Ministerial Expert Panel Recommendations

In this list of recommendations, the Panel has specifically included points of agreement with the Joint Select Committee that are significant to ensure that the recommendations of the Panel are not considered in isolation.

Guiding Principles

Ministerial Expert Panel recommendation 1:

The following Guiding Principles should be included in the legislation to help guide interpretation:

- Every human life has intrinsic value.
- A person’s autonomy should be respected.
- People have the right to be supported in making informed decisions about their medical treatment, and should be given, in a manner they understand and is culturally appropriate, information about medical treatment options, including comfort and palliative care.
- People approaching the end of life should be provided with high quality care, including access to specialist palliative care, to minimise their suffering and maximise their quality of life.
- A therapeutic relationship between a person and their health practitioner should, wherever possible, be supported and maintained.
- People should be encouraged to openly discuss death and dying, and their preferences and values should be encouraged and promoted.
- People should be supported in conversations with their health practitioners, family, carers and community about treatment and care preferences.
- People are entitled to genuine choices regarding their treatment and care; this should be regardless of their geographic location and take into account their ability as well as individual cultural and linguistic needs.
- People should be supported in their right to privacy and confidentiality regarding their choices about treatment and care preferences.
- People who may be vulnerable to coercion and abuse in relation to end of life choices and decisions should be protected.
- All people, including health practitioners, have the right to be shown respect for their culture, religion, beliefs, values and personal characteristics.

Policy intent: The principles reflect the values underpinning the Panel’s considerations and should be used to interpret the recommendations and the legislation.
Part A: Eligibility

Ministerial Expert Panel recommendation 2:
To access voluntary assisted dying a person must meet all of the following eligibility criteria:

1. be an adult, aged 18 years or over; and,
2. be an Australian citizen or permanent resident and have been ordinarily resident in Western Australia for 12 months at the time of making the request; and,
3. have decision-making capacity in relation to a decision about voluntary assisted dying; and,
4. be diagnosed with an eligible condition, where an eligible condition is an illness, disease or medical condition that:
   a. is advanced, progressive and will cause death; and,
   b. is causing suffering to the person that cannot be relieved in a manner the person considers tolerable; and,
5. death is reasonably foreseeable for the person within a period of 12 months.

Policy intent: To ensure that it is clear for whom voluntary assisted dying is intended. To ensure that access to voluntary assisted dying is limited to those for whom it is intended.

Ministerial Expert Panel recommendation 3:
For access to voluntary assisted dying, the person must have been ordinarily resident in Western Australia for 12 months at the time of making the first request.

There should be provision for application to the State Administrative Tribunal for relief from the strict requirements of residency for 12 months in exceptional circumstances, on compassionate grounds.

Policy intent: To provide clarity as to the meaning of ‘ordinarily resident’ for the purposes of access to voluntary assisted dying and to provide the opportunity for relief from the requirement for 12 months residency for exceptional circumstances.

Ministerial Expert Panel recommendation 4:
Where the assessing practitioner is unable to determine that the person’s decision is voluntary and valid, they should refer to a health practitioner with relevant expertise for further assessment.

That if, after further assessment, there is still uncertainty about whether the person's decision is voluntary and valid, such cases should be referred to the State Administrative Tribunal.

Policy intent: To ensure that people are making a voluntary and valid decision to access voluntary assisted dying and that this decision is not subject to coercion. To ensure that access to voluntary assisted dying is not unreasonably restricted through limiting referrals by specialist type.
Ministerial Expert Panel recommendation 5:

Provision of information to the person by the co-ordinating and consulting practitioners must include: the nature of their disease or illness, the prognosis, any available curative treatments, any available palliative treatments, information specific to voluntary assisted dying medications and must also inform the person that they may withdraw their consent at any time.

This information must be provided in a language and format that the person understands.

Policy Intent: To ensure that people are provided with information sufficient to make fully informed decisions at end of life.

Ministerial Expert Panel recommendation 6:

Health practitioners are able to appropriately raise the topic of voluntary assisted dying with a patient.

Policy intent: To ensure that people are able to make fully informed decisions at end of life. To ensure that access to voluntary assisted dying is not impeded by a health practitioner not discussing what would be a legal option at end of life for some people.

Ministerial Expert Panel recommendation 7:

The eligibility criteria for voluntary assisted dying includes reference to an illness, disease or medical condition that is advanced, progressive and will cause death.

Policy intent: To clearly emphasise the terminal nature of the illness or disease as part of consideration as an eligible condition.

Ministerial Expert Panel recommendation 8:

The eligibility criteria for voluntary assisted dying includes that the eligible condition ‘is causing suffering to the person that cannot be relieved in a manner the person considers tolerable’.

Policy intent: To ensure a compassionate person-centred approach to suffering in the eligibility criteria for voluntary assisted dying. To ensure that it is not necessary for a person to prove the degree of their suffering which is, by definition, subjectively determined.

Ministerial Expert Panel recommendation 9:

The eligibility criteria for voluntary assisted dying specify that death is a reasonably foreseeable outcome for the person within 12 months.

Policy intent: To provide clarity for both the person and assessing practitioners regarding the eligibility for voluntary assisted dying.
Ministerial Expert Panel recommendation 10:
A person with a mental illness or disability who meets the eligibility criteria shall not be denied access to voluntary assisted dying.

Having a mental illness or disability, in itself, would not be considered to meet the eligibility requirements for voluntary assisted dying.

Policy intent: To ensure that a person with a mental illness or disability is not discriminated against in seeking access to voluntary assisted dying but to also ensure clarity that a mental illness or disability on its own would not meet the eligibility criteria for voluntary assisted dying.

Part B: Process
Access

Ministerial Expert Panel recommendation 11:
The Government should play a central role in providing information to the general public and health professionals about how to access voluntary assisted dying.

This information must be translated, culturally appropriate and accessible via multiple formats.

Policy intent: To ensure that people who may seek to request voluntary assisted dying are provided with timely and appropriate information in a manner they understand that enables them to raise this question with their health professional.

Ministerial Expert Panel recommendation 12:
The Government should develop a system of care navigators as part of any implementation of voluntary assisted dying in Western Australia.

Policy intent: To ensure that people requesting voluntary assisted dying and their families, carers and health practitioners are provided with information, support and advice throughout the process.
First request

The Ministerial Expert Panel agrees with the recommendation of the Joint Select Committee:

<table>
<thead>
<tr>
<th>Joint Select Committee recommendation:</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.89 Voluntary Assisted Dying Legislation Framework</td>
</tr>
</tbody>
</table>

**Procedure**

A person must make an initial verbal request to a doctor to access assisted dying. A doctor must include a record that a verbal request has been made in the medical record.

---

The Ministerial Expert Panel agrees with the recommendation of the Joint Select Committee:

<table>
<thead>
<tr>
<th>Joint Select Committee recommendation:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation 20</td>
</tr>
</tbody>
</table>

The Minister for Health should ensure that health professionals are not compelled to participate if any voluntary assisted dying framework is developed for Western Australia.

---

Ministerial Expert Panel recommendation 13:

A health practitioner or health service that is unwilling to be involved in the voluntary assisted dying process must provide information sufficient to enable the person to access information regarding voluntary assisted dying.

**Policy intent:** To ensure that a person requesting voluntary assisted dying is able to be connected with information that meets their needs in a way that does not compromise the right of a health practitioner to conscientiously object to being involved in voluntary assisted dying.

---

Ministerial Expert Panel recommendation 14:

If a medical or nurse practitioner is unwilling to participate in voluntary assisted dying the practitioner must inform the person immediately.

If the practitioner requires time to consider the request for some other reason the practitioner must inform the person of their decision within two working days.

**Policy intent:** To ensure that a person requesting voluntary assisted dying is provided with a timely response about whether the medical or nurse practitioner can accept their request. To provide the practitioner with time to check their availability, consider if they can undertake training or otherwise be able to fulfil the requirements of being a co-ordinating or consulting practitioner.
The Ministerial Expert Panel agrees with the recommendation of the Joint Select Committee:

### Joint Select Committee recommendation:

7.89 Voluntary Assisted Dying Legislation Framework

#### Procedure

Following this request, providing that the doctor does not personally object to voluntary assisted dying, they must provide the person with information regarding:

a. the nature of the disease or illness;
ob. the prognosis;
c. any possible curative treatments;
d. any available palliative treatments;
e. the nature, effects and risks of the lethal medication that may be prescribed; and
f. that the person's consent to assisted dying may be withdrawn at any time.
Assessment

The Ministerial Expert Panel agrees with the recommendation of the Joint Select Committee subject to recommendation 16:

Joint Select Committee recommendation:

7.89 Voluntary Assisted Dying Legislation Framework

Assessment

Two doctors must assess the person. Each doctor must be independently satisfied that [the person meets the eligibility criteria].

Either or both doctors can be a general practitioner and neither doctor is required to be a specialist regarding the person's disease or illness.

Ministerial Expert Panel recommendation 15:

Medical practitioners who may seek to become co-ordinating or consulting practitioners for the purposes of voluntary assisted dying must:

1. Currently hold Specialist Registration with AHPRA and have practised as a registered specialist for at least one year; or,

2. Currently hold General Registration with AHPRA and have practised as a generally registered medical practitioner for 10 or more years; or,

   where it has been demonstrated that no local provider meets the above requirements be:

3. An internationally trained medical specialist currently holding Limited or Provisional Registration for:

   a. work in a gazetted Area of Need or as a sponsored provider within a health service in Western Australia; and,

   b. who has undergone a formal assessment by the relevant Australian College; and,

   c. for whom the relevant College has approved their specialist pathway and supervision program; and,

   d. who has five years’ experience as a specialist consultant; and,

   e. has completed 12 months working in a supervised position within Western Australia.

Policy intent: To ensure that the medical practitioners seeking to become co-ordinating or consulting practitioners for the purpose of voluntary assisted dying are only those that are appropriately qualified, skilled and experienced.

To ensure that there is appropriate access to voluntary assisted dying across the geographically diverse state of Western Australia.

To ensure that trainees or junior medical practitioners do not able to be either a co-ordinating or consulting practitioner for voluntary assisted dying.
Ministerial Expert Panel recommendation 16:

The co-ordinating practitioner must be a medical practitioner that meets the following qualification requirements:

a. Registered in Australia according to the medical practitioner qualification requirements for voluntary assisted dying previously specified; and,

b. Must have successfully completed mandatory approved voluntary assisted dying training.

The consulting practitioner:

a. May be a medical practitioner (with same requirements as for co-ordinating practitioner); or,

b. May be a nurse practitioner registered in Australia on an ongoing basis; and,

c. Must have successfully completed mandatory approved voluntary assisted dying training.

Policy intent: To ensure that only appropriately qualified, skilled and experienced practitioners are able to undertake voluntary assisted dying assessments. To ensure that there is appropriate access to voluntary assisted dying across the geographically diverse state of Western Australia.

Ministerial Expert Panel recommendation 17:

The co-ordinating practitioner must successfully complete approved voluntary assisted dying training before commencing the first assessment.

The consulting practitioner must successfully complete approved voluntary assisted dying training before commencing the second assessment.

Policy intent: To ensure that all practitioners who undertake the process for voluntary assisted dying have successfully completed appropriate training for this purpose.
Second request and written declaration

The Ministerial Expert Panel agrees with the recommendation of the Joint Select Committee:

Joint Select Committee recommendation:

7.89 Voluntary Assisted Dying Legislation Framework

Procedure

The person must provide the initial assessing doctor with a signed written request using a standard template. The written request must be filed with the oversight body.

Ministerial Expert Panel recommendation 18:

The written request is a declaration of the person's considered and enduring request for voluntary assisted dying.

The written declaration must be completed after the first assessment and before the third request.

Where the person is unable to sign the written declaration of request, the person may direct another person to sign on their behalf (where that person is not also a witness).

The written declaration of request will be witnessed by two witnesses to establish that the person requesting voluntary assisted dying signed the declaration voluntarily. The witnesses will be people who are aged 18 or over and have no reasonable grounds for belief that they will financially benefit from the person's death. Neither the co-ordinating nor consulting practitioner may be a witness for the person.

Policy intent: To ensure that the request is formalised after the person has received information about all of their options and been assessed as eligible by at least one practitioner. To ensure that the witnessing of the written declaration of request does not unduly delay the process. To ensure that the purpose of witnessing the written declaration of request is clear. To ensure that the written declaration of request is witnessed in a safe and responsible way. To ensure that a person who is unable to sign the written declaration of request is able to have the written declaration of request completed in a manner that fulfils the requirement under the legislation.
Third request

The Ministerial Expert Panel agrees with the recommendation of the Joint Select Committee:

Joint Select Committee recommendation:

7.89 Voluntary Assisted Dying Legislation Framework

Reflection period

In order to provide a period of reflection a prescription for medication must not be filled sooner than prescribed under the legislation as determined by the expert panel.

Ministerial Expert Panel recommendation 19:

The time period for reflection be defined as: the person’s third request to be made at least nine days after the day on which the person made the first request.

The voluntary assisted dying medication must not be prescribed before the third request.

Policy intent: To ensure that the process affords the person an adequate time for reflection and demonstrates the enduring nature of their decision but does not unduly delay their access to voluntary assisted dying.

Ministerial Expert Panel recommendation 20:

Where the co-ordinating practitioner is of the opinion that the person’s death is likely to occur before the expiry of the reflection period or that the person is likely to lose decision-making capacity before the expiry of the reflection period, and that this opinion is consistent with the assessment by the consulting practitioner, then the reflection period may be reduced to not less than one day after the consulting assessment.

Policy intent: To provide clear direction to the co-ordinating practitioner regarding when the time period may be reduced.
Approval

Ministerial Expert Panel recommendation 21:
There be no legislated requirement for an additional permit approval system in Western Australia.

*Policy intent:* To ensure that the voluntary assisted dying process is not burdened by bureaucratic oversight that may not materially add to the safety of the process.

Ministerial Expert Panel recommendation 22:
Authorisation for prescription of voluntary assisted dying medication be managed through existing mechanisms under the *Medicines and Poisons Act 2014*.

*Policy intent:* To provide clarity that appropriate authorisation of the prescription of voluntary assisted dying medication can be controlled under existing Western Australian legislation.

Medication

The Ministerial Expert Panel agrees with the recommendation of the Joint Select Committee:

Joint Select Committee recommendation:

7.89 Voluntary Assisted Dying Legislation Framework

Medication

The choice of lethal medication for voluntary assisted dying should remain a clinical decision based on the prescribed list of medications for this purpose. The WA Government should review current federal laws in relation to scheduling of medication in Australia, and negotiate with the Federal Government and the Therapeutic Goods Administration for the use of the best medication(s) for assisted dying.

Pharmacists dispensing the lethal medication(s) must report the dispensing of the medication to the oversight body.
Ministerial Expert Panel recommendation 23:

1. Administration of the voluntary assisted dying medication should usually be by self-administration.

2. Administration of the voluntary assisted dying medication may be by practitioner administration as a result of a clinical determination where consideration has been given to:
   a. the person’s ability to self-administer, including concerns regarding self-administration;
   b. the administration method(s) that are suitable for the person;
   c. the voluntary assisted dying medication that is suitable for the person; or
   d. other matters that the clinician or person may see as necessary to the decision-making.

**Policy intent:** To ensure it is clear in the first instance that voluntary assisted dying medication should be self-administered. To ensure that people who are otherwise not able to self-administer can have voluntary assisted dying medication administered by a practitioner.

Ministerial Expert Panel recommendation 24:

The Government should establish regulatory processes for the secure prescription, dispensing, handling, administration and disposal of voluntary assisted dying medication.

**Policy intent:** To ensure the safe and secure management of voluntary assisted dying medication. To ensure that there are clear roles and responsibilities for the person, their family, the contact person and health professionals for medication used in voluntary assisted dying.

Death Certification

Ministerial Expert Panel recommendation 25:

Voluntary assisted dying not be recorded by the medical practitioner as the cause of death at Part 1(a) of the Medical Certificate Cause of Death or reported on the Death Certificate issued by the Registrar of Births Deaths and Marriages.

A separate reporting system should be established requiring the medical practitioner to inform the voluntary assisted dying oversight body when voluntary assisted dying is the cause of death of a person and requiring the voluntary assisted dying oversight body to inform the Registrar of Births Deaths and Marriages.

**Policy intent:** To ensure the need for data collection and accurate record keeping surrounding voluntary assisted dying and the underlying illness or medical condition is met, and to ensure the community’s expectations for privacy and confidentiality are fulfilled.
Ministerial Expert Panel recommendation 26:

A death that occurs through voluntary assisted dying should not be a reportable death for the purposes of the Coroners Act 1996 unless the death is referred to the Coroner by the voluntary assisted dying oversight body.

Policy intent: To ensure that an appropriate mechanism is in place to report any concerns regarding deaths occurring through voluntary assisted dying to the Coroner for investigation, without otherwise lawful deaths occurring through voluntary assisted dying being the subject of an unnecessary investigation.

Part C: Oversight

The Ministerial Expert Panel agrees with the recommendation of the Joint Select Committee:

Joint Select Committee recommendation:

7.89 Voluntary Assisted Dying Legislation Framework

Oversight
An oversight body must be established […]

Ministerial Expert Panel recommendation 27:

The membership of the voluntary assisted dying oversight body should comprise a suitable mix of appropriate and relevant medical, legal and pharmacy expertise related to voluntary assisted dying as well as community representation and be reflective of the citizens of Western Australia.

Policy intent: To ensure that the oversight body is able to appropriately and effectively undertake its functions and responsibilities. To ensure that the oversight body is contemporary and representative of the citizens of Western Australia.

Ministerial Expert Panel recommendation 28:

Data collection in relation to voluntary assisted dying should include all aspects of the process of voluntary assisted dying and comprehensive information relating to the person accessing voluntary assisted dying.

Policy intent: To enhance current and future knowledge and understanding of voluntary assisted dying in the broader context of end of life.
Education and training

Ministerial Expert Panel recommendation 29:
Mandatory training and education provided to those seeking to become co-ordinating and consulting practitioners for voluntary assisted dying should be informed by the Panel’s consultation.

Voluntary assisted dying mandatory training for co-ordinating and consulting practitioners must include a focus on ensuring the voluntary and valid decision of the person.

All training in relation to voluntary assisted dying must promote culturally competent practice in relation to voluntary assisted dying.

Policy intent: To ensure that the mandatory training and education is effective in promoting the competencies required by practitioners to complete the voluntary assisted dying process in a way that is safe, effective and culturally appropriate.

Part D: Implementation

Ministerial Expert Panel recommendation 30:
There should be at least an 18 month period between passage and commencement of voluntary assisted dying legislation.

Policy intent: To enable sufficient time to plan, consult on and develop guidelines and protocols to ensure that the legislation is translated safely, effectively and appropriately for Western Australia.

Ministerial Expert Panel recommendation 31:
The legislation should initially be reviewed three years after the date of operation of the legislation, and every five years thereafter.

Policy intent: To ensure that the legislation remains in line with contemporary views and practices.
Executive Summary

Purpose

The purpose of this Executive Summary is to provide an overall picture of the background and scope of work of the Ministerial Expert Panel on Voluntary Assisted Dying Legislation.

Background

In August 2017 a cross-party Joint Select Committee comprising four members of the Legislative Council of Western Australia and four members of the Legislative Assembly was appointed to conduct an inquiry into End of Life Choices. Following its year-long inquiry the Joint Select Committee tabled its report *My Life, My Choice* in both Houses of Parliament.1,2

Based on the Joint Select Committee’s finding that some people experience unnecessary suffering at end of life and that there is broad community agreement on the importance of individual autonomy and choice, the *My Life, My Choice* report recommended that the Western Australian Government draft and introduce a Bill for voluntary assisted dying. The Joint Select Committee proposed a framework to support the development of the legislation (refer Appendix 1).

In November 2018 the Government announced it would introduce legislation into Parliament to permit voluntary assisted dying in Western Australia. In accordance with the Joint Select Committee's recommendations, the Minister for Health established a Ministerial Expert Panel (the Panel) to undertake consultation to inform the Panel's recommendations for development of legislation for voluntary assisted dying in Western Australia.

The Panel, chaired by Malcolm McCusker AC QC, includes expertise from clinical, legal, consumer, disability, and culturally and linguistically diverse groups. The members of the Panel and their backgrounds are outlined on page viii.

Scope

In establishing the Panel and proposing its Terms of Reference (refer Appendix 2) the Government was mindful that extensive work and consultation was done by the Joint Select Committee and that legislation for voluntary assisted dying was passed in Victoria in November 2017.

The Victorian legislation presented Western Australia with an opportunity to examine the approach taken and use this as a basis for the design of legislation suitable for the needs of Western Australians.3

In considering the Victorian legislation the Government was also aware that Western Australia is different from Victoria in many respects. Western Australia has a lower population than Victoria and is the most culturally and linguistically diverse state in Australia with Aboriginal people, migrants and refugees accounting for nearly 30% of its population.4 There is also significant geographical diversity in Western Australia which presents both challenges and opportunities to providing services in rural and remote areas.

---

1 ‘My Life, My Choice’ report of the Joint Select Committee on End of Life Choices, Parliament of Western Australia (August 2018).
3 Ibid.
4 WA Health System Language Services Policy Guidelines, Department of Health, Western Australia (2017).
For these reasons, the Government determined that the scope of the Panel’s work would focus on the Joint Select Committee’s recommendations and on elements of the Victorian legislation that might not be fit for purpose for Western Australia.

As stated in the Panel’s Terms of Reference, the role of the Panel was to provide advice to Government to assist in the development, consultation and implementation of new legislation for voluntary assisted dying. The Panel’s role did not extend to drafting the legislation itself or focussing on the detail of implementation.

Panel process and consultation

The Panel commenced its work in December 2018 with an extensive review of literature, the experience in other jurisdictions, and meetings with selected experts. This informed the development of a Discussion Paper which was released for public consultation in March 2019.\(^5\)

The Discussion Paper was distributed to over 500 stakeholders across the community including health services, aged care providers, advocacy groups and peak bodies.

The Panel undertook extensive consultation from 19 March until 24 May 2019 as detailed in the Consultation section. This consultation included an online consultation survey, 11 public forums and two webinars across metropolitan and rural areas, stakeholder roundtables and meetings with topic experts. There were a total of 867 participants involved in the consultation process and a further 541 submissions received by the Panel – a total of 1,408 consultation interactions. Submissions that were received by the Panel are to be published on the project website (unless the submitter has requested confidentiality).

The Panel’s consultations were structured as an opportunity to respond to the questions for consideration in the Discussion Paper. These questions focussed on how Western Australia could legislate for voluntary assisted dying and how it could be implemented safely and compassionately. The consultation was not on the ‘for and against’ positions in relation to voluntary assisted dying.

The Panel was very clear that it wished to hear directly from members of the public as well as health professionals and other subject matter experts. Additional public forums were scheduled in some rural areas to respond to demand and were well attended. Sixty five percent of all participants in public forums or webinars were from rural areas.

Throughout the consultation the Panel listened carefully and respectfully to different views, comments and suggestions.

In reaching its conclusions the Panel considered the findings of the consultation, the recommendations of the Joint Select Committee, the Victorian *Voluntary Assisted Dying Act 2017* and the experience to date in Victoria of preparing for implementation of this legislation. The Panel sought information about implementation in other jurisdictions, and spoke to health practitioners from Canada and Oregon (USA) about their experience of implementing voluntary assisted dying. The Panel referred to the extensive research undertaken in Victoria and by the Joint Select Committee and sought updated evidence to complement this existing body of research.

Through its deliberations the Panel carefully considered the range of views and significant volume of information available to it. Where there were different perspectives to resolve, the Panel referred to its Guiding Principles and particularly to the importance of a person-centred approach.

---

Next steps

The recommendations of the Panel will be considered by Government and approved elements will be included in the legislation to be developed for voluntary assisted dying in Western Australia. This legislation is due to be tabled in Parliament in the second half of 2019.

Some elements of the Panel’s recommendations relate more to implementation and will be referred to as required if legislation is passed by the Parliament of Western Australia.