to the institution of Parliament. Potential breaches are discussed in detail below.

***Does the legislation sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly?***

Section 4(4)(b) of the Legislative Standards Act provides that whether a Bill has sufficient regard to the institution of Parliament depends on whether the Bill sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

The Bill includes references to the Poisons Standard, an external document. This may be seen to impact on the FLP that legislation must have sufficient regard to the institution of Parliament.

The Bill defines *voluntary assisted dying substance* by reference to the *Standard for the Uniform Scheduling of Medicines and Poisons* (Poisons Standard). The Bill provides that the chief executive may approve an S4 substance or S8 substance, or a combination of those substances, as a voluntary assisted dying substance for use under the Voluntary Assisted Dying Act for the purpose of causing a person's death (clause 160 and definition *voluntary assisted dying substance*, Schedule 1). *S4 substance* and *S8 substance* are defined to mean a substance listed in the Poisons Standard.

It is necessary to refer to the Poisons Standard in defining the substances used under the scheme. The Poisons Standard is a Commonwealth legislative instrument that classifies medicines and poisons into 'schedules' of substances from 'Schedule 2' through to 'Schedule 10'. A substance is categorised into a schedule based on the level of regulatory control required to deal with the public health and safety risks of the substance. As a legislative instrument, the Poisons Standard is published on the Federal Register of Legislation (<https://www.legislation.gov.au/>). The Poisons Standard is regularly reviewed, and updated approximately three times a year following extensive committee meetings and decision-making processes regarding classification, which are outlined in more detail below.

The purpose of the Poisons Standard is to provide a means by which nationally uniform scheduling of substances can occur, which can be applied in the legislation of all Australian jurisdictions, usually by referral in each jurisdiction's medicines and poisons legislation. The intention of classifying medicines and poisons into schedules allows for the setting of different levels of control for the availability of substances included in each schedule. Although the Poisons Standard is a Commonwealth instrument, there is state and territory input into scheduling decisions. The Scheduling Policy Framework is the national policy around restricting access to medicines and poisons. The Australian Health Ministers' Advisory Council (AHMAC) is responsible for the framework and the framework must be endorsed by all states and territories.



There are two advisory committees, the Advisory Committee on Medicines Scheduling and the Advisory Committee on Chemicals Scheduling to advise the Commonwealth decision-maker, the Secretary of the Commonwealth Department of Health. Each state and territory is entitled to nominate a member on each of the committees. The Advisory Committees advise and make recommendations to the Commonwealth decision-maker on the level of access that should apply to each substance, that is, the schedule in which the substance should be included. An acknowledgment of the technical and specialised nature of scheduling medicines and poisons is that members nominated by states and territories are nominated on the basis of their knowledge, expertise and experience, rather than being merely representative. It is appropriate to rely on the scheduling decisions reflected in the Poisons Standard because it utilises the combined knowledge of national experts in a committee setting.

Although the scheduling level for substances is achieved through the Poisons Standard through this expert and rigorous assessment process, the regulation of how those substances are made available and used is a decision for the Parliament of each jurisdiction. It is at this State Parliamentary level that Queensland's decision-making is applied as to who may be authorised for each schedule class, and in what circumstances. As outlined above, the chief executive will determine the particular S4 and S8 substances to be approved as a voluntary assisted dying substance for use under the Act. The Poisons Standard provides for national uniformity and consistency, which provides certainty to industry, particularly for those that work across jurisdictions. As a Commonwealth legislative instrument, the latest version of the Poisons Standard is always available on the Federal Register of Legislation.

The QLRC recommended that *voluntary assisted dying substance* should be defined to mean a Schedule 4 or Schedule 8 substance, or a combination of those substances, as defined in the Poisons Standard, approved by the chief executive for use under the Act for the purpose of causing a person's death (Recommendation 11-1). The QLRC considered that the particular substances used for voluntary assisted dying should not be limited or prescribed by the Bill (paragraph 11.7). This is consistent with the approach taken in other jurisdictions and is also in keeping with the recommendation of the Parliamentary Committee (Committee report, Recommendation 11). It is therefore considered justified to refer to an external document in defining *voluntary assisted dying substance*, as it is not appropriate to specify the particular substances to be used.

#### ***Amendment of an Act only by another Act (Henry VIII clauses)***

Section 4(4)(c) of the Legislative Standards Act states that whether legislation has sufficient regard to the institution of Parliament depends on whether the legislation authorises the amendment of an Act only by another Act.

The QLRC recommended that the draft Bill provide that the Governor in Council may make regulations under the Act (Recommendation 19-3). This is appropriate for aspects of the scheme that are technical and detailed in nature, including specific requirements relating to management of the voluntary assisted dying substance.

Clause 167 (Regulation-making power) of the Bill provides a head of power for regulations to be made under the Act.

In addition to the general regulation-making head of power in clause 167, a number of clauses provide that specific matters relating to management of the voluntary assisted dying substance may be prescribed under regulation, including requirements for:

- prescribing a voluntary assisted dying substance (clause 67);
- labelling a voluntary assisted dying substance container (clause 71);
- supplying a voluntary assisted dying substance (clause 73);
- storage of a voluntary assisted dying substance (clause 74);
- disposal of a voluntary assisted dying substance (clause 79).

Clause 55 (Certification by administering practitioner following administration of voluntary assisted dying substance) provides that if the administering practitioner for the person administers a voluntary assisted dying substance to them, they must certify a number of matters in writing. The clause provides that other matters prescribed by regulation must be certified in writing. This provides Queensland Health with the flexibility to require the administering practitioner to certify matters additional to those set out in the clause, adding an additional safeguard to the process.

Clause 117 (Functions) sets out the functions of the Board. One of the functions is for the Board to record and keep information prescribed by regulation about requests for, and provision of, voluntary assisted dying. The QLRC recommended that the draft Bill, in establishing the Board, should provide for the Board to record and keep information prescribed by regulation about requests, for, and provision of, voluntary assisted dying (Recommendation 18-1(d)). The QLRC report considered that it would be appropriate for regulations to specify particular information to be collected, noting that mandating specific information in the draft Bill might have unintended practical implications for the Board and participating health practitioners, and by extension, the persons requesting access to voluntary assisted dying (paragraph 18.249). The QLRC report noted that providing for the Board to record and keep information prescribed by regulation would give scope for further consideration during implementation of the legislation of the information that should be prescribed and greater flexibility to make subsequent changes (paragraph 18.251).

These provisions are considered to have sufficient regard to the institution of Parliament because:

- the matters to be prescribed are consistent with the policy objectives and purpose of the authorising law;
- the matters to be prescribed are technical and clinical in nature;
- this approach will allow the Government to respond promptly and flexibly if changes are needed to the framework in future, ensuring the scheme can be managed appropriately. Some flexibility for Queensland Health to be able to update requirements relating to technical, clinical matters, such as labelling of a container the voluntary assisted dying substance is kept in, is considered appropriate; and
- any changes to regulations will be tabled in the Legislative Assembly and subject to parliamentary scrutiny and disallowance.

## Consultation

The Bill is based on the QLRC report and accompanying draft Bill. Accordingly, consultation on the Bill was limited. Immediately following the tabling of the QLRC report, meetings were

held with key stakeholders including advocacy groups, unions, health organisations and faith groups.

The QLRC consulted widely in developing its report and legislation. This included releasing a 176 page consultation paper that posed 50 questions for members of the public and organisations to make submissions on. The QLRC received 126 submissions from a range of respondents including researchers with detailed knowledge of voluntary assisted dying, professional bodies representing a range of health practitioners and disciplines, organisations that support or oppose voluntary assisted dying, religious bodies, unions, members of the public who have experienced suffering themselves or witnessed it in members of their family, health practitioners, including practitioners in the field of palliative care, disability advocates, lawyers' groups, public authorities, ethicists and members of the public.

The QLRC met with relevant stakeholders from other jurisdictions including health practitioners and officers from relevant government agencies. The QLRC consulted with the Voluntary Assisted Dying Review Board and the Voluntary Assisted Dying Care Navigator Service in Victoria.

The QLRC also considered the former Parliamentary Committee's inquiry, reports and consultation with stakeholders and the community on the matter. The former Parliamentary Committee conducted 34 public and private hearings and briefings, heard evidence from 502 invited witnesses and accepted 4,719 written submissions for the inquiry. This included public hearings in regional centres along the State's east coast as well as Mount Isa, Longreach, Mossman and Palm Island. The former Parliamentary Committee also visited a cross section of residential aged care facilities, hospices and palliative care facilities as part of its inquiry.

## Consistency with legislation of other jurisdictions

In response to growing community support for and acceptance of voluntary assisted dying, a number of other Australian jurisdictions have considered voluntary assisted dying legislation.

Three Australian States have enacted voluntary assisted dying legislation to date:

- **Victoria:** The *Voluntary Assisted Dying Act 2017 (Vic)* (Victorian Act) commenced in June 2019 following an 18 month implementation period;
- **Western Australia:** The *Voluntary Assisted Dying Act 2019 (WA)* was passed and received assent in December 2019 and is due to commence in mid-2021 after an 18 month implementation period;
- **Tasmania:** The *End-of-Life Choices (Voluntary Assisted Dying) Act 2021 (Tas)* (Tasmanian Act) was passed on 23 March 2021 and received assent on 22 April 2021. The Act will commence 18 months after assent or an earlier date upon proclamation.

Other Australian jurisdictions have also considered voluntary assisted dying legislation:

- **South Australia:** The Voluntary Assisted Dying Bill 2020 (SA) was passed by the Legislative Council in May 2021 and is expected to be debated by the House of Assembly in the coming weeks;
- **Northern Territory:** The Rights of the Terminally Ill Act 1995 was enacted in 1995, only for it to be overturned by the Commonwealth in 1997;
- **New South Wales:** The Voluntary Assisted Dying Bill 2017 was considered and defeated in the Legislative Council in November 2017.

A number of overseas jurisdictions have also enacted voluntary assisted dying legislation, including New Zealand, Canada, several states in the United States (such as California, Colorado, and Hawaii) and several European countries (including the Netherlands, Belgium and Luxembourg). New Zealand's *End of Life Choice Act 2019* (NZ) received assent in November 2020 and will commence in November 2021.

In determining an appropriate voluntary assisted dying scheme for Queensland, the QLRC had regard to other jurisdictions that have implemented end of life schemes, including Victoria, Western Australia and Tasmania. The legislation in these states has a similar basic architecture to the Bill, including eligibility criteria, a staged request and assessment process, conscientious objection provisions, safeguards and accountability mechanisms.

While recognising the desirability of achieving a reasonable consistency with other jurisdictions, the QLRC considers the legislation should be focused on best serving the needs of the Queensland community and the State's unique conditions, including geography, population diversity, and access to healthcare and practitioners in rural and remote areas (paragraph 4.72).

Accordingly, the Bill has been informed by and is broadly consistent with the Victorian and Western Australia Acts, but differs in some regards to suit Queensland's unique conditions.

# Notes on provisions

## Part 1 Preliminary

### Division 1 Introduction

#### Short Title

*Clause 1* provides that, when enacted, the short title of the Act will be the *Voluntary Assisted Dying Act 2021*.

#### Commencement

*Clause 2* provides for the commencement of the Act:

- Part 8 and clause 153 will commence six months after the date of assent; and
- the remaining provisions will commence on 1 January 2023.

#### Main purposes of Act

*Clause 3* states that the main purposes of the Act are to:

- give persons who are suffering and dying, and who meet eligibility criteria, the option of requesting medical assistance to end their lives;
- establish a lawful process for eligible persons to exercise that option;
- establish safeguards to ensure that the process is accessed only by persons who are assessed to be eligible and to protect vulnerable persons from coercion and exploitation;
- provide legal protection for health practitioners who choose to assist, or not to assist, persons to exercise the option of ending their lives in accordance with the Act; and
- establish a Voluntary Assisted Dying Review Board and other mechanisms to ensure compliance with the Act.

#### Act binds all persons

*Clause 4* provides that the Act binds all persons, including the State.

### Division 2 Principles of voluntary assisted dying

#### Principles

*Clause 5* states that the principles that underpin the Act are:

- human life is of fundamental importance;
- every person has inherent dignity and should be treated equally, with compassion and respect;
- a person's autonomy, including autonomy in relation to end of life choices, should be respected;
- every person approaching the end of life should be provided with high quality care and treatment, including palliative care, to minimise the person's suffering and maximise the person's quality of life;

- access to voluntary assisted dying and other end of life choices should be available regardless of where a person lives in Queensland;
- a person should be supported in making informed decisions about end of life choices;
- a person who is vulnerable should be protected from coercion and exploitation;
- a person's freedom of thought, conscience, religion and belief and enjoyment of their culture should be respected.

### **Division 3            Interpretation**

#### **Definitions**

*Clause 6* provides that particular words used in the Act are defined in the dictionary in Schedule 1.

### **Division 4            Other provisions**

#### **Health care worker not to initiate discussion about voluntary assisted dying**

*Clause 7* provides that a health care worker must not initiate discussion about voluntary assisted dying or suggest voluntary assisted dying to a person while providing health services or personal care services to that person.

This reflects the QLRC recommendation (Recommendation 6-1). The QLRC report considers this an important safeguard to ensure that someone in a therapeutic relationship with the person who is likely to be influential and trusted by the person, but may not be clinically skilled or sufficiently qualified to adequately discuss end of life options, does not initiate a discussion about voluntary assisted dying (paragraph 6.124 – 6.125).

The QLRC report considers that the prohibition on initiating a discussion about voluntary assisted dying should apply to registered health practitioners, other than medical practitioners or nurse practitioners, as they cannot be expected to provide advice about various treatment outcomes (paragraph 6.139).

A medical practitioner or a nurse practitioner may initiate a discussion about voluntary assisted dying with a person if, at the same time, the practitioner also informs the person about:

- the treatment options available to the person and the likely outcomes of that treatment; and
- the palliative care and treatment options available to the person and the likely outcomes of that care and treatment.

This reflects the QLRC recommendation (Recommendation 6-3). The QLRC report also states this is consistent with professional standards and codes of ethics regarding informed consent and respect for patient choice. Those requirements include that patients should be provided with all the necessary information to make informed decisions about their condition, prognosis, preferences and all alternative treatment options (paragraph 6.117).

The QLRC report states that the exception only applies to medical practitioners and nurse practitioners to address concerns about allied health practitioners and professional care service providers initiating such discussions (paragraph 6.140). The QLRC report considers that while some other registered health practitioners (such as experienced registered nurses) might be well equipped to discuss end of life options in general terms, they cannot be expected to provide advice about various treatment outcomes and that the prohibition on initiating a discussion should therefore apply other than to medical practitioners and nurse practitioners (paragraph 6.139).

A health care worker is not prevented from providing information about voluntary assisted dying to the person at the person's request. This reflects the QLRC recommendation (Recommendation 6-2) and is consistent with other jurisdictions.

Breach of the prohibition may be dealt with under the Health Practitioner Regulation National Law (for registered health practitioners) or as a complaint investigated by the Health Ombudsman (for another individual who provides a health service).

For the purposes of this clause, a *health care worker* is a registered health practitioner or another person providing a health service or personal care service to a person. The terms *health service*, *nurse practitioner*, *personal care service* and *registered health practitioner* are defined in schedule 1.

*Health service* is defined by reference to section 7 of the *Health Ombudsman Act 2013*.

For the purposes of the Act, *personal care service* means assistance or support provided by a person to another person under a contract of employment or a contract for services, including:

- assistance with bathing, showering, personal hygiene,
- toileting, dressing, undressing or meals; and
- assistance for persons with mobility problems; and
- assistance for persons who are mobile but require some
- form of assistance or supervision; and
- assistance or supervision in administering medicine; and
- the provision of substantial emotional support.

### **Voluntary assisted dying not suicide**

*Clause 8* provides that a person who dies as the result of the self-administration or administration of a voluntary assisted dying substance in accordance with the Act does not die by suicide. The person will be taken to have died from the disease, illness or medical condition from which they were dying, and which made them eligible to access voluntary assisted dying. This applies for the purposes of the law of Queensland, and for the purposes of a contract, deed or other instrument entered in Queensland or governed by the law of Queensland.

## Part 2 Requirements for access to voluntary assisted dying

### When person may access voluntary assisted dying

*Clause 9* provides that a person may access voluntary assisted dying if the following requirements are met:

- the person has made a first request;
- the coordinating practitioner for the person has assessed the person as meeting the requirements of a first assessment;
- the consulting practitioner for the person has assessed the person as meeting the requirements of a consulting assessment;
- the person has made a second request;
- the person has made a final request;
- the coordinating practitioner has submitted a *final review form* certifying that the request and assessment process has been completed in accordance with this Act; and the person has decision-making capacity in relation to voluntary assisted dying and is acting voluntarily and without coercion (see clause 46(3)(b));
- the person has made an administration decision; and
- the person has appointed a contact person.

### Eligibility

*Clause 10* sets out the eligibility criteria a person must be assessed against to be found eligible to access voluntary assisted dying.

A person is eligible only if they satisfy all of the eligibility criteria and each element within each criterion. The criteria are intended to provide a balance between enabling individual choice and access to the scheme with appropriate safeguards to protect vulnerable people from coercion and limit access to those who are suffering and dying.

To be eligible to access voluntary assisted dying, a person must:

- be diagnosed with a disease, illness or medical condition that is:
  - advanced, progressive and will cause death;
  - expected to cause death within 12 months;
  - causing suffering that the person considers to be intolerable;
- have decision-making capacity for voluntary assisted dying (see clause 11);
- be acting voluntarily and without coercion;
- be at least 18 years of age;
- be an Australian citizen, a permanent resident, have been ordinarily resident in Australia for at least 3 years immediately before the person makes the first request or have been granted an Australian residency exemption by the chief executive (see clause 12); and



- have been ordinarily resident in Queensland for at least 12 months immediately before the person makes the first request or have been granted a Queensland residency exemption by the chief executive (see clause 12).

#### *Eligible disease, illness or medical condition*

The QLRC report states that the eligible disease, illness or medical condition component of the eligibility criteria clarifies that voluntary assisted dying is an option only for people at the end of life who are suffering and dying, and strikes the right balance between the fundamental value of human life and the values of individual autonomy and reduced suffering (paragraph 7.71).

The QLRC report considers that “*the requirement that the person must be diagnosed with a condition that is ‘advanced, progressive and will cause death’ makes it clear that a person is eligible for voluntary assisted dying only if they have an eligible condition that is very serious, is on a deteriorating trajectory and will cause death.*” (paragraph 7.73).

The QLRC report provides that a specific timeframe until expected death (12 months) makes it clear that voluntary assisted dying is an option only for those who are at the end of life and “*gives clear guidance to the community and the health profession about who is eligible*” (paragraph 7.146). The QLRC report considers that a timeframe of 12 months is consistent with current health care practice and the end of life and palliative care framework in Australia, taking account of the clinical trajectories of different diseases, illnesses or medical conditions that are advanced, progressive and will cause death (paragraph 7.147).

The QLRC report considers that the requirement for intolerable suffering reflects the intention that voluntary assisted dying should be an option only for people at the end of life who are suffering and dying and is a crucial control over who is eligible for the scheme (paragraph 7.192).

For the purposes of this clause, *suffering*, caused by a disease, illness or medical condition, includes physical or mental suffering and suffering caused by treatment provided for the disease, illness or medical condition. The QLRC report provides that whether the suffering is intolerable is a subjective assessment to be determined by the person requesting access to the scheme (paragraph 7.193). The suffering must be causally linked to the disease, illness or medical condition, but is not limited to physical pain or symptoms (paragraph 7.194).

#### *Decision-making capacity*

The requirement for the person to have decision-making capacity for voluntary assisted dying is discussed at clause 11.

#### *Voluntary and without coercion*

The Bill provides that one of the eligibility criteria to access voluntary assisted dying is that that person is acting voluntarily and without coercion.

This is consistent with the QLRC recommendation (Recommendation 7-8). The QLRC report considers that the requirement to ensure that a person is acting voluntarily and without coercion at all stages of the process is a fundamental safeguard that will protect individual autonomy and help ensure that access to the scheme is properly regulated (paragraph 7.338).

The QLRC report explains that this is in addition to the requirement for the person to have decision-making capacity, with one criterion relating to the person's actual condition when making decisions, and another ensuring their capacity to make such decisions (paragraph 7.341).

The Bill defines *coercion* to include intimidation or a threat or promise, including by an improper use of a position of trust or influence.

### *Age*

The Bill provides that one of the eligibility criteria to access voluntary assisted dying is that the person is at least 18 years of age.

This is consistent with the QLRC recommendation (Recommendation 7-10). The QLRC report states that limiting access to adults is consistent with other relevant laws in Queensland, and the voluntary assisted dying legislation in other Australian jurisdictions (paragraph 7.365). The QLRC report notes that the age limit is “*designed to limit access to voluntary assisted dying to persons who are presumed, because of their age, to have access to sufficient understanding and intelligence to understand fully what is proposed, and to be able to give informed consent to a process that will end their lives*” (paragraph 7.367).

### *Residency*

The Bill includes a two-pronged residency requirement as one of the eligibility criterion.

This is consistent with the QLRC recommendation (Recommendation 7-11). The QLRC report states that “*not having a residency requirement risks denying access by Queenslanders who qualify for voluntary assisted dying and who are enduring great suffering*” (paragraph 7.452) and that “*the individual rights of Queensland residents to access high-quality, end of life care, including palliative care and the option of voluntary assisted dying, might be compromised by open access to voluntary assisted dying in Queensland*” (paragraph 7.453).

The Bill includes a discretionary power (see clause 12) to exempt the person from the residency requirement, where the person can demonstrate a substantial connection to Queensland and the circumstances justify granting an exemption on compassionate grounds.

For the purposes of this clause, a *permanent resident* refers to the holder of a permanent visa as defined by section 30(1) of the *Migration Act 1958* (Cwlth) or a New Zealand citizen who holds a special category visa as defined under section 32 of the *Migration Act 1958* (Cwlth).

## **Decision-making capacity**

*Clause 11* provides that a person has decision-making capacity for voluntary assisted dying if the person is capable of:

- understanding the nature and effect of decisions about access to voluntary assisted dying;
- freely and voluntarily making decisions about access to voluntary assisted dying; and
- communicating decisions about access to voluntary assisted dying in some way.

The QLRC report considers this a fundamental safeguard of the draft Bill, which will help ensure that a person's decision is voluntary and protect people who might be vulnerable to coercion or exploitation (paragraph 7.254). The QLRC report notes that the inclusion of a decision-making capacity requirement in the eligibility criteria will exclude some people from accessing the scheme but considers there is a need to “*prioritise adequate protection for vulnerable people*” (paragraph 7.313).

A person will be presumed to have decision-making capacity for voluntary assisted dying unless shown not to have that capacity.

Regard must be had to the following when determining whether a person has decision-making capacity for voluntary assisted dying:

- a person may have decision-making capacity to make some decisions but not others;
- capacity can change or fluctuate and a person may temporarily lose capacity and later regain it;
- that a person does not have decision-making capacity because of a personal characteristic such as, for example, age, appearance or language skills because the person has a disability or an illness; or because the person makes a decision with which other people may not agree;
- a person can do one of the things mentioned above if the person is capable of doing the thing doing the thing with adequate and appropriate support.

For the purposes of this clause, examples of support include giving a person information that is tailored to their needs; giving information to a person in a way that is tailored to their needs; communicating, or assisting a person to communicate, the person's decision; giving a person additional time and discussing the matter with the person; or using technology that alleviates the effects of a person's disability.

### **Residency exemptions**

*Clause 12* provides that person can apply to the chief executive for an Australian residency exemption or Queensland residency exemption. The chief executive must grant the exemption if satisfied that the person has a substantial connection to Queensland and there are compassionate grounds for granting the exemption.

The QLRC report recognises that a residency requirement may have harsh, and possibly unintended consequences for individuals who have a substantial connection with Queensland and who might be thought to be deserving of access to the scheme (paragraph 7.456).

An exemption may apply, for example, to a person who resides outside Queensland but who is a former resident of Queensland and whose family resides in Queensland or to a person who is a long term resident of a place close to the Queensland border and who works in Queensland and receives medical treatment in Queensland

### **Disability or mental illness**

*Clause 13* states that for the avoidance of any doubt, a person is not eligible for voluntary assisted dying only because the person has a disability or mental illness. However, such a person may be eligible if they meet all elements of the eligibility criteria in clause 10(1)(a).

The QLRC report provides that “*this makes it clear that people who have a disability or who are diagnosed with a mental illness have the same rights and protections as other members of the community and therefore should not be denied access to voluntary assisted dying*” (paragraph 7.77).

The QLRC report notes that in some circumstances, a person with a mental illness will lack decision-making capacity and that they would be ineligible on this basis (paragraph 7.78).

For the purposes of this clause, *eligible* means eligible for access to voluntary assisted dying.

For the purposes of this clause, *mental illness* has the same meaning as section 10 of the *Mental Health Act 2016*.

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

### **Division 1                First request**

#### **Person may make first request to medical practitioner**

*Clause 14* provides that a person may make a first request to a medical practitioner for access to voluntary assisted dying. The first request must be clear and unambiguous, and made by the person personally and not by another person on their behalf. The person may also make the request verbally or by gestures or other means of communication available to the person.

The QLRC report considers that it is important for the first request to be clear and unambiguous so that it can be distinguished from a general request for information about voluntary assisted dying or about a person’s end of life options (paragraph 8.55).

#### **No obligation to continue after making first request**

*Clause 15* states that the person may decide at any time not to continue the request and assessment process. The request and assessment process will end if the person decides not to continue the process. However, a person who decided not to continue the process, may commence a new request and assessment process by making a new first request

#### **Medical practitioner to accept or refuse first request**

*Clause 16* provides the medical practitioner must refuse the first request if the practitioner is not eligible to act as a coordinating practitioner. The medical practitioner may also refuse the first request if they have a conscientious objection to voluntary assisted dying or is unwilling to perform the duties of a coordinating practitioner; or is unavailable or unable to perform the duties of a coordinating practitioner.

The QLRC report notes that inclusion of the reference to ‘unwilling’ recognises that some practitioners may not want to participate for personal reasons other than a conscientious objection (paragraph 8.101). The provision also acknowledges that a practitioner may refuse to act as a coordinating practitioner due to other practical or professional reasons such as a lack of time, or for example, if the person’s location is not easily accessible by the practitioner (paragraph 8.102).

A medical practitioner who refuses a person's first request must inform the person of their decision and inform the person that other registered health practitioners, health service providers or services may be able to assist the person with the person's request.

The medical practitioner must also give the person information about a registered health practitioner, health service provider or service who the practitioner believes will be able to assist the person with the person's request. Alternatively, the medical practitioner must provide the person with the details of an official voluntary assisted dying care navigator service that can provide the person with information (including name and contact details) about a health practitioner, health service provider or service who may be able to assist the person with the person's request.

The QLRC report notes that requiring a medical practitioner who refuses a first request to give the person certain information appropriately balances the right of the practitioner to not participate, including due to a conscientious objection with the rights of the person to access information about their end of life choices and lawful treatment as well as their right to see a different medical practitioner (paragraph 8.121-8.123).

If the medical practitioner accepts the first request, they must inform the person of their decision and provide the person with the approved information (see clause 164 regarding approved information).

The medical practitioner must decide whether to accept or refuse the first request and inform the person of the decision within the prescribed timeframe. If the medical practitioner refuses the person's request, they must also provide the person with a reason for their decision within the stated timeframe.

For the purposes of this clause, a medical practitioner with a conscientious objection to voluntary assisted dying must inform the person of their decision immediately after the person makes the request. For all other circumstances, the medical practitioner must inform the person of their decision two business days after the person makes their first request.

The QLRC report provides that inclusion of specific timeframes for a practitioner's decision will ensure that a person's access to voluntary assisted dying is not unduly delayed (paragraph 8.109).

### **Medical practitioner to record first request and acceptance or refusal**

*Clause 17* provides that the medical practitioner must record the following matters in the person's medical record:

- the person's first request; and
- the practitioner's decision to accept or refuse the first request; and
- if the practitioner decided to refuse the first request, then the reason for the refusal and the steps taken to comply with clause 16(4); and
- if the practitioner decided to accept the first request, then the day on which the person was provided the approved information.

**Medical practitioner becomes coordinating practitioner if first request accepted**

*Clause 18* states that the medical practitioner will become the coordinating practitioner for the person if they accept the first request.

**Division 2                      First assessment****First assessment**

*Clause 19* provides the coordinating practitioner for a person is required to assess whether the person is eligible for access to voluntary assisted dying (the first assessment). In conducting the first assessment, the coordinating practitioner may consider any relevant information about the person that has been prepared by, or at the instigation of, another registered health practitioner.

**Coordinating practitioner to have completed approved training**

*Clause 20* provides that the coordinating practitioner must complete the approved training before commencing the first assessment (see clause 165 regarding approved training).

**Referral for determination**

*Clause 21* provides that the coordinating practitioner must refer the person to another registered health practitioner who has appropriate skills and training if they are unable to determine if:

- the person has a disease, illness or medical condition that meets the requirements of clause 10(1)(a); or
- the person has decision-making capacity in relation to voluntary assisted dying.

Similarly, if the coordinating practitioner is unable to determine whether the person is acting voluntarily and without coercion, they must refer the person to another person who has appropriate skills and training to determine the matter.

The QLRC notes this approach “*is a necessary safeguard to ensure that any person who is assessed as eligible for access to voluntary assisted dying (or who goes on to access it) does in fact meet all the eligibility requirements*” (paragraph 8.227). Additionally, a requirement to refer a person elsewhere in circumstances where a practitioner cannot determine a matter is consistent with good medical practice (paragraph 8.228).

The coordinating practitioner may adopt the determination of the other registered health practitioner or other person (the referee). However, the referee must not be:

- a family member of the person requesting access to voluntary assisted dying;
- someone who knows or believes that they are a beneficiary under a will of the person requesting access to voluntary assisted dying; or
- someone who may otherwise benefit financially or in any other material way from the death of the person requesting access to voluntary assisted dying, other than by receiving reasonable fees for the provision of services in connection with the referral.

**Information to be provided if person assessed as eligible**

*Clause 22* states that the coordinating practitioner must inform the person of certain matters if satisfied that the person is eligible for access to voluntary assisted dying. The matters include:

- the person's diagnosis and prognosis;
- the treatment options available to the person and the likely outcomes of that treatment;
- the palliative care and treatment options available to the person and the likely outcomes of that care and treatment;
- the potential risks of self-administering or being administered a voluntary assisted dying substance to cause death;
- that the expected outcome of self-administering or being administered a substance is death;
- the method by which a substance is likely to be self-administered or administered;
- the request and assessment process, including the requirement for a second request to be signed in the presence of two witnesses;
- that the person must appoint a contact person if they make an administration decision;
- that the person may decide at any time not to continue the request and assessment process or not to access voluntary assisted dying;
- that the person may consider informing their medical practitioner of their request for access to voluntary assisted dying if they are receiving ongoing health services from another medical practitioner.

The QLRC report states that the provision of this information is necessary to ensure the person can reach an informed decision (paragraph 8.270).

Nothing in this clause affects any duty a medical practitioner has at common law or under another Act.

### **Outcome of first assessment**

*Clause 23* states that the coordinating practitioner must assess the person as meeting the requirements of the first assessment if they are satisfied that the person is eligible for access to voluntary assisted dying and understands the information provided under clause 22(1).

However, if the coordinating practitioner is not satisfied that the person is eligible to access voluntary assisted dying or understands the information provided, they must assess the person as not meeting the requirements of a first assessment and the request and assessment process will end.

### **Recording of outcome of first assessment**

*Clause 24* provides that the coordinating practitioner must inform the person of the outcome of the first assessment as soon as practicable after its completion.

The coordinating practitioner is also required to complete a record of the assessment in the approved form (the *first assessment record form*) and provide a copy to the Board within two business days of completing the first assessment. Failure to comply with this requirement may result in a maximum penalty of 100 penalty units.

The first assessment record form must include the outcome of the first assessment, including the coordinating practitioner's decision in respect of each of the eligibility criteria and may include any documents that support the practitioner's decision in relation to the eligibility

criteria. The coordinating practitioner must provide a copy of the first assessment record form and any accompanying document to the person as soon as practicable after completing the form.

The QLRC report states that this approach provides a safeguard for both people seeking access to voluntary assisted dying and participating medical practitioners, providing an ongoing system of checks to ensure compliance with the scheme (paragraph 8.527).

### **Referral for consulting assessment if person assessed as eligible**

*Clause 25* provides that the coordinating practitioner must refer the person to another medical practitioner for a consulting assessment once the person has been assessed to meet the requirements of the first assessment.

## **Division 3                    Consulting assessment**

### **Medical practitioner to accept or refuse referral for consulting assessment**

*Clause 26* applies if a person is referred to a medical practitioner for a consulting assessment under clauses 25, 36 or 47. A medical practitioner who is not eligible to act as a consulting practitioner is required to refuse the referral.

The medical practitioner may also refuse the first request if they have a conscientious objection to voluntary assisted dying or is unwilling to perform the duties of a consulting practitioner; or is unavailable or unable to perform the duties of a consulting practitioner.

The medical practitioner must decide whether to accept or refuse the referral and must inform the person and the coordinating practitioner of their decision within the prescribed timeframe. If the medical practitioner refuses the referral, they must also provide the person and the coordinating practitioner with a reason for the refusal.

For the purposes of this clause, a medical practitioner with a conscientious objection to voluntary assisted dying must inform the person and the coordinating practitioner of their decision immediately after the referral is made. In all other circumstances, the medical practitioner must inform the relevant people of their decision within two business days of the referral being made.

### **Medical practitioner to record referral and acceptance or refusal**

*Clause 27* provides that the medical practitioner must record the following information in the person's medical record:

- the referral;
- the practitioner's decision to accept or refuse the referral;
- if the practitioner refuses the referral then the reason for the refusal.

### **Medical practitioner to notify board of referral**

*Clause 28* states that the medical practitioner must complete a record of the acceptance or refusal of the referral in the approved form and provide a copy of it to the Board, within two business days after deciding to accept or refuse the referral. Non-compliance with this requirement may result in a maximum penalty of 100 penalty units.



The QLRC report states that the requirement to keep records provides a safeguard for both people seeking access to voluntary assisted dying and participating medical practitioners, providing an ongoing system of checks to ensure compliance with the scheme (paragraph 8.527).

### **Medical practitioner becomes consulting practitioner if referral accepted**

*Clause 29* provides that the medical practitioner will become the consulting practitioner for the person if they accept the referral.

### **Consulting assessment**

*Clause 30* provides the consulting practitioner must conduct a consulting assessment to determine whether the person is eligible for access to voluntary assisted dying. The consulting assessment must be conducted independently of the coordinating practitioner and the consulting practitioner must form their own opinions on the matters to be decided.

The consulting practitioner may consider any relevant information about the person that has been prepared by, or at the instigation of, another registered health practitioner in forming their opinions.

The QLRC report notes that the requirement for the consulting practitioner to conduct the consulting assessment independently of the coordinating practitioner is a fundamental safeguard (paragraph 8.181). The QLRC report also provides that medical practitioners are subject to professional obligations, including to recognise and resolve conflicts of interest, noting that breaches of those obligations may result in disciplinary action, including the suspension or cancellation of the practitioner's registration (paragraph 8.187).

The QLRC report also considered that a requirement for the coordinating practitioner and the consulting practitioner not to be in a supervisory relationship with each other was not included as such a provision may cause accessibility issues, particularly in rural, regional and remote areas, where access to practitioners may be limited (paragraph 8.188).

### **Consulting practitioner to have completed approved training**

*Clause 31* provides that the consulting practitioner must complete the approved training before commencing the first assessment (see clause 165 regarding approved training).

### **Referral for determination**

*Clause 32* provides that the consulting practitioner must refer the person to another registered health practitioner who has appropriate skills and training if they are unable to determine if:

- the person has a disease, illness or medical condition that meets the requirements of clause 10(1)(a); or
- the person has decision-making capacity in relation to voluntary assisted dying.

Similarly, if the consulting practitioner is unable to determine whether the person is acting voluntarily and without coercion, they must refer the person to another person who has appropriate skills and training to determine the matter.

The consulting practitioner may adopt the determination of the other registered health practitioner or other person (the referee). However, the referee must not be:

- a family member of the person requesting access to voluntary assisted dying;
- someone who knows or believes that they are a beneficiary under a will of the person requesting access to voluntary assisted dying; or
- someone who may otherwise benefit financially or in any other material way from the death of the person requesting access to voluntary assisted dying, other than by receiving reasonable fees for the provision of services in connection with the referral.

### **Information to be provided if person assessed as eligible**

*Clause 33* states that the consulting practitioner must inform the person of certain matters if satisfied that the person is eligible for access to voluntary assisted dying. The matters include:

- the person's diagnosis and prognosis;
- the treatment options available to the person and the likely outcomes of that treatment;
- the palliative care and treatment options available to the person and the likely outcomes of that care and treatment;
- the potential risks of self-administering or being administered a voluntary assisted dying substance to cause death;
- that the expected outcome of self-administering or being administered a substance is death;
- the method by which a substance is likely to be self-administered or administered;
- the request and assessment process, including the requirement for a second request to be signed in the presence of two witnesses;
- that the person must appoint a contact person if they make an administration decision;
- that the person may decide at any time not to continue the request and assessment process or not to access voluntary assisted dying;
- that the person may consider informing their medical practitioner of their request for access to voluntary assisted dying if they are receiving ongoing health services from another medical practitioner.

The QLRC report noted that the requirement for both the coordinating practitioner and consulting practitioner to provide the above information will ensure the person has all the necessary information and is offered multiple opportunities to discuss and develop their understanding of that information (paragraph 8.277).

Nothing in this clause affects any duty a medical practitioner has at common law or under another Act.

### **Outcome of consulting assessment**

*Clause 34* states that the consulting practitioner must assess the person as meeting the requirements of the consulting assessment if they are satisfied that the person is eligible for access to voluntary assisted dying and understands the information provided under clause 33(1).

However, if the consulting practitioner is not satisfied on any matter above, they must assess the person as not meeting the requirements of the consulting assessment.

## **Recording of outcome of consulting assessment**

*Clause 35* provides that the consulting practitioner must inform the person and the coordinating practitioner of the outcome of the consulting assessment as soon as practicable after its completion.

The consulting practitioner is also required to complete a record of the assessment in the approved form (the *consulting assessment record form*) and provide a copy to the Board within two business days of completing the assessment. Failure to comply with this requirement may result in a maximum penalty of 100 penalty units.

The consulting assessment record form must include the outcome of the consulting assessment, including the consulting practitioner's decision in relation to the eligibility criteria and may include any documents that support the practitioner's decision in relation to the eligibility criteria. The consulting practitioner must provide a copy of the consulting assessment record form and any accompanying document to the person and the coordinating practitioner as soon as practicable after completion.

## **Referral for further consulting assessment if person assessed as ineligible**

*Clause 36* states that if the consulting practitioner assesses the person as not meeting the requirements of a consulting assessment, the coordinating practitioner may refer the person to another medical practitioner for a further consulting assessment.

## **Division 4            Second request**

### **Person assessed as eligible may make second request**

*Clause 37* provides that a person who has made a first request and has been assessed as meeting the requirements of a first assessment and a consulting assessment may make another request in writing (the second request) for access to voluntary assisted dying. The person must make the second request in the approved form and provide it to their coordinating practitioner.

The QLRC report notes that requiring a person to make a second request demonstrates that the person still wishes to proceed with accessing voluntary assisted dying (paragraph 8.296).

The second request must specify that the person is making the request voluntarily and without coercion; and understands its nature and effect. The person or another a person (see below) must sign the second request in the presence of two eligible witnesses.

The QLRC report notes that this requirement will provide a safeguard in ensuring that a person's request for access is made voluntarily and protect those people who may be vulnerable to abuse or coercion (paragraph 8.331). However, the QLRC report notes that there should not be a requirement for the coordinating practitioner to be present as the requirements for a person to access voluntary assisted dying should not be unduly burdensome (paragraph 8.334).

Another person may sign the second request on behalf of the person making the request if the person making the request is unable to sign the request and directs the other person to sign the request, and the person signing the request is:

- at least 18 years of age;
- not a witness to the signing of the request; and

- not the coordinating practitioner or consulting practitioner for the person making the request.

The person signing the second request on behalf of the person making the request must do so in the presence of the person making the request. If the person makes the second request with the assistance of an interpreter, the interpreter must certify on the request that they provided a true and correct translation of any translated material.

### **Eligibility to witness the signing of second request**

*Clause 38* provides that a person is eligible to witness the signing of the second request if they are at least 18 years of age and not an ineligible witness.

For the purposes of this clause, a person will be deemed an ineligible witness if they:

- know or believe that they are a beneficiary under a will of the person making the request or that they may otherwise benefit financially or in any other material way from the death of the person making the request. The QLRC report notes that this may give rise to an actual or perceived conflict of interest (paragraph 8.409);
- are an owner, or is responsible for the management, of any health facility at which the person making the request is being treated or resides. The QLRC report notes that permitting this person to act as a witness may give rise to some perception of impropriety (paragraph 8.410); or
- are the coordinating practitioner or consulting practitioner for the person making the request. The QLRC report considers that the practitioner is involved in assessing the person's eligibility to access voluntary assisted dying, making it inappropriate for them to be eligible (paragraph 8.413).

The QLRC report notes that although imposing eligibility criteria about witnesses may restrict the pool of eligible witnesses available to the person, some categories of people should not be eligible to witness the signing of the second request due to their relationship with the person making the request (paragraph 8.407). This will provide another important safeguard. However, the QLRC report also notes that one or both witnesses may be family members of the person if they are not ineligible to witness the second request (paragraph 8.416). This balances the need for the scheme to include safeguards with the need for voluntary assisted dying to be accessible to people who are suffering and dying.

### **Certification of witness to signing of second request**

*Clause 39* provides that each witness to the signing of the second request must certify the person making the request signed the request in the presence of the witness and the person appeared to sign freely and voluntarily. The certification must be made in writing in the request.

If another person signs the second request on behalf of the person making the request, the witness must certify in writing that the person making the request appeared to freely and voluntarily direct the other person to sign the request in the presence of the witness. The witness must also certify in writing that the other person signed the request in the presence of the person making the request and the witness.

The witness must confirm that they are not knowingly ineligible to witness the signing of the second request.

The QLRC report notes that certification of the above matters operates as a safeguard and ensures that requests for access are made voluntarily. This will also assist in demonstrating that the person chose to sign the request, and that they were not forced to do so by the other witness or by any other person who was present at the time (paragraph 8.350).

The QLRC report also considers that it is unnecessary to require the witnesses to certify that the person appeared to understand the nature and effect of making the request as the relevant practitioners would have assessed that the person has decision-making capacity and is acting voluntarily and without coercion (paragraph 8.353).

### **Coordinating practitioner to record second request**

*Clause 40* provides that the coordinating practitioner must record the following information in the person's medical record if the person makes a second request:

- the date the second request was made;
- the date the coordinating practitioner received the second request.

### **Coordinating practitioner to notify board of second request**

*Clause 41* states that the coordinating medical practitioner must provide a copy of the second request to the Board within two business days of receiving the request. Non-compliance with this requirement may result in a maximum penalty of 100 penalty units.

## **Division 5                      Final request and final review**

### **Person may make final request to coordinating practitioner**

*Clause 42* provides that a person who has made a second request may make a *final request* to their coordinating practitioner for access to voluntary assisted dying.

The final request must be clear and unambiguous, and made by the person personally and not by another person on their behalf. The person may make the request verbally or by gestures or other means of communication available to the person.

### **When final request may be made**

*Clause 43* provides that the final request may not be made before the end of the *designated period* unless an exception applies. In any case, the final request must be made at least one day after the day on which the consulting assessment is completed.

For the purposes of this clause, *designated period* means the period of nine days from and including the day on which the person made the first request.

The QLRC report states that the “*inclusion of a waiting period is appropriate as a means of ensuring that a person's decision is not rushed, and that a person has a period of time to reflect on their choices*” (paragraph 8.475). The QLRC report considers that waiting period of nine days represents an appropriate balance between ensuring the decision is well-considered and avoiding prolonging a person's suffering (paragraph 8.477).

However, the final request may be made before the end of the designated period if the:

- in the opinion of the coordinating practitioner, the person is likely to die, or to lose decision-making capacity in relation to voluntary assisted dying, before the end of the designated period; and
- the opinion of the coordinating practitioner is consistent with the opinion of the consulting practitioner as expressed in the consulting assessment.

The QLRC report states that the waiting period should be able to be reduced if the person is likely to die or lose decision-making capacity in that time, as requiring a person to wait may prevent the person from accessing the scheme and lead to further suffering (paragraphs 8.478-8.479).

### **Coordinating practitioner to record final request**

*Clause 44* requires the coordinating practitioner to record the following information in the person's medical record:

- the date when the final request was made; and
- if the final request was made before the end of the designated period, the reason for it being made before the end of that period.

### **Coordinating practitioner to notify board of final request**

*Clause 45* states that the coordinating medical practitioner must complete a record of receiving the final request in the approved form and provide a copy to the Board within two business days of receiving the request. Non-compliance with this requirement may result in a maximum penalty of 100 penalty units.

### **Final review by coordinating practitioner on receiving final request**

*Clause 46* provides that the coordinating practitioner must review the following matters about the person on receiving the final request:

- the first assessment record form;
- the consulting assessment record form;
- the second request.

When conducting the review, the coordinating practitioner must take account of any decision made by QCAT under part 7 in relation to a decision made in the request and assessment process.

New clause 46(1)(b) provides that the coordinating practitioner must also complete the *final review form* certifying that:

- the request and assessment process has been completed in accordance with the Act; and
- the coordinating practitioner is satisfied that the person making the request has decision-making capacity in relation to voluntary assisted dying and, in requesting access to the scheme, is acting voluntarily and without coercion.

The QLRC report notes that the final review will provide an additional 'check' to ensure that the earlier forms are in order, that the completion of the request and assessment process is

compliant with the requirements of the legislation, and that the coordinating practitioner remains satisfied of particular matters relevant to eligibility (paragraph 8.436).

The coordinating practitioner must provide a copy of the final review form to the person as soon as practicable after completion. The practitioner must also submit the form to the Board within two business days of completing the form. A maximum penalty of 100 penalty units may apply if the practitioner does not meet the latter requirement.

## **Division 6            Other provisions**

### **Transfer of coordinating practitioner's role**

*Clause 47* provides that the coordinating practitioner (the *original practitioner*) may transfer their role to the consulting practitioner for the person if the consulting practitioner has assessed the person making the request as meeting the requirements of a consulting assessment. The consulting practitioner must also accept the transfer of the role.

The transfer of the role may be requested by the person or based on the original practitioner's own initiative. The consulting practitioner must inform the original practitioner whether they accept or refuse the transfer of the role within two business days of the request being made.

The QLRC report provides that there should be a mechanism to manage circumstances where the coordinating practitioner is unable to continue in their role and needs to transfer the role to another practitioner. Examples include circumstances where the coordinating practitioner is taking personal or annual leave, or where they become ill.

Alternatively, the person requesting access to voluntary assisted dying may wish to transfer the role of coordinating practitioner to their consulting practitioner. Allowing a coordinating practitioner to transfer their role will provide clarity and continuity of care while also allowing for a degree of flexibility in the system (paragraph 9.22-9.24)

New clause 47(4) provides that if the consulting practitioner accepts the transfer of the role, the original practitioner must:

- inform the person of the transfer; and
- record the transfer in the person's medical record; and
- complete a record of the acceptance of the transfer in the approved form and give a copy of it to the Board within two business days. A maximum penalty of 100 penalty units may apply for not meeting this requirement.

The original practitioner may refer the person to another medical practitioner for a further consulting assessment if the consulting practitioner refuses the transfer of the role. The original practitioner may also transfer the role of coordinating practitioner to that medical practitioner if the practitioner:

- accepts the referral for a further consulting assessment. Once the practitioner accepts the referral, the consulting assessment that previously assessed the person as meeting the requirements of a consulting assessment becomes void; and
- assesses the person as meeting the requirements of a consulting assessment; and
- accepts the transfer of the role.

## **No obligation for person to continue after completion of request and assessment process**

*Clause 48* provides that a person who has completed the request and assessment process may decide at any time not to take any further step in relation to access to voluntary assisted dying.

The QLRC report notes that “*it is critical that the legislation makes clear that participation is voluntary, and that a person can change their mind at any time*” (paragraph 8.496).

## **Part 4 Accessing voluntary assisted dying and death**

### **Division 1 Administration of voluntary assisted dying substance**

#### **Application of division**

*Clause 49* provides that division 1 applies if a person has made a final request and their coordinating practitioner has completed the final review form.

This ensures that the person does not make an administration decision and the prescription, supply and administration of a voluntary assisted dying substance does not occur until the requirements of the request and assessment process have been complied with and the person has been assessed as eligible for the scheme.

#### **Administration decision**

*Clause 50* sets out the requirements for making an administration decision. The person may, in consultation with and on the advice of their coordinating practitioner:

- decide to self-administer a voluntary assisted dying substance (known as a *self-administration decision*); or
- decide that a voluntary assisted dying substance is to be administered to the person by the administering practitioner (known as a *practitioner administration decision*).

The QLRC report provides that self-administration should be the default method of administration as this provides a final indication that the person is acting voluntarily and maximises the person’s autonomy to control the timing and circumstances of their death (paragraph 10.58).

A practitioner administration decision may only be made if the coordinating practitioner advises the person that self-administration of a voluntary assisted dying substance is inappropriate having regard to:

- the ability of the person to self-administer the substance;
- the person’s concerns about self-administering the substance;
- the method for administering the substance that is suitable for the person.



The QLRC report considers that practitioner administration should be available where appropriate, subject to additional safeguards to ensure voluntariness, and should not be limited to where the person is physically incapable of self-administering or digesting the substance. The QLRC report states that permitting practitioner administration in broader circumstances gives the person more discretion to choose the method of administration best suited to them and is one way of ensuring the person is provided with high quality care (paragraph 10.59).

The QLRC report states that this approach will allow a person to discuss their wishes and concerns with their doctor and make an informed choice about the method of administration that is best suited to them, and maximise the person's autonomy while ensuring the method is clinically appropriate and consistent with good medical practice (paragraph 10.62).

An administration decision must be clear and unambiguous, made by the person personally and not by another person on their behalf. The person may make an administration decision verbally or by gestures or other means of communication available to the person.

If the person makes an administration decision, the coordinating practitioner must record the decision in the person's medical record.

### **Revocation of administration decision**

*Clause 51* provides that a person may revoke their administration decision at any time. For a self-administration decision, this may be done by informing the coordinating practitioner that the person has decided not to self-administer a voluntary assisted dying substance. For a practitioner administration decision, this may be done by informing the administering practitioner that the person has decided not to proceed with the administration of a voluntary assisted dying substance.

The QLRC report provides that this may be necessary if, for example, the person's condition deteriorates after making a self-administration decision such that self-administration becomes inappropriate. The person may wish to revoke their self-administration decision and make a practitioner administration decision, authorising the administering practitioner to administer a substance to them (paragraph 10.119).

The person may inform the coordinating practitioner or administering practitioner of their decision in writing, verbally or by gestures or other means of communication available to the person.

If the person revokes their administration decision, the coordinating practitioner or administering practitioner who is informed of the person's decision must record the revocation in the person's medical record, inform the coordinating practitioner of the revocation if the practitioner is not the coordinating practitioner and complete a record of the revocation in the approved form and give a copy of it to the Board within two business days of the revocation.

A maximum penalty of 100 penalty units applies where the practitioner fails to complete the approved form and give a copy to the Board.

The revocation of an administration decision does not prevent the person from making another administration decision.

## **Self-administration—authorisations**

*Clause 52* sets out authorisations for the prescription, supply and administration of the voluntary assisted dying substance that apply if a person makes a self-administration decision.

This ensures clarity around who is authorised to deal with the substance and the limits of the authorisations. A person is not authorised to deal with a voluntary assisted dying substance under a self-administration decision except as set out in this provision.

New subclause 52(2) provides that once a person makes a self-administration decision, the coordinating practitioner is authorised to prescribe a voluntary assisted dying substance for the person that is of a sufficient dose to cause death.

This authorisation is subject to the requirement in clause 59(6), which provides that the coordinating practitioner may not prescribe a voluntary assisted dying substance for the person before the contact person appointment form is given to them. This will ensure that the appointment of the contact person and acceptance of the role has taken place before prescribing occurs.

The QLRC report notes that limiting the authority to prescribe a voluntary assisted dying substance to the coordinating practitioner and requiring relevant steps to have been completed before prescribing can occur are important safeguards, ensuring that access to the voluntary assisted dying substance is not granted until the requirements of the request and assessment process have been complied with (paragraph 11.54).

New subclause 52(4) sets out what the authorised supplier who is given the prescription for the person is authorised to do with the voluntary assisted dying substance. This ensures that the role of authorised suppliers under the Bill is clear.

For the purposes of the Bill, an *authorised supplier* means a qualified registered health practitioner, or persons in a class of registered health practitioners, authorised by the chief executive of the Department to supply a voluntary assisted dying substance under the Act.

The authorised supplier is authorised to possess the substance for the purpose of preparing it and supplying it, prepare the substance and supply the substance. The substance may be supplied to the person, their contact person or an agent of the person.

*Prepare* is defined in Schedule 1 in relation to a voluntary assisted dying substance to mean to do anything necessary to ensure that the substance is in a form suitable for administration and includes to decant, dilute, dissolve, reconstitute, colour or flavour the substance.

The QLRC report states that permitting a contact person or agent to receive the substance, if the person has made a self-administration decision, will assist in ensuring voluntary assisted dying is accessible to people in rural and remote parts of Queensland, while providing a clear chain of responsibility for the substance, and that this is appropriate given Queensland's geographical and demographic profile (paragraph 11.92).

The report also notes that the allowing the contact person or an agent to supply the substance to the person for self-administration is consistent with the current regulation of scheduled substances and that if the contact person or agent used the substance other than as authorised

under the Bill, they would be subject to offences under the Bill, Medicines and Poisons Act and *Drugs Misuse Act 1986* (paragraph 11.93).

New subclause 52(5) sets out what the person is authorised to do with the voluntary assisted dying substance. The person is authorised to receive the substance from the authorised supplier, their contact person or an agent, possess the substance for the purpose of preparing and self-administering it, prepare the substance and self-administer the substance.

The QLRC report states that if the person makes a self-administration decision, they must take the voluntary assisted dying substance themselves. The act of self-administering the substance is the final indication that the person is acting voluntarily and it is a crime to administer a voluntary assisted dying substance to another person unless the person is authorised to do so (paragraph 10.203).

There is no requirement for the coordinating practitioner or another health practitioner to be present for self-administration.

The QLRC report considers that this maximises the person's autonomy to control the timing and circumstances of their death, including who is present, and that while many people may choose to have their coordinating practitioner or another health practitioner present, some may wish for independence and privacy, and that this decision should be a matter for the person in consultation with and on the advice of the coordinating practitioner, taking into account the person's individual circumstances (paragraph 10.199). Such a requirement would also cause difficulties in rural, regional and remote areas where the medical workforce is limited and would be a significant obstacle to accessing the scheme in many parts of Queensland (paragraph 10.200).

New subclause 52(6) sets out what an agent of the person is authorised to do with the substance. An agent is authorised to receive the substance from an authorised supplier, possess the substance for the purpose of supplying it to the person and supply the substance to the person. As outlined above, allowing an agent of the person to receive the substance from the authorised supplier will assist in ensuring voluntary assisted dying is accessible to people in rural and remote parts of Queensland, while providing a clear chain of responsibility for the substance.

New subclause 52(7) authorises another person to assist the person by preparing the substance for them. As outlined in the QLRC report, this makes it clear that another person is able to assist with the preparation of the substance at the person's request, for example, by mixing the substance together. Another person may include the coordinating practitioner or another health practitioner, a carer or support person, or a family member or friend, and may include the person who is appointed to be the contact person (paragraph 11.141).

The QLRC report states that including an authorisation for another person to prepare the substance is in keeping with the approach taken in the Bill to clearly set out who is authorised to deal with the substance and the limits of the authorisations. The authorisation will not create an obligation for anyone to prepare the voluntary assisted dying substance (paragraph 11.142).

The Bill makes a clear distinction between the preparation and administration of the substance. *Administer* is defined in Schedule 1, in relation to a voluntary assisted dying substance, to mean to introduce the substance into the body of a person by any means. Only the person requesting access to voluntary assisted dying will be authorised to self-administer the substance (paragraph 11.143)

Accordingly, another person requested by the person to prepare the voluntary assisted dying substance for the person, is authorised to possess the substance for the purpose of preparing it, prepare the substance and supply the substance to the person.

The authorisations of a contact person for a self-administration decision are set out separately in clause 61.

### **Practitioner administration—authorisations**

*Clause 53* sets out authorisations that apply if a person makes a practitioner administration decision. This ensures clarity around who is authorised to deal with the substance and the limits of the authorisations.

Consistent with the process for a self-administration decision, new subclause 53(2) provides that the coordinating practitioner is authorised to prescribe a voluntary assisted dying substance for the person that is of sufficient dose to cause death. As with clause 52, this authorisation is subject to the requirement in clause 59(6), which provides that the coordinating practitioner may not prescribe a voluntary assisted dying substance for the person before the contact person appointment form is given to them.

New subclause 53(4) provides that the authorised supplier who is given the prescription for the person is authorised to possess the substance for the purpose of preparing it and supplying it to the administering practitioner for the person, prepare the substance and supply the substance to the administering practitioner for the person.

Under new subclause 53(5), the administering practitioner for the person is authorised to receive the substance from an authorised supplier, possess the substance for the purpose of preparing it and administering it to the person and prepare the substance.

The QLRC report considers that there should be additional safeguards for practitioner administration to ensure the person is acting voluntarily and provide transparency of process (paragraph 10.249).

Under new subclause 53(6), the administering practitioner is authorised to administer the substance, in the presence of an eligible witness, if the practitioner is satisfied at the time of administration that the person has decision-making capacity in relation to voluntary assisted dying and is acting voluntarily and without coercion.

### **Witness to administration of voluntary assisted dying substance**

*Clause 54* sets out the witnessing requirements for practitioner administration.

The QLRC report states that requiring a witness for practitioner administration is an additional safeguard for the person and, in particular, the administering practitioner, but that the witness requirements should not be so onerous that they create a barrier to access or are unduly obtrusive (paragraph 10.252).

Accordingly, a person is eligible to witness the administration of a voluntary assisted dying substance to the person if they are at least 18 years of age. The witness may be a family member of the person accessing voluntary assisted dying, or another health practitioner.

The witness must certify in the practitioner administration form for the person that the person appeared to be acting voluntarily and without coercion and that the administering practitioner administered the substance to the person in the presence of the witness.

### **Certification by administering practitioner following administration of voluntary assisted dying substance**

*Clause 55* sets out the certification requirements that apply if the administering practitioners administers a voluntary assisted dying substance to the person.

As outlined above, the QLRC report considers that there should be additional safeguards for practitioner administration to ensure the person is acting voluntarily and provide transparency of process (paragraph 10.249).

The administering practitioner is required to certify in writing that:

- the person made a practitioner administration decision and did not revoke the decision;
- the administering practitioner was satisfied at the time of administering the voluntary assisted dying substance to the person—
  - that the person had decision-making capacity in relation to voluntary assisted dying;
  - that the person was acting voluntarily and without coercion;
- any other matter prescribed by regulation to be certified.

The certificate must be in the approved form (the *practitioner administration form*) and must include the certificate of the witness required under clause 54. The administering practitioner must give a copy of the practitioner administration form to the Board within two business days after administering the substance. A maximum penalty of 100 penalty units applies for non-compliance with the approved form requirement.

### **Transfer of administering practitioner's role**

*Clause 56* sets out the process for transfer of the administering practitioner's role.

This process applies where the person makes a practitioner administration decision, the coordinating practitioner prescribes a voluntary assisted dying substance for the person and the administering practitioner (the *original practitioner*) is unable or unwilling for any reason to administer the voluntary assisted dying substance to the person. This process applies whether the original practitioner is the coordinating practitioner for the person or a person to whom the role of administering practitioner has been transferred.

The original practitioner is required to transfer the role of administering practitioner to another person who is eligible to act as an administering practitioner for the person and accepts the transfer of the role. Eligibility requirements for administering practitioners are set out in Part 5 of the Bill.

If a person (the *new practitioner*) accepts the transfer of the role, the original practitioner must inform the person requesting access to voluntary assisted dying of the transfer and the contact details of the new practitioner, record the transfer in the person's medical record and complete a record of the acceptance of the transfer in the approved form and give a copy of it to the Board within two business days after the acceptance of the transfer. A maximum penalty of 100 penalty units applies for non-compliance with the approved form requirement.

The provision also sets out the requirements that apply if the original practitioner has possession of the voluntary assisted dying substance when the role is transferred. The original practitioner is authorised to supply the substance to the new practitioner and the new practitioner is authorised to receive the substance from the original practitioner.

The provision clarifies that the coordinating practitioner remains the coordinating practitioner despite any transfer of the role of administering practitioner.

## **Division 2            Contact person**

### **Application of division**

*Clause 57* provides that division 2 applies if a person has made an administration decision. This makes clear that a person who has made an administration decision must appoint a contact person.

### **Contact person to be appointed**

*Clause 58* provides that the person must appoint a contact person and sets out the following requirements for appointing a contact person:

- to be eligible for appointment, the person must be at least 18 years of age;
- a person cannot be appointed as the contact person unless the person consents to the appointment;
- the person may revoke the appointment of the contact person. If the person revokes the appointment, they must inform the contact person of the revocation, the contact person ceases to be the contact person for the person on being informed and the person must make another appointment.

### **Contact person appointment form**

*Clause 59* sets out the requirement for an appointment of a contact person to be made in the approved form (the *contact person appointment form*) and the information that must be included in the form.

The contact person appointment form must include:

- the name, date of birth and contact details of the person;
- the name and contact details of the coordinating practitioner;
- the name, date of birth and contact details of the contact person;
- a statement that the contact person consents to the appointment;
- a statement that the contact person understands the contact person's role under this Act (including the requirements under clause 63 to give the voluntary assisted dying substance, or any unused or remaining substance, to an authorised disposer and the penalties for offences under that clause);
- if the person was assisted by an interpreter when making the appointment—
  - the name, contact details and accreditation details of the interpreter; and
  - a statement signed by the interpreter certifying that the interpreter provided a true and correct translation of any information translated;

- the signature of the contact person and the date when the form was signed;
- the signature of the person, or other person who completes the form on behalf of the person, and the date when the form was signed.

If the person is unable to complete the contact person appointment form, another person (the *second person*) may complete the form on the person's behalf at their request. The second person must be at least 18 years of age and sign the form in the presence of the person.

The person or the contact person for the person is required to give the form to the coordinating practitioner. The coordinating practitioner is then required to give a copy of it to the Board within two business days of receiving it. A maximum penalty of 100 penalty units applies for non-compliance by the coordinating practitioner with this requirement.

As outlined above in relation to clauses 52 and 53, the coordinating practitioner for a person may not prescribe a voluntary assisted dying substance for the person before the contact person appointment form is given to them. This will ensure that the appointment of the contact person and acceptance of the role has taken place before prescribing occurs.

### **Board to give information to contact person**

*Clause 60* sets out the requirement for the Board to give the contact person particular information to assist them in their role where the person has made a self-administration decision. The Board is required to give the contact person information on the requirement to give the voluntary assisted dying substance, or any unused or remaining substance, to an authorised disposer under clause 63 and the support services available to the contact person to assist the contact person to fulfil the requirement.

The Board is required to provide the information within two business days of receiving the contact person appointment form.

### **Role of contact person in case of self-administration decision**

*Clause 61* sets out the role of the contact person if the person makes a self-administration decision and authorisations that apply.

Under this provision, the contact person for the person is authorised to receive the voluntary assisted dying substance from an authorised supplier, supply the substance to the person and give the substance, or any unused or remaining substance, to an authorised disposer under clause 63 for the purposes of disposal. The contact person is also authorised to possess the substance to carry out these activities.

The QLRC report states that the Bill should support a person to self-administer without requiring the coordinating practitioner or another health practitioner to be present, and ensure the voluntary assisted dying substance is managed safely. To enable this, the Bill provides for the appointment of a contact person where they have made a self-administration decision, ensuring clear chain of responsibility for the substance once it has been supplied and in particular, the safe return and disposal of any unused or remaining voluntary assisted dying substance (paragraph 11.191).

The report considers that enabling the contact person to supply the substance to the person is “*appropriate given Queensland’s geographic and demographic profile and the need to ensure voluntary assisted dying is accessible to people in rural and remote areas of Queensland who may not be able to travel to receive the substance*” (paragraph 11.193).

The contact person for the person is required to inform the coordinating practitioner if the person dies (whether as a result of self-administering the voluntary assisted dying substance or from some other cause), within two business days of becoming aware of the death.

The Board may also contact the contact person to request information.

### **Role of contact person in case of practitioner administration decision**

*Clause 62* sets out the role of the contact person if the person makes a practitioner administration decision and authorisations that apply.

The QLRC report provides that a contact person should be required to be appointed if the person makes a practitioner administration decision, as this will provide the Board with a point of contact, assisting it in its oversight and monitoring role (paragraph 11.192).

The contact person for the person is required to inform the coordinating practitioner if the person dies as a result of a cause other than the administration of the voluntary assisted dying substance, within two business days of becoming aware of the death.

The Board may contact the contact person to request information.

### **Contact person to give voluntary assisted dying substance to authorised disposer**

*Clause 63* sets out the requirement for the contact person to give the voluntary assisted dying substance, or any unused or remaining substance, to an authorised disposer.

The QLRC report states that this is a “*key aspect of the contact person’s role where a self-administration decision has been made*” (paragraph 11.194). The QLRC report notes the possibility of criminal liability for breach of this obligation may be a disincentive for people to accept, or continue, in the role of a contact person and that this may limit a person’s access to the scheme (paragraph 17.84). However, this has been balanced with the need to ensure the voluntary assisted dying substance is safely managed.

If the person revokes a self-administration decision after an authorised supplier has supplied a voluntary assisted dying substance for the person, the contact person is required to give the voluntary assisted dying substance to an authorised disposer as soon as practicable and in any event within 14 days after the day on which the decision is revoked.

If the person makes a self-administration decision and dies after an authorised supplier has supplied a voluntary assisted dying substance, the contact person for the person must, as soon as practicable and in any event within 14 days after the day on which the person dies, give any unused or remaining substance to an authorised disposer.

A maximum penalty of 100 penalty units applies for failure by the contact person to return the substance.



*Authorised disposer* is defined in Schedule 1 to mean a registered health practitioner, or persons in a class of registered health practitioners, authorised by the chief executive to dispose of a voluntary assisted dying substance under the Act.

*Unused or remaining substance* is defined in Schedule 1 to mean any of the voluntary assisted dying substance supplied for a person that remains unused or remaining after the person's death.

### **Contact person may refuse to continue in role**

*Clause 64* provides that the person may refuse to continue to perform the role of contact person and sets out the process for them to cease performing the role.

If the contact person refuses to continue to perform the role, the contact person must inform the person of the refusal upon which they cease to be the contact person and the person must make another appointment.

## **Division 3                      Prescribing, supplying and disposing of voluntary assisted dying substance**

### **Information to be given before prescribing voluntary assisted dying substance**

*Clause 65* sets out a requirement for the coordinating practitioner to give the person particular information before prescribing the voluntary assisted dying substance.

Where the person has made a self-administration decision, the coordinating practitioner is required to inform the person, in writing, of the following:

- the S4 substance or S8 substance, or combination of substances, constituting the substance;
- that the person is not under any obligation to self-administer the substance;
- that the substance must be stored in accordance with requirements prescribed by regulation;
- how to prepare and self-administer the substance;
- the expected effects of self-administration of the substance;
- the period within which the person is likely to die after self-administration of the substance;
- the potential risks of self-administration of the substance;
- that, if the person decides not to self-administer the substance, their contact person must give the substance to an authorised disposer for disposal;
- that, if the person dies, their contact person must give any unused or remaining substance to an authorised disposer for disposal;
- the name of the authorised supplier who will be supplying the voluntary assisted dying substance;
- the name of one or more registered health practitioners or class of registered health practitioners who are authorised disposers.

The coordinating practitioner for a person who has made a practitioner administration decision must, before prescribing a voluntary assisted dying substance for the person, inform the person, in writing, of the following:

- the S4 substance or S8 substance, or combination of substances, constituting the substance;
- that the person is not under any obligation to have the substance administered to the person;
- the method by which the substance will be administered;
- the expected effects of administration of the substance;
- the period within which the person is likely to die after administration of the substance;
- the potential risks of administration of the substance;
- that, if the practitioner administration decision is made after the revocation of a self-administration decision, the person's contact person must give any substance received by the person, the contact person or an agent of the contact person to an authorised disposer for disposal;
- if the practitioner administration decision is made after the revocation of a self-administration decision—the name of one or more registered health practitioners or class of registered health practitioners who are authorised disposers.

The QLRC report provides that the requirement for the coordinating practitioner to provide information before prescribing the voluntary assisted dying substance is consistent with the established clinical approach to informed patient decision-making, ensuring that the person is made fully aware of the risks and requirements associated with the substance before it is prescribed (paragraph 11.58).

### **Prescription for voluntary assisted dying substance**

*Clause 66* sets out the requirements for prescribing a voluntary assisted dying substance.

The prescription issued by the coordinating practitioner is required to include:

- a statement that clearly indicates it is for a voluntary assisted dying substance;
- a statement:
  - certifying that the request and assessment process has been completed in relation to the person in accordance with this Act;
  - certifying that the person has made an administration decision and specifying whether the decision is a self-administration decision or practitioner administration decision;
- details of the substance and the maximum amount of the substance authorised by the prescription;
- the person's name and telephone number.

The QLRC report provides that this requirement will add further rigour to the prescribing process and ensure that the prescription can be easily identified as being for a voluntary assisted dying substance (paragraph 11.59).

The prescription may not provide for the voluntary assisted dying substance to be supplied on more than one occasion. The QLRC report considers that given the nature of the substance,

there is no need for the prescription to provide for it to be supplied on more than one occasion (paragraph 11.61).

The coordinating practitioner must give the prescription directly to an authorised supplier. The QLRC report states that this will facilitate the substance being supplied while ensuring the prescription and substance remain in the control of the coordinating practitioner and authorised supplier until the person requires access to it (paragraph 11.62).

### **Other requirements for prescribing**

*Clause 67* provides that a regulation may prescribe other requirements with which a coordinating practitioner must comply in relation to prescribing a voluntary assisted dying substance. This will enable any technical or prescriptive matters to be dealt with via regulation.

### **Coordinating practitioner to notify board of administration decision and prescription of voluntary assisted dying substance**

*Clause 68* sets out the requirements for the coordinating practitioner to notify the Board of the person's administration decision and the prescription of the voluntary assisted dying substance. The coordinating practitioner must complete a record of the administration decision and prescription on an approved form and give a copy to the Board within two business days after prescribing the substance. A maximum penalty of 100 penalty units applies for non-compliance with this requirement.

The QLRC report considers that ensuring all administration decisions and instances of the substance being prescribed are recorded in the approved form will assist the Board in its monitoring and review role and provide a safeguard for safe management of the substance (paragraph 11.63).

### **Authorised supplier to authenticate prescription**

*Clause 69* provides that the authorised supplier who is given a prescription for a voluntary assisted dying substance must not supply the substance in accordance with the prescription 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 QLRC report provides that authorised suppliers will act as an essential check and balance on the process (paragraph 11.95).

### **Information to be given when supplying voluntary assisted dying substance**

*Clause 70* sets out a requirement for the authorised supplier to provide particular information when supplying the voluntary assisted dying substance. This requirement applies if an authorised supplier supplies a voluntary assisted dying substance to a person, the contact person for a person or an agent of a person following a self-administration decision.

The authorised supplier must, when supplying the voluntary assisted dying substance, inform the recipient, in writing, of the following:

- that the person is not under any obligation to self-administer the substance;
- the S4 substance or S8 substance, or combination of substances, constituting the substance;
- how to prepare and self-administer the substance;
- that the substance must be stored in accordance with requirements prescribed by regulation;
- the expected effects of self-administration of the substance;
- the period within which the person is likely to die after self-administration of the substance;
- the potential risks of self-administration of the substance;
- that, if the person decides not to self-administer the substance, their contact person must give the substance to an authorised disposer for disposal;
- that, if the person dies, their contact person must give any unused or remaining substance to an authorised disposer for disposal.

### **Labelling requirements for voluntary assisted dying substance**

*Clause 71* provides that an authorised supplier who supplies a voluntary assisted dying substance must comply with labelling requirements prescribed by regulation.

The QLRC report provides that it is important to be able to readily identify a voluntary assisted dying substance, given its nature, and that the requirements prescribed by regulation should include that the authorised supplier must attach a statement to the package or container warning of the purpose of the substance, the dangers of administration, and for self-administration, storage and disposal requirements (paragraph 11.98).

### **Authorised supplier to record and notify of supply**

*Clause 72* requires an authorised supplier who supplies a voluntary assisted dying substance complete a record of the supply in the approved form (the *authorised supply form*).

The QLRC report provides that this requirement will support the safe management of the substance by ensuring all instances of supply are recorded and assisting the Board in its monitoring and review role (paragraph 11.99).

The form must include the following information:

- the name, date of birth and contact details of the person;
- the name and contact details of the authorised supplier;
- a statement that the voluntary assisted dying substance was supplied;
- a statement that the above requirements under clauses 69, 70 and 71 were complied with.

The authorised supplier is required to give a copy of the completed authorised supply form to the Board within two business days of the supply. A maximum penalty of 100 penalty units applies for non-compliance with this requirement.

### **Other requirements for supplying**

*Clause 73* provides that a regulation may prescribe other requirements with which an authorised supplier must comply in relation to supplying a voluntary assisted dying substance. This will enable any technical or prescriptive matters to be dealt with via regulation.

### **Storage of voluntary assisted dying substance**

*Clause 74* provides that a person who receives a voluntary assisted dying substance must store the substance in accordance with the requirements prescribed by regulation.

It is proposed to provide that the person must keep the substance in a locked box not easily penetrable by other people, consistent with the Victorian approach.

The QLRC report provides that to ensure the person is aware of the storage requirements, the coordinating practitioner should be required to inform the person of these requirements before prescribing the substance for self-administration (per clause 65 above) and the authorised supplier should be required to inform the recipient (the person, contact person or agent) of the storage requirements when supplying the substance for self-administration (per clause 70 above) (paragraph 11.124).

### **Disposal of voluntary assisted dying substance**

*Clause 75* sets out the requirements for disposal of a voluntary assisted dying substance.

The QLRC report considers this necessary to ensure the voluntary assisted dying substance is managed appropriately while in the community (paragraph 11.166).

If a voluntary assisted dying substance, or any unused or remaining substance, is given to an authorised disposer by the contact person, the authorised disposer is authorised to possess the voluntary assisted dying substance or unused or remaining substance for the purpose of disposing of it and dispose of the substance. The authorised disposer must dispose of the substance or unused or remaining substance as soon as practicable after receiving it.

### **Authorised disposer to record and notify of disposal**

*Clause 76* requires an authorised disposer who disposes of a voluntary assisted dying substance or unused or remaining substance to complete a record of the disposal in the approved form (the *authorised disposal form*) and give a copy of the completed form to the Board within two business days after disposing of the substance. A maximum penalty of 100 penalty units applies for non-compliance with this requirement.

The QLRC report notes that this will ensure the whereabouts of the substance can be controlled and assist the Board in its monitoring and review role (paragraph 11.176).

### **Disposal of voluntary assisted dying substance by administering practitioner**

*Clause 77* sets out the requirements that apply if a person who has made a practitioner administration decision revokes their decision or dies, and the administering practitioner for the person has possession of the voluntary assisted dying substance.

The QLRC report notes that this approach is consistent with Western Australia and will facilitate accessibility in regional and remote areas of Queensland by allowing the

administering practitioner to dispose of the substance safely instead of travelling potentially long distances to an authorised disposer (paragraph 11.178).

Where the person revokes their practitioner administration decision, the administering practitioner is authorised to possess the voluntary assisted dying substance for the purpose of disposing of it and dispose of the substance. The administering practitioner must dispose of the voluntary assisted dying substance as soon as practicable after the practitioner administration decision is revoked.

Where the person who has made a practitioner administration decision dies (whether or not after being administered the voluntary assisted dying substance, the administering practitioner is authorised to possess the unused or remaining substance for the purpose of disposing of it and dispose of the unused or remaining substance. The administering practitioner must dispose of the unused or remaining substance as soon as practicable after the person's death.

The QLRC report provides that the administering practitioner is required to comply with any relevant disposal requirements prescribed by regulation and that if they are unable to comply, the administering practitioner may give the substance to an authorised disposer for disposal (paragraph 11.179).

### **Administering practitioner to record and notify of disposal**

*Clause 78* requires the administering practitioner who disposes of a voluntary assisted dying substance or unused or remaining substance to complete a record of the disposal in the approved form (the *practitioner disposal form*) and give a copy of the completed form to the Board within two business days after disposing of the substance. This is consistent with the requirements on authorised disposers. A maximum penalty of 100 penalty units applies for non-compliance with this requirement.

### **Other requirements for disposal**

*Clause 79* provides that a regulation may prescribe other requirements with which an authorised disposer or administering practitioner must comply in relation to disposing of a voluntary assisted dying substance or unused or remaining substance. This will enable technical or prescriptive matters to be dealt with via regulation.

## **Division 4      Other provisions**

### **Notification of death**

*Clause 80* sets out the requirements relating to notification of death.

The coordinating practitioner and administering practitioner are each required, within two business days after becoming aware that the person has died (whether or not after self-administering or being administered a voluntary assisted dying substance), to notify the Board in the approved form of the person's death. A maximum penalty of 100 penalty units applies for non-compliance with this requirement.

The QLRC report notes that the requirements applying upon the medical practitioner 'becoming aware' of the person's death provides more certainty than requiring the medical practitioner to hold a 'reasonable belief' (paragraph 12.74).

This requirement does not apply if the administering practitioner for a person gives the Board a copy of a practitioner administration form under clause 55.

### **Cause of death certificate**

*Clause 81* sets out requirements relating to the cause of death certificate, in accordance with the requirements of the *Births, Deaths and Marriages Registration Act 2003*, section 30(2)(a).

The requirements apply if a medical practitioner who is required to give a cause of death certificate for a person knows or reasonably believes that the person self-administered, or was administered, a voluntary assisted dying substance under the Voluntary Assisted Dying Act.

The medical practitioner must, within two business days after becoming aware that the person has died, notify the Board, in the approved form, of the person's death, unless the medical practitioner is the coordinating practitioner or administering practitioner for the person. This will ensure the Board is receiving accurate notifications and information.

The medical practitioner must state in the cause of death certificate for the person that the cause of death of the person was the disease, illness or medical condition mentioned in clause 10(1)(a) from which the person suffered and must not include any reference to voluntary assisted dying in the cause of death certificate for the person.

This is consistent with the QLRC's recommendation (Recommendation 12-1). The QLRC report states that the approach will ensure the privacy of the individual and their family, ensure consistency with the approach in Victoria and WA and for data collection by the Australian Bureau of Statistics (paragraph 12.45).

## **Part 5 Eligibility requirements for health practitioners**

### **Eligibility to act as coordinating practitioner or consulting practitioner**

*Clause 82* provides that a medical practitioner is eligible to act as a coordinating practitioner or consulting practitioner for a person requesting access to voluntary assisted dying if they:

- hold specialist registration, having practised in the medical profession for at least one year as the holder of specialist registration;
- hold general registration, having practised the medical profession for at least five years as the holder of general registration;
- hold specialist registration, having practised the medical profession for at least five years as the holder of general registration; or
- are an overseas-trained specialist who hold limited registration or provisional registration.

The QLRC report provides that overseas-trained specialists with limited or provisional registration are included to capture suitably qualified specialists, including in areas of need, to improve accessibility in rural, regional and remote areas and notes that to hold limited or provisional registration, an overseas-trained specialist must be enrolled in a specialist pathway (paragraph 13.116).

New clause 82(1)(b) provides that the practitioner must meet the approved medical practitioner requirements. These requirements will be approved by the chief executive (see clause 161) and will be made publicly available on the Department's website. This will ensure that any overseas-trained specialist has the necessary knowledge, clinical skills and professional attributes to perform the role and will facilitate having suitably qualified specialists in areas of need in regional, rural and remote areas.

A medical practitioner cannot be a coordinating or consulting practitioner if they are:

- a family member of the person requesting access to voluntary assisted dying; or
- someone who knows or believes that they are a beneficiary under a will of the person requesting access to voluntary assisted dying; or
- someone who knows or believes that they may otherwise benefit financially or in any other material way from the death of the person requesting access to voluntary assisted dying, other than by receiving reasonable fees for the provision of services in connection with the referral.

The QLRC report provides that this requirement is consistent with existing professional obligations and ensure there is no conflict of interest between the practitioner and the person requesting access to voluntary assisted dying (paragraph 13.206).

For the purposes of the Bill, a *family member* means the person's spouse, parent, grandparent, sibling, child or grandchild (or a person who is regarded as a parent, grandparent, sibling, child or grandchild under Aboriginal tradition or Torres Strait Island custom).

For the purposes of this clause:

- *general registration* means general registration under the Health Practitioner Regulation National Law (Queensland) in the medical profession;
- *limited registration* means limited registration under the Health Practitioner Regulation National Law (Queensland) in the medical profession;
- *provisional registration* means provisional registration under the Health Practitioner Regulation National Law (Queensland) in the medical profession;
- *specialist registration* means specialist registration under the Health Practitioner Regulation National Law (Queensland) in the medical profession in a recognised speciality.



**Eligibility to act as administering practitioner**

*Clause 83* provides that a person is eligible to act as an administering practitioner if they are a:

- medical practitioner eligible to act as a coordinating practitioner, in accordance with the eligibility requirements under clause 82(1);
- nurse practitioner who meets the approved nurse practitioner requirements (see clause 162 regarding nurse practitioner requirements); or
- registered nurse who has practised in the nursing profession for at least five years and meets the approved nurse requirements (see clause 163 regarding approved nurse requirements).

*Nurse practitioner* is defined in Schedule 1 to mean a person registered under the Health Practitioner Regulation National Law (Queensland) to practise in the nursing profession whose registration under that Law is endorsed as nurse practitioner.

*Nurse* is defined in Schedule 1 to mean a person registered under the Health Practitioner Regulation National Law (Queensland) to practise in the nursing profession, other than as a student, in the registered nurses division of that profession.

New clause 83(b) provides that the person must have also completed the approved training to be eligible to act as an administering practitioner (see clause 165 regarding approved training).

The QLRC report considers that the training requirements, together with the nurse practitioner and nurse requirements approved by the chief executive, will ensure that nurse practitioners and registered nurses who participate in the administration of the substance will have relevant and current experience and expertise (paragraph 13.154).

The QLRC report notes that authorising nurse practitioners to act as an administering practitioner may facilitate access to voluntary assisted dying, particularly for those Queenslanders residing in rural and remote areas where there are fewer medical practitioners (paragraph 13.149).

The QLRC report provides that expanded scopes of practice for registered nurses have been envisaged for many years to transform health services and enable people to access the care they need and that expanding the scope of practice of registered nurses to include administration of a voluntary assisted dying substance will require formal processes for continuing education, assessment of competence and authorisation through credentialling (paragraphs 13.152 – 13.153).

Consistent with the requirements for coordinating practitioners and consulting practitioners, a person cannot be an administering practitioner if they are:

- a family member of the person requesting access to voluntary assisted dying; or
- someone who knows or believes that they are a beneficiary under a will of the person requesting access to voluntary assisted dying; or
- someone who knows or believes that they may otherwise benefit financially or in any other material way from the death of the person requesting access to voluntary assisted dying, other than by receiving reasonable fees for the provision of services in connection with the referral.

As outlined above, the QLRC report provides that this requirement is consistent with existing professional obligations and ensure there is no conflict of interest between the practitioner and the person requesting access to voluntary assisted dying (paragraph 13.206).

## **Part 6                      Participation**

### **Division 1                Conscientious objection**

#### **Registered health practitioner with conscientious objection**

*Clause 84* sets out the rights and responsibilities of a registered health practitioner who has a conscientious objection to voluntary assisted dying.

The registered health practitioner has the right to refuse to:

- provide information to another person about voluntary assisted dying;
- participate in the request and assessment process;
- participate in an administration decision;
- prescribe, supply or administer a voluntary assisted dying substance;
- be present at the time of the administration or self-administration of a voluntary assisted dying substance.

This recognises registered health practitioners' right to freedom of conscience and belief. This right must be balanced against the rights of an individual to autonomy in end of life choices and the right to be supported in making informed decision about those choices. The QLRC report states that "*the right of an individual, including a health practitioner, to conscientiously object to participating in voluntary assisted dying should be subject to reasonable provisions that respect the rights of other individuals*" (paragraph 14.81).

A registered health practitioner who, because of a conscientious objection, refuses to do one of the things outlined above for a person seeking information or assistance about voluntary assisted dying, must:

- inform the person that other health practitioners, health service providers or services may be able to assist the person; and
- give the person—
  - information about a health practitioner, health service provider or service who, in the practitioner’s belief, is likely to be able to assist the person; or
  - the details of an official voluntary assisted dying care navigator service that is able to provide the person with information (including name and contact details) about a health practitioner, health service provider or service who may be able to assist the person.

### **Speech pathologist with conscientious objection**

*Clause 85* sets out the rights and responsibilities of a speech pathologist who has a conscientious objection to voluntary assisted dying.

*Speech pathologist* is defined for the clause to mean a person who is eligible for practising membership of The Speech Pathology Association of Australia.

A speech pathologist is not a registered health practitioner but may play a role in facilitating communication between a health practitioner and a person seeking access to voluntary assisted dying. The QLRC report states that speech pathologists “*may be asked to be involved in the request and assessment process, for example, to help a patient communicate a voluntary assisted dying request or to assist in patient-practitioner communications in the assessment process*” (paragraph 14.93).

A speech pathologist who has a conscientious objection to voluntary assisted dying has the right to refuse to:

- provide information to another person about voluntary assisted dying;
- participate in the request and assessment process;
- participate in an administration decision;
- be present at the time of the administration or self-administration of a voluntary assisted dying substance.

A speech pathologist who, because of a conscientious objection, refuses to do one of the things outlined above for an employer or for any other person who has requested speech pathology services in relation to voluntary assisted dying:

- must inform the employer or other person of the speech pathologist’s conscientious objection; and
- must inform the employer or other person of another speech pathologist or speech pathology service who, in the speech pathologist’s belief, is likely to be able to assist in providing the speech pathology services requested; and
- must not intentionally impede the person’s access to speech pathology services in relation to voluntary assisted dying.

If a speech pathologist is employed or otherwise engaged by a health service provider and the speech pathologist knows, or ought reasonably to know, the health service provider provides, or is likely to provide, services relating to voluntary assisted dying, additional requirements apply. The speech pathologist must:

- inform the health service provider of the speech pathologist's conscientious objection to voluntary assisted dying; and
- discuss with the health service provider how they can practise in accordance with their beliefs without placing a burden on their colleagues or compromising a person's access to voluntary assisted dying under this Act.

The QLRC report provides that the different requirements for speech pathologists reflect the fact that medical practitioners are subject to a code of conduct which requires them to disclose their conscientious objection to patients and, if relevant, colleagues, and to not deny a patient access to the relevant service, which speech pathologists are not (para 14.203).

Additionally, as a speech pathologist is likely to act as an intermediary between a medical practitioner and a patient and will not be engaged by the patient directly, the QLRC report considers that the speech pathologist should ensure that the person making the request (usually the health service or health practitioner who sought to engage their services) is assisted to find someone else to provide the services, ensuring that a person's access to information and assistance about a lawful end of life option is not denied or impeded (paragraph 14.204).

## **Division 2            Participation by entities**

### **Subdivision 1        Preliminary**

#### **Definitions for division**

*Clause 86* sets out relevant definitions for Division 2.

*A deciding practitioner*, for a decision about the transfer of a person, means:

- the coordinating practitioner for the person; or
- if a different medical practitioner is chosen by the person and the relevant entity from which the person is receiving relevant services at a facility, to make the decision—that practitioner.

*Facility* means a private hospital; a hospice; a public sector hospital; a nursing home, hostel or other facility at which accommodation, nursing or personal care is provided to persons who, because of infirmity, illness, disease, incapacity or disability, have a need for nursing or personal care; or a residential aged care facility.

*Residential aged care* means personal care or nursing care, or both personal care and nursing care, that is provided to a person in a residential facility in which the person is also provided with accommodation that includes staffing to meet the nursing and personal care needs of the person; meals and cleaning services; and furnishings, furniture and equipment for the provision of that care and accommodation.

*Residential aged care facility* means a facility at which residential aged care is provided, whether or not the care is provided by an entity that is an approved provider under the *Aged Care Quality and Safety Commission Act 2018* (Cwlth).

*Residential facility* does not include a private home, a hospital or psychiatric facility or a facility that primarily provides care to people who are not frail and aged.

### **Meaning of relevant entity**

*Clause 87* provides that for division 2, a *relevant entity* is an entity, other than an individual, that provides a relevant service.

### **Meaning of relevant service**

*Clause 88* provides that for division 2, a *relevant service* is a health service, residential aged care or a personal care service.

### **Meaning of permanent resident**

*Clause 89* sets out the meaning of *permanent resident* for division 2.

A person is a permanent resident at a facility if the facility is the person's settled and usual place of abode where the person regularly or customarily lives.

A person is a permanent resident at a facility that is a residential aged care facility if the person has security of tenure at the facility under the *Aged Care Act 1997* (Cwlth) or on some other basis.

A person is not a permanent resident at a facility if the person resides at the facility temporarily. For example, an in-patient of a hospital or a resident of a hospice.

## **Subdivision 2 Information about voluntary assisted dying**

### **Access to information about voluntary assisted dying**

*Clause 90* sets out the process that applies if:

- a person is receiving relevant services from a relevant entity at a facility;
- the person asks the entity for information about voluntary assisted dying; and
- the entity does not provide at the facility, to persons to whom relevant services are provided, the information that has been requested.

The QLRC report states that it is difficult to justify denying an individual access to information and advice about voluntary assisted dying on the grounds of an entity's conscientious objection (paragraph 15.233).

The QLRC report provides that a person's right to obtain information and receive visits from an official care navigator service or registered health practitioner who is prepared to provide information and advice about voluntary assisted dying should be confirmed and that an entity that objects to providing access to voluntary assisted dying should not hinder access by a person to information about it and not hinder such visits (paragraph 15.234).

If these circumstances apply, the relevant entity and any other entity that owns or occupies the facility:

- must not hinder the person's access at the facility to information about voluntary assisted dying; and
- must allow reasonable access to the person at the facility by each person who—
  - is a registered health practitioner or a member or employee of an official voluntary assisted dying care navigator service; and
  - is seeking the access to provide the requested information to the person about voluntary assisted dying.

### **Subdivision 3      Access to voluntary assisted dying**

#### **Application of subdivision**

*Clause 91* provides that subdivision 3 applies if a person is receiving relevant services from a relevant entity at a facility.

#### **First requests and final requests**

*Clause 92* sets out the process where a person wishes to make a first or final request for access to voluntary assisted dying.

This process applies if:

- the person or the person's agent advises the relevant entity that the person wishes to make a first request or final request (each a relevant request); and
- the entity does not provide, to persons to whom relevant services are provided at the facility, access to the request and assessment process at the facility.

The QLRC report considers that while an entity may not wish to be involved in receiving a request for voluntary assisted dying, it is hard to see why a patient or resident who is dying should be put to the trouble of being transferred outside of a facility to make a request for access (paragraph 15.235).

Instead, the QLRC report states that there should be a requirement to allow reasonable access to the person at the facility by a registered health practitioner who is qualified and willing to receive a request for access and whose presence is requested for that purpose (paragraph 15.236). If such a practitioner is not available, only then should reasonable steps be taken to facilitate the person's transfer to a place where the request can be made, and their return to the facility (paragraph 15.237).

Accordingly, the relevant entity and any other entity that owns or occupies the facility must allow reasonable access to the person at the facility by a medical practitioner:

- whose presence is requested by the person; and
- who:
  - for a first request—is eligible to act as a coordinating practitioner; or
  - for a final request—is the coordinating practitioner for the person.

If the requested medical practitioner is not available to attend, the relevant entity must take reasonable steps to facilitate the transfer of the person to and from a place where the person's relevant request may be made to:

- the requested medical practitioner; or
- another medical practitioner who is eligible and willing to act as a coordinating practitioner.

### **Second requests**

*Clause 93* sets out the process where a person wishes to make a second request for access to voluntary assisted dying.

This process applies if:

- the person or the person's agent advises the relevant entity that the person wishes to make a second request; and
- the entity does not provide, to persons to whom relevant services are provided at the facility, access to the request and assessment process at the facility.

As outlined above, the QLRC report considers that while an entity may not wish to be involved in receiving a request for voluntary assisted dying, it is hard to see why a patient or resident who is dying should be put to the trouble of being transferred outside of a facility to make a request for access (paragraph 15.235).

The relevant entity and any other entity that owns or occupies the facility must allow reasonable access to the person at the facility by the coordinating practitioner for the person and two people who are eligible to witness the signing of a second request by the person.

If the coordinating practitioner is not available to attend, the relevant entity must take reasonable steps to facilitate the transfer of the person to and from a place where the person's second request may be made to the coordinating practitioner or another medical practitioner who is eligible and willing to act as a coordinating practitioner.

### **First assessments**

*Clause 94* sets out the process where the person wishes to undergo a first assessment against the eligibility criteria.

This process applies if:

- the person has made a first request;
- the person or the person's agent advises the relevant entity that the person wishes to undergo a first assessment; and
- the entity does not provide, to persons to whom relevant services are provided at the facility, access to the request and assessment process at the facility.

The QLRC report considers that an entity that does not wish to provide access to voluntary assisted dying should not be required to do so (paragraph 15.253). The QLRC report states that a patient or resident at a facility operated by such an entity should have reasonable access to qualified health practitioners in order to undertake an eligibility assessment and that if the entity does not allow health practitioners engaged or employed by it to undertake such assessments at its facility, then the entity should not hinder the patient or resident undergoing such an assessment (paragraph 12.254).

If the person is a permanent resident at the facility:

- the relevant entity and any other entity that owns or occupies the facility must allow reasonable access to the person at the facility by a relevant practitioner (the coordinating practitioner or a registered health practitioner to whom the coordinating practitioner has referred a matter under clause 21) for the person to assess the person; and
- if a relevant practitioner is not available to attend—the relevant entity must take reasonable steps to facilitate the transfer of the person to and from a place where the person’s assessment may be carried out by the relevant practitioner or another medical practitioner who is eligible and willing to act as a relevant practitioner.

If the person is not a permanent resident at the facility:

- the relevant entity must take reasonable steps to facilitate the transfer of the person to and from a place where the person’s assessment may be carried out by a relevant practitioner for the person; or
- if, in the opinion of the deciding practitioner, transfer of the person would not be reasonable in the circumstances, the entity and any other entity that owns or occupies the facility must allow reasonable access to the person at the facility by a relevant practitioner for the person.

In considering the reconciliation of the competing interests of individuals and entities, the QLRC report notes that transfer of care comes at a human and financial cost (paragraph 15.242). For example, the person may be so ill that the transfer would be traumatic or painful, transfer may require pain medication that affects the person’s decision-making capacity and renders them ineligible for voluntary assisted dying, or continuity of care may be affected. The QLRC report also notes that in some cases, the person requesting the assessment will not be able to be transferred to another facility because of their frail condition or because a suitable place at another facility is not available (paragraph 15.243).

As a result, the QLRC report recommends that the reasonableness of the proposed transfer be determined by the coordinating practitioner, having regard to a number of factors (Recommendation 15-8).

Accordingly, in making a decision about whether transfer is reasonable in the circumstances, the deciding practitioner must have regard to:

- whether the transfer would be likely to cause serious harm to the person, for example, the transfer would cause significant pain or a significant deterioration in their condition;
- whether the transfer would be likely to adversely affect the person’s access to voluntary assisted dying, for example the transfer would likely result in a loss of decision-making capacity of the person, or pain relief or medication for the transfer would likely result in a loss of decision-making capacity of the person;



- whether the transfer would cause undue delay and prolonged suffering in accessing voluntary assisted dying;
- whether the place to which the person is proposed to be transferred is available to receive the person;
- whether the person would incur financial loss or costs because of the transfer.

### **Consulting assessments**

*Clause 95* sets out the process where a person wishes to undergo a consulting assessment against the eligibility criteria.

This process applies if:

- the person has undergone a first assessment;
- the person or the person's agent advises the relevant entity that the person wishes to undergo a consulting assessment; and
- the entity does not provide, to persons to whom relevant services are provided at the facility, access to the request and assessment process at the facility.

If the person is a permanent resident at the facility:

- the relevant entity and any other entity that owns or occupies the facility must allow reasonable access to the person at the facility by a *relevant practitioner* (the consulting practitioner or a registered health practitioner to whom the consulting practitioner has referred a matter under clause 32) for the person to assess the person; and
- if a relevant practitioner is not available to attend—the relevant entity must take reasonable steps to facilitate the transfer of the person to and from a place where the person's assessment may be carried out by the relevant practitioner or another medical practitioner who is eligible and willing to act as a relevant practitioner.

If the person is not a permanent resident at the facility:

- the relevant entity must take reasonable steps to facilitate the transfer of the person to and from a place where the person's assessment may be carried out by a relevant practitioner for the person; or
- if, in the opinion of the deciding practitioner, transfer of the person would not be reasonable in the circumstances, the entity and any other entity that owns or occupies the facility must allow reasonable access to the person at the facility by a relevant practitioner for the person.

In making a decision about whether transfer is reasonable in the circumstances, the deciding practitioner must have regard to the same matters outlined in clause 94.

### **Administration decisions**

*Clause 96* sets out the process where a person wishes to make an administration decision.

This process applies if:

- the person has made a final request;
- the person or the person's agent advises the relevant entity that the person wishes to make an administration decision; and
- the entity does not provide, to persons to whom relevant services are provided at the facility, access to a person's coordinating practitioner to enable an administration decision to be made.

If the person is a permanent resident at the facility:

- the relevant entity and any other entity that owns or occupies the facility must allow reasonable access to the person at the facility by the coordinating practitioner for the person to consult with and advise the person in making the administration decision; and
- if the coordinating practitioner is not available to attend—the relevant entity must take reasonable steps to facilitate the transfer of the person to and from a place where the person's administration decision may be made in consultation with, and on the advice of the coordinating practitioner or another medical practitioner who is eligible and willing to act as the coordinating practitioner for the person.

If the person is not a permanent resident at the facility:

- the relevant entity must take reasonable steps to facilitate the transfer of the person to and from a place where the person's administration decision may be made in consultation with, and on the advice of, the coordinating practitioner for the person; or
- if, in the opinion of the deciding practitioner, transfer would not be reasonable in the circumstances—the relevant entity and any other entity that owns or occupies the facility must allow reasonable access to the person at the facility by the coordinating practitioner for the person.
- whether the transfer would cause undue delay and prolonged suffering in accessing voluntary assisted dying.

In making the decision about the reasonableness of a transfer, the deciding practitioner must have regard to the same matters outlined in clause 94.

### **Administration of voluntary assisted dying substance**

*Clause 97* sets out the process where a person wishes to self-administer a voluntary assisted dying substance or have an administering practitioner administer a voluntary assisted dying substance to them.

This process applies if:

- the person has made an administration decision;
- the person or the person's agent advises the relevant entity that the person wishes to self-administer a voluntary assisted dying substance or have an administering practitioner administer a voluntary assisted dying substance to the person; and
- the relevant entity does not provide, to persons to whom relevant services are provided at the facility, access to the administration of a voluntary assisted dying substance at the facility.

The QLRC report considers whether the position reached in relation to eligibility assessments should equally apply to administration of a voluntary assisted dying substance and concludes that while an eligibility assessment does not in any real or immediate sense cause the person's death, administration of the substance does, and that this difference may justify greater weight being accorded to the entity's objection at the administration stage (paragraphs 15.264 – 15.265).

Accordingly, the QLRC report states that an entity that does not wish to provide access to voluntary assisted dying in its facility should not be required to do so and that a person wishing to self-administer or receive administration of a voluntary assisted dying substance should transfer from the facility for the purpose of administration, unless transfer is unreasonable (paragraphs 15.272 – 15.273).

If the person is a permanent resident at the facility, the relevant entity and any other entity that owns or occupies the facility must:

- if the person has made a practitioner administration decision—
  - allow reasonable access to the person at the facility by the administering practitioner for the person to administer a voluntary assisted dying substance to the person; and
  - allow reasonable access to the person at the facility by an eligible witness to the administration of the voluntary assisted dying substance by the administering practitioner for the person; or
- if the person has made a self-administration decision—not hinder access by the person to a voluntary assisted dying substance.

If the person is not a permanent resident at the facility:

- the relevant entity must take reasonable steps to facilitate the transfer of the person to a place where the person may be administered or may self-administer a voluntary assisted dying substance; or
- if, in the opinion of the deciding practitioner, transfer of the person would not be reasonable in the circumstances, the above process for permanent residents apply as if the person were a permanent resident at the facility.

In making the decision about the reasonableness of a transfer, the deciding practitioner must have regard to:

- whether the transfer would be likely to cause serious harm to the person, for example, the transfer would cause significant pain or a significant deterioration in their condition;
- whether the transfer would be likely to adversely affect the person's access to voluntary assisted dying, for example the transfer would likely result in a loss of decision-making capacity of the person, or pain relief or medication for the transfer would likely result in a loss of decision-making capacity of the person;
- whether the place to which the person is proposed to be transferred is available to receive the person.

## **Subdivision 4                      Information about non-availability of voluntary assisted dying**

### **Relevant entities to inform public of non-availability of voluntary assisted dying**

*Clause 98* sets out the requirement for relevant entities to inform the public of the non-availability of voluntary assisted dying in their facility.

The requirement applies to a relevant entity that does not provide, at a facility at which the entity provides relevant services, services associated with voluntary assisted dying, such as access to the request and assessment process or access to the administration of a voluntary assisted dying substance.

The relevant entity is required to publish information about the fact the entity does not provide those services at the facility. The information must be published in a way in which it is likely that persons who receive the services of the entity at the facility, or may in future receive the services of the entity at the facility, become aware of the information, for example, printing the information in brochures about the relevant entity, placing the information on the relevant entity's website or displaying the information on signs at the facility.

The QLRC report considers that the inclusion of this requirement may avoid a person finding out after they have been admitted to, or taken up residence at a facility that the facility objects to voluntary assisted dying (paragraph 15.278).

## **Part 7                                      Review by QCAT**

### **Division 1                                  Preliminary**

#### **Reviewable decisions**

*Clause 99* provides for the decisions that are reviewable by QCAT:

- a decision of a coordinating practitioner, in a first assessment, or a decision of a consulting practitioner, in a consulting assessment, about whether the person:
  - has been ordinarily resident in Australia for at least three years immediately before the person made the person's first request;
  - has been ordinarily resident in Queensland for at least 12 months immediately before the person made the person's first request;

- has decision-making capacity for voluntary assisted dying;
  - is acting voluntarily and without coercion;
- a decision of a coordinating practitioner, in a final review of a person about whether the person:
  - has decision-making capacity for voluntary assisted dying; or
  - is acting voluntarily and without coercion.

The QLRC report notes that decision-making capacity is a key feature and major safeguard in the legislation (paragraph 16.88). The QLRC considers it important that, in exceptional circumstances, there is a mechanism for independent review in the event of disagreement with a practitioner's assessment of a person's decision-making capacity (paragraph 16.88). The QLRC considers that QCAT already has jurisdiction under the guardianship legislation to make declarations about an adult's capacity for particular matters and has a body of expertise upon which to draw (paragraph 16.88).

The QLRC report also notes that the requirement for the person to be acting voluntarily and without coercion is a major safeguard and feature of the scheme (paragraph 16.89). The decision of the assessing practitioner on this matter should be reviewable by QCAT as assessment requires consideration of a range of factors, some of which might be subtle or, depending on the circumstances, unknown to the practitioner (paragraph 16.89).

### **Who is an eligible person**

*Clause 100* provides that an *eligible person*, for the purposes of a reviewable decision, is:

- a person who is the subject of the decision; or
- an agent of a person who is the subject of the decision; or
- any other person who has a sufficient and genuine interest in the rights and interests of a person who is the subject of the decision in relation to voluntary assisted dying.

### **Relationship with QCAT Act**

*Clause 101* provides that the following provisions of the QCAT Act do not apply to proceedings under this part:

- section 21(2) and (4);
- sections 22 and 23;
- section 24(1) and (2);
- section 33(3) and (4);
- chapter 3.

## **Division 2                    Application and review**

### **Right of review of particular decisions**

*Clause 102* states that an eligible person for a reviewable decision may apply to QCAT for a review of the decision. New clause 100 provides who is an eligible person for the purposes of this part.

## Making an application

*Clause 103* provides that an application for review of a decision must be made within five business days after the relevant day for the reviewable decision.

For the purposes of this clause, *relevant day*, for a reviewable decision, means:

- for a reviewable decision mentioned in new clause 99(a), the later of the following days:
  - the day the first assessment record form was given to the person requesting access to voluntary assisted dying;
  - the day the eligible person making the application becomes aware of the reviewable decision; or
- for a reviewable decision mentioned in new clause 99(b), the later of the following days:
  - the day the consulting assessment record form was given to the person requesting access to voluntary assisted dying;
  - the day the eligible person making the application becomes aware of the reviewable decision; or
- if the reviewable decision is made under new clause 99(c), the later of the following days:
  - the day the final review form was given to the person requesting access to voluntary assisted dying;
  - the day the eligible person making the application becomes aware of the reviewable decision.

## Effect of application

*Clause 104* provides that a request and assessment process that is has not been completed will be suspended when an application for a review is made to QCAT. No further step in the process may be taken until the application for review is finalised.

However, if the request and assessment process that has been completed, new clause 104(a) provides that the process for accessing voluntary assisted dying under part 4 will be suspended. Consequently, no further step under that part (including the prescription, supply or administration of a voluntary assisted dying substance) may be taken until the application for review is finalised.

## Decision of QCAT

*Clause 105* outlines the decisions QCAT may make in a proceeding for a review of the reviewable decision.

New clause 105(a) provides that in relation to an application for review about a person's Australian residency, QCAT may decide the person had:

- been ordinarily resident in Australia for at least 3 years immediately before making the first request; or
- not been ordinarily resident in Australia for at least 3 years immediately before making the first request.

New clause 105(b) provides that in relation to an application for review about a person's Queensland residency, QCAT may decide the person had:

- been ordinarily resident in Queensland for at least 12 months immediately before making their first request; or
- had not been ordinarily resident in Queensland for at least 12 months immediately before making their first request.

New clause 105(c) provides that if the application for review was about the person's decision-making capacity, QCAT may decide the person:

- does have decision-making capacity for voluntary assisted dying; or
- does not have decision-making capacity in relation to voluntary assisted dying.

New clause 105(d) provides that if the application for review was about whether the person is acting voluntarily and without coercion, QCAT may decide the person:

- is acting voluntarily and without coercion; or
- is not acting voluntarily and without coercion.

### **Effect of decision**

*Clause 106* provides that if QCAT makes a decision mentioned in new clause 105(a)(i), (b)(i), (c)(i) or (d)(i):

- new clause 104 (effect of application) ceases to apply; and
- if the reviewable decision is a decision made by a coordinating practitioner mentioned in new clause 99(a) or (c) and QCAT's decision sets aside the reviewable decision, then QCAT's decision is taken to be the decision of the coordinating practitioner, except for the purposes of an appeal under the QCAT Act, chapter 2, part 8; and
- if the reviewable decision is a decision of a consulting practitioner mentioned in new clause 99(b) and QCAT's decision sets aside the reviewable decision, then QCAT's decision is taken to be the decision of the consulting practitioner, except for the purposes of an appeal under the QCAT Act, chapter 2, part 8.

New clause 106(2) provides that new subclause (1) only applies if QCAT does not, in addition to making a decision under new clause 105(a)(i), (b)(i), (c)(i) or (d)(i), make a decision in the same proceeding under new clause 105(a)(ii), (b)(ii), (c)(ii) or (d)(ii).

If QCAT makes a decision mentioned in new clause 105(a)(ii), (b)(ii), (c)(ii) or (d)(ii) on a review of a reviewable decision:

- the person is taken to be ineligible for access to voluntary assisted dying for the purposes of the request and assessment process; and
- the request and assessment process will end if it had not been completed when the application for the review was made; and
- if the request and assessment process had been completed when the application for review was made:
  - the process for accessing voluntary assisted dying under part 4 ends; and
  - no step under that part (including the prescription, supply or administration of a voluntary assisted dying substance) is to be taken in relation to the person.

## Division 3                      Procedural provisions

### Parties to proceeding

*Clause 107* provides that each of the following persons is a party to a review of a reviewable decision about a person requesting access to voluntary assisted dying, for the purposes of section 40(1)(e) of the QCAT Act:

- if the person is not the applicant—the person;
- the coordinating practitioner for the person if the reviewable decision is a decision mentioned in new clause 99(b).

### Notice of proceeding

*Clause 108* applies if an application for review of a reviewable decision about a person requesting access to voluntary assisted dying is accepted by the principal registrar. The principal registrar must give a copy of the application to the following persons, within two business days of receiving the application:

- each party to the proceeding; and
- the consulting practitioner, if there is a consulting practitioner for the person and the consulting practitioner is not a party; and
- any other person to whom QCAT directs a copy of the application be given.

### Coordinating practitioner or consulting practitioner to assist QCAT

*Clause 109* applies if the principal registrar gives a coordinating practitioner or consulting practitioner for a person a copy of an application for review of a reviewable decision. The principal registrar must also give the coordinating practitioner or consulting practitioner a notice requiring the practitioner to give QCAT any documents in the practitioner's possession or under the practitioner's control that are relevant to the review.

For the purposes of this clause, examples of relevant document include a first assessment record form and any accompanying documents, a consulting assessment record form and any accompanying documents or a final review form. The coordinating practitioner or consulting practitioner must comply with the notice within two business days of receiving the notice.

### Notice of decision

*Clause 110* applies if there is a consulting practitioner for a person requesting access to voluntary assisted dying and the consulting practitioner is not a party to the review of a reviewable decision. For the purposes of section 121(1)(b) of the QCAT Act, QCAT is required to give its final decision in the proceeding for the review of the reviewable decision about the person to the consulting practitioner as soon as reasonably practicable after making the decision.

### Members constituting QCAT

*Clause 111* provides that for the review of a reviewable decision QCAT must be constituted by at least one member who is a legally qualified member.

For the purposes of this clause, *legally qualified member* and *member* has the meaning as in the QCAT Act.



## **Hearings must be held in private**

*Clause 112* provides that a hearing of a review of a reviewable decision must be held in private.

## **Application taken to be withdrawn if person dies**

*Clause 113* states that an application for a review of a reviewable decision is taken to be withdrawn if the person the subject of a review dies. The principal registrar must, as soon as reasonably practicable after becoming aware that the person has died, give notice of the withdrawal to each person who received a copy of the application and any other person to whom QCAT directs notice be given.

## **Division 4            Other provisions**

### **Coordinating practitioner must give copy of QCAT's decision to board**

*Clause 114* applies if a coordinating practitioner for a person receives a final decision of QCAT in a proceeding for the review of a reviewable decision. The coordinating practitioner must give a copy of the final decision to the Board within two business days of receiving it. A maximum penalty of 100 penalty units may apply for non-compliance.

### **Coordinating practitioner may refuse to continue in role**

*Clause 115* provides that a coordinating practitioner may refuse to continue to perform the role of coordinating practitioner if:

- a decision of QCAT is substituted for a decision of a coordinating practitioner for a person requesting access to voluntary assisted dying under new clause 106(1)(b); and
- the decision of QCAT is about whether the person:
  - has or does not have decision-making capacity in relation to voluntary assisted dying; or
  - is or is not acting voluntarily and without coercion.

A coordinating practitioner who refuses to continue to perform the role of coordinating practitioner must transfer their role to a consulting practitioner for the person or otherwise to another medical practitioner who is eligible to act as a coordinating practitioner.

## **Part 8                    Voluntary Assisted Dying Review Board**

### **Division 1            Establishment, functions and powers**

#### **Establishment**

*Clause 116* provides that the Voluntary Assisted Dying Review Board is established.

The establishment of a Board is a key safeguard under the scheme. The QLRC report considers that an independent body established by statute and conferred with clearly defined functions under the legislation will provide a visible and centralised point of oversight. It will also ensure a clear division of responsibilities between the oversight body and other areas of Queensland

Health, provide for independent expertise, and enhance community confidence in the scheme (paragraph 18.51).

## **Functions**

*Clause 117* outlines the functions of the Board. The Board will have the following functions:

- to monitor the operation of this Act;
- to review, for each completed request for voluntary assisted dying, whether the coordinating practitioners, consulting practitioners, administering practitioners, authorised suppliers, authorised disposers and contact persons complied with this Act. A person's request for voluntary assisted dying is *completed* if the person has died or the request has been discontinued;
- to refer to issues identified by the Board in relation to voluntary assisted dying to the commissioner of police; the registrar-general; the State Coroner; the health ombudsman; or the chief executive;
- to record and keep information prescribed by regulation about requests for, and provision of, voluntary assisted dying;
- to analyse information given to the Board under this Act and research matters related to the operation of this Act;
- to provide, on the Board's own initiative or on request, information, reports and advice to the Minister or the chief executive about the operation of this Act; the Board's functions; or the improvement of the processes and safeguards of voluntary assisted dying;
- to promote compliance with this Act, including by providing information about the operation of this Act to registered health practitioners and members of the community;
- to promote continuous improvement in the compassionate, safe and practical operation of this Act;
- to consult and engage with the community and any entity the Board considers appropriate in relation to voluntary assisted dying;
- any other function given to the Board under this Act.

## **Powers**

*Clause 118* sets out the powers of the Board. The Board may do anything necessary or convenient to be done in the performance of its functions.

Without limiting new subclause (1), the Board may collect, use and disclose information given to the Board under this Act for the purpose of carrying out its functions.

## **Board must act independently and in public interest**

*Clause 119* states that the Board must act independently and in the public interest in performing its functions. The Board is not subject to direction by anyone, including the Minister, about how it performs its functions.

## **Administrative support for board**

*Clause 120* provides that the chief executive must ensure the Board has the administrative support services reasonably required for it to perform its functions effectively and efficiently.

## **Division 2                      Membership**

### **Members of board**

*Clause 121* states that the Board consists of at least five but not more than nine members appointed by the Minister.

### **Chairperson**

*Clause 122* provides the Minister must appoint a member of the Board to be the chairperson. The chairperson is responsible for leading and directing the activities of the Board to ensure the Board performs its functions appropriately.

The chairperson will hold office for the term stated in their instrument of appointment as chairperson.

A vacancy in the office of chairperson arises if the person holding the office resigns office by signed notice given to the Minister or ceases to be a member. However, a person may be reappointed as chairperson.

### **Deputy chairperson**

*Clause 123* provides that the Minister may appoint a member of the Board to be the deputy chairperson. The deputy chairperson is to act as chairperson during a vacancy in the office of the chairperson and during all periods when the chairperson is absent from duty or for another reason cannot perform the duties of the office.

The deputy chairperson holds office for the term stated in the person's instrument of appointment as deputy chairperson.

A vacancy in the office of deputy chairperson arises if the person holding the office resigns office by signed notice given to the Minister or ceases to be a member. However, a person may be reappointed as deputy chairperson.

### **Appointment of members**

*Clause 124* sets out the eligibility requirements for appointment of members.

The Minister may appoint a person as a member only if satisfied the person has expertise in medicine, nursing, pharmacy, psychology, social work, ethics, law, or another area the Minister considers relevant to the performance of the Board's functions. The Minister may also appoint a person because the person's experience, knowledge or skills, is likely to make a valuable contribution to the work of the Board.

The Minister must ensure the membership of the Board:

- includes persons with a range of experience, knowledge and skills relevant to the Board's functions;
- considers the social, cultural and geographic characteristics of the Queensland community; and
- does not include a majority of persons who are public service employees.

The QLRC report considers that specifying matters the Minister must consider about the composition of the Board will ensure that the overall membership is suitably mixed, and the Board is not dominated by persons from a single profession or area of the State (paragraph 18.126). However, the QLRC report also notes that “*some flexibility is necessary to ensure the appointment process, and the Board’s ability to carry out its functions, is not hampered by a lack of available persons suitable for appointment*” (paragraph 18.127).

A person may not be appointed as a member if the person:

- is an insolvent under administration under section 9 of the Corporations Act; or
- has a conviction, other than a spent conviction, for an indictable offence; or
- is a member of the Legislative Assembly.

For the purposes of this clause, *spent conviction* means a conviction:

- for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under the Act; and
- that is not revived as prescribed by section 11 of that Act.

### **Conditions of appointment**

*Clause 125* provides that a member is to be paid the remuneration and allowances decided by the Minister. For matters not provided for by this Act, a member holds office on the terms and conditions decided by the Minister.

### **Term of appointment**

*Clause 126* provides that a member is appointed for the term, of not more than three years, stated in the member’s instrument of appointment. A member may be reappointed.

### **Vacation of office**

*Clause 127* provides that the office of a member becomes vacant if:

- the member completes the member’s term of office and is not reappointed;
- the member resigns from office by signed notice given to the Minister;
- the member becomes ineligible for appointment under new clause 124(3); or
- the Minister ends the member’s appointment.

The Minister may terminate the member’s appointment if the Minister is satisfied the member is incapable of satisfactorily performing the member’s functions. The termination must be by signed notice given to a member.

## **Division 3 Proceedings**

### **Conduct of meetings**

*Clause 128* provides that the Board may conduct its business, including its meetings, in the way it considers appropriate.

The Board may hold meetings, or allow members to take part in meetings, by using any technology allowing reasonably contemporaneous and continuous communication between persons taking part in the meeting. A member who takes part in a meeting by such a method is taken to be present at the meeting.

A question at a meeting is to be decided by a majority of the votes of the members present at the meeting. If the votes are equal, the member presiding has a casting vote.

A resolution is a valid resolution of the Board, even though it is not passed at a meeting of the Board, if at least half of the members have given written agreement to the resolution and notice of the resolution is given under procedures approved by the Board.

### **Minutes and other records**

*Clause 129* provides that the Board must keep minutes of its meetings and a record of its decisions and resolutions.

### **Quorum**

*Clause 130* states that a quorum for a meeting of the Board is at least half of the members of the Board.

### **Presiding at meetings**

*Clause 131* provides that the chairperson is to preside at all meetings at which the chairperson is present. However, the deputy chairperson is to preside if the chairperson is not present at a meeting. If neither the chairperson nor the deputy chairperson is present at a meeting, the Board member chosen by the members present is to preside.

### **Committees**

*Clause 132* provides the Board may establish committees to assist in the performance of its functions.

### **Disclosure of interests**

*Clause 133* applies if a member has a direct or indirect interest in a matter being considered, or about to be considered, at a meeting, and the interest could conflict with the proper performance of the member's duties about the consideration of the matter. The member must disclose the nature of the interest at a meeting, as soon as practicable after the relevant facts come to the member's knowledge.

The Board must record particulars of the disclosure in a register of interest kept for that purpose. Unless the Board directs otherwise, the member must not be present when the Board considers the matter or take part in a decision of the Board about the matter. The member must also not be present when the Board is considering whether to give a direction. However, a contravention of this clause does not invalidate a decision of the Board.

The Board must reconsider a decision it has made about a matter if the Board becomes aware that:

- the member was present in relation to the Board’s consideration of the matter before the Board made the decision; or
- the member took part in a decision of the Board about the matter in relation to the decision.

## **Division 4          Reporting**

### **Annual report**

*Clause 134* provides the Board must give the Minister a report (an *annual report*) about the performance of the Board’s functions during the financial year within three months after the end of each financial year.

The annual report must include:

- the number of completed requests for voluntary assisted dying the Board has reviewed under new clause 117(1)(b);
- the number of referrals, if any, the Board has made to other entities under new clause 117(1)(c);
- recommendations of the Board relevant to the performance of its functions, including, for example, recommendations about systemic matters in voluntary assisted dying or the improvement of voluntary assisted dying; and
- a summary, in de-identified form, of the information required to be recorded and kept by the Board under new clause 117(1)(d).

The QLRC report notes that requiring the Board to prepare and provide its own annual report is essential to ensuring accountability and transparency and forms a core aspect of the Board’s role in monitoring and promoting compliance with the legislation (paragraph 18.290).

The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving it.

### **Report to Minister or chief executive on board’s functions**

*Clause 135* provides that the Board may, and must on request, provide the Minister or the chief executive with a report about the Board’s functions.

This provision applies despite new clause 119(2), which provides that the Board is not subject to direction by anyone, including the Minister, about how to perform its functions.

A copy of a report provided to the Minister under this clause must be tabled by the Minister in the Legislative Assembly within 14 sitting days after receiving it.

### **Reports not to include personal information**

*Clause 136* provides an annual report or a report under new clause 135 must not include personal information about an individual unless the information was provided to the Board for the purpose of publication.

## **Division 5            Miscellaneous**

### **Assistance to the board**

*Clause 137* provides that the Board may, with the chief executive's approval, engage persons with suitable qualifications and experience to help the Board in performing its functions. This engagement may be in an honorary capacity or for remuneration. A person engaged by the Board under this clause may attend the Board's meetings and participate in the Board's deliberations but may not vote at the meetings.

### **Request for information by the board**

*Clause 138* provides that the Board may consult with, and ask for information from, other entities to help in performing its functions.

### **Protection from liability for giving information**

*Clause 139* applies if a person, acting honestly, gives information under clause 138. The person will not be liable, civilly, criminally or under an administrative process, for giving the information.

The QLRC report states that this will help support the effective operation of the oversight body (paragraph 18.311).

The person cannot be held to have breached any code of professional etiquette or ethics or departed from accepted standards of professional conduct merely because the person gives the information.

In a proceeding for defamation, the person has a defence of absolute privilege for publishing the information. If the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person:

- does not contravene the Act, oath or rule of law or practice by giving the information; and
- is not liable to disciplinary action for giving the information.

## **Part 9                    Offences**

### **Unauthorised administration of voluntary assisted dying substance**

*Clause 140* provides that it is an offence for a person to administer a voluntary assisted dying substance to another person unless the person is authorised to do so under clause 53(6).

The inclusion of this offence is a key safeguard for the scheme. Administration of a voluntary assisted dying substance to another person is a crime unless the person is authorised to do so under the scheme.

An offence under this clause is a crime, and the maximum penalty is 14 years imprisonment. This penalty reflects the seriousness of the offence and provides for prosecutorial discretion in whether to deal with the offending under existing Criminal Code offences or under the specific Bill offence (QLRC report, paragraph 17.90).

A person does not commit an offence if the person administers a medicine to another person under the Medicines and Poisons Act. This removes any doubt that administration of a medicine as defined in the Medicines and Poisons Act, including an S4 or S8 medicine, in accordance with that framework, is captured by the offence.

### **Inducing a person to request, or revoke request for, voluntary assisted dying**

*Clause 141* provides that a person must not, dishonestly or by coercion, induce another person to make, or revoke, a request for access to voluntary assisted dying.

This is consistent with the key feature of the scheme that assisted dying must be voluntary. The QLRC report notes that legislation is a blunt instrument and cannot remove all risk of potential coercion or exploitation, but that the Bill should include the best legal safeguards to address such risk, taking into account the need for workable and clear legislation (paragraph 17.70).

An offence under this clause is a misdemeanour, and the maximum penalty is seven years imprisonment. The QLRC report considers this “*reflects the seriousness of the conduct in undermining the autonomy and voluntary choice of the person*” (paragraph 17.73).

A request for access to voluntary assisted dying means a first, second or final request or administration decision.

‘Induce’ has its ordinary meaning and *coercion* is defined in Schedule 1 to include intimidation or a threat or promise, including by an improper use of a position of trust or influence.

### **Inducing self-administration of voluntary assisted dying substance**

*Clause 142* provides that a person must not, dishonestly or by coercion, induce another person to self-administer a voluntary assisted dying substance.

As noted above, it is a key feature of the scheme that assisted dying must be voluntary. The QLRC report provides that “*a request for and access to assisted dying is voluntary only if the person is exercising their own free choice*” (paragraph 17.70).

An offence under this clause is a misdemeanour, and the maximum penalty is 7 years imprisonment. As noted above, the QLRC report considers this “*reflects the seriousness of the conduct in undermining the autonomy and voluntary choice of the person*” (paragraph 17.73).

### **Giving board false or misleading information**

*Clause 143* provides that a person must not, in relation to the administration of this Act, give the Board information the person knows to be false or misleading in a material particular.

The QLRC report notes providing false information about a person’s request, eligibility or other matter would undermine the oversight and safe operation of the scheme (paragraph 17.74) and while some conduct would be covered by the Criminal Code (if there is intent to defraud), “*specific offences with a lower penalty level would serve as visible disincentive and ensure there is an appropriate mechanism to deal with noncompliance, or take non-compliance into account in disciplinary proceedings, without needing to prove intent to defraud*” (paragraph 17.75).



An offence under this clause is a misdemeanour, and the maximum penalty is 5 years imprisonment. The QLRC report considers that the penalty for these offences reflects the seriousness of the conduct in undermining the veracity of the process and the safe operation of the scheme (paragraph 17.78).

A person does not commit an offence if the person, when giving the information in a document tells the Board, to the best of the person's ability, how the document is false or misleading, and if the person has, or can reasonably obtain, the correct information, and gives the correct information.

### **Making false or misleading statement**

*Clause 144* provides that a person must not make a statement in a form or other document required to be made under this Act that the person knows to be false or misleading.

Consistent with the above offence, making a false or misleading statement would undermine the oversight and safe operation of the scheme.

An offence under this clause is a misdemeanour, and the maximum penalty is 5 years imprisonment.

### **Falsifying documents**

*Clause 145* provides a person must not falsify a form or other document required to be made under the Act.

Consistent with the above offences, falsifying documents would undermine the oversight and safe operation of the scheme.

An offence under this clause is a misdemeanour, and the maximum penalty is 5 years imprisonment.

### **Personal information not to be recorded or disclosed**

*Clause 146* provides that if person obtains personal information in the course of, or because of, the exercise of a function or power under the Act, the person must not make a record of the personal information or disclose the personal information.

The QLRC report considers that individuals involved in the administration of the voluntary assisted dying scheme will acquire personal information in the course of performing their functions that may often be of a sensitive nature, and that protection of privacy require such information to be protected from unauthorised disclosure (paragraph 17.102).

The QLRC report notes that "*other Acts commonly include provisions prohibiting the disclosure of personal or other information acquired by a person in performing a function or exercising a power, or in their capacity as an office holder*", and non-compliance will generally be an offence (paragraph 17.101).

The QLRC report states that *“the provision would apply, for example, to a person who is or has been a member of the Board or a person engaged to assist the Board, a coordinating practitioner, a consulting practitioner or an administering practitioner, an authorised supplier, a contact person or an agent of the requesting person who is authorised by the legislation to perform certain actions, a witness, or another person involved in administering the legislation such as an officer or employee of the Department”* (paragraph 17.107).

The maximum penalty is 100 penalty units.

A person does not commit an offence if the record is made, or the personal information disclosed:

- for a purpose under the Act, or
- with the consent of the person to whom the personal information relates, or
- in compliance with a lawful process requiring production of documents to, or giving evidence before, a court or tribunal, or
- as authorised or required by law.

The QLRC report states that disclosure of personal information may be permitted if necessary, for example, if the Board needs to refer a matter to another entity, to assess a person’s eligibility to access the scheme, for reporting obligations, or to supply or dispose of a voluntary assisted dying substance (paragraph 17.109).

## **Part 10            Protection from liability**

### **Protection for persons assisting access to voluntary assisted dying or present when substance administered**

*Clause 147* provides that criminal liability does not attach to a person only because the person, in good faith, does an act or makes an omission that assists another person who the person believes on reasonable grounds is requesting access to or accessing voluntary assisted dying in accordance with the Act. Criminal liability also does not attach to a person only because the person is present when another person self-administers or is administered a voluntary assisted dying substance under the Act.

The QLRC report considers that protections from liability should be included in the legislation to provide clarity and certainty for those who may act under, or interact with, the legislation (paragraph 17.150).

The QLRC report notes this *“will ensure that a person who assists the requesting person to access voluntary assisted dying under the legislation will not be guilty of a criminal offence, including the offence of ‘aiding suicide’ under the Criminal Code”* (paragraph 17.164).

The QLRC report also states that providing protections for people who are present when a voluntary assisted dying substance is administered *“will avoid the possibility that such a person may inadvertently be caught by the prohibition on aiding suicide”* and will *“provide reassurance that loved ones or others may be with the person”* (paragraph 17.166).

The clause declares that a person who does an act, or makes an omission mentioned above, does not commit an offence against sections 300, 302, 303, 305 and 310 (murder and

manslaughter), 306 (attempt to murder), 307 (accessory after the fact to murder), 309 (conspiring to murder) or 311 (aiding suicide) of the Criminal Code. This is consistent with the QLRC recommendation (Recommendation 17-11).

The clause provides that in a proceeding, a party alleging that criminal liability attaches to a person who does an act or omission, bears the onus of proving the person did not do the act or make the omission in good faith. This is consistent with the QLRC recommendation (Recommendation 17-10).

### **Protection for persons acting under Act**

*Clause 148* provides that no civil or criminal liability attaches to a person for an act done or omission made in good faith and without negligence in accordance with, or for the purposes of, the Act.

This is consistent with the QLRC recommendation (Recommendation 17-7). This protection from liability will apply not only to a health practitioner but to any person who acts under the legislation, including the person's agent or contact person, or a witness (QLRC report, paragraph 17.152). The QLRC report notes that this "*will provide comfort to health practitioners and other persons who participate in the process*" (paragraph 17.153).

The clause declares that a person who does an act, or makes an omission mentioned above, does not commit an offence against the Criminal Code sections 300, 302, 303, 305, 306, 307, 309, 310 or 311.

The clause provides that in a proceeding, a party alleging that criminal liability attaches to a person who does an act or omission, bears the onus of proving the person did not do the act or make the omission in good faith.

### **Protection for health practitioners and ambulance officers**

*Clause 149* provides that if a protected person, in good faith, does not administer life sustaining treatment to another person in circumstances where:

- the other person has not requested the administration of life sustaining treatment; and
- the protected person believes on reasonable grounds that the other person is dying after self-administering or being administered a voluntary assisted dying substance in accordance with the Act

no civil or criminal liability attaches to the protected person for not administering the life sustaining treatment.

This is consistent with the QLRC recommendation (Recommendation 17-9). The QLRC report notes that the protections will address "*the concern that a health practitioner or ambulance officer might be civilly liable for failing to provide aid or assistance in an emergency*" (paragraph 17.171).

The clause provides that no civil or criminal liability attaches to the protected person for not administering the life sustaining treatment. The clause declares that a person who does an act, or makes an omission mentioned above, does not commit an offence against the Criminal Code sections 300, 302, 303, 305, 306, 307, 309, 310 or 311.

The clause provides that in a proceeding, a party alleging that criminal liability attaches to a person who does an act or omission, bears the onus of proving the person did not do the act or make the omission in good faith.

*Protected person* means a registered health practitioner, a student under the Health Practitioner Regulation National Law (Queensland) or an ambulance officer.

*Ambulance officer* is defined in schedule 1, *Ambulance Service Act 1991*, schedule 1.

### **Nothing affects disciplinary proceedings, complaints or referrals**

*Clause 150* provides that nothing in this part prevents:

- the making of a mandatory notification or voluntary notification about a person under the Health Practitioner Regulation National Law (Queensland);
- the making of a health service complaint about a person under the *Health Ombudsman Act 2013*; or
- the referral of an issue to the health ombudsman under clause 117(1)(c)(iv).

The QLRC report states that the above protections from liability should not extend to disciplinary proceedings and that the existing health practitioner disciplinary framework which protects the public interest in ensuring professional competence should be left to operate on its own terms (paragraph 17.157).

The QLRC report further states that a key safeguard in the Bill is the ability for concerns about the conduct of health practitioners in relation to voluntary assisted dying to be referred or notified to the Health Ombudsman and that this ensures strong oversight of the scheme, recognising the important role of the health practitioner regulatory framework (paragraph 17.158).

## **Part 11                    Miscellaneous**

### **Functions and powers of inspectors**

*Clause 151* provides for the functions and powers of inspectors.

The Bill applies the inspectors functions and powers of the Medicines and Poisons Act by providing that the functions of an inspector under the Medicines and Poisons Act, section 130, also include to investigate and ensure compliance with the Act (the *further function*).

For the performance of the further function by an inspector:

- the inspector may exercise the inspector's powers under the applied provisions of the Medicines and Poisons Act and
- chapter 5 part 5, divisions 1 and 2 apply in relation to the exercise or purported exercise of a power under the applied provisions of the Medicines and Poisons Act; and
- a reference in the applied provisions of that Act to an offence against that Act is taken to be a reference to an offence against this Act.

*Applied provisions* means the following provisions of the Medicines and Poisons Act:

- section 140(1)(a), (b) and (c) and (3) to (6);
- chapter 5, part 3, division 2;
- chapter 5, part 3, division 4 and part 4.

For the avoidance of doubt, any provisions in the Medicines and Poisons Act which are referred to in the applied provisions, but not specifically listed in clause 151, are also taken to be applied provisions to the extent they apply in relation to another provision which is expressly applied.

*Inspector* means a person who holds office under the Medicines and Poisons Act, chapter 5, part 2, as an inspector.

### **Compliance with this Act relevant to professional conduct or performance**

*Clause 152* provides that in considering a matter under an Act about a relevant person's professional conduct or performance, regard may be had to whether the person contravened a clause of this Act.

As noted above, the QLRC report states that a key safeguard in the Bill is the ability for concerns about the conduct of health practitioners in relation to voluntary assisted dying to be referred or notified to the Health Ombudsman and that this ensures strong oversight of the scheme, recognising the important role of the health practitioner regulatory framework (paragraph 17.158).

The matters to which compliance with this Act is relevant to professional conduct or performance include matters arising in:

- a notification under the Health Practitioner Regulation National Law (Queensland); or
- a complaint under the Health Ombudsman Act 2013; or
- a referred matter under the Health Practitioner Regulation National Law (Queensland).

*Relevant person* means a registered health practitioner or a health service provider.

### **Protection from liability for members and persons helping board perform functions**

*Clause 153* provides that a member of the Board or a person engaged to help in the performance of the Board's functions is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

The QLRC report states that this will help support the effective operation of the oversight body (paragraph 18.311).

If the above prevents a civil liability attaching to a member of the Board or other person, the liability attaches instead to the State. The protection does not apply to a member of the Board or other person who is a State employee.

*State employee* means a person who is a State employee within the meaning of the *Public Service Act 2008*, section 26B(4).

### **Review of Act**

*Clause 154* provides that the Minister must review the effectiveness of this Act as soon as practicable after the end of three years after the commencement. The review must include a review of the eligibility criteria.

The QLRC report provides that the three year period for review is intended to run from the time when the Act as a whole comes into operation, and not from the earlier commencement of specific provisions. This takes account of the implementation period which may involve staged commencement of a limited number of provisions (paragraph 19.53).

As soon as practicable after finishing the review, the Minister must table a report about its outcome in the Legislative Assembly.

The QLRC report states that review of the operation and effectiveness of the voluntary assisted dying legislation is of significant importance given the sensitive and serious nature of the new legislative framework and the range of complex and practical considerations that will inform and impact its operation (paragraph 19.51).

The QLRC report states that three years after the commencement of the legislation is an appropriate period for its review, and that a shorter review period would provide insufficient time to evaluate the operation of the Act, and a longer period would delay the review and any resulting recommendations (paragraph 19.54).

The QLRC report considers that it is unnecessary to impose an additional statutory requirement for further review of the legislation in subsequent periods, as it is anticipated that legislation of this nature will be monitored by the Department on a regular basis as a matter of course and that the legislation will be subject to continual oversight and reporting by the Board (paragraph 19.59).

### **Technical error not to invalidate processes**

*Clause 155* provides the validity of the request and assessment process or the administration process is not affected by:

- any minor or technical error in a form required to be completed under part 3 or 4; or
- the failure of a person to provide a form within the time required under part 3 or 4; or
- the failure of a medical practitioner to do an act within the time required under part 3 or 4 for doing the act.

*Administration process* means the process that consists of the following steps:

- an administration decision;
- an administration or self-administration of a voluntary assisted dying substance.

This clause is in addition to, and does not limit, the *Acts Interpretation Act 1954*, section 48A.

### **Official voluntary assisted dying care navigator service**

*Clause 156* provides that the chief executive may approve a service to be an official voluntary assisted dying care navigator service for this Act. The purpose of an official voluntary assisted dying care navigator service is to provide support, assistance and information to people relating to voluntary assisted dying.

The chief executive must publish an approval on the department's website.

### **Interpreters**

*Clause 157* provides an interpreter for a person requesting access to voluntary assisted dying must be either accredited by a body approved by the chief executive or have been granted an exemption by the chief executive under subclause (2).

An interpreter must not be:

- a family member of the person;
- know or believe that they are a beneficiary under a will of the person or that they may otherwise benefit financially or in any other material way from the death of the person other than by receiving reasonable fees for the provision of services as an interpreter;
- be an owner of, or be responsible for the management of, any health facility at which the person is being treated or resides; or
- be a person who is directly involved in providing a health service or personal care service to the person.

Subclause (2) provides that a chief executive may grant an interpreter an exemption from the accreditation requirement in subclause (1)(a)(i) if satisfied that no accredited interpreter is available in a particular case and there are exceptional circumstances for granting the exemption.

The QLRC report considers that in exceptional circumstances where an accredited interpreter is not available, the chief executive may approve a person who does not meet the accreditation requirements to act as an interpreter, giving them the flexibility to accredit a person who speaks emerging or low demand languages (paragraph 19.32).

### **Authorised suppliers**

*Clause 158* provides that the chief executive may authorise an appropriately qualified registered health practitioner, or person in a class of registered health practitioners, to supply a voluntary assisted dying substance under this Act.

The QLRC report provides that this approach is consistent with WA and will enable Queensland Health to establish an appropriate delivery model for voluntary assisted dying pharmacy services (paragraph 11.90).

The chief executive must, on request, give a person who is acting as a coordinating practitioner the name of one or more registered health practitioners or class of registered health practitioners who are authorised under this clause. The QLRC report provides that this will ensure that the coordinating practitioner and the person are able to contact the authorised supplier when the voluntary assisted dying substance is required (paragraph 11.90).

### **Authorised disposers**

*Clause 159* provides that the chief executive may authorise an appropriately qualified registered health practitioner, or person in a class of registered health practitioners, to dispose of a voluntary assisted dying substance under this Act.

The QLRC report provides that this approach is consistent with WA and will enable Queensland Health to establish an appropriate delivery model for voluntary assisted dying pharmacy services (paragraph 11.169).

The chief executive must, on request, give a person who is acting as a coordinating practitioner the name of one or more registered health practitioners or class of registered health practitioners who are authorised under this clause. The QLRC report provides that this will ensure that the coordinating practitioner can inform the person and their contact person of the authorised disposer's details to support safe disposal of the substance (paragraph 11.169).

### **Voluntary assisted dying substance**

*Clause 160* provides that the chief executive may approve an S4 substance or S8 substance, or a combination of those substances, for use under this Act for the purpose of causing a person's death.

This is consistent with the QLRC recommendation (Recommendation 11-1). The QLRC report provides that the voluntary assisted dying scheme should not limit or prescribe the substances that may be used for voluntary assisted dying, and that a voluntary assisted dying substance should be approved by the chief executive for use under the Act (paragraphs 11.7-11.8).

### **Approved medical practitioner requirements**

*Clause 161* provides the chief executive must approve medical practitioner requirements for the purposes of clause 82(1)(b).

This enables the chief executive to set requirements that medical practitioners must meet for the purpose of eligibility to act as a coordinating practitioner or consulting practitioner, in addition to the eligibility requirements set out in clause 82.

The QLRC report states that the inclusion of this requirement will enable the chief executive to ensure that any overseas-trained specialist has the necessary knowledge, clinical skills and professional attributes to perform the role of a coordinating practitioner or consulting practitioner (paragraph 13.116).

The chief executive must publish the approved medical practitioner requirements on the department's website.

### **Approved nurse practitioner requirements**

*Clause 162* provides the chief executive must approve nurse practitioner requirements for the purposes of clause 83(a)(ii).

Clause 83(a)(ii) provides that a person is eligible to act as an administering practitioner if they are a nurse practitioner who meets the approved nurse practitioner requirements.

The QLRC report states that the inclusion of this requirement will ensure that nurse practitioners who participate in voluntary assisted dying have relevant and current experience and expertise (paragraph 13.154).

The chief executive must publish the approved nurse practitioner requirements on the department's website.



## Approved nurse requirements

*Clause 163* provides the chief executive must approve nurse requirements for the purposes of clause 83(a)(iii).

Clause 83(a)(iii) provides that a person is eligible to act as an administering practitioner if they are a nurse who has practised in the nursing profession for at least five years and meets the approved registered nurse requirements.

*Nurse* is defined in Schedule 1 to mean a person registered under the Health Practitioner Regulation National Law (Queensland) to practise in the registered nurse division of the nursing profession, other than as a student.

The QLRC report notes that expanding the practice of registered nurses to include the administration of a voluntary assisted dying substance to an eligible person who has made an administration decision will require formal processes for continuing education, assessment of competence and authorisation through credentialling (paragraph 13.153) and that the inclusion of this requirement will ensure that registered nurses who participate in voluntary assisted dying have relevant and current experience and expertise (paragraph 13.154).

The chief executive must publish the approved nurse requirements on the department's website.

## Approved information

*Clause 164* provides the chief executive must approve information for the purposes of clause 16(3).

Clause 16(3) provides that if a medical practitioner accepts a person's first request for access to voluntary assisted dying they must give the person the approved information at the time of informing the person of their decision to accept the first request.

The QLRC (Recommendations 8-23 and 8-28) recommended that a medical practitioner who accepts a first request must give the person the approved information at the time and that the chief executive must approve information for this purpose and publish the information on the Queensland Health website. The QLRC report noted that this is consistent with the Western Australia Act and will enable information to be settled during implementation and changed over time if required (paragraphs 8.118-8.119).

The QLRC report provided (paragraph 8.120) that the approved information might include:

- details of the official care navigator service that can give the person information, including the name and contact details of medical practitioners or health service providers who may be able to assist;
- details of a Government website giving information about voluntary assisted dying in Queensland; and
- fact sheets or other information about voluntary assisted dying in Queensland.

The chief executive must publish the approved information on the department's website.

The QLRC report considered that publication of the approved information on the relevant website ensures that the information can be easily located by practitioners and others who might want to obtain it (paragraph 8.119).

### **Approved training**

*Clause 165* provides the chief executive must approve training for the purposes of clauses 20, 31 and 83(b). The approved training may provide for the following matters:

- the operation of this Act in relation to medical practitioners, nurse practitioners and nurses, including the functions of coordinating practitioners, consulting practitioners and administering practitioners;
- assessing whether or not a person meets the eligibility criteria;
- identifying and assessing risk factors for abuse or coercion;
- other matters relating to the operation of this Act.

The QLRC report notes that all coordinating practitioners and consulting practitioners should be required to complete approved training before undertaking eligibility assessments, to enhance their knowledge about participating in voluntary assisted dying (paragraph 13.118).

The chief executive must publish the approval on the department's website.

### **Approved forms**

*Clause 166* provides the chief executive may approve forms for use under this Act.

The Bill includes a range of requirements relating to approved forms, to ensure appropriate record-keeping and reporting to the Board. This provision will support those requirements.

### **Regulation-making power**

*Clause 167* provides the Governor in Council may make regulations under this Act.

This reflects the QLRC recommendation (Recommendation 19-3). Matters that may be prescribed by regulation include:

- the statistical information about requests for, and provision of, voluntary assisted dying that the Board is required to record and keep
- any additional matter required to be certified by the administering practitioner following administration of a voluntary assisted dying substance;
- requirements for the use of the voluntary assisted dying substance, including labelling, storage and disposal requirements; and
- matters that must be included in an approved form under the Act.

This will ensure that any technical matters of detail can be prescribed by regulation to support the scheme.

A regulation may prescribe a matter that must be included in an approved form under this Act. The Bill includes a range of requirements relating to approved forms, to ensure appropriate record-keeping and reporting to the Board. This provision will support those requirements.

## **Part 12            Acts amended**

### **Division 1            Amendment of this Act**

#### **Act amended**

*Clause 168* provides that this division amends the Act.

#### **Amendment of long title**

*Clause 169* amends the long title of the Act.

### **Division 2            Amendment of Coroners Act 2003**

#### **Act amended**

*Clause 170* provides that this division amends the Coroners Act.

#### **Amendment of s 8 (*Reportable death defined*)**

*Clause 171* amends the definition of reportable death in the Coroners Act. Subsection (1) amends section 8 of the Coroners Act to provide that the death of a person who has self-administered, or been administered a voluntary assisted dying substance under the Voluntary Assisted Dying Act is not a reportable death. Subsection (2) renumbers the new subsection and the subsection following.

The QLRC report notes that the nature of a reportable death is generally one which is unexpected or where suspicious circumstances surround the death, and that by contrast, a death through access to lawful voluntary assisted dying is planned and expected (paragraph 12.92). The QLRC report states that “*any suspicions surrounding the death of a person through accessing voluntary assisted dying may still be reported to the coroner for investigation*” (paragraph 12.92).

### **Division 3            Amendment        of        Guardianship        and Administration Act 2000**

#### **Act amended**

*Clause 172* provides that this division amends the *Guardianship and Administration Act 2000*.

#### **Insertion of new s 250C**

*Clause 173* inserts new section 250C which provides that voluntary assisted dying under the Voluntary Assisted Dying Act is not a matter to which the Guardianship and Administration Act applies.

The QLRC report (paragraph 19.83) considers that amendment to the Guardianship and Administration Act 2000 and the Powers of Attorney Act 1998 is needed to exclude:

- an adult from making decisions about voluntary assisted dying in an advance health directive;

- a substitute decision-maker (such as an attorney, guardian or administrator) from making decisions about voluntary assisted dying for an adult with impaired capacity; and
- QCAT from making or giving (under the guardianship legislation) a declaration, order, direction, recommendation or advice in relation to an adult about voluntary assisted dying, including a declaration about the capacity of an adult to make decisions about voluntary assisted dying (noting that QCAT will have power to make particular decisions in the exercise of its recommended new review jurisdiction under the Bill).

The QLRC report states that a declaratory provision will remove any doubts that might otherwise arise about the potential application of the guardianship legislation to decisions about voluntary assisted dying (paragraph 19.86).

## **Division 4           Amendment of Medicines and Poisons Act 2019**

### **Act amended**

*Clause 174* provides that this division amends the Medicines and Poisons Act.

### **Amendment of s 50 (Persons authorised under other laws)**

*Clause 175* amends section 50 of the Medicines and Poisons Act to provide that a person does not commit an offence against the Medicines and Poisons Act to the extent the person acts under an authorisation for the person under the Voluntary Assisted Dying Act.

This reflects the QLRC recommendation (Recommendation 11-15) that to avoid doubt, the Bill should include consequential amendments to the Medicines and Poisons Act to provide clarity on the relationship between the voluntary assisted dying scheme and the Medicines and Poisons Act. A person who deals with a voluntary assisted dying substance in accordance with an authorisation under the Voluntary Assisted Dying Act does not commit an offence under the Medicines and Poisons Act.

## **Division 5           Amendment of Powers of Attorney Act 1998**

### **Act amended**

*Clause 176* provides that this division amends the *Powers of Attorney Act 1998*.

### **Insertion of new s 159**

*Clause 177* inserts new section 159 which provides that voluntary assisted dying under the Voluntary Assisted Dying Act is not a matter to which this Act applies.

As outlined above, the QLRC report states that a declaratory provision is needed and that such a provision will remove any doubts that might otherwise arise about the potential application of the guardianship legislation to decisions about voluntary assisted dying (paragraph 19.86).

## **Schedule 1 Dictionary**

*Schedule 1* provides a dictionary of terms used in the Voluntary Assisted Dying Act.