Lawyers for Vulnerable New Zealanders

The End of Life Choice Bill: a threat to vulnerable older New Zealanders

by Ian McIntosh

For all that the End of Life Choice Bill claims is a compassionate purpose, it is likely to fall short on care and consideration for some of New Zealand's most vulnerable people: the elderly.

Under the Bill a person is able to request assisted dying from any doctor, who determines whether they are eligible.[1] They need to meet certain medical criteria and to be able to understand the nature and consequences of assisted dying. The doctor must encourage them to discuss their wish with family, friends and counsellors (if they want to), and must check with other health practitioners and members of their family (but only those they approve of) to ensure they made their choice free from coercion. If they don't want to discuss their decision with family, friends or counsellors, the Bill respects that decision. Finally, a second doctor confirms their eligibility using the same medical criteria as the original doctor.

How the Bill's due diligence process fails to adequately protect vulnerable older people

But the Bill fails to adequately protect victims of the pervasive and notoriously difficult-to-detect problem of elder abuse, who might be coerced into requesting assisted dying. And that matters because studies of elder abuse show that its origins are often close to home:

- 10 per cent of elderly New Zealanders have suffered some form of abuse;
- Close family members are the most common elder abuse perpetrators: 79% of abusers of the elderly are their family members; their children are the most common category of abuser (48%).
- In cases involving people living in residential care, 67% of elder abusers were family members and 20% were staff of the facility;
- Financial and psychological abuse are the most common forms of elder abuse.

When inheritance comes into play, the risk of coercion of older people is greatly elevated: unscrupulous family members may be motivated by the prospect of inheriting property, getting their hands on the estate sooner or preventing its value from being eroded by the cost of rest home care or treatment.

The due diligence process in the Bill does not provide adequate protection against coercion. As the Office for Seniors points out on its website, elder abuse is often subtle and difficult to detect. A doctor assessing an elderly patient's request for assisted dying will not necessarily know anything about them or whether there is a background of abuse that is actually driving their request. If the patient is a victim of elder abuse, they may well be so afraid of their abuser that they would be unable to voluntarily advise the doctor that they are being coerced. It may be impossible for the doctor to recognise that someone has been psychologically bullied into believing that their life is not worth living and that the best thing for them to do is end it as soon as possible.

[1] For someone to be eligible for assisted dying a doctor has to determine that he or she has a terminal illness and 6 months to live, or a grievous and uncurable medical condition, are in an advanced state of irreversible decline in capability, experiencing unbearable suffering that couldn't be relieved in a tolerable way.

In requiring doctors to check for coercion by talking with a patient's usual medical practitioners, the Bill also makes assumptions about the health care of older people. First, it assumes they will be in regular contact with other health practitioners. If that is not the case it will be impossible for the doctor to detect coercion by contacting other medical practitioners. Second, even if the doctor consults with other health practitioners who know the older person it is possible that none will be aware that he or she is a victim of elder abuse – especially in cases where the abuse is subtle.

The same conundrum applies around any conversations the doctor may have with approved family members of the requesting patient. If the older person does not permit the doctor to speak with family, friends or counsellors, it will be impossible for the doctor to determine whether their assisted dying request has been coerced. (Indeed, a refusal to allow the doctor to speak with others may be driven by fear of reprisals). And, even if the older person does permit the doctor to speak with family, friends or counsellors, it is unlikely that anyone coercing them will admit to doing so.

And encouraging a requesting elderly patient to have conversations with their family, friends or counsellors about their desire for assisted death offers them little protection, if the very people participating in those conversations are their abusers or coercers.

Finally, the second doctor participating in the assisted dying process is also unlikely to be in a position to determine coercion in a patient (particularly in cases where coercion may be subtle), seeing that their only task is to read the patient's medical files, examine them and determine whether or not they are eligible for assisted dying.

The Bill is not fit for purpose

The Bill, therefore, does not adequately protect vulnerable older people from coercion. It depends on a flawed process that is open to abuse by family, friends, and counsellors. It is unfair and inappropriate to place the burden of detecting coercion on doctors who may not know an elderly person or have the time, ability or expertise required to determine whether that person has been coerced.

To be effective, the due diligence process needs to be far more rigorous that the one in the Bill. At a minimum such a process would require a team of independent expert professionals to gather detailed background information about the requesting older person’s personal circumstances in order to gain a true understanding of the circumstances surrounding their decision to end their own life. A rigorous interview and analysis procedure would need to be developed involving experts in elder abuse, social work, geriatric care, psychology and medicine.

As it stands the due diligence process in the Bill is not fit for purpose because it fails to adequately protect many vulnerable older New Zealanders against coercion that is driven by the significant and ever-increasing problem of elder abuse.

Don’t get me wrong - I am not against the idea of legislation that enables people who are very ill and suffering to decide to end their lives. However elder abuse is the elephant in the room, and the Bill fails to adequately address it. For this reason, I strongly recommend that the Bill be abandoned.

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