

## AGE LIMIT – “18 YEARS OR OVER”

1. The EOLC Bill restricts access to assisted suicide to persons over the age of 18.<sup>1</sup> The former Attorney General Chris Finlayson has already opined that this age limit discriminates against eligible 16 and 17 year old New Zealanders who may also wish to be euthanised or be assisted to commit suicide:<sup>2</sup>

“Put another way, 16 and 17 year olds are disadvantaged vis-a-vis those aged 18 and over because they are ineligible for assisted dying.... I think the Bill appears to be inconsistent with the right to be free from discrimination on the grounds of age affirmed in s 19(1) of the Bill of Rights Act.”

2. The former Attorney General’s Report then recommended that in order to "protect" the right to be free from discrimination on the basis of age, the EOLC Bill should be amended either by reducing the age limit to 16 years or "by **removing the age criterion altogether** and relying on the other criteria and safeguards to ensure competence".<sup>3</sup>

3. It follows that if our Parliament abides by the former Attorney General’s recommendations, two legislative options will be on the table:

3.1 Allowing euthanasia or assisted suicide to extend to New Zealand children aged 16 of 17 years; or

3.2 Allowing euthanasia or assisted suicide to extend to New Zealand children of any age.

4. The former Attorney General’s Report did not consider the gravity of this recommendation in light of clauses 8(e) - (g) of the Bill. Those clauses stipulate that a doctor must (here the word "person" has been substituted with the word "child") do the following in respect of an eligible child who has requested euthanasia or assisted suicide:

(e) encourage the child to talk about his or her wish with others such as family, friends, and counsellors; and

(f) ensure that the child knows that he or she is not obliged to talk to anyone; and

(g) ensure that the child has had the opportunity to talk about his or her wish with those whom he or she chooses.”

5. In other words, if the Attorney General’s recommendations are followed then it would be conceivable for a 16 or 17 year old child, or possibly even a younger child, to be euthanised or helped to commit suicide under the Bill without their family even knowing about it.

6. Mindful of Lord Goff’s statement in the House of Lords decision of *Airedale NHS Trust v Bland*, that once euthanasia is recognised as lawful in a limited set of circumstances “*it is difficult to see any logical basis for excluding it in others*”,<sup>4</sup> it is important to view the End of Life Choice Bill’s age restriction alongside developments in those jurisdictions that have legalised euthanasia or assisted suicide:

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<sup>1</sup> Clause 4(a).

<sup>2</sup> Christopher Finlayson *Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the End of Life Choice Bill* (4 August 2017) at [24] and [36]; see also discussion below: “Discrimination in the Bill”.

<sup>3</sup> *Ibid*, para 33.

<sup>4</sup> *Airedale NHS Trust v Bland* [1993] AC 789, [1993] 1 All ER 821 (HL) at 867.

- 6.1 Colombia, which implemented its euthanasia regime in 2015, expanded the practice to include children in 2018.
- 6.2 Belgium, which legalised euthanasia in 2002, expanded the practice to include children in 2014 and removed the age restriction entirely.<sup>5</sup> Belgian doctors are now authorised to terminate the life of some terminally ill children with the capacity of discernment who make a request for euthanasia with parental consent, no matter their age.<sup>6</sup> Since 2014 two children – a nine-year-old with a brain tumour and an 11-year-old with cystic fibrosis – were euthanized by lethal injection. A 17 year old with muscular dystrophy was also euthanized in similar fashion.<sup>7</sup>
- 6.3 In the Netherlands, euthanasia is legal for children between 12 and 16 years of age with parental consent.<sup>8</sup> For children between 16 and 18 years old, parents must be informed of their child’s request and its status, but if there is disagreement, the final decision rests with the minor.<sup>9</sup> The Dutch Society of Paediatrics has called for the 12 year old limit to be scrapped, to bring Dutch law into line with Belgium’s recent amendment.<sup>10</sup> Eduard Verhagen, one of the Society’s ethics commissioner’s wrote:<sup>11</sup>
- “We feel that an arbitrary age limit such as 12 should be changed and that each child’s ability to ask to die should be evaluated on a case-by-case basis.”
- 6.4 In Canada, where euthanasia was legalised in 2016, the Canadian Paediatric Society has reported that its members are being “increasingly” approached by parents asking about the option of seeking euthanasia for their children.<sup>12</sup> In February 2016 a special parliamentary committee recommended in a 70 page report that mature minors and mentally ill people should not be excluded from accessing euthanasia.<sup>13</sup> In late 2016 the Ministers of Justice and Health engaged the Council of Canadian Academies to review the issue of requests for euthanasia or assisted suicide by “mature minors”,<sup>14</sup> and the Council reported back on the issue in December 2018. Its Report has been tabled in Parliament and is under government consideration.<sup>15</sup> Canada’s Attorney General has said that any changes to Canada’s euthanasia law will

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<sup>5</sup> Loi modifiant la loi du 28 mai 2002 relative à l'euthanasie, en vue d'étendre l'euthanasie aux mineurs [Amendment Act modifying the Act of 28 May 2002 on euthanasia, to extend euthanasia to minors] of 28 February 2014, *Moniteur Belge [MB] [Official Gazette of Belgium]*, 12 March 2014, 21053; see generally Kristoff van Assche and others “‘Capacity for Discernment’ and Euthanasia on Minors in Belgium” (2018) 0 *Med L Rev* 1.

<sup>6</sup> Article 3.

<sup>7</sup> Henry Samuel “Belgium authorised euthanasia of a terminally ill nine and 11-year-old in youngest cases worldwide” *The Telegraph* (online ed, United Kingdom, 7 August 2018).

<sup>8</sup> See *Wet toetsing levensbeëindiging op verzoek en hulp bij zelfdoding (WtI) [Termination of Life on Request and Assisted Suicide (Review Procedures) Act 2002]*, *Stb* 2001, 194 (NL), art 2(4).

<sup>9</sup> Article 2(3).

<sup>10</sup> Dutch Society of Paediatrics “Termination of life should also be possible for children 1-12 years” (press release, 19 June 2015).

<sup>11</sup> “Dutch paediatricians: give terminally ill children under 12 the right to die” *The Guardian* (online ed, The Hague, 19 June 2015).

<sup>12</sup> Maija Kappler “Canadian pediatricians ‘increasingly’ being asked about assisted death for children” *Global News* (online ed, Canada, 17 October 2017); see also Dawn Davies “Medical assistance in dying: A paediatric perspective” (2018) 23 *PCH* 125 at 128.

<sup>13</sup> Report of the Special Joint Committee on Physician Assisted Dying: “Medical Assistance in Dying, a Patient Centred Approach”, 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session, February 2016.

<sup>14</sup> In accordance with section 9.1(1).

<sup>15</sup> K Harris, “The next frontier in the ‘right to die’: advance requests, minors and the mentally ill” *CBC News* · Posted: Jan 03, 2019; Government of Canada “Medical assistance in dying” (26 October 2018) <[www.canada.ca](http://www.canada.ca)>.

have to wait until the conclusion of a five year parliamentary review, which is due in 2021.<sup>16</sup>

7. Given the current issues with the Bill that have been identified by the former Attorney General and the inevitable expansion of euthanasia laws to include children, it may only be a matter of time before euthanasia extends to New Zealand children if the End of Life Choice Bill becomes law.

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<sup>16</sup> T MacCharles, "Lametti opposed a bill on assisted dying. As federal justice minister, he won't push to change it", The Star, 13 February 2019