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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

VOLUNTARY ASSISTED DYING BILL 2023

SUPPLEMENTARY EXPLANATORY STATEMENT

**Presented by
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VOLUNTARY ASSISTED DYING BILL 2023

This explanatory statement relates to the Voluntary Assisted Dying Bill 2023 (**the Bill**) – Government Amendments as presented to the ACT Legislative Assembly.

This Supplementary Explanatory Statement outlines the Government Amendments to be made to the Bill. It is to be read in conjunction with the Government Amendments. It is not a complete description but provides information about the intent of the provisions in the Government Amendments.

It has been prepared to assist the reader. It does not form part of the Government Amendments, has not been endorsed by the Legislative Assembly and is not to be taken as providing a definitive interpretation of the meaning of a provision.

BACKGROUND

On 31 October 2023, the Minister for Human Rights introduced the Voluntary Assisted Dying Bill 2023 (**Bill**) into the Legislative Assembly. The Bill proposes to change the law to ensure that, in defined circumstances and with strong safeguards, it is lawful for an authorised health practitioner to assist an eligible individual to access an approved substance through the additional end of life choice of voluntary assisted dying (**VAD**).

VAD refers to a medical process that gives an eligible individual the option to end their suffering by choosing to die through the administration of an approved substance. VAD is not a choice between life or death, it is an additional choice that can be made by an eligible individual about the circumstances of their death.

On 31 October 2023, the Legislative Assembly established the Select Committee on the VAD Bill (**Select Committee**) and referred the Bill to the Select Committee for inquiry.

The Select Committee inquiry received 83 written submissions, and heard evidence over four days from 56 witnesses. The Committee released its report on 29 February 2024 (**Select Committee Report**). The Select Committee Report made 27 recommendations, which have informed the Government's amendments to the Bill.

OVERVIEW OF GOVERNMENT AMENDMENTS

The Government Amendments amend the Bill as follows:

- a. Revise the commencement date for the Bill to 3 November 2025;

- b. Revise the definition of 'advanced';
- c. Revise the definition of 'disability';
- d. Replace 'working day' with business day' and change some reporting timeframes from 2 to 4 days;
- e. Revise the point at which information must be given by a coordinating and consulting practitioner;
- f. Clarify that a witness is required to be present for practitioner administration;
- g. Allow for a courier to deliver the VAD substance, with strict requirements to be set by regulations and the creation of an offence for not complying with these requirements;
- h. Create offences for improper delivery, supply, and storage of approved substances;
- i. Redraft and clarify the requirements in relation to the supply and disposal of approved VAD substances;
- j. Include a timeframe for giving approved substances to approved disposer;
- k. Clarify that a doctor must be either the coordinating practitioner or the consulting practitioner for an individual;
- l. Clarify that only a medical practitioner, nurse practitioner or registered nurse may apply for authorisation under the Act;
- m. Clarify the scope of the conscientious objection obligations;
- n. Clarify the meaning of counsellors and social workers;
- o. Revise Part 7 to clarify requirements for care facilities;
- p. Clarify the interaction between the *Medicines, Poisons and Therapeutic Goods (MPTG) Act 2008* (ACT) and the offence for unauthorised administration of approved substance;
- q. Add health care consumer representation or advocacy and disability and/or carer representation or advocacy to relevant areas for Board membership;
- r. Broaden the scope of enforcement matters for medicines and poisons inspectors;
- s. Insert an explicit provision for Board to use or share protected information;
- t. Clarify that nothing in the Bill prevents the making of a corruption complaint, any other referral under a law applying in the ACT or the making of any other complaint under a law applying in the ACT.
- u. Amend the timeframe for making an application to the ACT Civil and Administrative Tribunal (ACAT) for review of reviewable decision;
- v. Clarify consequential amendments to *Coroners Act 1997*;

- w. List the definition of 'advanced' as one of the matters to be included in the review of the Act;
- x. Remove unnecessary clauses related to protection from liability from authorised participation in VAD; and
- y. Make a number of minor, consequential and technical amendments to the Bill

CONSULTATION ON THE PROPOSED APPROACH

Significant consultation was undertaken with the public, key stakeholders, subject matter experts, and other Australian jurisdictions including through the YourSay website. Throughout the project feedback has been sought from a range of stakeholders including ACT Policing, ACT Human Rights Commission, ACT Courts and Tribunal, ACT Corrective Services, Access Canberra, Capital Health Network, ACT Law Society, ACT Bar Association, Aboriginal Legal Service NSW/ACT, Legal Aid ACT, the Aged and Community Care Providers Association, ACT Disability, Aged and Carer Advocacy Service, Australia, Health Care Consumers' Association, Carers ACT and Women With Disabilities ACT.

The Government has carefully considered each submission to the Committee. Further targeted consultation has been undertaken with the ACT Human Rights Commission, ACT Courts and Tribunal, ACT Health, Canberra Health Services, Marshall Perron, Doctors for Assisted Dying Choice, Professors White and Willmott, Dr Michael Chapman/VAD Australia and New Zealand, the Clem Jones Group, and Go Gentle Australia.

CONSISTENCY WITH HUMAN RIGHTS

A discussion of the human rights engaged, promoted and limited by the Bill can be found in the revised explanatory statement for the Bill.

During the development of the Government Amendments, due regard was given to their compatibility with human rights as set out in the *Human Rights Act 2004 (ACT) (HRA)*.

An assessment of the Government amendments against section 28 of the HRA is provided below. Section 28 provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

The Bill engages section 22 of the HRA - Rights in criminal proceedings and limits section 12 of the HRA - Right to privacy and reputation.

Rights engaged

Rights in criminal proceedings – Elements of offences to be prescribed by regulation

Clause 60 (4), 60 (6) and 69 establish offence provisions where:

- a supplier supplies an approved VAD substance to a person using another person who is not a courier, and the use of a courier is not in the circumstances prescribed by regulation;
- a courier does not comply with any requirements prescribed by regulation when receiving, possessing or delivering a VAD substance; and
- a person who possesses an approved VAD substance must store the substance in accordance with any storage requirements prescribed by regulation.

A maximum penalty of 20 penalty units applies to these offences.

All three of these offences allow for elements of the offence to be prescribed by regulation. This is necessary as the requirements for the safe storage and delivery of the VAD substance may differ significantly depending on the type of substance(s) approved for VAD, the operational mechanisms for implementing the supply of the substance and, the circumstances in which the relevant individual is dealing with or storing the substance. These operational matters may change over time, requiring new methods of storage or safeguards for possession and delivery to be prescribed. Setting these requirements in the Act rather than through regulations would not provide the required flexibility.

Additionally, in order to safeguard against an excessive delegation of rule making power, clauses 60(4), 60(6) and 69 each provide that the maximum penalty that can be attached to these provisions, which are in part prescribed by regulation, is 20 penalty units. This is within the normal range of these types of offences and is in accordance with the Guide to Framing Offences 2005, lending to the proportionality of this provision.

Whilst the circumstances of these offences may be prescribed by regulation, any regulations created will still be subject to the Legislative Assembly scrutiny process and can be disallowed by the Legislative Assembly. An explanatory statement giving consideration to the human rights implications must accompany any changes to regulations, and under section 38 of the Human Rights Act 2005 this will be subject to a report about human rights issues by the relevant Assembly committee. This will ensure that the need for regulatory responses in relation to the supply of the substance via courier, and the storage requirements for the substance are responsive to challenges as they arise and are balanced appropriately with the need to ensure appropriate scrutiny and accountability.

All persons receiving, possessing or delivering a VAD substance will be advised in detail on their legislative obligations when they are provided the substance.

Rights limited

Right to Privacy – Use and Divulge protected and personal information

1. Nature of the right and the limitation (s28 (a) and (c))

Section 12 of the HRA provides that a person has the right not have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

The government amendments engage the right to privacy and reputation as amendments to:

- clause 114(2A) of the Bill explicitly provides for the Board to use or share information with a relevant entity where it has referred a matter to that entity under clause 114(c) ; and
- clause 80 of the Bill allow information held in the register to be shared by the Director-General with the VAD Board or a medicines and poisons inspector.

2. Legitimate purpose (s28 (b))

The purpose of introducing VAD is to promote the human rights of individuals who are suffering and dying by enabling an eligible individual to both ‘enjoy a life with dignity’ and ‘die with dignity’, and by providing choices for a person about the circumstances of their death.

VAD aims to provide a safe, effective, and accessible process where an eligible individual chooses to access VAD in the ACT. The Bill seeks to strike the right balance between the fundamental value of human life and the values of individual autonomy in order to reduce suffering.

The purpose of the provisions in relation to information sharing under clause 114(2A) is to ensure that the power at clause 114 to refer a complaint will be effective in light of the protections at clause 157. The purpose of the information sharing at clause 80 is to ensure there is a mechanism whereby information from the register can be shared by relevant entities who each have overlapping functions in relation to ensuring oversight of the scheme.

3. Rational connection between the limitation and the purpose (s28 (d))

The Bill requires the collection of information as a rational means of achieving its legitimate purpose.

The collection of personal information ensures that vulnerable individuals are protected from coercion and exploitation through appropriate monitoring and enforcement of compliance with VAD legislation. These requirements promote and ensure compliance with the legal framework and accurate record keeping.

Without access to personal information, the VAD Board and Director-General would not be able to fulfil its functions providing critical oversight of the scheme and refer matters to appropriate bodies for consideration. This would result in VAD operating

in the ACT with reduced scrutiny and without the ability to contact and evaluate the individuals involved in the VAD process. Similarly, the information sharing under clause 114(2A) is necessary to ensure that the relevant entity can investigate or otherwise deal with the issue which has been referred to them under clause 114(c).

4. *Proportionality (s28 (e))*

Clause 114(c) of the Bill provide that it is a function of Board to refer issues identified by the board in relation to voluntary assisted dying to the following people if those issues are relevant to the person:

- i. the chief police officer;
- ii. the coroner;
- iii. the director-general;
- iv. the human rights commission;
- v. the national agency;
- vi. the registrar-general;

The government amendments seek to provide beyond doubt that the Board can divulge protected information to these persons.

Similarly, the amendments to clause 80 of the Bill allow information held in the register to be shared by the Director-General with the VAD Board or a medicines and poisons inspector.

The sharing of this information is reasonable to allow for effective oversight of VAD in the ACT and is a common feature of regulatory schemes. The persons whom the Board or Director-General may share information with is limited, adding further weight to the proportionality of the amendments.

The right to privacy only protects against arbitrary and unlawful interferences with privacy. Interference with privacy that is neither arbitrary nor unlawful will not limit the right.

Because the impacts on privacy are proportionate, they are not arbitrary. They are clearly defined, legislated, and are 'opt in' – only the individuals and health practitioners who have chosen to participate in the VAD scheme are required to provide personal information. Accordingly, any limitation on the right to privacy is justified.

Right to privacy – Eligible witness required at practitioner administration of VAD substance

1. *Nature of the right and the limitation (s28 (a) and (c))*

Section 12 of the HRA provides that a person has the right not have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

The government amendments engage the right to privacy and reputation as it requires a witness to be present where a person opts for practitioner administration of the VAD substance.

The witness must be at least 18 years old and must certify in the practitioner administration form for the person that the person appeared to be acting voluntarily and without coercion, and the administering practitioner for the person administered the substance to the person in the presence of the witness.

Unlike other witness requirements in the Bill, a family member or a person who knows or believes they are a beneficiary under the will of the individual or may otherwise benefit financially or in any other material way, is not prohibited from acting as a witness for practitioner administration of the VAD substance.

2. *Legitimate purpose (s28 (b))*

The purpose of introducing VAD is to promote the human rights of individuals who are suffering and dying by enabling an eligible individual to both 'enjoy a life with dignity' and 'die with dignity', and by providing choices for a person about the circumstances of their death.

VAD aims to provide a safe, effective, and accessible process where an eligible individual chooses to access VAD in the ACT. The Bill seeks to strike the right balance between the fundamental value of human life and the values of individual autonomy in order to reduce suffering.

The purpose of this limitation is to establish an additional safeguard for the individual accessing VAD and, in particular, the administering practitioner.

3. *Rational connection between the limitation and the purpose (s28 (d))*

The Bill mandates the presence of a witness where the VAD substance is administered by an administering practitioner in order to ensure that there are appropriate safeguards in place for vulnerable people. There is a need for these safeguards to ensure the person is acting voluntarily and to provide transparency of process including that the person has decision-making capacity in relation to VAD and is acting voluntarily and without coercion.

4. *Proportionality (s28 (e))*

The requirement for a witness to be present is an appropriate measure to safeguard vulnerable people. Allowing this role to be filled by a family member of the person accessing voluntary assisted dying, or another health practitioner adult who is a friend or family member of the person accessing VAD provided they are at least 18 years of age, ensures the witness requirements are not onerous and do not create a barrier to access or are unduly obtrusive.

Where a witness must be completely independent of the individual accessing VAD, this risks mandating the presence of a stranger that the dying person does not wish to be present. Also, given the given the extensive process that must be completed before a person may even reach the point of administration, the involvement of further independent witnesses is unnecessary.

An alternate approach which does not require the presence of a witness is not considered to provide sufficient safeguards for either the individual or the administering practitioner.

Accordingly, the limitation on the right to privacy is justified.

CLAUSE NOTES

Clause 1 Clause 2

This clause substitutes clause 2 to provide that the Act commences on 3 November 2025, rather than 18 months from notification of the Act.

Clause 2 Clause 10 (h)

This clause substitutes clause 10 (h) to replace the term “has taken effect” with the term “is in effect” to ensure an individual may not access VAD where an individual’s contact person appointment has been revoked. This ensures clause 10 aligns with the process to access VAD set out under the Act.

Clause 3 Clause 11 (2)

This clause substitutes clause 11 (2) to clarify that an individual:

- (a) may meet the requirement mentioned in that subsection if they have a disability, mental disorder or mental illness; but
- (b) does not meet the requirement mentioned in that subsection only because of the disability that substantially impairs their communication, learning or mobility and results in the individual needing services to support them to live with the disability, or mental disorder or mental illness.

Having a disability, mental disorder or mental illness alone is not a relevant condition to be eligible to access VAD. No individual with a disability, mental disorder or mental illness may have access to VAD unless they meet all the eligibility requirements and choose to access VAD in accordance with the Bill.

VAD is an end-of-life choice for eligible individual’s experiencing intolerable suffering. As raised by the Select Committee on the Voluntary Assisted Dying Bill 2023 and agreed by Government, VAD is not to be seen as an alternative to providing supports for people with disability, or indeed any other issues that may cause suffering such as mental illness, housing, finance, work, etc.

This clause introduces clause 11 (2A) to provide further clarification on the meaning of ‘advanced’ in relation to eligibility to access VAD. Advanced is a key concept within the eligibility requirements as an individual must have been diagnosed with a condition that, either on its own or in combination with one or more other diagnosed conditions, is advanced, progressive and expected to cause death.

Like other Australian jurisdictions, VAD will only be an option for a person with at least one condition that is ‘advanced, progressive, and expected to cause the person’s death’. It is intended that an ‘advanced’ condition refers to a period of serious illness when functioning and quality of life decline, and treatments (other

than for the primary purpose of pain relief) have lost any beneficial impact. It is not the intent that the definition of 'advanced' be limited to the final days, weeks or months of life. A person may be considered to be eligible for VAD, even if it is uncertain whether their relevant conditions will cause death within the next 12 months.

Under new clause 11 (2A) an individual's relevant conditions are advanced if:

- (a) the individual's functioning and quality of life— (i) have declined or are declining; and
- (b) any treatments that are reasonably available and acceptable to the individual have lost any beneficial impact; and
- (c) the individual is approaching the end of their life.

The meaning of approaching the end of life is clarified further in proposed new clause 11 (3A).

Clause 4 Proposed new clause 11 (3A) and (3B)

This clause introduces clause 11 (3A) which defines the meaning of 'treatment' in relation to clause 11 (2A) (b) which provides that 'any treatments that are reasonably available and acceptable to the individual have lost any beneficial impact'.

It is important that treatments people are receiving for their condition which are for the purposes of relieving symptoms or pain or distress do not make them ineligible for VAD. New clause 11 (2A) (b) provides that an individual's relevant conditions are advanced if any treatments that are reasonably available and acceptable to the individual have lost any beneficial impact.

It is not the intention that a 'treatment' primarily for the purpose of relieving a symptom of the condition or any pain or distress caused by the condition is included in this definition.

For example, the pain caused by advanced cancer can be treated by palliative radiotherapy or chemotherapy to help manage symptoms. These treatments aim primarily to improve quality of life and alleviate suffering, rather than to have any effect in curing the disease. Accordingly, receiving such treatment does not make the person ineligible for VAD.

This clause introduces clause 11 (3B) to provide further clarification on the meaning of 'approaching the end of life' within the context of 'advanced' in relation to eligibility to access VAD. Clause 11(3B) is not intended to limit the circumstances where an individual can be taken to be "approaching end of life" and is not intended to introduce a fixed timeframe to death to determine an individual's eligibility for VAD. There may be instances where an individual's timeframe to death is unclear,

unpredictable or where the person's prognosis has a range of possible outcomes. A person may be considered to be approaching the end of life, even if it is uncertain whether their relevant conditions will cause death within the next 12 months. Clause (3B) is not intended to exclude an individual who might be expected to live for more than 12 months where the individual has been assessed as approaching the end of their life in all of the circumstances, and in light of their particular conditions(s), by their assessing health practitioners.

Clinical trajectories of advanced life limiting illnesses, such as cancer and neurodegenerative diseases, can be unpredictable. In some circumstances, individuals may have an expected prognosis of 12 months or more, however, the prognosis may change very quickly due to complications and uncertainties common in advanced illness.

The intent of the Government's approach is to avoid the many challenges for practitioners, individuals and their families, friends and carers that arise from the strict 6 to 12-month timeframe to death requirement imposed in other Australian jurisdictions. At the same time, the proposed framework seeks to ensure that VAD remains an end-of-life choice to end intolerable suffering for an individual whose terminal, progressive condition is advanced and is expected to cause their death.

Importantly, a person must meet all eligibility criteria to access VAD, including suffering intolerably in relation to the relevant condition/s and have decision-making capacity in relation to VAD.

Clause 5 Clause 11 (4), definition of advanced

This clause omits the definition of 'advanced' as this been relocated to new clause 11 (2A).

Clause 6 Clause 11 (4), definition of disability

This clause changes the definition of disability to the definition of disability used in the *Disability Services Act 1991* (ACT).

Clause 7 Clause 14 (1)

This clause substitutes the term 'working day' with 'business day'.

The Bill contains several obligations for health practitioners and others to report to the Board within 2 'working days' of key VAD milestones.

The government amendments replace '2 working' days with '4 business' days. This use of business days rather than working days is consistent with other Australian jurisdictions and provides clarity for people accessing VAD, VAD practitioners and compliance mechanisms including the VAD Board. The timeframe for health practitioners to meet their obligations has been extended in recognition that health

practitioners have a wide range of competing priorities in their role. However, to support the integrity of the model the Bill continues to retain mandatory timeframes, with penalties to comply for non-compliance.

'Business day' is defined through the *Legislation Act 2001*.

Clause 8 Clause 16

This clause substitutes clause 16 in the Bill which outlines the process for the coordinating practitioner to undertake a first assessment to decide whether the individual meets the eligibility requirements and understands the information provided to them.

These amendments require that where the coordinating practitioner decides that the individual meets the eligibility requirements, the coordinating practitioner must give the individual any information prescribed by regulation. Where the coordinating practitioner decides that the individual meets the eligibility requirements, they must then ensure the individual understands the information given to them. These amendments allow the coordinating practitioner to first assess an individual's eligibility for VAD, prior to ensuring they understand the information provided, which would reflect normal practice.

Clause 9 Clause 17 (1)

This clause is a technical amendment and clarifies that when referring an individual for advice, the practitioner being referred to must have the appropriate skills and training to provide advice about whether the individual meets the eligibility requirement in the opinion of the coordinating practitioner.

Clause 10 Clause 18 (1)

This clause substitutes the term '2 working' days with '4 business' days. 'Business day' is defined through the *Legislation Act 2001*.

The clause also makes a minor technical change to substitute 'the day the coordinating practitioner decides whether the individual meets the eligibility requirements' to 'the day the coordinating practitioner makes their decision on the first assessment' to better align with terminology used in the Act.

Clause 11 Clause 19 (1) and (2)

This clause substitutes clause 19 (1) and (2) in the Bill which outlines the process for the coordinating practitioner to refer the individual to another health practitioner for a consulting assessment.

The referral must now be made within 4 business days after the day the coordinating practitioner decides that the individual understands the information given to the individual under clause 16 (3).

Clause 12 Clause 20 (1)

This clause substitutes the term '2 working' days with '4 business' days. 'Business day' is defined through the *Legislation Act 2001*.

Clause 13 Clause 20 (3)

This clause substitutes clause 20 (3) to remove the requirement for the coordinating practitioner to tell the health practitioner that they have told the individual about their decision to accept or refuse to accept consulting assessment referral. The individual is now given this information by the coordinating practitioner.

Clause 14 Clause 22 (2)

This clause substitutes clause 22 (2) which is required as a consequential amendment by new clause 20 (3). The individual is now given the information on the health practitioner's decision to accept or refuse to accept consulting assessment referral by the coordinating practitioner.

Clause 15 Clause 22 (5)

This clause omits clause 22 (5). Clause 22 (5) has been deleted as part of the broader clause 23 amendments. The required information will be given to the individual after the practitioner decides whether the person meets the eligibility requirements. The requirement to give the individual any information prescribed by regulation now appears in clause 23 (3).

Clause 16 Clause 23

This clause outlines the process for the consulting practitioner to undertake a consulting assessment to decide whether the individual meets the eligibility requirements and understands the information provided to them.

These amendments require that where the consulting practitioner decides that the individual meets the eligibility requirements, the consulting practitioner must give the individual any information prescribed by regulation. Where the consulting practitioner decides that the individual meets the eligibility requirements, they must then ensure the individual understands the information given to them. These amendments allow the consulting practitioner to first assess an individual's eligibility for VAD, prior to ensuring they understand the information provided, which would reflect normal practice.

Clause 17 Clause 24 (1)

This clause is a technical amendment and clarifies that when referring an individual for advice, the practitioner being referred to must have the appropriate skills and training to provide advice about whether the individual meets the eligibility requirement in the opinion of the consulting practitioner.

Clause 18 Clause 24 (2) (d)

This clause corrects a drafting error and deletes clause 24 (2) (d) which provides the consulting practitioner must not refer the individual to a person who the consulting practitioner knows or believes is a family member of the individual. This requirement is already set out in clause 24 (2) (a).

Clause 19 Clause 25 (1)

This clause substitutes the term '2 working' days with '4 business' days. 'Business day' is defined through the *Legislation Act 2001*.

The clause also makes a minor technical change to substitute 'the day the consulting practitioner decides whether the individual meets the eligibility requirements' to 'the day the consulting practitioner makes their decision on the consulting assessment' to better align with terminology used in the Act.

Clause 20 Clause 25 (1) (b)

This clause removes the term 'as soon as practicable', from the requirements for the consulting practitioner to tell the individual about their decision and give the individual a copy of the consulting assessment report. The timeframe for this to occur is already specified as 4 business days in clause 25 (1).

Clause 21 Clause 27 (1)

This clause substitutes clause 27 (1) in the Bill which outlines the eligibility for an individual to make a second request for access to voluntary assisted dying.

The changes have been made to reflect terminology used in the Act and are necessary because of earlier amendments to clauses 16 and 23.

Clause 22 Clause 27 (6)

This clause substitutes the term 'For this section:' with 'In this section:' to align with current drafting practice.

Clause 23 Clause 30 (1)

This clause substitutes the term '2 working' days with '4 business' days. 'Business day' is defined through the *Legislation Act 2001*.

Clause 24 Clause 34 (1)

This clause substitutes the term '2 working' days with '4 business' days. 'Business day' is defined through the *Legislation Act 2001*.

Clause 25 Clause 36 and 37

This clause substitutes all mention of the term '2 working' days with '4 business' days in clauses 36 and 37. 'Business day' is defined through the *Legislation Act 2001*.

Clause 26 Clause 38 (1)

This clause amends clause 38 (1) to broaden the situations where an individual may ask to change their coordinating practitioner. Previously this was only where an individual's coordinating practitioner is unable or unwilling to transfer their functions under clause 37.

Clause 27 Clause 38 (3)

This clause substitutes the term '2 working' days with '4 business' days. 'Business day' is defined through the *Legislation Act 2001*.

Clause 28 Clause 38 (3) (b)

This clause substitutes the term 'consulting' for 'other' to reflect the terminology used in the Act.

Clause 29 Clause 38 (5) (b)

This clause substitutes the term '2 working' days with '4 business' days. 'Business day' is defined through the *Legislation Act 2001*.

Clause 30 Clause 39 (1) (b)

This clause substitutes clause 39 (1) (b) in the Bill which provides beyond doubt that the decisions of previous coordinating practitioner remain valid despite transfer of coordinating practitioner functions.

These changes have been made to reflect terminology used in the Act and is necessary because of earlier amendments to clause 16.

Clause 31 Clause 42 (1) (a)

This clause omits the term '(a self-administration decision)' as this is now included as a definition in the dictionary of the Act.

Clause 32 Clause 42 (1) (b)

This clause omits the term '(a practitioner administration decision)' as this is now included as a definition in the dictionary of the Act.

Clause 33 Clause 42 (4) (b)

This clause substitutes the term '2 working' days with '4 business' days. 'Business day' is defined through the *Legislation Act 2001*.

Clause 34 Clause 43 (1)

This clause substitutes clause 43 (1) to further clarify the meaning of the clause.

If an individual has an administration decision in effect, the individual may, at any time:

- (a) decide instead that an approved substance will be administered to them by a health practitioner, where they have previously made a decision that they would self-administer an approved substance; or
- (b) decide they will instead self-administer an approved substance, where they previously made a decision that an approved substance would be administered to them by a health practitioner.

Clause 35 Clause 43 to 46

This clause substitutes all mentions of the term '2 working' days with '4 business' days in clauses 43 to 46. 'Business day' is defined through the *Legislation Act 2001*.

Clause 36 Clause 47 (1)

This clause substitutes the current wording of clause 46 (1) to clarify this section applies if an individual has an administering practitioner. This allows an individual to change their administering practitioner at any time not just in situations where the administering practitioner is unable or unwilling to transfer their functions.

Clause 37 Clause 47 (3)

This clause substitutes the term '2 working' days with '4 business' days. 'Business day' is defined through the *Legislation Act 2001*.

Clause 38 Clause 47 (3) (b)

This clause substitutes the term ‘consulting’ with ‘health’ to reflect the terminology used in the Act.

Clause 39 Clause 47 (5) (c)

This clause substitutes the term ‘2 working’ days with ‘4 business’ days. ‘Business day’ is defined through the *Legislation Act 2001*.

Clause 40 Clause 51 (3)

This clause corrects a drafting error by amending clause 51 (3) to remove the term ‘health professional’ which is not defined in the Act or elsewhere. Clause 53 does not limit who can be appointed as a contact person, but clarifies the policy intent that their coordinating practitioner or consulting practitioner can be a contact person.

Clause 41 Clause 51 to 53

This clause substitutes all mentions of the term ‘2 working’ days with ‘4 business’ days in clauses 51 to 53. ‘Business day’ is defined through the *Legislation Act 2001*.

Clause 42 Clause 54 heading

This clause substitutes the heading of clause 54 from ‘Effect of revocation of administration decision on contact person appointment’ to ‘Effect of change or revocation of administration decision on contact person appointment’ to ensure the heading better reflects the contents of clause 54.

Clause 43 Clause 54 (1) (a) (i)

This clause omits the term ‘self-administration decision to a practitioner administration decision’ and substitutes the term ‘administration decision’ to align with the changes made to clause 43(1).

Clause 44 Clause 54 (1) (b) and (2)

This clause omits the multiple references to the term ‘self-administration’ and substitutes the term ‘administration’ to align with the changes made to clause 43(1).

Clause 45 Clause 58 (1) (b)

This clause omits the phrase ‘if the individual has a self-administration decision in effect—the individual’s contact person appointment has taken effect’ and includes the term ‘if the individual has a self-administration decision in effect—a contact person appointment is in effect for the individual’ to align with current drafting practices.

Clause 46 Clause 58 (4)

This clause substitutes the term '2 working' days with '4 business' days. 'Business day' is defined through the *Legislation Act 2001*.

Clause 47 Clause 59 (1) (b)

This clause omits the phrase 'if the individual has a self-administration decision in effect—the individual's contact person appointment has taken effect' and includes the term 'if the individual has a self-administration decision in effect—a contact person appointment is in effect for the individual'. This amendment ensures that this section does not apply to situations where an individual's contact person appointment has been revoked.

Clause 48 Clause 59 (4)

This clause substitutes the term '2 working' days with '4 business' days. 'Business day' is defined through the *Legislation Act 2001*.

Clause 49 Clause 60

This clause substitutes clause 60 to set out the requirements for possessing, preparing and supplying approved substances.

This clause provides that an approved supplier may possess an approved substance or prepare the substance for the purposes of supplying it.

On receipt of a prescription, an approved supplier is authorised to supply an approved substance to an individual or the individual's contact person (where a self-administration decision has been made), or the individual's administering practitioner (where the individual has made a practitioner administration decision).

The supplier must not supply an approved substance unless the prescription was issued within the last 6 months for a controlled substance, or within the last 12 months in any other case.

The supplier must be satisfied about the authenticity of the prescription, and of the identity of the coordinating practitioner and the person who the substance is being supplied to.

The substance must be labelled in accordance with any requirements set by regulation, and meet any other requirements set by regulation.

An approved supplier must not supply a subsequent supply of an approved substance unless satisfied that the previously supplied substance has been given to an approved disposer or reported as lost or stolen in accordance with section 39 of the *Medicines, Poisons and Therapeutic Goods Act 2008*.

The approved supplier may supply the substance to the person personally or by courier in circumstances prescribed by regulation. The approved supplier commits

an offence if the supplier does not supply an approved substance personally or does not supply the approved substance via a courier or in accordance with the prescribed circumstances for the use of a courier under subsection (3)(f)(ii). Failure to meet these requirements is an offence, the maximum penalty for which is 20 penalty units.

The Director-General and Board must be notified of the supply within two business days, and a written record of the supply must be kept by the approved supplier for two years. Failure to provide a copy of the supply record to the VAD Board is a strict liability offence, the maximum penalty for which is 20 penalty units.

Clause 50 Clause 61 (2) (e)

This clause amends clause 61 (2) (e) to clarify that the substance in this clause is being provided for self-administration. This ensure consistent terminology is used in the Act.

Clause 51 Clause 61 (4)

This clause amends clause 61 (4) to remove requirement for the contact person to give written notice to the Director-General that they have given the substance to the individual. The contact person must still give written notice to the Board. This notice must be given within 4 business days rather than 2 working days as provided in the Bill. Failure to provide notice to the VAD Board is a strict liability offence, the maximum penalty for which is 20 penalty units.

Clause 52 Clause 61 (6) (c)

This clause amends clause 61 (6) (c) to clarify that the substance in this clause is being provided to the individual to self-administer. This ensures consistent terminology is used in the Act.

Clause 53 Clause 62 (1) (a)

This clause amends clause 62 (1) (a) to omit the term ‘to a practitioner administration decision’ to align with the changes made to clause 43(1).

Clause 54 Clause 62 (2)

This clause substitutes the term ‘their administering practitioner’ to ‘the health practitioner’ to provide that the individual must give the approved substance to health practitioner as soon as practicable after the health practitioner becomes their administering practitioner. This clarifies the intended requirements of the Act.

Clause 55 Clause 62 (3) and penalty

This clause amends 62 (3) to remove the requirement for the contact person to give written notice to the Director-General that they have given the substance to the administering practitioner. The contact person must still give written notice to the Board. This notice must be given within two business days rather than two working days as provided in the Bill. Failure to provide notice to the VAD Board is a strict liability offence, the maximum penalty for which is 20 penalty units.

Clause 56 Clause 63

This clause substitutes clause 63 and introduces new clauses 63A to 63C.

Clause 63 provides that the individual's administering practitioner may receive and possess the substance from an approved supplier in order to prepare and administer the approved substance to the individual. Clause 63 applies where a practitioner administration decision is in effect for an individual and the individual's coordinating practitioner has prescribed an approved substance under clause 58 or clause 59.

Clause 63A provides that the individual's administering practitioner may receive and possess the substance from an individual in order to prepare and administer the approved substance to the individual. Clause 63A applies where an individual changes their self-administration decision to a practitioner administration decision under clause 43 (1) (a).

Clause 63B provides that within 14 days after the day the administering practitioner functions are transferred, the new administering practitioner may ask the original administering practitioner to give the approved substance to the new administering practitioner. The original administering practitioner must comply with this request within 2 days after the day the request is made. Failure to give the approved substance to the new administering practitioner within two days is an offence, the maximum penalty for which is 100 penalty units.

Clause 63B (4) provides that the new administering practitioner may receive and possess the substance from the original administering practitioner in order to prepare and administer the approved substance to the individual.

Clause 63B (5) provides that within four business days after the day the original administering practitioner gives an approved substance to the new administering practitioner, the original administering practitioner must tell the board, by written notice, that they have given the substance to the new administering practitioner and tell the director-general, by written notice, that the individual has a new administering practitioner. The written notice must include any information prescribed by regulation. Failure to provide notice to the VAD Board is a strict liability offence, the maximum penalty for which is 20 penalty units.

Clause 63C provides that the individual's administering practitioner may prepare and administer the substance to the individual. Clause 63C applies where a practitioner

administration decision is in effect for an individual and the individual's coordinating practitioner has prescribed an approved substance under clauses 58 or 59.

Clause 63C (3) provides that the individual's administering practitioner must not administer the approved substance to the individual unless the administering practitioner is satisfied, immediately before administering the substance, that the individual has decision-making capacity in relation to VAD and is acting voluntarily and without coercion. The administering practitioner must administer the substance in the presence of an eligible witness who must then certify, by written statement, that the individual appeared to be acting voluntarily and without coercion and that the substance was administered to the individual in the presence of the witness. The witness must give the administering practitioner a copy of the witness certificate.

Clause 57 Clause 64 (5) and (6)

This clause provides that within 4 business days after the day the original contact person gives an approved substance to another person, the original contact person must tell the board, by written notice, that they have given the substance to the new contact person and tell the Director-General, by written notice, that the individual has a new contact person and that the original contact person has given the substance to the new contact person. The written notice must include any information prescribed by regulation. Failure to provide notice to the VAD Board is a strict liability offence, the maximum penalty for which is 20 penalty units.

The Bill previously incorrectly applied strict liability to the offence in clause 64 (3). This drafting error has been addressed through these amendments.

Clause 58 Proposed new clause 64A

This clause provides that the individual or contact person must give the approved substance to an approved disposer if administration decision is revoked. This applies where the individual or their contact person is in possession of an approved substance when the self-administration decision is revoked.

The individual or contact person must give the approved substance to an approved disposer as soon as practicable, but not later than 14 days after the day the self-administration decision is revoked. Failure to comply with these requirements is an offence, the maximum penalty for which is 100 penalty units.

Clause 59 Clause 65 (2)

This clause substitutes clause 65 (2) to authorise the contact person to possess any remaining substance following the administration of the substance. The contact person must give any remaining substance to an approved disposer as soon as practicable, but not later than 14 days after the day of the administration of the substance or where the appointment of the individual's contact person ends and the

contact person is not required to give the approved substance to the individual or a new contact person. Failure to give any remaining approved substance to an approved disposer within the required timeframe is an offence, the maximum penalty for which is 100 penalty units.

Clause 60 Clause 66 (2) (b)

This clause amends clause 62 (2) (b) to provide that the administering practitioner must give an approved substance to an approved disposer as soon as practicable, but not later than 14 days after the day an event mentioned in subsection 66 (1) (c) happens.

Clause 61 Clause 66 (2) penalty

This clause omits the penalty of maximum of 100 penalty units from clause 66 (2). Administering practitioners are regularly responsible for possessing substances of a similar nature to the approved VAD substance in their normal role as health practitioners. It is considered unlikely that an administering practitioner will misuse the substance due to their professional obligations. Accordingly, it is not considered necessary for a penalty to apply. It is not considered necessary for a penalty to apply as administering practitioners are already subject to professional obligations.

Clause 62 Proposed new clause 66A

This clause inserts new clause 66A.

This clause applies where the administering practitioner functions for an individual are transferred under clause 46 or 47, the original administering practitioner is in possession of the approved substance when the transfer takes effect, and the original administering practitioner is not required to give the approved substance to the new administering practitioner under section 63B.

The original administering practitioner must give any remaining substance to an approved disposer as soon as practicable, but not later than 14 days after the day the transfer takes effect.

Clause 63 Clause 67 (2)

This clause substitutes clause 67 (2) to authorise an individual or other person to possess any remaining substance following the administration of the substance. The individual or other person must give any remaining substance to an approved disposer as soon as practicable, but not later than 14 days after the day they become aware that the substance has expired. Failure to give any remaining approved substance to an approved disposer within the required timeframe is an offence, the maximum penalty for which is 100 penalty units.

Clause 64 Clause 68 (2) and (3)

This clause substitutes clause 68 (2) and (3) which sets out the requirements where an approved disposer receives an approved substance from a person.

The approved disposer must give the person a written record of receiving the substance that includes any information prescribed by regulation. Within 2 business days after the day they receive the approved substance, they must give written notice of having received the substance, including any information prescribed by regulation, to the VAD Board and the Director-General. Failure to provide notice to the VAD Board is a strict liability offence, the maximum penalty for which is 20 penalty units.

The approved disposer may possess the approved substance for the purpose of disposing of it, and must, as soon as practicable after receiving the approved substance, dispose of it in accordance with any disposal requirements prescribed by regulation.

Within 7 days after the day an approved disposer disposes of an approved substance, the disposer must give written notice of the disposal, including any information prescribed by regulation, to the VAD Board and the Director-General. Failure to provide notice to the VAD Board is a strict liability offence, the maximum penalty for which is 20 penalty units.

Clause 65 Clause 69, proposed new penalty

Clause 69 provides that requirements for storage of an approved substance may be set through regulation. This ensures safe storage of the substance so that unauthorised access to an approved substance is limited as far as possible.

These amendments provides that it is an offence to not comply with storage requirements, with a maximum penalty of 20 penalty units.

Clause 66 Clause 70

This clause substitutes the reference to clause 63 (Receiving, possessing and administering approved substances—administering practitioner) with clause 63C (Administering approved substances—administering practitioner) as a result of amendments in clause 63 of these amendments.

This section also clarifies beyond doubt that the offence does not apply if the person administers an approved substance to another person under the *Medicines, Poisons and Therapeutic Goods Act 2008*.

Clause 67 Clause 74 to 75

This clause substitutes all mentions of the term '2 working' days with '4 business' days in clauses 74 to 76. 'Business day' is defined through the *Legislation Act 2001*.

Clause 68 Clause 76 (2)

This clause substitutes the term '2 working' days with '4 business' days. 'Business day' is defined through the *Legislation Act 2001*.

Clause 69 Clause 76 (4)

This clause provides that where an individual dies following the administration of an approved substance by their administering practitioner, both the administration certificate and the witness certificate must be given by the administering practitioner to the Board within four business days.

Failure to notify the Board within the required timeframe is a strict liability offence, the maximum penalty for which is 20 penalty units.

Clause 70 Proposed new clause 76 (6)

This clause inserts a signpost definition to witness certificate as a result of the amendments in clause 63C (4).

Clause 71 Clause 77 (1) (b)

This clause substitutes the term 'reasonably believes' to 'believes on reasonable grounds' to provide consistent terminology throughout then Act.

Clause 72 Clause 78 (2)

This clause substitutes the term '2 working' days with '4 business' days. 'Business day' is defined through the *Legislation Act 2001*.

Clause 73 Clause 80

This amends clause 80 to clarify the purpose of the register which is for the pharmacy service to contact any person the Director-General considers appropriate in relation to an approved substance that has been supplied under this Act. The register does not require the recording of the person in possession of the substance at all times, and so the term 'possession' has been removed from the heading of this section.

Clause 74 Clause 84

This clause substitutes clause 84 to provide that only a doctor or nurse practitioner, may apply to the Director-General for authorisation as a coordinating practitioner or consulting practitioner. Only a doctor, nurse practitioner or registered nurse may

apply for authorisation as an administering practitioner. This requirement was previously not explicit in the Bill.

These health practitioners must also meet any other eligibility requirements prescribed by regulation, for example, the years of experience and the nature of experience which are suitable to be authorised for this position.

Clause 75 Clause 87

This clause substitutes clause 87 to provide consistent language and drafting practices in the Act and clarity that only a health practitioner may be authorised under division 5.2.

Clause 76 Clause 92 (3)

This clause substitutes clause 92 (3) to provide that a doctor must be either the coordinating practitioner or the consulting practitioner for an individual. Two doctors may act as the coordinating practitioner and the consulting practitioner, or another type of health practitioner eligible for authorisation under clause 84 may act in one of these practitioner roles, provided the other practitioner is a doctor.

Clause 77 Clause 94 (3), definition of health service provider

This clause substitutes a signpost definition of health service provider to section 7 of the *Health Act 1993*.

Clause 78 Clause 95 (1)

This clause amends clause 95 (1) to insert 'relevant' before 'health service provider' to provide consistent drafting practices in the Act.

Clause 79 Clause 95 (2)

This clause substitutes the term '2 working' days with '4 business' days. 'Business day' is defined through the *Legislation Act 2001*.

Clause 80 Clause 95 (4)

This clause amends the signpost definitions of 'health service provider' and 'relevant health service provider' in clause 95 (4) to provide consistent drafting practices in the Act.

Clause 81 Clause 96 (2), definition of disability

This clause substitutes the definition of disability to provide a signpost to the definition to disability in the *Disability Services Act 1991*.

Clause 82 Clause 97

This clause substitutes clause 97 to clarify that division 7.2 only applies where an individual is a resident of a facility and the facility operator does not provide residents of the facility with access to a VAD service (the relevant service). A definition of relevant service is provided.

Clause 83 Clause 98 (1), definition of deciding practitioner, paragraph (b)

This clause substitutes the term ‘in any case’ with ‘if the individual does not have a coordinating practitioner’ to provide clarity that if an individual already has a coordinating practitioner, then the coordinating practitioner must be the individual’s deciding practitioner. Only in cases where the individual does not have coordinating practitioner could any other treating doctor be the individual’s deciding practitioner.

Clause 84 Clauses 99

This clause omits clauses 99 as this requirement is now captured under revised clause 102A.

Clause 85 Clauses 100 to 102

This clause substitutes clauses 100 to 102.

Clause 100 applies if the individual, or their agent, tells the facility operator, orally or in writing, that the individual wants information about or access to VAD. If the individual consents to seeing a relevant person, the facility operator must allow the relevant person to have reasonable access to the individual at the facility at a time that is acceptable to the individual. ‘Reasonable access’ is not defined in the Bill. Whether access to the individual at the facility is ‘reasonable’ depends on all the circumstances. Access must be provided by the facility at a time that is acceptable to the individual. Failure to comply with these requirements is an offence, the maximum penalty is 100 penalty units.

Clause 101 applies where the facility is required to provide reasonable access under clause 100, and the relevant person is unable to attend the facility at a time that is acceptable to the individual or the facility operator does not allow the relevant person to have reasonable access to the individual at the facility in accordance with clause 100. Clause 101(2) requires that the facility operator must ask the individual if they want to be transferred to and from a place to see the relevant person or another relevant person if—the first relevant person is unable to see the individual at a time or place that is acceptable to them or if the individual’s deciding practitioner decides that transferring the individual is unreasonable in the circumstances.

Clause 101 (3) provides that the individual’s deciding practitioner to decide whether it is reasonable in the circumstances to transfer the individual to and from a place to see the person.

Clause 101(4) lists factors that the deciding practitioner must take into account when deciding whether a transfer is reasonable in the circumstances:

- whether the transfer would be likely to cause serious harm to the individual, adversely affect the individual's access to VAD, or cause undue delay or prolonged suffering in accessing VAD;
- whether the place where it is proposed the individual would be transferred to is available to receive the individual;
- whether the individual would incur a financial loss or cost because of the transfer.

Clause 101 (5) requires that, if the deciding practitioner decides the transfer is reasonable and if the individual consents, the facility operator must facilitate the transfer as soon as reasonably practicable. It is an offence for a facility operator to fail to do so. The maximum penalty is 100 penalty units.

Clause 101 (6) requires that if the facility operator does not facilitate the transfer of the individual as required under clause 101 (5), the operator must give the Board written notice stating the reasons for this, and the steps taken by the operator to try to transfer the individual. Non-compliance with this clause is a strict liability offence with a maximum penalty of 20 penalty units.

Clause 102 applies if the facility operator does not transfer the individual under clause 101 because the individual's deciding practitioner decides that the transfer is unreasonable in the circumstances.

Clause 102 (2) provides that where the individual consents to seeing the relevant person, the facility operator must take reasonable steps to allow the relevant person to have access to the individual at the facility at a time that is acceptable to the individual.

Clause 102 (3) provides that where the relevant person is unable to attend the facility, the facility operator must take reasonable steps to allow another relevant person to have access to the individual at the facility at a time that is acceptable to the individual. The individual must also consent to seeing the other relevant person.

It is an offence for a facility operator to not comply with this clause, with a maximum penalty of 100 penalty units.

The purpose of these clauses is to ensure that no individual's access to VAD is hindered if they are a resident at a facility.

Clause 86 Proposed new clause 102A

Clause 102A applies if the individual, or their agent, tells the facility operator, orally or in writing, that the individual wants information about or access to VAD. This clause now provides that within 2 business days after the day the request is made, the facility operator must give the individual, in writing, the contact details for the

Care Navigator Service. The Bill previously provided 2 working days for this to occur. Not complying with these requirements is a strict liability offence, with a maximum penalty of 30 penalty units. This offence was previously included in clause 99 of the Bill, however has been redrafted to provide additional clarity, with clause 99 now omitted.

The facility operator must allow an employee or other official of the approved care navigator service to have reasonable access to the individual at the facility at a time that is acceptable to the individual if the individual consents to seeing the employee or other official and the employee or other official is seeking the access for the purpose of giving the individual the requested information. Not complying with these requirements is an offence with a maximum penalty of 100 penalty units. This offence was previously included in clause 100 of the Bill, however has been redrafted to provide additional clarity.

New clause 102A is in division 7.3 which, unlike division 7.2, applies to all facilities irrespective of whether they offer VAD services.

Clause 87 Section 103 (2)

This clause amends clause 103 (2) to provide that the facility operator must publish its policy in a way that is likely to come to the attention of ‘an individual who tells the facility operator that the individual or a family member of the individual is interested in becoming a resident of the facility’ rather than an ‘individual who may wish to become a resident of the facility in the future’. This provides clearer drafting on the policy intent of clause 103.

As provided in the Bill, the policy still must also be published a way that is likely to come to the attention of a resident of the facility and an individual who accesses the website for the facility.

Clause 88 Clause 103 (3)

This clause substitutes the term ‘working’ day with ‘business’ day. ‘Business day’ is defined through the *Legislation Act 2001*.

Clause 89 Clause 107 (5), definition of relevant area, proposed new paragraphs (ga) and (gb)

This clause amends clause 107 (5) to include health care consumer representation or advocacy and disability or carer representation or advocacy as relevant areas of expertise for appointment to the VAD Board.

Carer representation means the representation of anyone who is in a ‘care relationship’ as defined in section 6 (1) of the *Carers Recognition Act 2021 (ACT)*.

Clause 90 Clauses 117 (1)

This clause substitutes clause 117 (1) to provide that a decision of the board on a question is valid if at least the number of members prescribed by regulation vote on the question and the question is decided by the number of votes prescribed by regulation.

Clause 91 Proposed new clause 114 (2A)

This clause inserts new clause 114 (2A) to provide beyond doubt that where the VAD Oversight Board refers an issue to a person under clause 114 (1) (c), the Board may give information to the person if satisfied that the information is relevant to the exercise of the person's functions.

Clause 92 Clauses 125

This clause omits clause 125 'People assisting access to voluntary assisted dying or witnessing administration of approved substance', as the behaviour clause 125 sought to provide a protection from liability is included under new clause 126.

Clause 93 Clause 126

Clause 126 provides that a person is not civilly or criminally liable for conduct engaged in under this Act if the person engages in the conduct honestly and on reasonable grounds. This amends the previous test that a person must be acting 'honestly and without recklessness' to 'honestly and on reasonable grounds' given this is a more reasonable standard for the mental element to apply to this offence.

Clause 94 Clause 127

Clause 127 omits clause 127 - Protection from liability for certain offences against *Crimes Act 1900*. The Bill included provisions to provide criminal protections beyond doubt against section 12 (Murder), section 15 (Manslaughter) or section 17 (Suicide—aiding etc) of the *Crimes Act 1900 (ACT)*. Following further consultation, further criminal proceeding protections are considered unnecessary and duplicative given the protections and defences that already exist under the *Criminal Code 2002*.

Clause 95 Clauses 128 and 129

This clause substitutes clause 128 and 129 of the Bill and inserts new clauses 128 and 129.

New clause 128 remains largely the same, with minor drafting changes. Clause 128 provides that a health practitioner or ambulance service member is not civilly or criminally liable for not administering life sustaining treatment to an individual if the health practitioner or ambulance service member believes on reasonable ground that the individual is dying after self-administering or being administered with an approved substance in accordance with this Act and has not requested the

administration of life sustaining treatment. A definition of 'health practitioner' and 'member' is provided for this clause.

Clause 129 of the Bill clarified beyond doubt that if a party alleges that clause 125(a), 126 or 127 of the Bill does not prevent a finding of liability against a person, then that party bears the onus of proving that the person did not engage in the conduct in the circumstances mentioned in the relevant clause. This replicates the normal onus of proof that applies in proceedings, and this clause is therefore unnecessary.

New clause 129 provides that if a person, honestly and on reasonable grounds, engages in conduct under this Act, the conduct is not, in itself a breach of professional ethics or standards or any principles of conduct applicable to the person's employment or professional misconduct or unprofessional conduct.

Clause 96 Clause 130

This clause substitutes clause 130 which amends the removal of doubt provision to make it clear that nothing in part 9 affects the capacity to make complaints or referrals to entities mentioned in clause 130 (c).

Clause 97 Clause 130 (c)

This clause substitutes clause 130 (c) to provide beyond doubt that nothing in part 7 affects the ability for a person to make a corruption complaint under the *Integrity Commission Act 2018*, to refer an issue to the Board under section 114 (1) (c), for any other referral (however described) under a law applying in the ACT or the making of any other complaint (however described) under a law applying in the ACT.

Clause 98 Clause 133 (2)

This clause substitutes clause 133 (2) to amend the timeframe a person has to make an application about certain decisions under the Act.

Part 10 provides ACAT with a new jurisdiction to review decisions made about whether an individual has decision-making capacity, is acting voluntarily and without coercion, and has lived in the ACT for at least the previous 12 months. The Bill provided a 5-day time limit for a person to lodge an application to ensure an individual's access to VAD is not unduly hindered by another person making an application to review their eligibility.

This clause retains the timeframe of 5 days where a reviewable decision is about someone being assessed as eligible to access VAD (e.g. a decision that someone has capacity), so that an application to ACAT can be made and considered quickly and does not slow down legitimate access to VAD. The 28-day timeframe will apply to any other reviewable decision. This will deliver on the government's policy intent to provide a robust independent review of certain decisions under the VAD scheme, without unduly restricting access.

ACAT has the power to extend these timeframes under section 151C of the *Legislation Act 2001* (ACT), even after the timeframe has elapsed.

Clause 99 Clause 142 (1) (a)

This clause amends the reviewable decisions which ACAT may make order for, as a result of the changes to clause 133 (2) which amend the timeframe a person has to make an application about certain decisions under the Act.

Clause 100 Clause 142 (1) (b)

This clause amends the reviewable decisions which ACAT may make order for, as a result of the changes to clause 133 (2) which amend the timeframe a person has to make an application about certain decisions under the Act.

Clause 101 Clause 142 (1) (c)

This clause amends the reviewable decisions which ACAT may make order for, as a result of the changes to clause 133 (2) which amend the timeframe a person has to make an application about certain decisions under the Act.

Clause 102 Clause 144 (2)

This clause amends the reviewable decisions which a decision by ACAT means that the individual does not meet the eligibility requirements. This is a result of the changes to clause 133 (2) which amend the timeframe a person has to make an application about certain decisions under the Act.

Clause 103 Clause 144 (3)

This clause amends the reviewable decisions which a decision by ACAT means that the individual does not meet the eligibility requirements. This is a result of the changes to clause 133 (2) which amend the timeframe a person has to make an application about certain decisions under the Act.

Clause 104 Clause 146 (2)

This clause substitutes the term '2 working' days with '4 business' days. 'Business day' is defined through the *Legislation Act 2001*.

Clause 105 Clause 150 (1) and (2)

This clause amends clause 150 (1) and (2) to omit the reference to 'a relevant provision of' this Act. The Bill limited the enforcement powers of a medicines and poisons inspector under the *Medicines, Poisons and Therapeutic Goods Act 2008* to certain provisions under the Act.

Reflecting the practice in other jurisdictions, medicines and poisons inspector require enforcement powers beyond matters that deal with substances to providing enforcement for the VAD substance to allow inspectors to investigate and enforce compliance with the ensure Act. For example, the coordinating practitioners providing notice to the VAD Board in accordance with the Act.

Clause 106 Clause 150 (3), definition of relevant provision

This clause amends clause 150 (3) to remove the definition of relevant provision. As outlined in clause 88 the enforcement powers of a medicines and poisons inspector under the *Medicines, Poisons and Therapeutic Goods Act 2008* will apply to all provisions under the Act.

Clause 107 Clause 152

This clause sets minimum requirements for initiating discussions on VAD for health professionals to establish additional safeguards for persons who may be unduly influenced to access VAD. The aim of this provision is to ensure health professionals who are likely to engage in end-of-life discussions with patients or clients only do so where they provide information on a range of end of life options.

Medical practitioners and nurse practitioners who initiate a discussion on VAD must be satisfied that they have the expertise to appropriately discuss VAD and palliative care, as well as ensure the person is informed about treatment and palliative care options available to them, and the likely outcomes of those options.

Other Australian Health Practitioner Regulation Agency registered health professions, as well as the self-regulated professions of social workers and counsellors, may have end of life discussions within their scope of practice. As these health professionals do not have medical qualifications to discuss medical treatment and palliative care options, they may only initiate a discussion about VAD if: they understand the person has an eligible condition; and they ensure that the person knows there are palliative care and treatment options available; and they advise that the person discuss these options with their treating doctor.

This clause amends the Bill to:

- Amend the heading of this clause to 'Requirements for health professionals when raising voluntary assisted dying as an end-of-life choice'.
- Allow for the requirements for a counsellor and social worker to be set by regulation.
- Change the references to 'initiating conversations about VAD' to 'raising voluntary assisted dying as an end of life choice' to better reflect the policy intent that nobody is prohibited from engaging in discussion about VAD, including health professionals. However, this clause does establish minimum

requirements for health professionals who are likely to engage in end of life discussions with patients or clients only do so if they provide a range of information on end of life options.

- Provide that in order to raise voluntary assisted dying as an end-of-life choice with an individual, a doctor, nurse practitioner or relevant health professional must know or believe on reasonable grounds that the individual has been diagnosed with a condition or conditions mentioned in section 11 (1) (b). This is a more appropriate threshold than previously set through the Bill which required a doctor or nurse practitioner to be sure that the individual has a condition or conditions mentioned in section 11 (1) (b).

Clause 108 Clause 159 (2)

This clause substitutes clause 159 (2) to include the definition of advanced as a matter to be considered by the review.

Clause 109 Schedule 1

This clause substitutes the table in schedule 1 to reflect the changes to clause 133 (2) which amend the timeframe a person has to make an application about certain decisions under the Act.

The timeframe of 5 days to make an application to ACAT where a reviewable decision is about someone being assessed as eligible to access VAD (e.g. a decision that someone has capacity) is retained where an individual has been found to be eligible for VAD. A 28-day timeframe to make an application to ACAT will apply to any other reviewable decision including where a person has been found to be ineligible for VAD.

Clause 110 Schedule 3, part 3.3

The clause amends schedule 3, amendment 3.5 to provide that a VAD death in care or custody must not be the subject of a mandatory coronial inquest, where a person has self-administered, or been administered, an approved substance in accordance with the Act.

Under section 13 (1) of the *Coroner Act 1997*, the Coroner must hold an inquest into the manner and cause of death of a person who dies and the death appears to be completely or partly attributable to an operation or procedure. New clause 3.5A provides that the definition of 'operation or procedure' does not include the administration of an approved substance by or to a person in accordance with the Act. This clarifies that the Coroner must not hold an inquest where the individual dies and the death appears to be completely or partly attributable to an operation or

procedure or dies after having undergone an operation or procedure and in circumstances that, in the opinion of the Chief Coroner, should be better ascertained.

It is also the policy intention that the mandatory inquest provisions in sections 13 (1) (a), (b), (e), (f) and (g) of the *Coroner Act 1997* would not apply where an individual has self-administered, or been administered, an approved substance in accordance with the Act.

The Coroner may still hold an inquest into a VAD death in accordance with the Act where the individual dies, or is suspected to have died, in circumstances that, in the opinion of the Attorney-General, should be better ascertained. This will provide additional safeguards for the Coroner to investigate a VAD death where considered appropriate by the Attorney-General.

Clause 111 Schedule 3, proposed new part 3.4A

This clause inserts ‘the person is authorised under the Voluntary Assisted Dying Act 2023, section 63C to administer the medicine’ as an example into section 20 (1), examples for par (b), new example 3 of *the Medicines, Poisons and Therapeutic Goods Act 2008*. This is a new example of when a person may or must deal with medicines.

Clause 112 Dictionary, note, proposed new dot point

This clause inserts a signpost to the definition of ‘business day’ which is defined through the *Legislation Act 2001*.

Clause 113 Dictionary, definition of practitioner administration decision

This clause inserts a definition of ‘practitioner administration decision’.

Clause 114 Dictionary, definition of self-administration decision

This clause inserts a definition of ‘self-administration decision’.

Clause 115 Dictionary, definition of working day

The clause omits the signpost to the definition of ‘working day’ in the *Legislation Act 2001* given this term is no longer used in the Act.