

South Australia

# Voluntary Assisted Dying Act 2021

An Act to provide for and regulate access to voluntary assisted dying, to establish the Voluntary Assisted Dying Review Board, to make related amendments to other Acts, and for other purposes.

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## Legislative history

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### **The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Voluntary Assisted Dying Act 2021*.

### **2—Commencement**

This Act comes into operation on a day to be fixed by proclamation.

### **3—Interpretation**

In this Act, unless the contrary intention appears—

**administration request** means a request made under section 81 for the administration of a voluntary assisted dying substance;

**approved assessment training** means training approved by the Minister under section 13;

**Australian Health Practitioner Regulation Agency** means the Australian Health Practitioner Regulation Agency established under the *Health Practitioner Regulation National Law*;

**Chief Executive** means the Chief Executive of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Health Care Act 2008*;

**consulting assessment** means an assessment of a person conducted in accordance with Part 4 Division 4 by a consulting medical practitioner for the person;

**consulting assessment report form** means the consulting assessment report form prescribed by the regulations, completed under section 48;

**consulting medical practitioner** for a person means a registered medical practitioner who accepts a referral to conduct a consulting assessment of the person;

**contact person** means a person appointed under section 57;

**contact person appointment form** means the contact person appointment form prescribed by the regulations, completed under section 58;

**controlled substance** has the same meaning as in the *Controlled Substances Act 1984*;

**coordinating medical practitioner** for a person means a person who is—

- (a) a registered medical practitioner who accepts the person's first request; or
- (b) a consulting medical practitioner for the person who accepts a transfer of the role of coordinating medical practitioner under section 51;

**coordinating medical practitioner administration form** means the coordinating medical practitioner administration form prescribed by the regulations, completed by a witness under section 82 and a coordinating medical practitioner under section 83;

**decision-making capacity**—see section 4;

**de-identified**, in relation to personal information or health information, means personal information or health information that no longer relates to an identifiable individual or an individual who can be reasonably identified;

**dispensing pharmacy** means the pharmacy, pharmacy business or pharmacy department from which a pharmacist sold or supplied a voluntary assisted dying substance;

**domestic partner** has the same meaning as in the *Family Relationships Act 1975* (whether or not a declaration of the relationship has been made under that Act) but does not, in the case of persons in a close personal relationship within the meaning of Part 3 of that Act, include a person who provides domestic support and personal care to the person—

- (a) for fee or reward; or
- (b) on behalf of another person or an organisation (including a government, a government agency, a body corporate or a charitable or benevolent organisation);

**drug of dependence** has the same meaning as in the *Controlled Substances Act 1984*;

**eligibility criteria** means the criteria set out in section 26;

**family member** of a person means the person's spouse or domestic partner, parent, sibling, child or grandchild;

**final request** means a request for access to voluntary assisted dying made under section 55 by a person to the coordinating medical practitioner for the person;

**final review** means a review conducted under section 59 by the coordinating medical practitioner for the person;

**final review form** means the final review form prescribed by the regulations, completed under section 59;

**first assessment** means an assessment of a person conducted in accordance with Part 4 Division 3 by the coordinating medical practitioner for the person;

**first assessment report form** means the first assessment report form prescribed by the regulations, completed under section 39;

**first request** means a request for access to voluntary assisted dying made under section 29 by a person to a registered medical practitioner;

**prescribed health facility** means—

- (a) an incorporated or private hospital within the meaning of the *Health Care Act 2008*; or
- (b) a residential care service or aged care service; or
- (c) a supported residential facility under the *Supported Residential Facilities Act 1992*; or
- (d) a treatment centre within the meaning of the *Mental Health Act 2009*; or
- (e) any other facility of a kind prescribed by the regulations;

**health information** means—

- (a) personal information relating to—
  - (i) the physical, mental or psychological health (at any time) of a person; or
  - (ii) a disability (at any time) of a person; or
  - (iii) a person's expressed wishes about the future provision of health services to the person; or
  - (iv) a health service provided, or to be provided, to a person; or
- (b) personal information collected to provide, or in providing, a health service; or
- (c) personal information about a person collected in connection with the donation, or intended donation, by the person of body parts, organs or body substances; or
- (d) personal information that is genetic information about a person in a form which is or could be predictive of the health (at any time) of the person or of any of their descendants,

but does not include health information, or a class of health information or health information contained in a class of documents, of a kind prescribed by the regulations;

**health service** has the same meaning as in the *Health Practitioner Regulation National Law*;

**identifying information** means health information or personal information about a person whose identity is apparent, or can reasonably be ascertained, from that information;

**ineligible witness**—see section 53(2);

**interpreter**—see section 7;

**labeling statement** means a statement attached to a container as required by section 76(1);

**mental illness** has the same meaning as in the *Mental Health Act 2009*;



***palliative care*** has the same meaning as in the *Consent to Medical Treatment and Palliative Care Act 1995*;

***personal information*** means information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

***pharmacist*** means a person registered under the *Health Practitioner Regulation National Law* to practise in the pharmacy profession (other than as a student);

***pharmacy*** has the same meaning as in the *Health Practitioner Regulation National Law (South Australia) Act 2010*;

***pharmacy business*** has the same meaning as in the *Health Practitioner Regulation National Law (South Australia) Act 2010*;

***pharmacy department*** means the part of the premises of a health service set aside for supplying, compounding or dispensing medicines on order or prescription to patients and staff of the health service;

***poison*** has the same meaning as in the *Controlled Substances Act 1984*;

***practitioner administration permit*** means a permit issued under section 67(2)(a)(ii);

***professional care services*** means any of the following provided to another person under a contract of employment or a contract for services:

- (a) support or assistance;
- (b) special or personal care;
- (c) disability services;
- (d) services provided by a registered NDIS provider within the meaning of the *National Disability Insurance Scheme Act 2013* of the Commonwealth;

***psychiatrist*** means a person who is registered under the *Health Practitioner Regulation National Law* as a medical practitioner in the speciality of psychiatry (other than as a student);

***registered health practitioner*** means a person registered under the *Health Practitioner Regulation National Law* to practise a health profession (other than as a student);

***Registrar*** means the Registrar of Births, Deaths and Marriages under the *Births, Deaths and Marriages Registration Act 1996*;

***request and assessment process*** means, in respect of a person, the making or the conducting of the following under Part 4:

- (a) a first request;
- (b) a first assessment;
- (c) a consulting assessment;
- (d) a written declaration;
- (e) a final request;
- (f) a contact person appointment;
- (g) a final review;

***self administration permit*** means a permit issued under section 67(2)(a)(i);

***special or personal care*** means—

- (a) assistance with 1 or more of the following:
  - (i) bathing, showering or personal hygiene;
  - (ii) toileting;
  - (iii) dressing or undressing;
  - (iv) meals; or
- (b) assistance for persons with mobility problems; or
- (c) assistance for persons who are mobile but require some form of supervision or assistance; or
- (d) assistance or supervision in administering medicine; or
- (e) the provision of substantial emotional support;

***supply*** has the same meaning as in the *Controlled Substances Act 1984*;

***Tribunal*** means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*;

***Uniform Poisons Standard*** means the current Poisons Standard as defined in the *Therapeutic Goods Act 1989* of the Commonwealth (as in force from time to time);

***vocationally registered general practitioner*** has the same meaning as in the *Health Insurance Act 1973* of the Commonwealth;

***voluntary assisted dying*** means the administration of a voluntary assisted dying substance and includes steps reasonably related to such administration;

***voluntary assisted dying permit*** means—

- (a) a self administration permit; or
- (b) a practitioner administration permit;

***Voluntary Assisted Dying Review Board or Board*** means the Voluntary Assisted Dying Review Board established under section 107;

***voluntary assisted dying substance*** means a poison or controlled substance or a drug of dependence specified in a voluntary assisted dying permit for the purpose of causing a person's death;

***voluntary assisted dying substance dispensing form*** means the voluntary assisted dying substance dispensing form prescribed by the regulations, completed by a pharmacist under section 77;

***voluntary assisted dying substance disposal form*** means the voluntary assisted dying substance disposal form prescribed by the regulations, completed by a pharmacist under section 80;

***written declaration*** means a declaration made under section 52 in the form prescribed by the regulations.

#### 4—Meaning of decision making capacity

- (1) A person has decision making capacity in relation to voluntary assisted dying if the person is able to—
  - (a) understand the information relevant to the decision relating to access to voluntary assisted dying and the effect of the decision; and
  - (b) retain that information to the extent necessary to make the decision; and
  - (c) use or weigh that information as part of the process of making the decision; and
  - (d) communicate the decision and the person's views and needs as to the decision in some way, including by speech, gestures or other means.
- (2) For the purposes of subsection (1), a person is presumed to have decision making capacity unless there is evidence to the contrary.
- (3) For the purposes of subsection (1)(a), a person is taken to understand information relevant to a decision if the person understands an explanation of the information given to the person in a way that is appropriate to the person's circumstances, whether by using modified language, visual aids or any other means.
- (4) In determining whether or not a person has decision making capacity, regard must be had to the following:
  - (a) a person may have decision making capacity to make some decisions and not others;
  - (b) if a person does not have decision making capacity to make a particular decision, it may be temporary and not permanent;
  - (c) it should not be assumed that a person does not have decision making capacity to make a decision—
    - (i) on the basis of the person's appearance; or
    - (ii) because the person makes a decision that is, in the opinion of others, unwise;
  - (d) a person has decision making capacity to make a decision if it is possible for the person to make a decision with practicable and appropriate support.

**Example—**

Practicable and appropriate support includes things such as—

- (a) using information or formats tailored to the particular needs of a person;
  - (b) communicating or assisting a person to communicate the person's decision;
  - (c) giving a person additional time and discussing the matter with the person;
  - (d) using technology that alleviates the effects of a person's disability.
- (5) A person who is assessing whether a person has decision making capacity for the purposes of this Act must take reasonable steps to conduct the assessment at a time and in an environment in which the person's decision making capacity can be most accurately assessed.

## 5—Voluntary assisted dying not palliative care

- (1) For the purposes of the law of the State, the administration of a voluntary assisted dying substance to a person in accordance with, or purportedly in accordance with, this Act will be taken not to constitute palliative care of the person.
- (2) To avoid doubt, nothing in subsection (1) prevents a person who is providing, or who has provided, palliative care to a person, or an institution at which palliative care is provided to a person, from performing functions or otherwise being involved in the operation of this Act (whether as a coordinating medical practitioner, a consulting medical practitioner or otherwise).
- (3) Nothing in this Act limits Part 3 Division 2 of the *Consent to Medical Treatment and Palliative Care Act 1995* (and, for the purposes of section 17(1) of that Division, a reference to administering medical treatment in that subsection will be taken not to include a reference to administering a voluntary assisted dying substance to a person in accordance with, or purportedly in accordance with, this Act).

**Note—**

Section 17 of the *Consent to Medical Treatment and Palliative Care Act 1995* provides that a medical practitioner does not incur liability where certain medical treatment incidentally, rather than intentionally, hastens the death of a patient.

## 6—Voluntary assisted dying not suicide

- (1) For the purposes of the laws of the State, the death of a person by the administration of a voluntary assisted dying substance in accordance with this Act will be taken not to constitute the death by suicide of the person.
- (2) Without limiting subsection (1), for the purposes of the laws of the State, and any professional standard or code of conduct (however described), a person who performs an act or omission in relation to the voluntary assisted dying of a person in accordance with this Act will be taken not, by that act or omission alone, to have aided, abetted, counselled or procured the suicide of the other person.

## 7—Interpreters

For the purposes of this Act, an interpreter who assists a person in relation to requesting access to or accessing voluntary assisted dying—

- (a) must be accredited by a prescribed body; and
- (b) must not—
  - (i) be a family member of the person; or
  - (ii) believe or have knowledge of—
    - (A) being a beneficiary under a will of the person; or
    - (B) otherwise benefitting financially or in any other material way from the death of the person; or
  - (iii) be an owner of, or be responsible for the day-to-day management and operation of, any prescribed health facility at which the person is being treated or resides; or
  - (iv) be a person who is directly involved in providing health services or professional care services to the person.

## 8—Principles

- (1) A person exercising a power or performing a function or duty under this Act must have regard to the following principles:
  - (a) every human life has equal value;
  - (b) a person's autonomy should be respected;
  - (c) a person has the right to be supported in making informed decisions about the person's medical treatment, and should be given, in a manner the person understands, information about medical treatment options including comfort and palliative care;
  - (d) every person approaching the end of life should be provided with quality care to minimise the person's suffering and maximise the person's quality of life;
  - (e) a therapeutic relationship between a person and the person's health practitioner should, wherever possible, be supported and maintained;
  - (f) individuals should be encouraged to openly discuss death and dying and an individual's preferences and values should be encouraged and promoted;
  - (g) individuals should be supported in conversations with the individual's health practitioners, family and carers and community about treatment and care preferences;
  - (h) individuals are entitled to genuine choices regarding their treatment and care;
  - (i) there is a need to protect individuals who may be subject to abuse;
  - (j) all persons, including health practitioners, have the right to be shown respect for their culture, beliefs, values and personal characteristics;
  - (k) every person has the right to make decisions about medical treatment options freely and not as a consequence of the suggestion, pressure, coercion or undue influence of others.
- (2) For the purposes of subsection (1), a reference to a person exercising a power or performing a function or duty under this Act will be taken to include the Tribunal.

## 9—When may a person access voluntary assisted dying

A person may access voluntary assisted dying if—

- (a) the person has made a first request; and
- (b) the person has been assessed as eligible for access to voluntary assisted dying by—
  - (i) the coordinating medical practitioner for the person; and
  - (ii) a consulting medical practitioner for the person; and
- (c) the person has made a written declaration; and
- (d) the person has made a final request to the coordinating medical practitioner; and
- (e) the person has appointed a contact person; and

- (f) the coordinating medical practitioner has certified in a final review form that the request and assessment process has been completed as required by this Act; and
- (g) the person is the subject of a voluntary assisted dying permit.

#### **10—Conscientious objection of registered health practitioners**

A registered health practitioner who has a conscientious objection to voluntary assisted dying has the right to refuse to do any of the following:

- (a) to provide information about voluntary assisted dying;
- (b) to participate in the request and assessment process;
- (c) to apply for a voluntary assisted dying permit;
- (d) to supply, prescribe or administer a voluntary assisted dying substance;
- (e) to be present at the time of administration of a voluntary assisted dying substance;
- (f) to dispense a prescription for a voluntary assisted dying substance.

#### **11—Conscientious objection of operators of certain health service establishments**

- (1) A relevant service provider has the right to refuse to authorise or permit the carrying out, at a health service establishment operated by the relevant service provider, of any part of the voluntary assisted dying process in relation to any patient at the establishment (including any request or assessment process under this Act).
- (2) A relevant service provider may include in the terms and conditions of acceptance of any patient into the health service establishment an acknowledgment by the patient that the patient—
  - (a) understands and accepts that the relevant service provider will not permit the establishment to be used for the purposes of, or incidental to, voluntary assisted dying; and
  - (b) agrees, as a condition of entry, that they will not seek or demand access to voluntary assisted dying at the establishment.
- (3) Subsection (4) applies in relation to a patient at a health service establishment if the patient advises a person employed or engaged by the relevant service provider at that health service establishment that they wish to access voluntary assisted dying.
- (4) If this subsection applies in relation to a patient at a health service establishment, the relevant service provider who operates the establishment must ensure that—
  - (a) the patient is advised of the relevant service provider's refusal to authorise or permit the carrying out at the health service establishment of any part of the voluntary assisted dying process; and

- (b) arrangements are in place whereby the patient may be transferred to another health service establishment or prescribed health facility at which, in the opinion of the relevant service provider, a registered health practitioner who does not have a conscientious objection to voluntary assisted dying is likely to be able to participate in a voluntary assisted dying process in relation to the patient; and
  - (c) reasonable steps are taken to facilitate the transfer referred to in paragraph (b) if requested by the patient.
- (5) To avoid doubt, this section does not apply to, or in relation to, a patient accepted into a health service establishment before the commencement of this section.
- (6) In this section—

***health service establishment*** means—

- (a) a private hospital within the meaning of the *Health Care Act 2008* or other private health facility of a kind prescribed by the regulations; or
- (b) the whole or part of any other private institution, facility, building or place that is operated or designed to provide inpatient or outpatient treatment, diagnostic or therapeutic interventions, nursing, rehabilitative, palliative, convalescent, preventative or other health services (including, to avoid doubt, places of short-term respite care); or
- (c) any other health service establishment of a kind prescribed by the regulations, but does not include prescribed residential premises, or any establishment declared by the regulations not to be included in the ambit of this definition;

***prescribed residential premises*** means—

- (a) a facility (within the meaning of Part 2);
- (b) any other residential premises of a kind prescribed by the regulations;

***relevant service provider*** means a person or body that operates a health service establishment.

## **12—Voluntary assisted dying must not be initiated by registered health practitioner**

- (1) A registered health practitioner who provides health services or professional care services to a person must not, in the course of providing those services to the person—
- (a) initiate discussion with that person that is in substance about voluntary assisted dying; or
  - (b) in substance, suggest voluntary assisted dying to that person.
- (2) Nothing in subsection (1) prevents a registered health practitioner providing information about voluntary assisted dying to a person at that person's request.
- (3) A contravention of subsection (1) is to be regarded as unprofessional conduct within the meaning and for the purposes of the *Health Practitioner Regulation National Law*.

### 13—Chief Executive may approve training for medical practitioners

The Chief Executive, by notice published in the Gazette, may approve training relating to the following matters:

- (a) requirements under this Act relating to coordinating medical practitioners and consulting medical practitioners, including functions of coordinating medical practitioners and consulting medical practitioners;
- (b) assessing whether or not a person meets the eligibility criteria;
- (c) identifying and assessing risk factors for abuse or coercion.

### 14—Delegations

- (1) The Minister may delegate a function or power conferred on the Minister under this Act—
  - (a) to a specified person or body; or
  - (b) to a person occupying or acting in a specified office or position.
- (2) The Chief Executive may delegate a function or power conferred on the Chief Executive under this Act—
  - (a) to a specified person or body; or
  - (b) to a person occupying or acting in a specified office or position.
- (3) A delegation—
  - (a) must be in writing; and
  - (b) may be made subject to conditions or limitations specified in the instrument of delegation; and
  - (c) if the instrument of delegation so provides, may be further delegated by the delegate; and
  - (d) is revocable at will and does not prevent the delegator from acting personally in a matter.

## Part 2—Conscientious objection of operators of certain residential facilities

### Division 1—Preliminary

#### 15—Interpretation

In this Part—

*deciding practitioner*, for a decision about the transfer of a person, means—

- (a) the coordinating medical practitioner for the person; or
- (b) if the coordinating medical practitioner for the person is not available, another medical practitioner nominated by the person;



**facility** means—

- (a) a nursing home, hostel or other facility at which accommodation, nursing or personal care is provided to persons on a residential basis who, because of infirmity, illness, disease, incapacity or disability, have a need for nursing or personal care; or
- (b) a residential aged care facility; or
- (c) a retirement village (within the meaning of the *Retirement Villages Act 2016*);

**relevant entity** means an entity, other than a natural person, that provides a relevant service;

**relevant service** means a residential aged care service or a personal care service, or services provided in the course of administering a retirement village scheme (within the meaning of the *Retirement Villages Act 2016*);

**residential aged care** means personal care or nursing care (or both) that is provided to a person in a residential facility in which the person is also provided with accommodation that includes—

- (a) staffing to meet the nursing and personal care needs of the person; and
- (b) meals and cleaning services; and
- (c) 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* of the Commonwealth;

**residential facility** does not include—

- (a) a private home; or
- (b) a hospital or psychiatric facility; or
- (c) a facility that primarily provides care to people who are not frail and aged.

## 16—Meaning of permanent residents of certain facilities

- (1) 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.
- (2) 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* of the Commonwealth or on some other basis.
- (3) A person is not a permanent resident at a facility if the person resides at the facility temporarily.

## Division 2—Information about voluntary assisted dying

### 17—Access to information about voluntary assisted dying

- (1) This section applies if—
  - (a) a person is receiving relevant services from a relevant entity at a facility; and

- (b) the person asks the entity for information about voluntary assisted dying; and
  - (c) the entity does not provide at the facility, to persons to whom relevant services are provided, the information that has been requested.
- (2) The relevant entity and any other entity that owns or occupies the facility—
- (a) must not hinder the person's access at the facility to information about voluntary assisted dying; and
  - (b) must, on request, allow reasonable access to the person at the facility by a registered health practitioner or other person to enable the registered health practitioner or other person to personally provide the requested information about voluntary assisted dying to the person.

### **Division 3—Request and assessment process**

#### **18—Application of Division**

This Division applies if a person is receiving relevant services from a relevant entity at a facility.

#### **19—First requests and final requests**

- (1) This section applies if—
- (a) 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
  - (b) 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.
- (2) 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—
- (a) whose presence is requested by the person; and
  - (b) who—
    - (i) for a first request—is eligible to act as a coordinating medical practitioner; or
    - (ii) for a final request—is the coordinating medical practitioner for the person.
- (3) 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—
- (a) the requested medical practitioner; or
  - (b) another medical practitioner who is eligible and willing to act as a coordinating medical practitioner.

#### **20—First assessments**

- (1) This section applies if—
- (a) the person has made a first request; and

- (b) the person or the person's agent advises the relevant entity that the person wishes to undergo a first assessment; and
  - (c) 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.
- (2) If the person is a permanent resident at the facility—
  - (a) 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 for the person to assess the person; and
  - (b) 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—
    - (i) the relevant practitioner; or
    - (ii) another medical practitioner who is eligible and willing to act as a relevant practitioner.
- (3) If the person is not a permanent resident at the facility—
  - (a) the relevant entity must take reasonable steps to facilitate the transfer of the person to and from a place where the person's first assessment may be carried out by a relevant practitioner for the person; or
  - (b) if, in the opinion of the deciding practitioner, transfer of the person as described in paragraph (a) 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.
- (4) In making a decision referred to in subsection (3)(b), the deciding practitioner must have regard to the following:
  - (a) whether the transfer would be likely to cause serious harm to the person;
  - (b) whether the transfer would be likely to adversely affect the person's access to voluntary assisted dying;
  - (c) whether the transfer would cause undue delay and prolonged suffering in accessing voluntary assisted dying;
  - (d) whether the place to which the person is proposed to be transferred is available to receive the person;
  - (e) whether the person would incur financial loss or costs because of the transfer.
- (5) In this section—

**relevant practitioner** for a person, means—

  - (a) the coordinating medical practitioner for the person; or
  - (b) a registered health practitioner to whom the coordinating medical practitioner for the person has referred a matter under section 36.

## **21—Consulting assessments**

- (1) This section applies if—
  - (a) the person has undergone a first assessment; and
  - (b) the person or the person's agent advises the relevant entity that the person wishes to undergo a consulting assessment; and
  - (c) 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.
- (2) If the person is a permanent resident at the facility—
  - (a) 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 for the person to assess the person; and
  - (b) 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—
    - (i) the relevant practitioner; or
    - (ii) another medical practitioner who is eligible and willing to act as a relevant practitioner.
- (3) If the person is not a permanent resident at the facility—
  - (a) 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
  - (b) if, in the opinion of the deciding practitioner, transfer of the person as described in paragraph (a) 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.
- (4) In making a decision referred to in subsection (3)(b), the deciding practitioner must have regard to the following:
  - (a) whether the transfer would be likely to cause serious harm to the person;
  - (b) whether the transfer would be likely to adversely affect the person's access to voluntary assisted dying;
  - (c) whether the transfer would cause undue delay and prolonged suffering in accessing voluntary assisted dying;
  - (d) whether the place to which the person is proposed to be transferred is available to receive the person;
  - (e) whether the person would incur financial loss or costs because of the transfer.
- (5) In this section—

***relevant practitioner*** for a person, means—

  - (a) the consulting medical practitioner for the person; or

- (b) a registered health practitioner to whom the consulting medical practitioner for the person has referred a matter under section 45.

## 22—Written declarations

- (1) This section applies if—
  - (a) the person has been assessed as eligible for access to voluntary assisted dying; and
  - (b) the person or the person's agent advises the relevant entity that the person wishes to make a written declaration; and
  - (c) 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.
- (2) If the person is a permanent resident at the facility—
  - (a) 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 medical practitioner for the person and any other person lawfully participating in the person's request for access to voluntary assisted dying to enable the person to make a written declaration; and
  - (b) if the coordinating 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 may make a written declaration.
- (3) If the person is not a permanent resident at the facility—
  - (a) the relevant entity must take reasonable steps to facilitate the transfer of the person to and from a place where the person may make a written declaration; or
  - (b) if, in the opinion of the deciding practitioner, transfer of the person as described in paragraph (a) 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 and any other person lawfully participating in the person's request for access to voluntary assisted dying.
- (4) In making a decision referred to in subsection (3)(b), the deciding practitioner must have regard to the following:
  - (a) whether the transfer would be likely to cause serious harm to the person;
  - (b) whether the transfer would be likely to adversely affect the person's access to voluntary assisted dying;
  - (c) whether the transfer would cause undue delay and prolonged suffering in accessing voluntary assisted dying;
  - (d) whether the place to which the person is proposed to be transferred is available to receive the person;
  - (e) whether the person would incur financial loss or costs because of the transfer.

(5) In this section—

*relevant practitioner* for a person, means—

- (a) the coordinating medical practitioner for the person; or
- (b) a registered health practitioner to whom the coordinating medical practitioner for the person has referred a matter under section 45.

### **23—Application for voluntary assisted dying permit**

(1) This section applies if—

- (a) the person has made a final request; and
- (b) the person or the person's agent advises the relevant entity that the person wishes to make an application for a voluntary assisted dying permit; and
- (c) the entity does not provide, to persons to whom relevant services are provided at the facility, access to a person's coordinating medical practitioner to enable such an application to be made.

(2) If the person is a permanent resident at the facility—

- (a) 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 medical practitioner for the person to consult with and assess the person in relation to the application; and
- (b) if the coordinating 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 consultation and assessment of the person can occur in relation to the application in consultation with, and on the advice of—
  - (i) the coordinating medical practitioner; or
  - (ii) another medical practitioner who is eligible and willing to act as the coordinating medical practitioner for the person.

(3) If the person is not a permanent resident at the facility—

- (a) the relevant entity must take reasonable steps to facilitate the transfer of the person to and from a place where the coordinating medical practitioner for the person can consult with and assess the person in relation to the application; or
- (b) if, in the opinion of the deciding practitioner, transfer of the person as described in paragraph (a) 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 medical practitioner for the person to consult with and assess the person in relation to the application.

(4) In making a decision referred to in subsection (3)(b), the deciding practitioner must have regard to the following—

- (a) whether the transfer would be likely to cause serious harm to the person;
- (b) whether the transfer would be likely to adversely affect the person's access to voluntary assisted dying;

- (c) whether the transfer would cause undue delay and prolonged suffering in accessing voluntary assisted dying;
- (d) whether the place to which the person is proposed to be transferred is available to receive the person;
- (e) whether the person would incur financial loss or costs because of the transfer.

## **Division 4—Accessing voluntary assisted dying and death**

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

- (1) This section applies if—
  - (a) an application for a voluntary assisted dying permit has been made in respect of the person and a permit issued; and
  - (b) 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 the coordinating medical practitioner for the person administer a voluntary assisted dying substance to the person; and
  - (c) 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.
- (2) If the person is a permanent resident at the facility, the relevant entity and any other entity that owns or occupies the facility must—
  - (a) if a practitioner administration permit is issued in respect of the person—allow reasonable access to the person at the facility by the coordinating medical practitioner and any other person lawfully participating in the person's request for access to voluntary assisted dying for the person to make an administration request and for the coordinating medical practitioner to administer a voluntary assisted dying substance to the person; or
  - (b) if a self administration permit is issued in respect of the person—
    - (i) allow reasonable access to the person at the facility by a person lawfully delivering a voluntary assisted dying substance to the person, and any other person lawfully participating in the person's request for access to voluntary assisted dying; and
    - (ii) not otherwise hinder access by the person to a voluntary assisted dying substance.
- (3) If the person is not a permanent resident at the facility—
  - (a) 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
  - (b) if, in the opinion of the deciding practitioner, transfer of the person as described in paragraph (a) would not be reasonable in the circumstances, subsection (2) applies in relation to the person as if the person were a permanent resident at the facility.

- (4) In making the decision under subsection (3)(b), the deciding practitioner must have regard to the following—
- (a) whether the transfer would be likely to cause serious harm to the person;
  - (b) whether the transfer would be likely to adversely affect the person's access to voluntary assisted dying;
  - (c) whether the transfer would cause undue delay and prolonged suffering in accessing voluntary assisted dying;
  - (d) whether the place to which the person is proposed to be transferred is available to receive the person;
  - (e) whether the person would incur financial loss or costs because of the transfer.

### **Division 5—Information about non-availability of voluntary assisted dying at certain facilities**

#### **25—Relevant entities to inform public of non-availability of voluntary assisted dying at facility**

- (1) This section 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 (including, without limiting this subsection, access to the request and assessment process or access to the administration of a voluntary assisted dying substance).
- (2) The relevant entity must publish information about the fact the entity does not provide any services, or services of a specified kind, associated with voluntary assisted dying at the facility.
- (3) The relevant entity must publish the information 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.

### **Part 3—Criteria for access to voluntary assisted dying**

#### **26—Criteria for access to voluntary assisted dying**

- (1) For a person to be eligible for access to voluntary assisted dying—
  - (a) the person must be aged 18 years or more; and
  - (b) the person must—
    - (i) be an Australian citizen or permanent resident; and
    - (ii) be ordinarily resident in South Australia; and
    - (iii) at the time of making a first request, have been ordinarily resident in South Australia for at least 12 months; and
  - (c) the person must have decision making capacity in relation to voluntary assisted dying; and
  - (d) the person must be diagnosed with a disease, illness or medical condition that—
    - (i) is incurable; and



- (ii) is advanced, progressive and will cause death; and
  - (iii) is expected to cause death within weeks or months, not exceeding 6 months; and
  - (iv) is causing suffering to the person that cannot be relieved in a manner that the person considers tolerable; and
  - (e) the person must be acting freely and without coercion.
- (2) A person is not eligible for access to voluntary assisted dying only because the person is diagnosed with a mental illness within the meaning of the *Mental Health Act 2009*.
  - (3) A person is not eligible for access to voluntary assisted dying only because the person has a disability within the meaning of the *Disability Inclusion Act 2018*.
  - (4) Despite subsection (1)(d)(iii), if a person is diagnosed with a disease, illness or medical condition that is neurodegenerative, that disease, illness or medical condition will be taken to be expected to cause death within weeks or months, not exceeding 12 months.

## **Part 4—Requesting access to voluntary assisted dying and assessment of eligibility**

### **Division 1—Minimum requirements for coordinating medical practitioners and consulting medical practitioners**

#### **27—Minimum requirements for coordinating medical practitioners and consulting medical practitioners**

- (1) Each coordinating medical practitioner and consulting medical practitioner must—
  - (a) hold a fellowship with a specialist medical college; or
  - (b) be a vocationally registered general practitioner.
- (2) Either the coordinating medical practitioner or each consulting medical practitioner must have practised as a registered medical practitioner for at least 5 years after completing a fellowship with a specialist medical college or vocational registration (as the case requires).
- (3) Either the coordinating medical practitioner or each consulting medical practitioner must have relevant expertise and experience in the disease, illness or medical condition expected to cause the death of the person being assessed.

#### **28—Certain registered medical practitioners not eligible to act as coordinating medical practitioner etc for person**

A registered medical practitioner is not eligible to act as the coordinating medical practitioner or a consulting medical practitioner (as the case requires) for a person if the practitioner—

- (a) is a family member of the person; or
- (b) knows, or has reasonable grounds to believe, that they—
  - (i) may be a beneficiary under a will of the person; or

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- (ii) 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 the coordinating practitioner or consulting practitioner for the person).

**Division 2—First request**

**29—Person may make first request to registered medical practitioner**

- (1) A person may make a request to a registered medical practitioner for access to voluntary assisted dying.
- (2) A request for access to voluntary assisted dying must be—
  - (a) clear and unambiguous; and
  - (b) made by the person personally.
- (3) The person may make the request verbally or by gestures or other means of communication available to the person.

**30—No obligation to continue after making first request**

- (1) A person who has made a first request may decide at any time not to continue the request and assessment process.
- (2) The request and assessment process ends if a person decides not to continue the request and assessment process.
- (3) If the request and assessment process has ended under subsection (2), the person may commence a fresh request and assessment process by making a new first request.

**31—Registered medical practitioner must accept or refuse first request**

- (1) Within 7 days after receiving a first request from a person, the registered medical practitioner to whom the request was made must inform the person that the practitioner—
  - (a) accepts the first request; or
  - (b) refuses the first request because the practitioner—
    - (i) has a conscientious objection to voluntary assisted dying; or
    - (ii) believes that the practitioner will not be able to perform the duties of coordinating medical practitioner due to unavailability; or
    - (iii) is required under subsection (2) to refuse the first request; or
    - (iv) is not eligible to act as the coordinating medical practitioner for the person.
- (2) The registered medical practitioner must not accept the first request unless the practitioner—
  - (a) holds a fellowship with a specialist medical college; or
  - (b) is a vocationally registered general practitioner.

### **32—Registered medical practitioner who accepts first request must record first request and acceptance**

If the registered medical practitioner accepts the person's first request, the practitioner must—

- (a) record the practitioner's decision to accept the first request in the person's medical record; and
- (b) record the first request in the person's medical record.

### **33—Registered medical practitioner who accepts first request becomes coordinating medical practitioner**

On acceptance of a person's first request, the registered medical practitioner to whom the request was made becomes the coordinating medical practitioner for the person.

## **Division 3—First assessment**

### **34—Commencement of first assessment**

After becoming the coordinating medical practitioner for a person, the coordinating medical practitioner must assess whether the person requesting access to voluntary assisted dying meets the eligibility criteria.

**Note—**

The person must meet all eligibility criteria to be assessed as eligible for access to voluntary assisted dying—see section 38(1)(a).

### **35—Coordinating medical practitioner must not commence first assessment unless approved assessment training completed**

The coordinating medical practitioner must not commence the first assessment unless the practitioner has completed approved assessment training.

### **36—Referral for specialist opinion**

- (1) If the coordinating medical practitioner is unable to determine whether the person has decision making capacity in relation to voluntary assisted dying as required by the eligibility criteria (for example, due to a past or current mental illness of the person), the coordinating medical practitioner must refer the person to a registered health practitioner who has appropriate skills and training (such as a psychiatrist in the case of mental illness).
- (2) If the coordinating medical practitioner is unable to determine whether the person's disease, illness or medical condition meets the requirements of the eligibility criteria, the coordinating medical practitioner must refer the person to a specialist registered medical practitioner who has appropriate skills and training in that disease, illness or medical condition.
- (3) If the coordinating medical practitioner refers the person to—
  - (a) a registered health practitioner under subsection (1); or
  - (b) a specialist registered medical practitioner under subsection (2),

the coordinating medical practitioner may adopt the determination of the registered health practitioner or specialist registered medical practitioner (as the case requires) in relation to the matter in respect of which the person was referred.

- (4) If the coordinating medical practitioner is able to determine that the person has a disease, illness or medical condition that is neurodegenerative in accordance with section 26(4) that—
- (a) will cause death; and
  - (b) is expected to cause death between 6 and 12 months,

the coordinating medical practitioner must refer the person to a specialist registered medical practitioner who has appropriate skills and training in that particular disease, illness or medical condition that is neurodegenerative, whether or not the coordinating medical practitioner has also made a referral under subsection (2).

- (5) The specialist registered medical practitioner referred to in subsection (4) must—
- (a) determine whether the person has a disease, illness or medical condition that is neurodegenerative that—
    - (i) will cause death; and
    - (ii) is expected to cause death between 6 and 12 months; and
  - (b) provide a clinical report to the coordinating medical practitioner that sets out the specialist registered medical practitioner's determination.
- (6) A registered health practitioner or specialist registered medical practitioner is not eligible to act in relation to the referral of a person under this section if the practitioner—
- (a) is a family member of the person; or
  - (b) knows, or has reasonable grounds to believe, that they—
    - (i) may be a beneficiary under a will of the person; or
    - (ii) 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 referred to in this section).

- (7) If the coordinating medical practitioner refers the person to a specialist registered medical practitioner under subsection (4), the coordinating medical practitioner must adopt the determination of the specialist registered medical practitioner in respect of the matter in relation to which the person was referred.

### **37—Information to be provided if coordinating medical practitioner assesses person as meeting eligibility criteria**

- (1) If the coordinating medical practitioner is satisfied that the person requesting access to voluntary assisted dying meets all the eligibility criteria, the coordinating medical practitioner must inform the person about the following matters:
- (a) the person's diagnosis and prognosis;
  - (b) the treatment options available to the person and the likely outcomes of that treatment;

- (c) palliative care options available to the person and the likely outcomes of that care;
  - (d) the potential risks of taking a poison or controlled substance or a drug of dependence likely to be prescribed under this Act for the purposes of causing the person's death;
  - (e) that the expected outcome of taking a poison or controlled substance or a drug of dependence referred to in paragraph (d) is death;
  - (f) that the person may decide at any time not to continue the request and assessment process;
  - (g) that if the person is receiving ongoing health services from a registered medical practitioner other than the coordinating medical practitioner, the person is encouraged to inform the registered medical practitioner of the person's request to access voluntary assisted dying.
- (2) In addition to the matters of which the coordinating medical practitioner must inform the person under subsection (1), the coordinating medical practitioner must, if the person consents, take all reasonable steps to fully explain to a member of the family of the person—
- (a) all relevant clinical guidelines; and
  - (b) a plan in respect of the self administration of a voluntary assisted dying substance for the purpose of causing death.
- (3) Nothing in this section affects any duty a registered medical practitioner has under any other Act or law.

### **38—Outcome of first assessment**

- (1) The coordinating medical practitioner must assess the person as eligible for access to voluntary assisted dying if the coordinating medical practitioner is satisfied that—
- (a) the person meets all the eligibility criteria for access to voluntary assisted dying; and
  - (b) the person understands the information required to be provided under section 37(1); and
  - (c) the person is acting voluntarily and without coercion; and
  - (d) the person's request for access to voluntary assisted dying is enduring.
- (2) If the coordinating medical practitioner is not satisfied as to any matter in subsection (1)—
- (a) the person requesting access to voluntary assisted dying is ineligible for access to voluntary assisted dying; and
  - (b) the request and assessment process ends.

### **39—Recording and notification of outcome of first assessment**

- (1) The coordinating medical practitioner must notify the person requesting access to voluntary assisted dying of the outcome of the first assessment.

- (2) Within 7 days after completing the first assessment, the coordinating medical practitioner must complete the first assessment report form and give a copy of that form to the Board.

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

If the coordinating medical practitioner for the person assesses the person as eligible for access to voluntary assisted dying, the coordinating medical practitioner must refer the person to another registered medical practitioner for a consulting assessment.

### **Division 4—Consulting assessment**

#### **41—Registered medical practitioner must accept or refuse referral for a consulting assessment**

- (1) Within 7 days after a registered medical practitioner receives a referral for a consulting assessment of a person from the coordinating medical practitioner for the person under section 40, 49, 51(3)(a) or section 89(4), the registered medical practitioner must inform the person and the coordinating medical practitioner that the practitioner—
  - (a) accepts the referral; or
  - (b) refuses the referral because the practitioner—
    - (i) has a conscientious objection to voluntary assisted dying; or
    - (ii) believes that the practitioner will not be able to perform the duties of consulting medical practitioner due to unavailability; or
    - (iii) is required under this section to refuse the referral; or
    - (iv) is not eligible to act as a consulting medical practitioner for the person.
- (2) The registered medical practitioner must not accept the referral unless the practitioner—
  - (a) holds a fellowship with a specialist medical college; or
  - (b) is a vocationally registered general practitioner.
- (3) Subject to subsection (5), the registered medical practitioner must refuse the referral if the practitioner has not practised as a medical practitioner for at least 5 years after completing a fellowship with a specialist medical college or vocational registration (as the case requires).
- (4) Subject to subsection (6), the registered medical practitioner must refuse the referral if the practitioner does not have relevant expertise and experience in the disease, illness or medical condition expected to cause the person's death.
- (5) Subsection (3) does not apply if the coordinating medical practitioner has practised as a medical practitioner for at least 5 years after completing a fellowship with a specialist medical college or vocational registration (as the case requires).
- (6) Subsection (4) does not apply if the coordinating medical practitioner has relevant expertise and experience in the disease, illness or medical condition expected to cause the person's death.

#### **42—Registered medical practitioner who accepts referral becomes consulting medical practitioner**

On acceptance of a referral for a consulting assessment of a person, the registered medical practitioner to whom the referral was made becomes a consulting medical practitioner for the person.

#### **43—Commencement of consulting assessment**

The consulting medical practitioner for a person must assess whether the person requesting access to voluntary assisted dying meets the eligibility criteria.

**Note—**

The person must meet all eligibility criteria to be assessed as eligible for access to voluntary assisted dying—see section 47(1)(a).

#### **44—Consulting medical practitioner must not commence consulting assessment unless approved assessment training completed**

The consulting medical practitioner must not commence a consulting assessment unless the practitioner has completed approved assessment training.

#### **45—Referral for specialist opinion**

- (1) If the consulting medical practitioner is unable to determine whether the person has decision making capacity in relation to voluntary assisted dying as required by the eligibility criteria (for example, due to a past or current mental illness of the person), the consulting medical practitioner must refer the person to a registered health practitioner who has appropriate skills and training (such as a psychiatrist in the case of mental illness).
- (2) If the consulting medical practitioner is unable to determine whether the person's disease, illness or medical condition meets the requirements of the eligibility criteria, the consulting medical practitioner must refer the person to a specialist registered medical practitioner who has appropriate skills and training in that disease, illness or medical condition.
- (3) A registered health practitioner or specialist registered medical practitioner is not eligible to act in relation to the referral of a person under this section if the practitioner—
  - (a) is a family member of the person; or
  - (b) knows, or has reasonable grounds to believe, that they—
    - (i) may be a beneficiary under a will of the person; or
    - (ii) 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 referred to in this section).
- (4) If the consulting medical practitioner refers the person to—
  - (a) a registered health practitioner under subsection (1); or
  - (b) a specialist registered medical practitioner under subsection (2),

the consulting medical practitioner may adopt the determination of the registered health practitioner or specialist registered medical practitioner (as the case requires) in relation to the matter in respect of which the person was referred.

#### **46—Information to be provided if consulting medical practitioner assesses person as meeting eligibility criteria**

- (1) If the consulting medical practitioner is satisfied that the person requesting access to voluntary assisted dying meets all the eligibility criteria, the consulting medical practitioner must inform the person about the following matters:
  - (a) the person's diagnosis and prognosis;
  - (b) the treatment options available to the person and the likely outcomes of that treatment;
  - (c) palliative care options available to the person and the likely outcomes of that care;
  - (d) the potential risks of taking a poison or controlled substance or a drug of dependence likely to be prescribed under this Act for the purposes of causing the person's death;
  - (e) that the expected outcome of taking a poison or controlled substance or a drug of dependence referred to in paragraph (d) is death;
  - (f) that the person may decide at any time not to continue the request and assessment process;
  - (g) that if the person is receiving ongoing health services from a registered medical practitioner other than the coordinating medical practitioner, the person is encouraged to inform the registered medical practitioner of the person's request to access voluntary assisted dying.
- (2) Nothing in this section affects any duty a registered medical practitioner has under any other Act or law.

#### **47—Outcome of consulting assessment**

- (1) The consulting medical practitioner must assess the person as eligible for access to voluntary assisted dying if the consulting medical practitioner is satisfied that—
  - (a) the person meets all the eligibility criteria for access to voluntary assisted dying; and
  - (b) the person understands the information required to be provided under section 46(1); and
  - (c) the person is acting voluntarily and without coercion; and
  - (d) the person's request for access to voluntary assisted dying is enduring.
- (2) If the consulting medical practitioner is not satisfied as to any matter in subsection (1), the consulting medical practitioner must assess the person requesting access to voluntary assisted dying as ineligible for access to voluntary assisted dying.



#### **48—Recording and notification of outcome of consulting assessment**

- (1) The consulting medical practitioner must—
  - (a) notify the person requesting access to voluntary assisted dying of the outcome of the consulting assessment; and
  - (b) complete the consulting assessment report form and give a copy of it to—
    - (i) the Board; and
    - (ii) the coordinating medical practitioner for the person.
- (2) The consulting medical practitioner must give the copy of the consulting assessment report form to the Board within 7 days after completing the consulting assessment.

#### **49—Coordinating medical practitioner may refer person assessed as ineligible for further consulting assessment**

If a consulting medical practitioner assesses a person requesting access to voluntary assisted dying as ineligible for access to voluntary assisted dying, the coordinating medical practitioner for the person may refer the person to another registered medical practitioner for a further consulting assessment.

#### **50—Coordinating medical practitioner may transfer role of coordinating medical practitioner**

The coordinating medical practitioner for a person may transfer the role of coordinating medical practitioner in accordance with section 51—

- (a) at the request of the person; or
- (b) at the coordinating medical practitioner's own initiative.

#### **51—Process for transfer of coordinating medical practitioner role**

- (1) The coordinating medical practitioner for a person may transfer the role of coordinating medical practitioner to a consulting medical practitioner for the person if—
  - (a) the consulting medical practitioner has assessed the person as eligible for access to voluntary assisted dying; and
  - (b) the consulting medical practitioner accepts the transfer of the role.
- (2) Within 7 days after being requested by the coordinating medical practitioner to accept a transfer under subsection (1), the consulting medical practitioner must inform the coordinating medical practitioner whether the consulting medical practitioner accepts or refuses the transfer of the role.
- (3) If the consulting medical practitioner refuses the transfer of the role of coordinating medical practitioner, the coordinating medical practitioner for the person may—
  - (a) refer the person to another registered medical practitioner to conduct a further consulting assessment; and
  - (b) transfer the role of coordinating medical practitioner to that registered medical practitioner if that practitioner—
    - (i) accepts the referral to conduct a further consulting assessment; and

- (ii) assesses the person as eligible for access to voluntary assisted dying; and
  - (iii) accepts the transfer of the role.
- (4) If the registered medical practitioner accepts a referral to conduct a further consulting assessment, the consulting assessment that previously assessed the person as eligible for access to voluntary assisted dying becomes void.

## **Division 5—Written declaration**

### **52—Person assessed as eligible for access to voluntary assisted dying may make written declaration**

- (1) A person may make a written declaration requesting access to voluntary assisted dying if the person has been assessed as eligible for access to voluntary assisted dying by—
  - (a) the coordinating medical practitioner for the person; and
  - (b) a consulting medical practitioner for the person.
- (2) The written declaration must—
  - (a) specify that the person—
    - (i) makes the declaration voluntarily and without coercion; and
    - (ii) understands the nature and the effect of the declaration the person is making; and
  - (b) be signed by the person making the declaration in the presence of 2 witnesses and the coordinating medical practitioner.
- (3) Despite subsection (2)(b), a person may sign a written declaration at the direction of the person making the declaration if—
  - (a) the person making the declaration is unable to sign the declaration; and
  - (b) the person signing—
    - (i) is aged 18 years or more; and
    - (ii) is not a witness to the signing of the declaration.
- (4) A person who signs a written declaration on behalf of the person making the declaration must do so in that person's presence.
- (5) If a person makes a written declaration with the assistance of an interpreter, the interpreter must certify on the declaration that the interpreter provided a true and correct translation of any material translated.

**Note—**

Interpreters who assist in relation to requesting access to or accessing voluntary assisted dying must meet certain requirements—see section 7.

### **53—Witness to making of written declaration**

- (1) A person is eligible to witness the making of a written declaration if the person is—
  - (a) aged 18 years or more; and
  - (b) not an ineligible witness.

- (2) A person is an *ineligible witness* for the purposes of a written declaration if the person—
- (a) knows or believes that the person—
    - (i) is a beneficiary under a will of the person making the declaration; or
    - (ii) may otherwise benefit financially or in any other material way from the death of the person making the declaration; or
  - (b) is an owner of, or is responsible for the day to day operation of, any prescribed health facility at which—
    - (i) the person making the declaration is being treated; or
    - (ii) the person making the declaration resides; or
  - (c) is directly involved in providing health services or professional care services to the person making the declaration.
- (3) Not more than 1 witness may be a family member of the person making the written declaration.

#### **54—Certification of witness to signing of written declaration**

- (1) A witness who witnesses a person signing a written declaration must—
- (a) certify in writing in the declaration—
    - (i) that, in the presence of the witness, the person making the declaration appeared to freely and voluntarily sign the declaration; and
    - (ii) that, at the time the person signed the declaration, the person appeared to have decision making capacity in relation to voluntary assisted dying; and
    - (iii) that, at the time the person signed the declaration, the person appeared to understand the nature and effect of making the declaration; and
  - (b) state that the witness is not knowingly an ineligible witness.
- (2) A witness who witnesses another person signing a written declaration on behalf of the person making it must—
- (a) certify in writing in the declaration—
    - (i) that, in the presence of the witness, the person making the declaration appeared to freely and voluntarily direct the other person to sign the declaration; and
    - (ii) that the other person signed the declaration in the presence of the person making the declaration and the witness; and
    - (iii) that, at the time the other person signed the declaration, the person making it appeared to have decision making capacity in relation to voluntary assisted dying; and

- (iv) that, at the time the other person signed the declaration, the person making it appeared to understand the nature and effect of making the declaration; and
  - (b) state that the witness is not knowingly an ineligible witness.
- (3) A certification and statement under subsection (1) or (2) must be signed by the witness making it in the presence of the coordinating medical practitioner.

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

### **55—Person may make final request**

- (1) A person may make a final request for access to voluntary assisted dying if the person has made a written declaration.
- (2) A final request must be made to the coordinating medical practitioner for the person, by that person personally.
- (3) The person may make the final request verbally or by gestures or other means of communication available to the person.

### **56—Final request to be made a certain time after first request and consulting assessment**

- (1) A person's final request must be made—
  - (a) subject to subsection (2), at least 9 days after the day on which the person made the first request; and
  - (b) in any case, at least 1 day after the day on which the consulting assessment that assessed the person as eligible for access to voluntary assisted dying was completed.
- (2) Subsection (1)(a) does not apply if the coordinating medical practitioner for the person considers that the person's death is likely to occur before the expiry of the time period specified in that subsection, and this is consistent with the prognosis of the consulting medical practitioner for the person set out in the consulting assessment report form.

### **57—Contact person**

- (1) A person must, after making a final request, appoint a person who is aged 18 years or more as the contact person in respect of the person.
- (2) The contact person must return to a pharmacist at the dispensing pharmacy any unused or remaining voluntary assisted dying substance dispensed to the person making the final request either—
  - (a) if the person dies and the contact person knows that any voluntary assisted dying substance is unused or remaining after the death, within 15 days after the date of death; or
  - (b) if the person decides to make a request under section 71 for practitioner administration or decides not to self administer, at the person's request.
- (3) The Board may contact the contact person to request information.

## 58—Formal requirements for appointment of contact person

- (1) A person cannot be appointed as the contact person unless the person accepts the appointment.
- (2) An appointment of the contact person must—
  - (a) be made in a contact person appointment form; and
  - (b) in the presence of another person who is aged 18 years or more, be signed by—
    - (i) the person making the appointment; and
    - (ii) the person being appointed.
- (3) Despite subsection (2)(b)(i), a person may sign a contact person appointment form at the direction of the person making the appointment if—
  - (a) the person making the appointment is unable to sign the form; and
  - (b) the person signing—
    - (i) is aged 18 years or more; and
    - (ii) is not a witness to the signing of the form; and
    - (iii) is not the person to be appointed as the contact person.
- (4) A person who signs a contact person appointment form on behalf of the person making the appointment must do so in that person's presence.
- (5) If a person appoints a contact person with the assistance of an interpreter, the interpreter must certify on the contact person appointment form that the interpreter provided a true and correct translation of any material translated.

**Note—**

Interpreters who assist in relation to requesting access to or accessing voluntary assisted dying must meet certain requirements—see section 7.

## 59—Final review by coordinating medical practitioner on receipt of final request

- (1) On receipt of a final request made by a person, the coordinating medical practitioner for the person must—
  - (a) review the following forms completed under this Part:
    - (i) the first assessment report form;
    - (ii) all consulting assessment report forms;
    - (iii) the written declaration;
    - (iv) the contact person appointment form; and
  - (b) complete the final review form in respect of the person; and
  - (c) certify whether the request and assessment process has been completed as required by this Act.

- (2) The coordinating medical practitioner must give the Board a copy of the completed final review form, accompanied by copies of all forms referred to in subsection (1)(a), within 7 days after completing the final review form.

#### **60—Technical error not to invalidate request and assessment process**

The validity of the request and assessment process is not affected by any minor or technical error in a final review form or a form referred to in section 59(1)(a).

#### **61—Coordinating medical practitioner may apply for voluntary assisted dying permit on certification of request and assessment process on final review**

If the coordinating medical practitioner certifies in a final review form that the request and assessment process has been completed as required by this Act, the coordinating medical practitioner may apply under section 65 or 66 for a voluntary assisted dying permit for the person.

#### **62—No obligation for person to continue after certification of request and assessment process on final review**

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

### **Part 5—Voluntary assisted dying permits**

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

#### **63—What is authorised by self administration permit**

A self administration permit in respect of a person specified in the permit authorises—

- (a) the coordinating medical practitioner for the person, for the purpose of causing the person's death, to prescribe and supply the voluntary assisted dying substance specified in the permit to the person that—
  - (i) is able to be self administered; and
  - (ii) is of a sufficient dose to cause death; and
- (b) the person to obtain, possess, store, use and self administer the voluntary assisted dying substance; and
- (c) in the case of the death of the person, within 15 days after the date of the person's death, the contact person specified in the permit—
  - (i) to possess and store the unused or remaining voluntary assisted dying substance (if any) for the purpose of returning it to a pharmacist at the dispensing pharmacy; and
  - (ii) to carry and transport the unused or remaining voluntary assisted dying substance to a pharmacist at the dispensing pharmacy; and
- (d) in the case that the person decides to make a request under section 71 or decides not to self administer, or in the case of an order made by the Tribunal to return the voluntary assisted dying substance to the dispensing pharmacy, a contact person specified in the permit—

- (i) to possess and store the voluntary assisted dying substance (if any) that has been dispensed to the person; and
- (ii) to carry and transport the voluntary assisted dying substance to a pharmacist at the dispensing pharmacy.

#### **64—What is authorised by practitioner administration permit**

A practitioner administration permit in respect of a person specified in the permit authorises the coordinating medical practitioner for the person, for the purpose of causing the person's death—

- (a) to prescribe and supply to the person a sufficient dose of the voluntary assisted dying substance specified in the permit; and
- (b) in the presence of a witness receive an administration request; and
- (c) to possess, use, and administer in the presence of a witness, the voluntary assisted dying substance to the person if—
  - (i) the person is physically incapable of the self administration or digestion of the voluntary assisted dying substance; and
  - (ii) the person at the time of making the administration request has decision making capacity in relation to voluntary assisted dying; and
  - (iii) the person in requesting access to voluntary assisted dying is acting voluntarily and without coercion; and
  - (iv) the person's request to access voluntary assisted dying is enduring; and
  - (v) the person is administered the voluntary assisted dying substance immediately after making the administration request.

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

#### **65—Application for self administration permit**

- (1) Subject to subsection (3), the coordinating medical practitioner for a person may apply to the Chief Executive for a self administration permit in respect of the person if the person is physically able to self administer and digest the poison or controlled substance or the drug of dependence proposed to be specified in the permit for the purpose of causing the person's death.
- (2) An application for a self administration permit must—
  - (a) be in the prescribed form; and
  - (b) identify the person in respect of whom the permit is sought; and
  - (c) specify the poison or controlled substance or the drug of dependence the applicant seeks to prescribe or supply in a sufficient dose to the person, for the purpose of self administration to cause the person's death; and
  - (d) specify the contact person in respect of the person; and
  - (e) be accompanied by a copy of the completed final review form and all forms referred to in section 59(1)(a); and

- (f) be accompanied by a statement that the applicant is satisfied of the matters specified in subsection (3).
- (3) The coordinating medical practitioner must not apply for a self administration permit unless the coordinating medical practitioner is satisfied that—
  - (a) the person has decision making capacity in relation to voluntary assisted dying; and
  - (b) the person's request for access to voluntary assisted dying is enduring.

### **66—Application for practitioner administration permit**

- (1) Subject to subsection (3), the coordinating medical practitioner for a person may apply to the Chief Executive for a practitioner administration permit in respect of the person, if the person is to be supplied and administered the poison or controlled substance or the drug of dependence proposed to be specified in the permit by the coordinating medical practitioner for the purpose of causing the person's death.
- (2) An application for a practitioner administration permit must—
  - (a) be in the prescribed form; and
  - (b) identify the person in respect of whom the permit is sought; and
  - (c) specify the poison or controlled substance or the drug of dependence the applicant seeks to prescribe, supply and administer to the person in a sufficient dose to cause the person's death; and
  - (d) specify the contact person in respect of the person; and
  - (e) be accompanied by a copy of the completed final review form and all forms referred to in section 59(1)(a); and
  - (f) be accompanied by a statement that the applicant is satisfied of the matters specified in subsection (3); and
  - (g) if the person in respect of whom the permit is sought was the subject of a self administration permit cancelled under section 70, be accompanied by evidence to the satisfaction of the Chief Executive—
    - (i) that any prescription under that self administration permit which was not filled has been destroyed by the applicant; or
    - (ii) that any voluntary assisted dying substance supplied under that self administration permit has been disposed of by a pharmacist at the dispensing pharmacy.
- (3) The coordinating medical practitioner must not apply for a practitioner administration permit unless the coordinating medical practitioner is satisfied that—
  - (a) the person is physically incapable of the self administration or digestion of an appropriate poison or controlled substance or drug of dependence; and
  - (b) the person has decision making capacity in relation to voluntary assisted dying; and
  - (c) the person's request for access to voluntary assisted dying is enduring.



**67—Chief Executive to determine application for a voluntary assisted dying permit**

- (1) The Chief Executive must determine an application for a voluntary assisted dying permit made under section 65 or 66 by the coordinating medical practitioner for a person within the prescribed period.
- (2) The Chief Executive—
  - (a) may issue—
    - (i) a self administration permit; or
    - (ii) a practitioner administration permit; or
  - (b) may refuse to issue a voluntary assisted dying permit.
- (3) Without limiting subsection (2), the Chief Executive may refuse to issue a voluntary assisted dying permit if the Chief Executive is not satisfied the request and assessment process has been completed as required by this Act.
- (4) After determining the application the Chief Executive must—
  - (a) as soon as practicable—
    - (i) notify the coordinating medical practitioner in writing of the decision under subsection (2); and
    - (ii) if the Chief Executive refuses an application under subsection (2)(b), provide reasons for the decision; and
  - (b) within 7 days notify the Board in writing of the decision under subsection (2).
- (5) A voluntary assisted dying permit must be in the prescribed form.

**68—Operation of voluntary assisted dying permit**

A voluntary assisted dying permit comes into force on the day specified in the permit.

**69—Return of any dispensed voluntary assisted dying substance**

Before making a request under section 71, the person or the relevant contact person must, if a voluntary assisted dying substance has been supplied, return the voluntary assisted dying substance to a pharmacist at the dispensing pharmacy.

**70—Cancellation of self administration permit**

A self administration permit is cancelled—

- (a) on the coordinating medical practitioner destroying any unfilled prescription; or
- (b) on a pharmacist giving the Board a copy of the completed voluntary assisted dying substance disposal form.

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

#### **71—Person may request coordinating medical practitioner apply for a practitioner administration permit**

- (1) A person may request the coordinating medical practitioner for the person to apply for a practitioner administration permit if—
  - (a) the person is the subject of a self administration permit; and
  - (b) the person has lost the physical capacity to self administer or digest the voluntary assisted dying substance specified in the permit.
- (2) The person must make the request personally.
- (3) The person may make the request verbally or by gestures or other means of communication available to the person.

#### **72—Destruction of unfilled prescription by coordinating medical practitioner**

The coordinating medical practitioner must, on receiving a request under section 71, destroy any prescription under the relevant self administration permit which has not been filled.

#### **73—Coordinating medical practitioner may apply for a practitioner administration permit**

If a self administration permit is cancelled under section 70, the coordinating medical practitioner for the person may apply for a practitioner administration permit for the person.

## **Part 6—Accessing voluntary assisted dying and death**

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

#### **74—Information to be given on prescribing a voluntary assisted dying substance**

The coordinating medical practitioner for a person must, before prescribing a voluntary assisted dying substance in accordance with a self administration permit, inform the person—

- (a) how to self administer the voluntary assisted dying substance; and
- (b) that the person is not under any obligation to obtain the voluntary assisted dying substance and may at any time return an unfilled prescription to the coordinating medical practitioner; and
- (c) that the voluntary assisted dying substance must be stored in a locked box that satisfies the prescribed specifications; and
- (d) that the person is not under any obligation to self administer the voluntary assisted dying substance; and

- (e) that any unfilled prescription must be returned to the coordinating medical practitioner for destruction on the making of a request under section 71; and
- (f) that the person or the relevant contact person must return to a pharmacist at the dispensing pharmacy for disposal any dispensed voluntary assisted dying substance—
  - (i) that the person decides not to self administer; or
  - (ii) that the person does not self administer before making a request under section 71; and
- (g) that the relevant contact person must return to a pharmacist at the dispensing pharmacy for disposal any dispensed voluntary assisted dying substance that is not self administered after the person dies.

### **75—Information to be given by pharmacist dispensing a prescribed voluntary assisted dying substance**

A pharmacist must, on dispensing a prescription for a voluntary assisted dying substance, inform the person to whom the voluntary assisted dying substance is being dispensed—

- (a) how to self administer the voluntary assisted dying substance; and
- (b) that the voluntary assisted dying substance must be stored in a locked box that satisfies the prescribed specifications; and
- (c) that the person is not under any obligation to self administer the voluntary assisted dying substance; and
- (d) that the person or the relevant contact person must return to a pharmacist at the dispensing pharmacy for disposal any dispensed voluntary assisted dying substance—
  - (i) that the person decides not to self administer; or
  - (ii) that the person does not self administer before making a request under section 71; and
- (e) that the relevant contact person must return to a pharmacist at the dispensing pharmacy for disposal any dispensed voluntary assisted dying substance that is not self administered after the person dies.

### **76—Labeling requirements for voluntary assisted dying substance**

- (1) In addition to any labeling requirements of the Uniform Poisons Standard or any other Act, a pharmacist who supplies a voluntary assisted dying substance must attach a labeling statement in writing to the relevant package or container that—
  - (a) warns of the purpose of the dose of the voluntary assisted dying substance; and
  - (b) states the dangers of self administering the voluntary assisted dying substance; and
  - (c) states that the voluntary assisted dying substance must be stored in a locked box that satisfies the prescribed specifications; and

- (d) states that any unused or remaining voluntary assisted dying substance must be returned by the person to whom it was dispensed or the relevant contact person to a pharmacist at the dispensing pharmacy.
- (2) A labeling statement must be in the prescribed form.

### **77—Pharmacist to record and notify of voluntary assisted dying substance dispensed**

- (1) A pharmacist who dispenses a voluntary assisted dying substance must immediately record in a voluntary assisted dying substance dispensing form—
  - (a) that the voluntary assisted dying substance was dispensed; and
  - (b) that the requirements under sections 75 and 76 were satisfied.
- (2) The pharmacist must within 7 days after dispensing the voluntary assisted dying substance give a copy of the completed voluntary assisted dying substance dispensing form to the Board.

### **78—Secure storage of voluntary assisted dying substance**

The person in respect of whom a voluntary assisted dying substance has been dispensed must store the substance in a locked box that satisfies the prescribed specifications.

### **79—Pharmacist at dispensing pharmacy to dispose of returned voluntary assisted dying substance**

If a person who is the subject of a self administration permit or the contact person specified in the permit returns any of the dispensed voluntary assisted dying substance to a pharmacist at the dispensing pharmacy, the pharmacist must as soon as practicable dispose of it.

### **80—Pharmacist at dispensing pharmacy to record and notify of disposal of returned voluntary assisted dying substance**

- (1) A pharmacist at the dispensing pharmacy who disposes of a voluntary assisted dying substance under section 79 must immediately record that disposal in a voluntary assisted dying substance disposal form.
- (2) The pharmacist must within 7 days after disposing of the voluntary assisted dying substance give a copy of the completed voluntary assisted dying substance disposal form to the Board.

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

### **81—Person may make administration request**

- (1) A person may make an administration request, to the coordinating medical practitioner for the person, that the coordinating medical practitioner administer to the person the voluntary assisted dying substance specified in a practitioner administration permit, if—
  - (a) the person is the subject of the permit; and

- (b) the person has decision making capacity in relation to voluntary assisted dying; and
  - (c) the person's request to access voluntary assisted dying is enduring; and
  - (d) the person understands that the voluntary assisted dying substance is to be administered immediately after the making of the administration request.
- (2) The person must make the request personally.
  - (3) The person may make the request verbally or by gesture or other means of communication available to the person.
  - (4) An administration request must be made in the presence of a witness.
  - (5) The coordinating medical practitioner must refuse to accept the person's administration request if the coordinating medical practitioner is not satisfied of any matter under subsection (1).

### **82—Witness to administration request and administration of voluntary assisted dying substance**

- (1) For the purposes of section 64(b) and (c) and section 81(4), a witness to the making of an administration request and the administration of the voluntary assisted dying substance must be—
  - (a) aged 18 years or more; and
  - (b) independent of the coordinating medical practitioner for the person to whom the voluntary assisted dying substance is to be administered.
- (2) The witness who witnesses a person making an administration request and who witnesses the administration of the voluntary assisted dying substance must, in a coordinating medical practitioner administration form—
  - (a) certify in writing that—
    - (i) the person at the time of making the administration request appeared to have decision making capacity in relation to voluntary assisted dying; and
    - (ii) the person in requesting access to voluntary assisted dying appeared to be acting voluntarily and without coercion; and
    - (iii) the person's request to access voluntary assisted dying appeared to be enduring; and
  - (b) state that the coordinating medical practitioner administered the voluntary assisted dying substance to the person.

### **83—Certification by coordinating medical practitioner following administration of voluntary assisted dying substance**

- (1) The coordinating medical practitioner for a person who has administered the voluntary assisted dying substance to the person must, in the same coordinating medical practitioner administration form completed by the relevant witness, certify in writing that the practitioner is satisfied—
  - (a) the person was physically incapable of the self administration or digestion of the voluntary assisted dying substance; and

- (b) the person at the time of making the administration request had decision making capacity in relation to voluntary assisted dying; and
  - (c) the person in requesting access to voluntary assisted dying acted voluntarily and without coercion; and
  - (d) the person's request to access voluntary assisted dying was enduring.
- (2) The coordinating medical practitioner must within 7 days after administering a voluntary assisted dying substance to a person under a practitioner administration permit give the Board a copy of the coordinating medical practitioner administration form completed under subsection (1).

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

#### **84—Notification of disease, illness or medical condition of person to the Registrar and Coroner**

- (1) In addition to any other requirements under the *Births, Deaths and Marriages Registration Act 1996*, a registered medical practitioner who was responsible for a person's medical care immediately before death, or who examines the body of a deceased person after death and reasonably believes or knows the person was the subject of a voluntary assisted dying permit must notify the Registrar of—
- (a) the registered medical practitioner's reasonable belief or knowledge that the person—
    - (i) was the subject of a voluntary assisted dying permit and the voluntary assisted dying substance specified in the permit was not self administered by the person or administered to the person; or
    - (ii) was the subject of a self administration permit and accessed voluntary assisted dying by self administering the voluntary assisted dying substance specified in the permit; or
    - (iii) was the subject of a practitioner administration permit and accessed voluntary assisted dying by being administered the voluntary assisted dying substance specified in the permit; and
  - (b) the disease, illness or medical condition that was the grounds for the person to access voluntary assisted dying.
- (2) A registered medical practitioner who was responsible for a person's medical care immediately before death, or who examines the body of a deceased person after death and reasonably believes or knows the person was the subject of a voluntary assisted dying permit must notify the State Coroner of—
- (a) the registered medical practitioner's reasonable belief or knowledge that the person—
    - (i) was the subject of a voluntary assisted dying permit and the voluntary assisted dying substance specified in the permit was not self administered by the person or administered to the person; or
    - (ii) was the subject of a self administration permit and accessed voluntary assisted dying by self administering the voluntary assisted dying substance specified in the permit; or

- (iii) was the subject of a practitioner administration permit and accessed voluntary assisted dying by being administered the voluntary assisted dying substance specified in the permit; and
- (b) the disease, illness or medical condition that was the grounds for the person to access voluntary assisted dying.

## **Part 7—Review of decisions by South Australian Civil and Administrative Tribunal**

### **85—Review of decisions by South Australian Civil and Administrative Tribunal**

- (1) Subject to this section, the Tribunal is, by force of this section, conferred with jurisdiction to deal with matters consisting of the review of the following decisions (*reviewable decisions*):
  - (a) a decision of the coordinating medical practitioner for a person in a first assessment that the person—
    - (i) is or is not ordinarily resident in South Australia; or
    - (ii) was or was not ordinarily resident in South Australia for at least 12 months at the time of making a first request; or
    - (iii) has or does not have decision making capacity in relation to voluntary assisted dying;
  - (b) a decision of a consulting medical practitioner for a person in a consulting assessment that the person—
    - (i) is or is not ordinarily resident in South Australia; or
    - (ii) was or was not ordinarily resident in South Australia for at least 12 months at the time of making a first request; or
    - (iii) has or does not have decision making capacity in relation to voluntary assisted dying;
  - (c) a decision of the coordinating medical practitioner for a person under Part 5 Division 2 that the person has or does not have decision making capacity in relation to voluntary assisted dying;
  - (d) a decision of the coordinating medical practitioner for a person under section 81(5) that the person has or does not have decision making capacity in relation to voluntary assisted dying.
- (2) An application for review of a reviewable decision may be made to the Tribunal by—
  - (a) the person to whom the decision relates; or
  - (b) a person, or persons of a class, prescribed by the regulations for the purposes of this paragraph.
- (3) An application must be made within 28 days after the date of the reviewable decision (or such longer period as may be allowed by the Tribunal).

- (4) However, the Tribunal may only allow an extension of time under subsection (3) if satisfied that—
- (a) special circumstances exist; and
  - (b) another party will not be unreasonably disadvantaged because of the delay in commencing the proceedings.

### **86—Notice requirements**

If an application is made under section 85 for review of a decision in respect of a person, the Tribunal must give notice of the application and any order or determination (however described) of the Tribunal in respect of the application to—

- (a) the coordinating medical practitioner for the person; and
- (b) the Chief Executive; and
- (c) the Board.

### **87—No further action to be taken in relation to access to voluntary assisted dying if application to Tribunal in existence**

If an application has been made under section 85 for review of a decision in respect of a person—

- (a) if the request and assessment process in relation to the person has not been completed it is suspended for the period during which the application is in existence; and
- (b) the coordinating medical practitioner for the person must not apply for a voluntary assisted dying permit for the person while the application is in existence; and
- (c) any application for a voluntary assisted dying permit, for the person is suspended for the period during which the application is in existence; and
- (d) any voluntary assisted dying permit that the person is the subject of is suspended for the period during which the application is in existence, other than the following authorisations in respect of a self administration permit:
  - (i) an authorisation under section 63(b) to possess or store the voluntary assisted dying substance;
  - (ii) an authorisation under section 63(c) or (d).

### **88—Application to Tribunal for review taken to be withdrawn in certain circumstances**

An application for the review of a decision under section 85 is taken to be withdrawn if the person who is the subject of the decision has died.



## 89—Coordinating medical practitioner or consulting medical practitioner may refuse to continue process

- (1) The coordinating medical practitioner for a person may refuse to resume any first assessment in relation to the person or to continue to perform the role of coordinating medical practitioner or if—
  - (a) an application under section 85 was made for review of a decision of the coordinating medical practitioner that the person did not have decision making capacity in relation to voluntary assisted dying; and
  - (b) the Tribunal determines that the person had decision making capacity.
- (2) A consulting medical practitioner for a person may refuse to resume any consulting assessment that was not completed in relation to the person before the application was made if—
  - (a) an application under section 85 was made for review of a decision of the consulting medical practitioner that the person did not have decision making capacity in relation to voluntary assisted dying; and
  - (b) the Tribunal determines that the person had decision making capacity.
- (3) A coordinating medical practitioner who refuses under subsection (1) to continue to perform the role of coordinating medical practitioner must transfer the role of coordinating medical practitioner in accordance with section 51.
- (4) If a consulting medical practitioner refuses under subsection (2) to resume a consulting assessment, the coordinating medical practitioner for the person may refer the person to another registered medical practitioner for a further consulting assessment.

## Part 8—Notifications and protections from liability

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

#### 90—Mandatory notification by registered health practitioner

- (1) A registered health practitioner (the *first health practitioner*) must notify the Australian Health Practitioner Regulation Agency as soon as practicable after forming a belief on reasonable grounds that another registered health practitioner (the *second health practitioner*)—
  - (a) who provides health services or professional care services to a person is—
    - (i) in the course of providing those services to the person, initiating a discussion or attempting to initiate a discussion with that person that is in substance about voluntary assisted dying that is not, or would not be, in accordance with this Act; or
    - (ii) in substance, suggesting or attempting to suggest voluntary assisted dying to the person that is not, or would not be, in accordance with this Act; or

- (b) is offering to provide or attempting to provide access to voluntary assisted dying in a manner that is not, or would not be, in accordance with this Act.
- (2) A failure by a first health practitioner to notify the Australian Health Practitioner Regulation Agency as required under subsection (1) is to be regarded as unprofessional conduct within the meaning and for the purposes of the *Health Practitioner Regulation National Law*.

### **91—Mandatory notification by employer**

- (1) An employer of a registered health practitioner must notify the Australian Health Practitioner Regulation Agency as soon as practicable after forming a belief on reasonable grounds that the registered health practitioner—
  - (a) who provides health services or professional care services to a person is—
    - (i) in the course of providing those services to the person, initiating a discussion or attempting to initiate a discussion with that person that is in substance about voluntary assisted dying that is not, or would not be, in accordance with this Act; or
    - (ii) in substance, suggesting or attempting to suggest voluntary assisted dying to the person that is not, or would not be, in accordance with this Act; or
  - (b) is offering to provide or attempting to provide access to voluntary assisted dying in a manner that is not, or would not be, in accordance with this Act.
- (2) In this section—

**employer** of a registered health practitioner means an entity that employs the registered health practitioner under a contract of employment or a contract for services.

### **92—Voluntary notification by persons**

A person may notify the Australian Health Practitioner Regulation Agency of the person's belief on reasonable grounds that a registered health practitioner—

- (a) who provides health services or professional care services to a person is—
  - (i) in the course of providing those services to the person, initiating a discussion or attempting to initiate a discussion with that person that is in substance about voluntary assisted dying that is not, or would not be, in accordance with this Act; or
  - (ii) in substance, suggesting or attempting to suggest voluntary assisted dying to the person that is not, or would not be, in accordance with this Act; or
- (b) is offering to provide or attempting to provide access to voluntary assisted dying in a manner that is not, or would not be, in accordance with this Act.

### **93—Protection from liability for persons making notifications**

- (1) A person who in good faith makes a notification under this Division is not personally liable for any loss, damage or injury suffered by another person merely because of the making of the notification.

- (2) Without limiting subsection (1)—
- (a) the making of the notification or the giving of any information included in the notification does not constitute a contravention of professional etiquette or ethics or a departure from accepted standards of professional conduct; and
  - (b) no liability for defamation is incurred by the person because of the making of the notification or the giving of the information.

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

### **94—Protection from criminal liability of person who assists or facilitates request for or access to voluntary assisted dying**

A person who in good faith does something or fails to do something—

- (a) that assists or facilitates any other person who the person believes on reasonable grounds is requesting access to or is accessing voluntary assisted dying in accordance with this Act; and
- (b) that apart from this section, would constitute an offence under any other Act or law,

does not commit the offence.

### **95—No liability for registered health practitioner who acts in accordance with this Act**

A registered health practitioner who, in good faith and without negligence, acts under this Act believing on reasonable grounds that the act is in accordance with this Act is not in respect of that act—

- (a) guilty of an offence; or
- (b) liable for unprofessional conduct or professional misconduct; or
- (c) liable in any civil proceeding; or
- (d) liable for contravention of any code of conduct.

### **96—No liability for registered health practitioner or ambulance paramedic present after person administered voluntary assisted dying substance**

- (1) A registered health practitioner, or a person providing an ambulance service (within the meaning of the *Health Care Act 2008*), who, in good faith, does not administer life saving or life sustaining medical treatment to a person who has not requested it, and believes on reasonable grounds that the person is dying after being administered or self administering a voluntary assisted dying substance in accordance with this Act, is not, in respect of that omission to act—
- (a) guilty of an offence; or
  - (b) liable for unprofessional conduct or professional misconduct; or
  - (c) liable in any civil proceeding; or
  - (d) liable for contravention of any code of conduct.

## **Voluntary Assisted Dying Act 2021—31.1.2023**

### **Part 8—Notifications and protections from liability**

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

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- (2) This section does not prevent a registered health practitioner or a person providing an ambulance service from providing medical treatment for the purpose of ensuring the person's comfort.

### **97—Certain provisions of *Criminal Law Consolidation Act 1935* not to apply**

Section 13A(2) and (5) of the *Criminal Law Consolidation Act 1935* do not apply in relation to voluntary assisted dying occurring in accordance with this Act.

## **Part 9—Offences**

### **98—Offence not to comply with practitioner administration permit**

A coordinating medical practitioner must not administer to a person who is the subject of a practitioner administration permit a voluntary assisted dying substance specified in that permit, if the coordinating medical practitioner—

- (a) intends to cause the person's death by administering the voluntary assisted dying substance; and
- (b) knowingly administers the voluntary assisted dying substance other than as authorised by, and in accordance with, that permit.

Maximum penalty: Imprisonment for life.

#### **Note—**

See section 64 for the authorisation of a coordinating medical practitioner by a practitioner administration permit.

### **99—Offence for person to administer voluntary assisted dying substance to another person—self administration permit**

A person must not knowingly administer to another person a voluntary assisted dying substance dispensed in accordance with a self administration permit.

Maximum penalty: Imprisonment for life.

### **100—Offence to induce another person to request voluntary assisted dying**

- (1) A person must not, by dishonesty or undue influence, induce another person to make a request for access to voluntary assisted dying.

Maximum penalty: Imprisonment for 5 years.

- (2) In this section—

*request* means—

- (a) a first request; or
- (b) a written declaration; or
- (c) a final request; or
- (d) an administration request.

### **101—Offence to induce self administration of a voluntary assisted dying substance**

A person must not, by dishonesty or undue influence, induce another person to self administer a voluntary assisted dying substance dispensed in accordance with a self administration permit.

Maximum penalty: Imprisonment for 5 years.

### **102—Offence to falsify form or record**

- (1) A person must not falsify a form or record required to be made under this Act.

Maximum penalty: Imprisonment for 5 years.

- (2) In this section—

*form* or *record* means—

- (a) a first assessment report form; or
- (b) a consulting assessment report form; or
- (c) a written declaration; or
- (d) a contact person appointment form; or
- (e) a final review form; or
- (f) a voluntary assisted dying substance dispensing form; or
- (g) a voluntary assisted dying substance disposal form; or
- (h) a coordinating medical practitioner administration form.

### **103—Offence to make a false statement**

- (1) A person must not knowingly make a statement in a report or form in respect of another person who requests access to voluntary assisted dying that the person knows is false or misleading in a material particular.

Maximum penalty: Imprisonment for 5 years.

- (2) In this section—

*report* or *form* means—

- (a) a first assessment report form; or
- (b) a consulting assessment report form; or
- (c) a written declaration; or
- (d) a contact person appointment form; or
- (e) a final review form; or
- (f) an application for a self administration permit under section 65; or
- (g) an application for a practitioner administration permit under section 66; or
- (h) a statement made under section 65(2)(f); or
- (i) a statement made under section 66(2)(f); or
- (j) a voluntary assisted dying substance dispensing form; or

- (k) a voluntary assisted dying substance disposal form; or
- (l) a coordinating medical practitioner administration form.

**104—Offence for contact person to fail to return unused or remaining voluntary assisted dying substance after death of person who is the subject of a self administration permit**

The contact person for a person who is the subject of a self administration permit must not fail to return to a pharmacist at the dispensing pharmacy, within 15 days after the date of death of the person, any voluntary assisted dying substance specified in the permit, and dispensed to the person, that the contact person knows is unused or remaining after the death.

Maximum penalty: Imprisonment for 12 months.

**105—Offence to fail to give copies of forms to the Board**

- (1) A person who is required in accordance with this Act to give a copy of a form to the Board must give that copy to the Board in accordance with this Act.

Maximum penalty: \$10 000.

- (2) In this section—

*form* means—

- (a) a first assessment report form; or
- (b) a consulting assessment report form; or
- (c) a final review form; or
- (d) a voluntary assisted dying substance dispensing form; or
- (e) a voluntary assisted dying substance disposal form; or
- (f) a coordinating medical practitioner administration form.

**106—Criminal liability of officers of body corporate—failure to exercise due diligence**

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.
- (2) For the purposes of subsection (1), the following provisions are specified:
  - (a) section 100;
  - (b) section 101;
  - (c) section 102;
  - (d) section 103;
  - (e) section 105.

- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to—
  - (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
  - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
  - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
  - (d) any other relevant matter.
- (4) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (5) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.
- (6) In this section—

**body corporate** has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

**officer** in relation to a body corporate means—

  - (a) a person who is an officer (within the meaning of the *Corporations Act 2001* of the Commonwealth) of the body corporate; or
  - (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

## Part 10—Voluntary Assisted Dying Review Board

### Division 1—Voluntary Assisted Dying Review Board

#### 107—Establishment of Voluntary Assisted Dying Review Board

- (1) The Voluntary Assisted Dying Review Board is established.
- (2) The Board consists of members appointed by the Minister, being persons who collectively have, in the opinion of the Minister, the knowledge, skills and experience necessary to enable the Board to carry out its functions effectively.
- (3) The Minister must, before appointing a member to the Board, call for expressions of interest under a scheme determined by the Minister for the purposes of this section.
- (4) The Minister may appoint a person to be the deputy of a member of the Board.
- (5) A deputy may act as a member of the Board during any period of absence of the member in relation to whom the deputy has been appointed.

### **108—Terms and conditions of membership**

- (1) Subject to this section, a member of the Board will hold office on conditions, and for a term (not exceeding 3 years), determined by the Minister and specified in the instrument of appointment and is, at the expiration of a term of office, eligible for reappointment.
- (2) A member of the Board (not being a member who is a member of the Public Service) is entitled to receive remuneration, fees and expenses determined by the Minister.
- (3) The office of a member becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) is convicted of—
    - (i) an indictable offence against the law of this State; or
    - (ii) an offence against the law of this State that is punishable by imprisonment for a term of at least 12 months; or
    - (iii) an offence against the law of another jurisdiction that, if committed in this State, would be an offence of a kind referred to in a preceding paragraph; or
  - (e) is sentenced to imprisonment for an offence (whether against a law of this State or another jurisdiction); or
  - (f) is removed from office by the Minister under subsection (4).
- (4) The Minister may remove a member from office—
  - (a) for misconduct or conduct that may bring the Board into disrepute; or
  - (b) for breach of, or non-compliance with, a condition of appointment; or
  - (c) if the member has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or
  - (d) if the member has been disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or
  - (e) if the member has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily; or
  - (f) for incompetence or neglecting the duties of the position; or
  - (g) any other reason the Minister thinks fit.
- (5) An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

### **109—Presiding member and deputy presiding member**

The Minister must appoint 1 of the members of the Board to be the presiding member of the Board and 1 to be the deputy presiding member.



### **110—Board's procedures**

- (1) Subject to this Act, a quorum of the Board consists of one half the total number of its members (ignoring any fraction resulting from the division) plus 1.
- (2) The Board must meet at least 6 times in any calendar year.
- (3) The presiding member will preside at a meeting of the Board and, in the absence of that person, or, in that member's absence, by the deputy presiding member and, in the absence of both the presiding member and the deputy presiding member, the members present at a meeting of the Board must choose 1 of their number to preside at the meeting.
- (4) A decision carried by a majority of the votes cast by members of the Board at a meeting is a decision of the Board.
- (5) Each member present at a meeting of the Board has 1 vote on any question arising for decision (but, to avoid doubt, the member presiding at the meeting does not have a casting vote if the votes are equal).
- (6) The Board must have accurate minutes kept of its meetings.
- (7) Subject to this Act and any direction of the Minister, the Board may determine its own procedures.

### **111—Committees**

- (1) The Board may establish committees—
  - (a) to advise the Board; or
  - (b) to carry out functions on behalf of the Board.
- (2) The membership of a committee will be determined by the Board and may, but need not, consist of, or include, members of the Board.
- (3) The Board will determine who will be the presiding member of a committee.
- (4) The procedures to be observed in relation to the conduct of the business of a committee will be—
  - (a) as determined by the Board; and
  - (b) insofar as a procedure is not determined under paragraph (a)—as determined by the committee.

### **112—Use of staff etc of Public Service**

The Board may, under an arrangement established by the Minister administering an administrative unit of the Public Service, make use of the staff, equipment or facilities of that administrative unit.

### **113—Functions and powers of the Board**

- (1) The Board has the following functions:
  - (a) to monitor matters related to voluntary assisted dying;
  - (b) to review the exercise of any function or power under this Act;
  - (c) to provide reports to Parliament on the operation of this Act and any recommendations for the improvement of voluntary assisted dying;

- (d) to promote compliance with the requirements of this Act by the provision of information in respect of voluntary assisted dying to registered health practitioners and members of the community;
  - (e) to refer any issue identified by the Board in relation to voluntary assisted dying that is relevant to the following persons or bodies:
    - (i) the Commissioner of Police;
    - (ii) the Registrar;
    - (iii) the Chief Executive;
    - (iv) the State Coroner;
    - (v) the Australian Health Practitioner Regulation Agency;
  - (f) to promote continuous improvement in the quality and safety of voluntary assisted dying to those who exercise any function or power under this Act;
  - (g) to conduct analysis of, and carry out research in relation to, information or forms given to the Board in accordance with this Act;
  - (h) to provide information about voluntary assisted dying, and other matters identified by the Board in the performance of a function under this Act;
  - (i) to collect, use and disclose forms and information provided in accordance with this Act for the purposes of carrying out a function of the Board;
  - (j) to consult and engage with any of the following persons and groups in relation to voluntary assisted dying—
    - (i) the South Australian community;
    - (ii) relevant groups or organisations;
    - (iii) government departments and agencies;
    - (iv) registered health practitioners who provide voluntary assisted dying services;
  - (k) to provide advice to the Minister or the Chief Executive in relation to the operation of this Act;
  - (l) to provide reports to the Minister or the Chief Executive in respect of any matter relevant to the functions of the Board as requested.
- (2) The Board has all the powers that are necessary or convenient to perform its functions under this Act.

### **114—Delegation**

- (1) The Board may delegate a function or power under this Act (other than a prescribed function or power)—
  - (a) to a member of the Board; or
  - (b) to a committee established by the Board; or
  - (c) to a specified body or person (including a person for the time being holding or acting in a specified office or position).

- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the ability of the Board to act in any matter; and
  - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

### **115—Board may seek external advice**

- (1) Despite any other Act or law, the Board may, in relation to any decision or determination under this Act, seek such medical, legal or other professional advice as it thinks necessary or appropriate to make the decision or determination.
- (2) Without limiting the generality of subsection (1), the regulations may provide for the establishment of an advisory panel to advise or assist the Board in the performance of its functions under this Act.

## **Division 2—Request for information, referral of identifying information held by the Board and notifications**

### **116—Request for information by the Board**

The Board may request that any person (including a contact person) give information to the Board to assist the Board in carrying out any of the Board's functions.

### **117—Referral of identifying information to others**

- (1) Subject to subsection (2), the Board may use and disclose any identifying information obtained as a result of the Board performing a function or exercising a power of the Board for the purpose of referring a matter to the following:
  - (a) the Commissioner of Police;
  - (b) the Registrar;
  - (c) the Chief Executive;
  - (d) the State Coroner;
  - (e) the Australian Health Practitioner Regulation Agency.
- (2) The Board must not refer a matter under subsection (1) unless the Board reasonably believes the identifying information discloses a matter that is relevant to the functions and powers of that person or body.

### **118—Board to notify registered medical practitioner, pharmacist or Chief Executive on receipt of certain forms**

- (1) The Board must as soon as practicable after receiving a copy of any of the following forms from a registered medical practitioner or a pharmacist (as the case requires), notify the registered medical practitioner or the pharmacist that the copy has been received:
  - (a) a first assessment report form;

- (b) a consulting assessment report form;
  - (c) a final review form;
  - (d) a voluntary assisted dying substance dispensing form;
  - (e) a voluntary assisted dying substance disposal form;
  - (f) a coordinating medical practitioner administration form.
- (2) The Board must as soon as practicable after receiving a copy of a completed voluntary assisted dying substance disposal form give a copy of that form to the Chief Executive.

### **119—Board to provide information to the contact person after the notification of the person's death**

The Board must within 7 days of being notified by the Registrar of the registration of a person's death in accordance with the *Births, Deaths and Marriages Registration Act 1996* provide information to the contact person for the person that—

- (a) sets out the requirement under section 63(c) to return any unused or remaining voluntary assisted dying substance to a pharmacist at the dispensing pharmacy; and
- (b) outlines the support services available to assist the contact person with the performance of the requirement referred to in paragraph (a).

## **Division 3—Reports and statistical information**

### **120—Annual report**

- (1) The Board must, on or before 31 October in each year, report to the Minister on the performance of the Board's functions during the preceding financial year.
- (2) The Minister must, within 6 sitting days after receiving a report from the Board, have copies of the report laid before both Houses of Parliament.

### **121—Report of the Board on request of the Minister or Chief Executive**

The Minister or the Chief Executive may request the Board to consider and report on a matter relevant to the functions of the Board.

### **122—Board may provide other reports**

- (1) The Board may prepare and provide to the Minister, or to another Minister responsible for a particular area, reports on matters related to voluntary assisted dying.
- (2) The Minister to whom a report is provided under subsection (1) must, within 6 sitting days after receiving the report, cause a copy of the report to be laid before both Houses of Parliament.
- (3) The Board may, once a report under this section has been laid before each House of Parliament and after consultation with the Minister, publish all or part of the report as the Board thinks fit.

### **123—Contents of reports**

- (1) Subject to subsection (2), the Board may include any de-identified information of a person, who has during the relevant reporting period accessed or requested access to voluntary assisted dying under this Act, in a report under this Part.
- (2) The Board must not include in a report under this Division any information (including de-identified information) that the Board considers would prejudice—
  - (a) any criminal proceeding or criminal investigation; or
  - (b) any civil proceeding; or
  - (c) any proceeding in the Coroner's Court.

### **124—Board to record, retain and make public statistical information**

- (1) The Board must record and retain statistical information about—
  - (a) persons who have been issued with a voluntary assisted dying permit; and
  - (b) persons who have died after being administered or self administering a voluntary assisted dying substance in accordance with this Act.
- (2) The following statistical information must be recorded and retained in respect of the persons referred to in subsection (1):
  - (a) the disease, illness or medical condition of the person that met the requirements of the eligibility criteria;
  - (b) if the person has died after being administered or self administering a voluntary assisted dying substance in accordance with this Act—the age of the person at the date of the person's death.
- (3) The Board must make the statistical information recorded and retained publicly available in a de-identified form on website determined by the Board.

## **Part 11—Miscellaneous**

### **125—Confidentiality**

A person must not, directly or indirectly, disclose information obtained in the course of the administration or operation of this Act except—

- (a) for the purposes of the administration or enforcement of this Act; or
- (b) for the purposes of referring the matter to a law enforcement, or a regulatory agency or person exercising official duties in relation to a health profession or otherwise related to the operation of this Act; or
- (c) for the purposes of a criminal proceeding or a proceeding for the imposition of a penalty; or
- (d) if the disclosure is reasonably necessary for the protection of the lawful interests of that person; or
- (e) as is otherwise required or authorised by or under this or any other Act.

Maximum penalty: \$20 000.

## 126—Victimisation

- (1) A person who causes detriment to another on the ground, or substantially on the ground, that the other person or a third person has provided, or intends to provide, information under this Act commits an act of victimisation.
- (2) Causing detriment on the ground that a person—
  - (a) has made a false allegation; or
  - (b) has not acted in good faith,does not constitute an act of victimisation.
- (3) An act of victimisation under this Act may be dealt with—
  - (a) as a tort; or
  - (b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*,  
but, if the victim commences proceedings in a court seeking a remedy in tort, the victim cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, the victim cannot subsequently commence proceedings in a court seeking a remedy in tort.
- (4) If a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.
- (5) In proceedings against a person seeking a remedy in tort for an act of victimisation committed by an employee or agent of the person, it is a defence to prove that the person exercised all reasonable diligence to ensure that the employee or agent would not commit an act of victimisation.
- (6) A person who personally commits an act of victimisation under this Act is guilty of an offence.  
Maximum penalty: \$20 000.
- (7) Proceedings for an offence against subsection (6) may only be commenced by a police officer or a person approved by either the Commissioner of Police or the Director of Public Prosecutions.
- (8) In this section—

**detriment** includes—

  - (a) injury, damage or loss; or
  - (b) intimidation or harassment; or
  - (c) discrimination, disadvantage or adverse treatment in relation to a person's employment; or
  - (d) threats of reprisal.

## 127—Service

Except where this Act requires otherwise, a notice or other document required or authorised to be given to or served on a person under this Act may—

- (a) be given to the person personally; or
- (b) be left for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
- (c) be posted to the person at the person's last known place of residence or business; or
- (d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or other document will be taken to have been given or served at the time of transmission); or
- (e) if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served in accordance with that Act.

## 128—Minister to report annually on palliative care spending

- (1) The Minister must, on or before 31 December in each year, cause a report to be prepared and provided to the Minister setting out—
  - (a) the total amount spent by South Australians on palliative care during the financial year ending on 30 June of that year (determined by reference to data provided by the Independent Hospital Pricing Authority established under the *National Health Reform Act 2011* of the Commonwealth); and
  - (b) the aggregated amounts spent by South Australians on palliative care during the preceding 5 financial years; and
  - (c) the variation in—
    - (i) the total amount spent by South Australians on palliative care during the year to which the report relates compared with the immediately preceding financial year; and
    - (ii) the aggregated amounts spent by South Australians on palliative care during the 5 financial years immediately preceding the year to which the report relates compared with the corresponding amount reported in the most recent previous report,  
expressed both in terms of an amount of money spent and as a percentage increase or decrease in the amount spent during the relevant periods; and
  - (d) any other information required by the regulations,and must, within 6 sitting days after receiving the report, have copies of the report laid before both Houses of Parliament.
- (2) If the variation referred to in subsection (1)(c)(ii) indicates a reduction in the amount spent by South Australians on palliative care from the corresponding amount reported in the most recent previous report, the Minister must cause a review of the operation of this Act to be conducted and a report of the review prepared and submitted to the Minister.

- (3) A review and report under subsection (2) must be completed not later than 3 months after the Minister becomes aware of the variation.
- (4) The Minister must cause a copy of a report submitted under subsection (2) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.
- (5) This section is in addition to, and does not derogate from, a provision of any other Act or law that requires or authorises the Minister to report to Parliament.

### 129—Review of Act

- (1) The Minister must cause a review of the operation of this Act to be conducted and a report on the review to be prepared and submitted to the Minister.
- (2) The review and the report must be completed after the fourth, but before the fifth, anniversary of the commencement of this Act.
- (3) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

### 130—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may provide for—
  - (a) the exemption of a person, or a class of persons, from the operation of a specified provision or provisions of this Act; and
  - (b) fees or charges in respect of any matter under this Act and their payment, recovery or waiver; and
  - (c) fines, not exceeding \$10 000, for offences against the regulations; and
  - (d) facilitation of proof of the commission of offences against the regulations.
- (3) The regulations may—
  - (a) be of general or limited application; and
  - (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
  - (c) make provisions of a saving or transitional nature; and
  - (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister, the Chief Executive or any other specified person or body; and
  - (e) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another specified person or body.
- (4) If a code, standard or other document is referred to or incorporated in the regulations—
  - (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and



- (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

## **Schedule 1—Related amendments and transitional provisions etc**

### **Part 1—Preliminary**

#### **1—Amendment provisions**

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### **Part 2—Amendment of *Advance Care Directives Act 2013***

#### **2—Insertion of section 7A**

After section 7 insert:

##### **7A—Interaction with Voluntary Assisted Dying Act**

Except where expressly provided for, this Act does not apply in relation to medical treatment or other services consisting of, or given in the course of, the administration of a voluntary assisted dying substance, or any other medical treatment or other service relating to voluntary assisted dying, under the *Voluntary Assisted Dying Act 2021*.

#### **3—Amendment of section 12—Provisions that cannot be included in advance care directives**

- (1) Section 12(1)(a)(i) and (ii)—delete subparagraphs (i) and (ii) and substitute:
- (i) that is unlawful, or that would require an unlawful act to be performed; or
- (2) Section 12—after subsection (1) insert:
- (1a) An advance care directive cannot constitute a request for voluntary assisted dying (however described), however nothing in this subsection prevents a person from expressing their preferences or wishes in relation to voluntary assisted dying in an advance care directive.

#### **4—Amendment of section 23—Powers of substitute decision maker**

Section 23—after subsection (4) insert:

- (5) Despite any provision of an advance care directive to the contrary, an advance care directive does not authorise a substitute decision-maker to make a decision, or to otherwise act in a manner, that is inconsistent with a request for voluntary assisted dying made by the person who gave the advance care directive.

## **Part 3—Amendment of *Consent to Medical Treatment and Palliative Care Act 1995***

### **5—Insertion of section 4C**

After section 4B insert:

#### **4C—Interaction with Voluntary Assisted Dying Act**

This Act does not apply in relation to medical treatment consisting of, or given in the course of, the administration of a voluntary assisted dying substance, or any other medical treatment relating to voluntary assisted dying, under the *Voluntary Assisted Dying Act 2021*.

## **Part 4—Amendment of *Coroners Act 2003***

### **6—Amendment of section 3—Interpretation**

Section 3(1), definition of *reportable death*—after paragraph (e) insert:

- (ea) that occurs as a result of the administration of a voluntary assisted dying substance to the person in accordance with the *Voluntary Assisted Dying Act 2021*; or

## **Part 5—Amendment of *Criminal Law Consolidation Act 1935***

### **7—Amendment of section 13A—Criminal liability in relation to suicide**

Section 13A—after subsection (11) insert:

- (12) To avoid doubt, the death of a person by the administration of a voluntary assisted dying substance in accordance with the *Voluntary Assisted Dying Act 2021* does not constitute suicide.

**Note—**

See section 5 of the *Voluntary Assisted Dying Act 2021*.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act

Year	No	Title	Assent	Commencement
2021	29	<i>Voluntary Assisted Dying Act 2021</i>	1.7.2021	1.9.2022 except s 130—29.9.2022 and except ss 4 to 106, 110(1) to (6), 111, 113 to 129 & Sch 1—31.1.2023 ( <i>Gazette 11.8.2022 p2489</i> as amended by <i>Gazette 29.9.2022 p6256</i> )