

## WHICH NEW ZEALANDERS WILL LIKELY BE ELIGIBLE FOR EUTHANASIA AND ASSISTED SUICIDE?

1. The Explanatory Note claims that the End of Life Choice Bill is “targeted to a small but significant group of competent adults *who are not vulnerable* ...”<sup>1</sup> An analysis of the eligibility criteria shows this claim to be false: large numbers of vulnerable New Zealanders will be eligible for euthanasia or assisted suicide if the Bill is passed.
2. The Human Rights Commission states that a person who is vulnerable is “less able than other people to cope with and recover from stresses and pressures”. The Human Rights Commission defines a person as ‘vulnerable’ if that person:<sup>2</sup>
  - (a) is dependent on a carer; or
  - (b) has been diagnosed with a chronic illness or a terminal illness; or
  - (c) has a serious physical health or mental health condition requiring continuous monitoring;  
or
  - (d) has experienced a serious injury in the last twelve months; or
  - (e) is over the age of 75; or
  - (f) over the age of 65 and living alone without family support; or
  - (g) lives in severe financial hardship; or
  - (h) lives in a dwelling, the conditions or habitability of which is detrimental to their health.
3. The definition of a “person who is eligible for assisted dying” in cl 4 will, in addition to the “terminal illness” criterion, likely extend eligibility for euthanasia or assisted suicide to the following groups of New Zealand citizens or permanent residents – provided that a person in those groups has (a) sufficient competence to understand the basic proposition that assisted suicide will result in their death, and (b) themselves consider their condition to be grievous and their (physical or psychological) suffering to be unbearable:
  - 3.1. Persons with a medical condition for which there is no complete cure (“irremediable”), who suffer a more than minor level of permanent disability (“loss of capability” – noting that this will include loss of mental capability);<sup>3</sup>
  - 3.2. Persons with a psychological illness or mental health condition for which there is no complete cure, who suffer a more than minor level of permanent physical disability or loss of mental capability;
  - 3.3. Persons with a permanent physical disability;
  - 3.4. Persons with a permanent intellectual disability.

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<sup>1</sup> EOLC Bill (explanatory note) at 2 (emphasis added).

<sup>2</sup> Margaret MacDonald and Sally Carlton *Best practice guidelines for the prioritisation of vulnerable customers* (New Zealand Human Rights Commission, 2016) at 3.

<sup>3</sup> If the application of the eligibility criteria are limited to only those with more serious conditions, that interpretation may be challenged as discrimination on the grounds of disability; the interpretive schema of the Bill of Rights requires the criteria to be interpreted in the least discriminatory way possible, New Zealand Bill of Rights Act 1990, ss 6 and 19; and Human Rights Act 1993, s 21(1)(h).

4. Hundreds of thousands of New Zealanders fall (or potentially fall) within these groups. The Disability Commissioner has found that 24 per cent of New Zealand's overall population is disabled.<sup>4</sup> The 2016/17 results of the New Zealand Health Survey found that one 19.9% of New Zealand adults suffer from mood and anxiety disorders, such as depression, bipolar or PTSD.<sup>5</sup>
5. It is less clear whether the End of Life Choice Bill would extend eligibility for EAS to persons with a number of more minor conditions that *in combination* would mean that the other criteria are established.<sup>6</sup> For example, in the Netherlands, euthanasia is available for elderly people with 'multiple geriatric syndromes' (ie the routine medical conditions associated with old age).<sup>7</sup> A clear delineation of the EOLC Bill's scope on this point is absent.

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<sup>4</sup> Statistics New Zealand *Disability Survey: 2013* (17 June 2014) at 2.

<sup>5</sup> Ministry of Health "Adults: Topic: Mental Health" (2017) New Zealand Health Survey <<https://minhealthnz.shinyapps.io/nz-health-survey-2016-17-annual-data-explorer/>>.

<sup>6</sup> The use of the singular 'a' in cl 4(c)(ii) would appear to exclude them, but that is possibly an error of drafting not reflecting a considered policy approach: it is not clear what the policy objective would be for allowing assisted suicide for persons with a single illness but not for multiple conditions that together impose what the person considers to be "unbearable suffering".

<sup>7</sup> Baroness Illora Finlay: "Review of Data from the 2016 official reports of the Dutch Termination of Life on Request Termination of Life on Request and Assisted Suicide and Oregon's Death with Dignity Act", which states: "In 2010, of 3,136 Dutch PAS/PAE notified, 2781 (89%) were related to cancer, cardiovascular and neurological disorders and 11 per cent to other conditions. By 2016 a rising proportion (17%) related to multiple geriatric syndromes, dementia (n=141), psychiatric disorders (n=60), and other conditions. Statistics Netherlands data confirms this trend." Accessible at: <[https://spcare.bmj.com/content/8/Suppl\\_1/A45.2](https://spcare.bmj.com/content/8/Suppl_1/A45.2)>