

Response to public statements made by the End of Life Choice Bill's sponsor

On behalf of vulnerable New Zealanders we wish to respond to various statements which the End of Life Choice Bill's sponsor, MP David Seymour, has recently made in a report and in recorded interviews and debates over the Bill, which goes before our Parliament for its second reading this week.

Those statements, and our responses, are set out below.

	David Seymour's Claims	LVNZ Responses
1.	<p>The claim that the End of Life Choice Bill's safeguard against coercion in section 8 involves a process of detecting coercion overseen by two doctors:</p> <p>"...actually it's not one doctor, it's two doctors".</p> <p><i>(TVNZ Breakfast, 7 April)</i></p>	<p>This is not correct. Under section 8 of the Bill only the first doctor ("the attending medical practitioner") is required to assess whether a patient is being coerced. The second doctor ("the independent medical practitioner" appointed by the SCENZ Committee) is not so required (section 11).</p>
2.	<p>Claims that depressed people won't meet the competency criteria of the End of Life Choice Bill:</p> <p>"[I]f you're so depressed that you feel that your life is hopeless you're not going to meet the criteria of being somebody capable of making the decision"</p> <p><i>(TVNZ Q+A debate, 1 April)</i></p>	<p>That is not correct. The Bill only requires that a requesting patient "has the ability to understand the nature of assisted dying and the consequences for them of assisted dying" (section 4(f)).</p> <p>In other words, the patient merely has to understand the very basic proposition that euthanasia or assisted suicide involves the administration of a lethal drug and that the consequences for them of receiving that drug will be that they die. A depressed person can very easily satisfy that simple test.</p> <p>In her Report to the Justice Select Committee the Disability Rights Commissioner has concluded that mentally ill and depressed New Zealanders could in some cases satisfy the Bill's eligibility criteria and could also easily satisfy this low-threshold competency test.</p> <p>If Mr Seymour's statement is in fact a reference to the recommendation in his "Sponsor's Report on the End of Life Choice Bill" (December 2018) that the Bill's competence criteria be amended (see "4A. Capacity to make informed decision") so as to be more in line with the competency test in the Substance Addiction (Compulsory Assessment and Treatment) Act 2017 and with overseas assisted dying legislation, we point out that the "Sponsor's Report" has no official status and has not been adopted by the Justice Select Committee, which has not made any recommendation to amend the Bill's competence criteria in its Report to Parliament.</p> <p>In any event, medical authorities in those jurisdictions where mentally ill and depressed patients are being euthanised argue a diametrically opposed view to Mr</p>

		<p>Seymour's position that depressed New Zealanders would be incapable of making a decision over assisted dying. In justification of their practices, both Belgian academics and international "right to die" advocates argue that depressed or mentally ill persons <i>can</i> be capable of consenting to euthanasia. A recent report, published (amongst others) by the World Right to Die Federation, concluded:¹</p> <p style="padding-left: 40px;">"The increase [in Belgium] in euthanasia cases in people with a diagnosis of psychiatric disorder or dementia has given rise to some concerns Assessment of decision-making capacity in people with psychiatric disorders is a complex undertaking. However, studies of mental capacity in psychiatric patients show that mental capacity can be reliably assessed.... Despite all existing and novel treatments for mood disorders, euthanasia may still be the only option available for certain people suffering from severe treatment-resistant depression...."</p> <p>Moreover, and noting that the End of Life Choice Bill's eligibility criteria have been modelled primarily on Canada's euthanasia law, a recent Report by the Canadian Institute for Research and Public Policy (IRPP) outlining "the most defensible interpretations of the [Canadian euthanasia] legislation, using the tools of statutory interpretation supported by relevant clinical and other forms of expertise" has specifically found:²</p> <p style="padding-left: 40px;">"Persons with mental illness can be capable of making decisions with respect to their health (even when the consequences of the decision are death)."</p> <p>It follows that there is no basis for Mr Seymour's claim that a depressed person is "not going to meet the criteria of being somebody capable of making the decision".</p>
3.	<p>The claims that "the Supreme Court of Canada, the Western Australian parliament, the Quebec Select Committee and the Attorney-General have all said that the safeguards are adequate and this Bill is consistent with human rights"</p> <p><i>(TVNZ Q+A debate, 1 April)</i></p> <p>"Well, if you accept that this Bill is safe, and that is the position of the Supreme Court of Canada..."</p> <p><i>(Newshub Nation, 13 April)</i></p>	<p>We are not aware of any decision of the Supreme Court of Canada or of any report by the Quebec Select Committee which has analysed the End of Life Choice Bill.</p> <p>The Quebec Select Committee <i>Report on Dying with Dignity</i> was published in March 2012. The Canadian Supreme Court's ruling in <i>Carter v Canada</i> was handed down in February 2015. The End of Life Choice Bill wasn't drafted until after the <i>Carter</i> case and wasn't tabled in New Zealand's Parliament until June 2017.</p> <p>Likewise, in its <i>Report of the Western Australian Parliament's Joint Select Committee on End of Life Choices</i> (August 2018) the Western Australian parliament did not analyse the End of Life Choice Bill.</p>

¹ Sigrid Dierickx, "Euthanasia practice in Belgium A population-based evaluation of trends and currently debated issues", July 5, 2018 (published at https://www.worldrtd.net/sites/default/files/newsfiles/Sigrid_Dierickx.pdf), citing Cairns R, Maddock C, Buchanan A, David AS, Hayward P, Richardson G, et al, "Reliability of mental capacity assessments in psychiatric in-patients", *Br J Psychiatry* 2005; 187:372-8 and Trachsel M, Irwin SA, Biller-Andorno N, Hoff P, Riese F, "Palliative psychiatry for severe and persistent mental illness", *BMC Psychiatry* 2016;16.

² J Downie and JA Chandler, "Interpreting Canada's Medical Assistance in Dying Legislation", IRPP Report (March 2018), 23,29. The Report was drafted because "uncertainty about the meaning of specific terms in the Canadian MAiD legislation puts Canadians at risk in a number of ways". The authors have therefore identified "six key phrases in the current law that urgently need clarification" and "explain how these phrases are generating interpretive uncertainties, propose an interpretation for each phrase and justify each interpretation."

	<p>Those Courts, Parliaments and other legislatures which have analysed the few euthanasia and assisted suicide regimes that exist in the world and have observed that safeguards are not adequate in protecting vulnerable citizens against the risk of abuse include:</p> <ul style="list-style-type: none"> • The Courts of the United Kingdom including the UK Supreme Court.³ • The Courts of Ireland including the High Court⁴ and Supreme Court.⁵ • The European Court of Human Rights.⁶ • The United Kingdom Parliament, which rejected an assisted dying Bill by 330 votes to 118 in September 2015.⁷ • The Scottish Parliament, which rejected an assisted dying Bill by 82 votes to 36 in May 2015 and an earlier Bill introduced in 2010 by 85 votes to 16.⁸ • The National Assembly for Wales, which rejected an assisted dying Bill by 21 votes to 12 in December 2014.⁹ • The Guernsey Parliament, which rejected an assisted dying Bill by 24 votes to 14 in May 2018.¹⁰ • The Isle of Man Parliament, which rejected an assisted dying bill by 17 votes to 5 in February 2015.¹¹ • The Portugese Parliament, which rejected an assisted dying Bill by 115 votes to 110 in May 2018.¹² • Parliaments of the Australian states and territories, which over the last few decades have rejected nearly 50 euthanasia and assisted suicide bills, including the New South Wales Parliament in November 2017.¹³ • Legislatures across 39 states of the United States, where since 1994 some 260 attempts to legalise assisted suicide have failed and only 8 have succeeded.¹⁴ Euthanasia remains illegal in every state in the US.¹⁵ <p>The New Zealand Royal College of New Zealand General Practitioners reported to the Justice Select Committee its “strong apprehension about legalising physician-assisted suicide and euthanasia”, said that the coercion safeguard in</p>
--	---

³ *R (Nicklinson) v Minister of Justice*, above n 164, at [149], [195], [206], [257], [289], [293], [298] and [366]; *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 *Fleming v Ireland & Ors* [2013] IEHC 2.

⁵ *Fleming v Ireland & Ors* [2013] IESC 19 (019/2013)

⁶ See AFFAIRE HAAS c. SUISSE (*Haas v Switzerland*, Application No. 31322/07, 20 January 2011), at 58. See also “Right-to-die campaigners' case rejected in Europe” *BBC* (online ed, United Kingdom, 16 July 2015).

⁷ Rowena Mason “Assisted dying bill overwhelmingly rejected by MPs” *The Guardian* (online ed, United Kingdom, 12 September 2015).

⁸ Libby Brooks “Scottish parliament rejects assisted dying law” *The Guardian* (online ed, United Kingdom, 27 May 2015). For the 2010 Bill see K McKenna, “Scotland’s assisted suicide bill is an offence to our human dignity”, *The Guardian* (online ed, 1 February 2014).

⁹ Although this was not a devolved issue and the results were therefore not legally binding. See J Mildred, “Welsh Assembly soundly rejects Assisted Dying Bill, CARE UK, 11 December 2014.

¹⁰ H Sherwood: “Guernsey parliament votes against assisted dying”, *The Guardian*, 18 May 2018.

¹¹ E Vannin, “Assisted dying bill rejected by Isle of Man politicians”, *BBC News* (online ed, United Kingdom, 3 January 2015).

¹² “Portugal parliament rejects euthanasia decriminalisation” *BBC News* (online ed, United Kingdom, 29 May 2018).

¹³ G Alcorn, Crossing the threshold: how Victoria's assisted dying law finally made history, *The Guardian*, 23 November 2017.

¹⁴ Assisted dying bills in the US have either been defeated, tabled for the session, withdrawn by sponsors, or have languished with no action taken; see “Attempts to Legalize Euthanasia/Assisted-Suicide in the United States”, Patient Rights Council, <www.patientsrightscouncil.org/site/failed-attempts-usa/>

¹⁵ CNN Library “Physician-Assisted Suicide Fast Facts” *CNN* (online ed, United States, 13 August 2018).

		<p>the End of Life Choice Bill was “problematic”, that “coercion of patients will be impossible to discern in every request for assisted death”, and that vulnerable people will die wrongful deaths.¹⁶</p> <p>The New Zealand Disability Rights Commissioner has also described the Bill as ‘woefully inadequate’ and unsafe. In her Report to the Justice Select Committee she wrote:</p> <ol style="list-style-type: none"> a. “this Bill undermines the position of disabled and vulnerable members of our community and poses significant risks to them, as individuals and as a group; b. the proposed safeguards in the Bill are deficient, both procedurally and substantively, for both terminal and non-terminal conditions...”
4.	<p>“The trial judge in [the Canadian case of] <i>Carter v. Canada</i> found that ‘a properly administered regulatory regime is capable of protecting the vulnerable from abuse or error.’ She pointed to expert evidence from Oregon and the Netherlands which showed that the ‘predicted abuse and disproportionate impact on vulnerable populations has not materialised.’”</p> <p>(<i>David Seymour, “Sponsor’s Report on the End of Life Choice Bill”, 12 December 2018</i>)</p>	<p>We respectfully disagree. Equal or more superior courts in other jurisdictions have made findings to the contrary or have specifically rejected the conclusions of the trial judge in <i>Carter v. Canada</i>. These include:</p> <ul style="list-style-type: none"> • The United Kingdom Supreme Court, which has found:¹⁷ <p>(Lord Neuberger) “I would find it hard to accept the [conclusions of Smith J in the Canadian case of <i>Carter v Canada</i>] ... as a sound basis for supporting the appellants’ case.”</p> <p>(Lord Mance) “Whatever else may be said about the evidential position, it is not in my opinion sustainable to suggest that there is no evidence and to describe as ruminations a conclusion that permitting assisted suicide in the case of persons in Mr Nicklinson’s and Mr Lamb’s position would pose a relevant risk to vulnerable people”.</p> <p>(Lord Sumption) “Lord Mance has reviewed [the material comprising Lord Falconer’s Commission on Assisted Dying and the decision of Lynn Smith J in the Supreme Court of British Columbia on a very similar issue in <i>Carter v Canada</i>] and summarised the problems associated with it in terms with which I agree. There are obvious difficulties about reaching a concluded view on untested, incomplete and second-hand material of this kind. The authority of these sources is also diminished by other considerations.... Lynn Smith J’s review of the extensive evidence before her excluded a substantial body of apparently relevant material as inadmissible and was ultimately set aside by the Court of Appeal on the ground that it was inconsistent with the law laid down by the Supreme Court of Canada in <i>Rodriguez</i>. However, I would in any event reject the submission that the issue has been overtaken by more recent knowledge because I think that this material even if taken at face value is inconclusive both factually and legally.... It is inconclusive factually, for reasons which emerge very</p>

¹⁶ RNZCGP Submission to Justice Select Committee on End of Life Choice Bill, 6 March 2018:

"The College also considers clause (h) where the medical practitioner is required to ‘do his or her best to ensure that the person expresses his or her wish free from pressure’ is problematic. As one member wrote: “It will prove impossible to determine if a patient is ‘free from coercion’. What criteria will doctors use to determine whether or not coercion exists? If patients request assisted death, there is no provision in the Bill as to what a doctor should do if she or he thinks that coercion is actually present. Coercion of patients will be impossible to discern in every request for assisted death. Doctors will not be 100% correct in their assessments of coercion. Wrongful deaths will be the result of this proposed new law.” Again, we question the practicalities of medical practitioners being able to consult with other health practitioners. In cases where some medical professionals and health professionals have a conscientious objection to euthanasia, in sharing their medical opinion they may feel complicit in the process of enabling euthanasia."

¹⁷ *R (Nicklinson) v Minister of Justice*, per Lord Neuberger at 121; Lord Mance at 183 and Lord Sumption at 224, 225, 229.

		<p>clearly from the report of the Commission on Assisted Dying. The only jurisdictions with experience of legalised assisted suicide are certain states of the United States, of which the most important is Oregon, and the Netherlands, Belgium and Switzerland. The data from these sources is contested and acknowledged to be of variable robustness.”</p> <p>“It is plain from the expert evidence ... that there is a diversity of opinion about the degree of risk in relaxing or qualifying the ban on assisted suicide, but not about its existence. The risk exists and no one appears to regard it as insignificant. There is a reputable body of experienced opinion which regards it as high. ... The real question ... is how much risk to the vulnerable we are prepared to accept in this area in order to facilitate suicide by the invulnerable ...”</p> <ul style="list-style-type: none"> • The UK High Court:¹⁸ <p>“We did not find the decision in <i>Carter</i> to be of assistance.... It also turned critically on findings by the trial judge in the proceedings on evidence before her in relation to the effectiveness of safeguards for vulnerable people which the Supreme Court held could not be challenged on appeal.... The evidence before us is different and we have made our own findings in the light of it.”</p> • The Irish Supreme Court:¹⁹ <p>“Although the judgment of [the <i>Carter v Canada</i> trial judge] is enormously detailed and comprehensive, this Court is mindful of the fact that it is a decision of a trial court, currently under appeal; it is grounded on the Canadian Charter of Rights and Freedoms, not the Irish Constitution; the foundation of the judgment is a development of the principle of proportionality, and new evidence; and it is not consistent with many judgments from supreme and constitutional courts of other nations”.</p> • The Irish High Court:²⁰ <p>“the Court cannot at all agree with [the <i>Carter v Canada</i> trial judge’s finding] that the risks inherent in legally permitted assisted death have not materialized in jurisdictions such as Belgium and the Netherlands.... this Court finds that it cannot agree with [her] analysis of both the evidence and the relevant legal principles”.</p> <p>The European Court of Human Rights has also found:²¹</p> <p>“The risks of abuse inherent in a system that facilitates access to assisted suicide should not be underestimated.”</p>
--	--	--

¹⁸ *R (Conway) v Secretary of State for Justice* [2017] EWHC 2447, [2018] 2 All ER 250 at [123], in a decision that was recently upheld by both the UK Court of Appeal (27 June 2018) and the UK Supreme Court (27 November 2018).

¹⁹ *Fleming v Ireland & Ors* [2013] IESC 19 (019/2013). See also Mary Carolan “Marie Fleming appeal on assisted suicide rejected” *The Irish Times* (online ed, Ireland, 29 April 2014); and *Fleming v Ireland*, above n 252, at [166].

²⁰ *Fleming v Ireland & Ors* [2013] IEHC 2.

²¹ See *AFFAIRE HAAS c. SUISSE (Haas v Switzerland)*, Application No. 31322/07, 20 January 2011), at 58. See also “Right-to-die campaigners' case rejected in Europe” *BBC* (online ed, United Kingdom, 16 July 2015).

<p>5.</p>	<p>The following claims made during an interview with Lisa Owens on Radio NZ Checkpoint on 9 April 2019:</p> <p>Q: Belgium includes children of all ages, and as you would know children under 12 have been killed there using euthanasia legislation.</p> <p>A (Mr Seymour) Uh, well that's not quite right, but-</p> <p>Q. What's not quite right about that Mr Seymour? A child the age of 9, a child the age of 11, and a child who's 17 in the most recent times have ended their lives under this law.</p> <p>A (Mr Seymour). Ok well there you go, you said they've been killed that's quite a different criteria from what actually happened..... they've developed protocols there that I disagree with, that no English-speaking country that has an assisted dying law has considered, and ultimately the way they did that was they had to go back to Parliament and pass another law. People can argue about what Parliament might do in the future, but I'd be very surprised if New Zealand was ever to consider that, and it's certainly not being considered in this law.</p>	<p>We respectfully take issue with a number of the claims made during this particular line of questioning.</p> <p>In Belgium, where only euthanasia is legal and assisted suicide is illegal, three Belgian children – a nine-year-old with a brain tumour, an 11-year-old with cystic fibrosis, and a 17 year old with muscular dystrophy have been euthanized by lethal injection since 2014.²²</p> <p>As for the claim that “no English-speaking country that has an assisted dying law has considered” extending euthanasia to children, our discussion of recent developments in Canada below demonstrates otherwise.</p> <p>Contrary to Mr Seymour's claim, the question of whether or not the End of Life Choice Bill should be extended to include New Zealand children is very much an issue that is presently on the table. The former Attorney-General's section 7 Report to Parliament on the End of Life Choice Bill has specifically stated that the Bill's age limit of 18 years discriminates against eligible 16 and 17 year old New Zealanders who may also wish to be euthanised or be assisted to commit suicide:²³</p> <p>“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.”</p> <p>The former Attorney-General's Report has recommended that in order to "protect" the right to be free from discrimination on the basis of age, the 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".²⁴</p> <p>It follows that if our Parliament abides by the former Attorney-General's recommendations in order to ensure the End of Life Choice Bill's compliance with the Bill of Rights Act, two legislative imperatives will be on the table:</p> <ol style="list-style-type: none"> 1. Allowing euthanasia or assisted suicide to extend to New Zealand children aged 16 of 17 years; or 2. Allowing euthanasia or assisted suicide to extend to New Zealand children of any age. <p>We note further that the former Attorney-General's Report failed to consider the gravity of this recommendation in</p>
-----------	--	---

²² 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).

²³ 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].

²⁴ *Ibid*, para 33.

		<p>light of sections 8(e) - (g) of the Bill. Those provisions 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:</p> <p>“(e) encourage the child to talk about his or her wish with others such as family, friends, and counsellors; and</p> <p>(f) ensure that the child knows that he or she is not obliged to talk to anyone; and</p> <p>(g) ensure that the child has had the opportunity to talk about his or her wish with those whom he or she chooses.”</p> <p>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.</p>
6.	<p>Q: Now, Canada — one of the major concerns about enacting this kind of legislation is whether it’s going to be a gateway or a slippery slope to people like minors or people with disabilities or who have a mental illness being able to access this. Now, that’s not allowed under the bill at the moment, but is that a possibility? That’s one of the concerns, isn’t it, David?</p> <p>A. (Mr Seymour): Well, no, it’s not. Frankly, it’s one of the weakest arguments that people make.....The fact that some Canadian says it doesn’t mean that Canada’s going to do it.”</p> <p><i>(Newshub Nation, 13 April)</i></p>	<p>We beg to differ.</p> <p>In late 2016 the Canadian Ministers of Justice and Health appointed the Council of Canadian Academies to review the issues of whether mentally ill Canadians should be able to access euthanasia and assisted suicide “where mental illness is the sole underlying medical condition” and whether the law should be expanded to cover requests for euthanasia or assisted suicide by "mature minors".²⁵ The Council’s Report was tabled in Parliament in December 2018 and is now under government consideration.²⁶ Canada’s Attorney-General has said that any changes to Canada’s euthanasia law will have to wait until the conclusion of a five year parliamentary review that is due in 2021.²⁷</p> <p>On 12 April 2019, the United Nations Special Rapporteur on the Rights of Persons with Disabilities issued an End of Mission Statement regarding Canada’s treatment of its disabled citizens. In respect of Canada’s euthanasia law, she reported (emphasis added):²⁸</p> <p>“Right to life</p> <p>I am extremely concerned about the implementation of the legislation on medical assistance in dying from a disability perspective. I have been informed that there is no protocol in place to demonstrate that persons with disabilities have been provided with viable alternatives when eligible for assistive dying.</p>

²⁵ In accordance with section 9.1(1).

²⁶ 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>.

²⁷ 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

²⁸ United Nations Office of the High Commissioner for Human Rights: *End of Mission Statement by the United Nations Special Rapporteur on the rights of persons with disabilities, Ms. Catalina Devandas-Aguilar, on her visit to Canada, Ottawa, Canada, 12 April 2019.*

	<p>I have further received worrisome claims about persons with disabilities in institutions being pressured to seek medical assistance in dying, and practitioners not formally reporting cases involving persons with disabilities. I urge the federal government to investigate these complaints and put into place adequate safeguards to ensure that persons with disabilities do not request assistive dying simply because of the absence of community-based alternatives and palliative care.”</p> <p>In less than three short years, euthanasia has already been judicially or medically extended in Canada to citizens with non-terminal conditions such as osteoarthritis,²⁹ rheumatoid arthritis,³⁰ and "age-related frailty" where an elderly man did not even have a specific illness.³¹</p> <p>Just 10 days after Canada's euthanasia law came into force in June 2016, the B.C. Civil Liberties Association (which had led the ground-breaking <i>Carter v. Canada (Attorney General)</i> case) launched a new court challenge together with Julia Lamb, a 25-year-old woman with a severe neurodegenerative disease, seeking a ruling that Bill C-14's "reasonably foreseeable" criterion was unconstitutional and discriminated against Canadians with a grievous and irremediable medical condition by denying them a medically assisted death.³²</p> <p>Within 12 months another court challenge on the same grounds was also initiated in Quebec by two Canadians with post-polio syndrome and cerebral palsy, who seek a declaration that Bill C-14 is too limiting of who can access euthanasia or assisted suicide and violates their charter rights.³³ Both cases remain before the courts.</p> <p>In 2017, the mother of 25 year old Candice Lewis, hospitalised for treatment of her spina bifida, cerebral palsy and chronic seizure disorder, was taken aside by a doctor who offered euthanasia for her daughter. Candice Lewis, who was in earshot of the conversation, had already been criticised by hospital staff for being a "frequent flyer" at the hospital. When her mother declined the offer, the doctor told her she was "being selfish".³⁴</p> <p>In 2018, Ontario patient Roger Foley initiated litigation against his Ontario hospital, several health agencies, the Ontario government and the federal government, alleging that hospital health officials denied him the medical option of assisted home care, instead offering him euthanasia or assisted suicide.³⁵ Foley, who is crippled by an incurable</p>
--	--

²⁹ See "Judge says arthritis may qualify woman for euthanasia", Fox News, 28 June 2017; "Woman, 77, with osteoarthritis approved for euthanasia in Canada after confusion over wording of assisted dying law", Daily Mail, 28 June 2017.

³⁰ See "Medically assisted death allows couple married almost 73 years to die together", The Globe and Mail, 1 April 2018.

³¹ Ibid.

³² *Lamb v. Canada (Attorney General)*, 2017 BCSC 1802; see Statement of Claim at <http://eol.law.dal.ca/wp-content/uploads/2016/07/Lamb-v-Canada.pdf>. The case is still under consideration.

³³ See "2 Montrealers with degenerative diseases challenge medically assisted dying law", CBC News, 14 June 2017. The trial commenced before the Quebec Superior Court in January 2019 - see "Quebecers with degenerative diseases in court to challenge assisted dying laws", The Star, 7 January 2019.

³⁴ G Bartlett: "Mother says doctor brought up assisted suicide option as sick daughter was within earshot", CBC News 24 July 2017.

³⁵ *Foley v Victoria Hospital London Health Sciences Centre Ontario* SCJ CV-18-592072, 14 February 2018 (Statement of Claim).

		neurological disease, published audio recordings of hospital staff asking if he was interested in assisted dying and suggesting that he could apply to get it. ³⁶
7.	<p>The claim: “You've now got 150 million people living in jurisdictions where assisted dying is legal...</p> <p>There is no evidence after extensive research in all those countries which has found that coercion is an issue”</p> <p>(TVNZ Breakfast, 7 April)</p>	<p>To place things in their proper perspective, this leaves the other 7.55 billion people around the world who live in jurisdictions where assisted dying is not legal.</p> <p>That is not correct. There is a considerable body of evidence that coercion and abuses have occurred in the minority of jurisdictions that have legalised assisted dying. Some of those abuses have been documented on the LVNZ website:</p> <p>https://lvnz.org/wp-content/uploads/2019/04/A23-Euthanasia-and-assisted-suicide-laws-abroad-expansion-and-abuse.pdf</p>
8.	<p>The following claim made to TVNZ Breakfast on 7 April:</p> <p>“But actually we do have good evidence where we’ve looked around the world at people who use assisted dying laws, and it's not people who are vulnerable, who don't have access to health insurance, palliative care, and so on – it's overwhelmingly people who actually have greater access to all of those things, people who are more used to making choices and being assertive throughout their life. It is a choice that people make.... Now if what your previous interviewee said was true, that when you pass an assisted dying law, it's all the people who are vulnerable and the people who aren't used to making choices, and don't have resources, and have run out of money or health-care funding or whatever – start using assisted dying as an alternative, I wouldn't be doing this”</p> <p>(TVNZ Breakfast 7 April; see also RNZ Checkpoint Interview 9 April 2019).</p>	<p>That is not correct. There is incontrovertible evidence to the contrary from those few overseas jurisdictions where euthanasia or assisted suicide is legal.</p> <p>The End of Life Choice Bill's eligibility criteria borrow heavily from Canada's euthanasia law. The impact which that law is already having on many vulnerable Canadians is discussed above. In stark contradiction of Mr Seymour's specific claim that "it's not people who are vulnerable, who don't have access to ... palliative care" who are using Canada's euthanasia law, in May 2018 the Quebec College of Physicians wrote to the Health Minister warning that a lack of palliative care services in parts of Quebec could be forcing patients to choose euthanasia or assisted suicide as a way to end their lives. After expressing concern that Quebec is suffering from uneven levels of palliative care services across the province and a lack of specialized doctors following a recent downturn in the number of doctors choosing to specialise in palliative care, the College warned the Minister that patients requesting medical aid in dying were getting priority access to available resources, "to the detriment of other patients" at the end of their lives. The letter stated: "Palliative care cannot be limited to access to medical aid in dying".³⁷</p> <p>In Oregon, the other jurisdiction which the End of Life Choice Bill's supporters frequently cite as an exemplar of a robust, safe assisted suicide regime, between 63.3% and 66.9% of all assisted suicides during the past five years were of people on low incomes who were accessing state health care insurance through the Oregon Health Plan.³⁸ The same Oregon Health Plan has denied coverage to</p>

³⁶ “Chronically ill man releases audio of hospital staff offering assisted death” CTV (online ed, Canada, 2 August 2018).

³⁷ CBC News, “Lack of palliative care pushing Quebecers toward medically assisted death, College of Physicians says”, 31 May 2018.

³⁸ Oregon Public Health Division, Oregon Death With Dignity Act: Data Summary 2018, 6: “The proportions of patients who had private insurance (32.4%) and Medicare or Medicaid insurance (66.9%) in 2018 were similar to those reported during the past five years (35.8% and 63.3%, respectively)”. Medicaid Insurance is a federal program managed by the State of Oregon through the Oregon Health Plan which provides health insurance for low-income individuals.

		<p>terminally-ill citizens for their chemotherapy or drug treatments, instead offering to pay for the drugs enabling them to commit suicide under the Death with Dignity Act.³⁹ One such citizen was Barbara Wagner, a 64-year-old Oregon woman with lung cancer who was prescribed a \$4,000-a-month life-saving drug by her doctor. The Oregon Health Plan refused to pay for the drug, instead offering to cover her doctor-assisted suicide for around \$50.⁴⁰</p> <p>The Oregon Public Health Division’s annual reports on the administration of its assisted suicide law over the entire period the law has been in operation, reveals that psychological concerns far outweigh any concerns related to physical pain amongst those patients who are assisted in their suicides.⁴¹ According to the report, during 2018 the four most frequently reported end-of-life concerns and reasons for seeking assisted suicide were loss of autonomy (91.7%), decreasing ability to participate in activities that make life enjoyable (90.5%), loss of dignity (66.7%), and being a “burden on family, friends or caregivers” (63.6%).</p>
9.	<p>The claim: “the New Zealand Medical Association’s done a survey, almost 40 per cent of doctors are in favour... That’s what the data is”</p> <p><i>(Newshub Nation, 13 April)</i></p>	<p>In fact, polls which show that the majority of New Zealand doctors - in particular those very doctors whose job it is to care for dying people on a daily basis – are totally opposed to the idea of intentionally ending their patient’s lives.</p> <p>Over the past three-and-a-half years, polls of general practitioners have revealed that between 52 - 58% of New Zealand’s general practitioners "totally" or "strongly" oppose euthanasia or assisted suicide.⁴²</p> <p>A 2016 Australasian poll also found that the overwhelming number (80.1%) of palliative care specialists and palliative general practitioners in Australia and New Zealand are totally opposed to euthanasia or assisted suicide and that only 2% of palliative care specialists would be willing to participate in these practices.⁴³</p>
10.	<p>The following claim regarding dissenting medical practitioners:</p> <p>"The bill is incredibly clear: nobody has to do anything</p>	

³⁹ Bradford Richardson “Insurance companies denied treatment to patients, offered to pay for assisted suicide, doctor claims” *The Washington Times* (online ed, United States, 31 May 2017).

⁴⁰ Susan Donaldson James “Death Drugs Cause Uproar in Oregon” *ABC News* (online ed, United States, 6 August 2008).

⁴¹ Oregon Public Health Division *Oregon Death with Dignity Act: 2018 Data Summary*, at 12.

⁴² In **April 2018** a *New Zealand Doctor* magazine commissioned survey by Horizon Research reported its findings from a survey of 1,540 General Practitioners and registrars, for which 545 responded, and found that 52% of doctors totally opposed assisted dying if death was imminent, while 32% supported it. 56% opposed and 31% were in favour if the patient’s condition was irreversible but death was not imminent. In **2017** the NZMJ published the findings of a survey of 969 New Zealand-registered doctors and nurses taken in October to November 2015. The survey found that 58% of doctors “strongly” or “mostly” disagreed (on a 5-point scale from ‘strongly agree’ to ‘strongly disagree’ or ‘not sure’) that assisted dying should be legalised in New Zealand, assuming provision of appropriate guidelines and protocols. In contrast 37% of doctors “strongly” or “mostly” agreed with legalising AD.

See <https://www.parliament.nz/media/5372/assisted-dying-new-zealand-december-2018.pdf>

⁴³ A **2016 study** found very low support for legalising euthanasia (7.1%) and assisted dying (8.9%) among Australasian palliative care specialists and GPs with palliative care practice interests: 80.1% were opposed and 15.9% were undecided about euthanasia; 75.2% were opposed and 15.9% were undecided about assisted dying. The study also found that very few palliative care specialists were willing to participate in euthanasia (2%) or assisted dying (4.5%); see Sheahan L. 2016, “Exploring the interface between ‘physician-assisted death’ and palliative care: cross-sectional data from Australasian palliative care specialists”, *Internal Medicine Journal*.

	<p>they don't want to do. If you're a doctor, and you want nothing to do with this, then you can conscientiously object."</p> <p><i>(Newshub Nation, 13 April)</i></p>	<p>Neither of these statements is correct. The Bill gives little, if any, recognition to the individual autonomous choices of doctors in the exercise of their professional and ethical obligations and overrides any conscientious, ethical or clinical objections they may have. Sections 8–16 of the Bill set out a mandatory, rigid process which “must” be followed by the first and second doctors in every case for every eligible patient who has requested euthanasia or assisted suicide. Each step is carefully prescribed and the doctor is obliged to move the person to the next step once the listed requirements are met.</p> <p>There is no flexibility for either the first, second or third doctor to exercise their independent clinical judgement as to what they consider the patient's best care might be, or to take appropriate interim steps, such as instead referring the patient to other specialists or support services (including mental health services), for undertaking more tests or assessment, or for seeking advice or input from a different specialist. In fact, doing so may constitute an offence under section 27 of the Bill, by amounting to a "wilful failure" to comply with the mandatory steps that each doctor “must” take under sections 8–16 to facilitate a request.</p> <p>As for the claim that doctors can “conscientiously object”, the Bill in fact requires all medical practitioners with conscientious objections to facilitate euthanasia or assisted suicide regardless of their objections.⁴⁴ The President of the Royal New Zealand College of General Practitioners (RNZCGP) has also expressed concern over the impact of the conscientious objection provision on New Zealand doctors, and has criticised the fact that doctors who refuse to become complicit in the euthanasia or assisted suicide of their patients by not referring that patient to a group of doctors who are "willing to participate" in those practices would commit an offence punishable by a fine of up to \$10,000 or three months' jail. He has stated: 45</p> <p>"This in and of itself seems a coercive way to get medical practitioners to be explicitly involved in euthanasia".</p> <p>In responding to the RNZCGP President's concerns, Mr Seymour has said that doctors' personal opinions “carry no more weight than a plumber's”.⁴⁶</p>
11.	<p>"The Select Committee report says that the Bill is unworkable, well it does use the word unworkable, it said the Bill in its current form is unworkable – that's why we made changes so that it is workable."</p>	<p>If the changes to make the End of Life Choice Bill "workable" that are being referred to here are those proposals contained in Mr Seymour's December 2018 “Sponsor's Report”, that Report's attempt to improve the Bill fails to repair most of the serious deficiencies which</p>

⁴⁴ See our analysis of the Bill's impact on conscientious objectors at <https://lvnz.org/wp-content/uploads/2019/04/Impact-of-the-Bill-on-Medical-Practitioners-A8.pdf> Given that 52-58% of New Zealand GPs and up to 80% of our palliative care doctors are “totally” or “strongly” opposed to participating in euthanasia or assisted suicide, it is likely there will be many such objections.

⁴⁵ Laura Walters “David Seymour open to change his euthanasia bill to stop objecting doctors being punished” *Stuff* (online ed, New Zealand, 19 June 2018).

⁴⁶ *Ibid.*

<p>(TVNZ Breakfast, 7 April)</p> <p>"In this Sponsor's Report I make a series of recommendations for how the Bill might be improved."</p> <p>(David Seymour, "Sponsor's Report on the End of Life Choice Bill", 12 December 2018)</p>	<p>have been highlighted by Lawyers for Vulnerable New Zealanders;⁴⁷ indeed the Report generates altogether new problems. By way of example:</p> <ul style="list-style-type: none"> • The Report fails to identify, let alone to protect, vulnerable New Zealanders who could find themselves eligible for euthanasia or assisted suicide under the Bill's provisions. It does not even define who might be "vulnerable" and how they could be protected. • The Report does not address (let alone attempt to repair) the Bill's inadequate "coercion safeguard" in section 8, other than to propose moving it in its present form into the section 4 eligibility criteria. • A perhaps unforeseen consequence of one of the Report's recommended changes to the Bill is to grant the cover of criminal immunity to the very abusers who will likely try and coerce or pressure their family members into requesting euthanasia or assisted suicide; amongst them, the abusers of some 70,000 New Zealanders who are victims of elder abuse.⁴⁸ The immunity is achieved by the Report's proposed amendment to the offence of "aiding and abetting suicide" in s 179 of the Crimes Act, which it now proposes should read (emphasis added): <p>(4) No one shall be guilty of any offence under this section by reason only of informing a person about the availability of, or enabling or assisting a person to request, assisted dying pursuant to the End of Life Choice Act nor by reason only of his or her participation in good faith and without negligence in the procedures contained in the End of Life Choice Act.</p> <p>This proposed amendment creates a place of refuge for abusers which has not previously existed in New Zealand law.</p>
---	--

We wish to make it clear that we are not claiming that Mr Seymour has deliberately attempted to mislead the New Zealand public in some of the statements we have referenced above. We do consider, however, that a number of his statements are clearly inaccurate or (at best) are heavily contested. It is also clear that Mr Seymour has not properly researched many of his statements, particularly those where his argument relies on the position in other jurisdictions.

In the interests of ensuring the wellbeing and safety of vulnerable New Zealanders, it is important that the record be set straight on these statements and that public debate on this important issue is properly informed.

Lawyers for Vulnerable New Zealanders

⁴⁷ Lawyers for Vulnerable New Zealanders website - <https://lvnz.org/wp-content/uploads/2019/04/35-Fatal-Flaws-in-End-of-Life-Choice-Bill-A8.pdf>

⁴⁸ Charles Waldegrave *Measuring Elder Abuse in New Zealand: Findings from the New Zealand Longitudinal Study of Ageing (NZLSA)* (Family Centre Social Policy Research Unit, 2015) at 12; Kathy Glasgow and Janet Fanslow *Family Violence Intervention Guidelines: Elder Abuse and Neglect* (Ministry of Health, 2 August 2007); Penny Brander, Judith A Davey and Jayne McKendry *Elder Abuse and Neglect Prevention: Challenges for the Future* (Age Concern New Zealand, 1 October 2007).