

LANGUAGE IS EVERYTHING – THE BILL’S TERMINOLOGY

1. Under the phrase “assisted dying”, the End of Life Choice Bill provides for both assisted suicide and euthanasia, depending on the circumstances:¹
 - (a) **Assisted suicide** occurs where a person's death is facilitated by the provision of a lethal drug but where the person administers the drug to themselves.
 - (b) **Euthanasia** occurs where the lethal drug is administered to the person by another.²
2. The EOLC Bill does not use the words “euthanasia”, “suicide” or “homicide”, although its primary effect is to override the criminal law on assisted suicide and euthanasia.³ The term “assisted dying” is used 67 times throughout the End of Life Choice Bill and is defined generically in cl 3 as “the administration by a medical practitioner of a lethal dose of medication to a person to relieve his or her suffering by hastening death”.
3. In the case of *Seales v Attorney General*, Collins J concluded that the acts which the End of Life Choice Bill now defines as “assisted dying” constitute either:⁴
 - (a) In the case of euthanasia, an “unlawful act” for the purposes of ss 160(2)(a) and (3) of the Crimes Act 1961, which state that the killing of another person by an unlawful act is culpable homicide, and that culpable homicide is either murder or manslaughter;⁵ and
 - (b) In the case of assisted suicide, aiding and abetting suicide under s 179 of the Crimes Act.⁶
4. The distinction between euthanasia and assisted suicide is considered to be an important one in a number of jurisdictions where these processes have been legalised. Often only one option is permitted, not both. For example, only euthanasia is permitted in Belgium.⁷ Euthanasia is illegal in every US state while assisted suicide is permitted in six states and in the District of Columbia.⁸ In Switzerland, only assisted suicide is legal.⁹ The term “assisted dying” in the End

¹ Clause 15(3)(a).

² Typically, there are three forms of euthanasia:

- (a) Voluntary euthanasia (euthanasia performed with the patient's consent);
- (b) Non-voluntary euthanasia (where the patient is unable to give their informed consent or lack the mental competence to make a decision, such as when they are unconscious, delirious, demented, or in a permanent vegetative state);
- (c) Involuntary euthanasia (performed on a patient against their will).

³ Legislation in other jurisdictions is also more explicit in describing ‘assisted dying’ for what it is and what it seeks to achieve. Canada’s legislation states that its enactment “amends the Criminal Code to, among other things ... create exemptions from the offences of culpable homicide, of aiding suicide and of administering a noxious thing, in order to permit medical practitioners and nurse practitioners to provide medical assistance in dying and to permit pharmacists and other persons to assist in the process”, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying) SC 2016 c 3 (summary) at 2.

⁴ *Seales v Attorney General* [2015] NZHC 1239, [2015] 3 NZLR 556.

⁵ At [107], [113]–[114].

⁶ At [147].

⁷ See s 2, Belgian Act on Euthanasia 28 May 2002.

⁸ Cal Health and Safety Code § 443.16 (Deering 2015); Colo Rev Stat § 25-48-121 (2016); DC Code § 7-661.15 (2016); *Baxter v State* 224 P 3d 1211 (Mont 2009) at [36] and [93]; Or Rev Stat § 127.880 (2017); Vt Stat Ann tit 18, § 5292 (2013); Wash Rev Code § 70.245.180(1) (2018); see also: Haw Rev Stat Ann § 327L-18(a) (LexisNexis, 2018, effective 1 January 2019); see generally: CNN Library “Physician-Assisted Suicide Fast Facts” CNN (online ed, United States, 13 August 2018).

⁹ Samia A Hurst and Alex Mauron “Assisted suicide and euthanasia in Switzerland: allowing a role for non-physicians” (2003) 326 BMJ 271; see: Schweizerisches Stagesetzbuch [StGB], [Swiss Criminal Code], 21 December 1937, SR 311.0, AS 54 757, art 114.

of Life Choice Bill conflates the two and pre-empts a debate on whether New Zealand should accept either, one or other, or both.

5. Where the term "assisted dying" is used in other jurisdictions, this usually refers to services available only to those with a terminal illness (i.e. it provides them "assistance in their dying").¹⁰ However, the End of Life Choice Bill proposes assisted suicide or euthanasia for those with chronic illness and/or disabilities and who do not have a terminal illness.¹¹ The term "assisted dying" is therefore misleading. It has the effect of disguising two issues that should be considered independently.

¹⁰ Owen Dwyer, Caroline White and Aser Garcia Rada "Assisted dying: law and practice around the world" (2015) 351 *BMJ* 4481; contrast Criminal Code RSC 1985 c C-46, s 241.2(1).

¹¹ EOLC Bill, cl 4.