



OPEN STATEMENT ON END OF LIFE CHOICE BILL

We are lawyers and legal academics from across New Zealand, with experience in diverse fields of law, representing a variety of ideological and political views, and unanimous in our concern over the care of New Zealand's vulnerable communities and the compassionate treatment of its sick, disabled and terminally ill.

We make this public statement to express our opposition to the End of Life Choice Bill ("the Bill") and its proposed introduction of euthanasia and assisted suicide into New Zealand law, and to warn both Parliamentarians and New Zealanders against the dangers of voting the Bill into legislation.

If it is passed into law, the Bill will legalise what it terms "assisted dying". Under the Bill's provisions this will involve medical professionals, overseen by the Ministry of Health, ending the lives of their patients through lethal injection upon request (known as euthanasia), or assisting them in their suicide through the ingestion or intravenous delivery of lethal medication. Under current New Zealand law, as the case of *Seales v Attorney General* confirmed, "assisted dying" constitutes the offences of culpable homicide and aiding and abetting suicide under sections 160(2)(a) and (3) and 179 of the Crimes Act 1961. In order to further the interests of purportedly only a "small" number of New Zealanders,¹ the Bill proposes to override these fundamental provisions in New Zealand criminal law by effectively permitting homicide and assisted suicide in some medical cases. In addition to impacting many other laws, this development would represent a profound shift in New Zealand law, the practice of medicine, and the field of medical ethics. It will also profoundly impact New Zealand society.

We acknowledge that this issue is fraught with complexity, and recognise the difficult choices that many of us in New Zealand must make when we are near the end of our lives. We also empathise with those New Zealanders who live with disabilities, chronic illnesses or mental illnesses; some of our number are amongst them.

We believe that the mark of our civilised society is measured by the manner in which we treat and protect our weakest and most vulnerable members. While the Bill purports to be targeted to a "small but significant group of competent adults who are not vulnerable and who wish to die without unbearable suffering and pain", we consider that it will in fact place many vulnerable members of our community (whether terminally or chronically ill, disabled or mentally ill) at greater risk of premature death by homicide or suicide as a result of neglect, coercion and other forms of abuse, as well as misdiagnosis or prognostic error and uncertainty. Its definition of a "person who is eligible for assisted dying" is so broad in its coverage of a range of conditions and illnesses that it could extend to New Zealanders with disabilities, relatively common chronic health conditions, and in some cases even mental health or psychological disorders such as depression, anorexia or bi-polar disorder. We concur with the New Zealand Disability Rights Commissioner's assessment that the Bill undermines the position of disabled and vulnerable New Zealanders and poses significant risks to them, both as individuals and as a group. We are particularly concerned at its potential impact on Māori, who are over-represented in our suicide rates each year, in terminal, mental and chronic health illnesses, and in disabilities. We note that according to the Waitangi Tribunal, "many of these illnesses and problems are practically at epidemic levels"² and that in December 2018 the Tribunal commenced an investigation into more than 200 claims that the Crown is operating a "sick, racist system that fails Māori", leading to Māori dying earlier and suffering the worst health outcomes.

¹ Explanatory Note to End of Life Choice Bill.

² *Te Manutukutuku* (Waitangi Tribunal), Issue 68, June 2015.

The Bill lacks important safeguards, and the purported safeguards that it does propose (such as its safeguard against coercion) are completely inadequate in protecting New Zealand's vulnerable communities. We agree with the Disability Rights Commissioner that its safeguards are deficient, both procedurally and substantively, for both terminal and non-terminal conditions.

As lawyers working across a range of fields, we are keenly aware of the diversity of vulnerabilities which many New Zealanders experience, not only within their families and communities but also across the health system (including, for example, inequitable regional variances in palliative care resources and a lack of government funding for some life-prolonging medications). Given these very serious problems, and having considered the impact of euthanasia and assisted suicide laws on vulnerable populations in other countries, we have very serious misgivings over whether a safe regime for euthanasia and assisted suicide can be implemented in New Zealand. The risk of abuses resulting from the legalisation of euthanasia and assisted suicide through this Bill is very high. We are supported in this view by a reputable body of experienced opinion that has been informed by the harms which have resulted in the few overseas jurisdictions that have legalised these practices.³

We believe the implementation of the Bill could create harmful social pathologies, as well as result in the dangerously contradictory message being promoted within New Zealand society that suicide can actually be a good and dignified act. We note in this regard that the Bill will vest the Ministry of Health, the government department presently responsible for suicide prevention in New Zealand, with responsibility for overseeing the practice of helping some New Zealanders to commit suicide at the same time as advising others not to. Both of these groups will receive the message that our society and state endorse the ending of a person's life as an appropriate response to suffering, the only difference being that those who are "ineligible" for assistance in their suicide will be left on their own to achieve it. This message will confuse New Zealand's attempts to eliminate suicide.

We have many other concerns over the Bill, including its lack of any effective or meaningful oversight and the false or questionable assertions of fact in its Explanatory Note. One final, significant, concern of note is that it compels all New Zealand doctors to facilitate euthanasia and assisted suicide in violation of the rights of many doctors to freedom of conscience in section 13 of the Bill of Rights Act, and makes those conscientious objecting doctors who refuse to refer a patient to another doctor for help in ending their lives liable to prosecution, imprisonment or a substantial fine. We consider that to be an unacceptable intrusion into the personally-held beliefs which many of our doctors have regarding their duty to their patients: a duty to care for them, rather than to be complicit in killing them.

After 16 months of investigation and after reviewing some 39,000 submissions, the Justice Select Committee has now confirmed in its Report to Parliament that it has not even been able to agree that the Bill be passed and that it is unworkable in its present state.⁴ It appears the Committee has been left in considerable disarray over how to repair it. In the result, our Parliament has now been handed an extremely dangerous Bill with no real insight into how it might be remedied, or even if it can be remedied. Indeed, the Committee's Report suggests very strongly that the Bill, to borrow from its own terminology, is irreparable.

As lawyers we believe the End of Life Choice Bill is not fit for purpose and is not salvageable. For many vulnerable New Zealanders this issue is literally a matter of their life and death. When it comes to safeguarding their wellbeing and safety, we consider the risks associated with the Bill to be unacceptably high.

³ As discussed, for example, by the UK Supreme Court in *Nicklinson v Minister of Justice* [2014] UKSC 38 at [225] – [229]; also discussed in *R (Conway) v Secretary of State for Justice* [2017] EWHC 2447, [2018] 2 All ER 250 at [100]–[104], a decision that was recently upheld by both the UK Court of Appeal (27 June 2018) and the UK Supreme Court (27 November 2018).

⁴ Justice Select Committee Report to Parliament on End of Life Choice Bill, p 1, 7.