

Why the End of Life Choice Act is riskier than overseas assisted dying laws

Many of us have watched loved ones die. It's important to remember that we're **not** voting on whether people should suffer. New Zealanders already agree that we don't want people to suffer.

Some people say assisted dying and euthanasia laws work well overseas, and therefore New Zealanders need to vote for the End of Life Choice Act at the upcoming referendum.

However, we are **not** voting on whether assisted dying or euthanasia should be legal in principle. We **are** voting on the details of a specific version of assisted dying: a specific piece of legislation which has *not* been tested overseas. Regardless of our personal views on the idea of euthanasia, each of us need to decide whether or not we think the details in this Act are watertight.

The End of Life Choice Act omits key safeguards used in the US, Australia and Canada. It leaves out more than a third of the 68 safeguards in Victoria's law. Parliament didn't debate these differences.

Assisted Dying in the End of Life Choice Act

"The [Act] uses 'assisted dying' to refer to both euthanasia and assisted suicide.

"Euthanasia refers to a patient being administered a lethal drug by a medical practitioner.

"Assisted suicide refers to a patient receiving lethal drugs at their request, which they take by themselves." – *Departmental Report on the End of Life Choice Bill, Ministry of Health & Ministry of Justice, p 2.*

See <http://tiny.cc/mohreport> (After this was written the Bill was amended to also allow nurse practitioners.)

Some of the missing safeguards:

Weak safeguards against pressure:

Only the first doctor in the process (who can be fresh out of medical school) needs to "do their best to ensure the person expresses their wish free from pressure from any other person" [s 11]. This doctor needs do this only by speaking to health professionals who are in regular contact with the person and with family members approved by the person. But many Kiwis don't live with family, and relationship abuse can remain hidden. Pressure could also come from caregivers; friends; flatmates; financial problems; poor access to support; social isolation; or euthanasia advertising.

This doctor doesn't need to speak to the person face-to-face and may not have met the person before. An abuser could be present but out of sight when the request is made via telehealth. Parliament voted down amendments [SOP 300, SOP 269] which would have tightened this.

A health professional is not allowed to initiate a discussion on assisted dying, but is prohibited only while providing a service to the person and only if talking specifically about "assisted dying under the Act". If the doctor were to break this law, their guilt could be impossible to prove.

No requirement to try treatment first

Most New Zealanders assume that the End of Life Choice Act would allow euthanasia only as a last resort. However, a person doesn't need to try any treatments or palliative care before requesting a lethal dose [\[s 11\]](#).

Parliament voted down two amendments that would have tightened this [\[SOP 286 and SOP 300\]](#) and without debating them.

No screening for depression

A person cannot be eligible for assisted dying based on mental illness alone [\[s 5\(2\)\]](#). However, a person who has a terminal illness and also has depression or another mental illness could still be considered mentally competent and still be eligible if they meet the other criteria.

An eligible person needs to “experience unbearable suffering that cannot be relieved in a manner the person considers tolerable” [\[s 5\(1\)\(e\)\]](#). It doesn't need to be physical pain. Unlike Victoria's law [\[s 9\(1\)\(d\)\(iv\)\]](#), the Act we're voting on doesn't state that this suffering needs to be caused by the terminal illness. It's possible that depression or mental illness could be the “unbearable suffering” that causes a person to feel that they want to request euthanasia.

No requirement to see a specialist first

The Act doesn't require either doctor in the euthanasia process to have training or experience in the area of the person's illness [\[s 4\]](#). Neither needs to have vocational registration (to be a specialist or GP). This was not debated by Parliament and is not the case in Victoria [\[s 11\]](#) or Oregon [\[s 1.01\(4\)\]](#).

The Act would allow a doctor who recently graduated from medical school to be the attending medical practitioner, overseeing the person's euthanasia application.

The risk is high that an inexperienced doctor may give a person an incorrect diagnosis and prognosis. An inexperienced doctor may be unaware of some alternatives to euthanasia.

No independent witnesses are required at any stage

The End of Life Choice Act doesn't even mention the word “witness”. In contrast, two independent people need to witness the person signing their written request in the presence of the doctor in Oregon [\[s 2.02\]](#), Victoria [\[s 34\]](#) and Canada [\[s 241.2 \(3\)\(c\)\]](#). They need to confirm that the person is of sound mind and is signing it without being pressured. Victoria's law also requires a witness when the lethal dose is administered and shortly before that when the person confirms that they still want to go ahead [\[s 65\]](#).

Parliament voted down requiring an independent witness at the death [\[\[SOP 211\]](#) and without debating this.

4 days between diagnosis and death

Compared to overseas laws, the Act does not protect against the risk of an impulsive decision. A person as young as 18 would be allowed to request euthanasia on the same day they receive a terminal diagnosis and die as early as 4 days later, without telling their loved ones.

The Ministry of Health and Ministry of Justice [tiny.cc/mohreport, s 271, p.46] confirmed that the process, from request to reporting after the death, could take as few as 4 working days in a hospital setting, provided all parties are available and the person meets the eligibility criteria.

The only required time frame specified in the End of Life Choice Act is a minimum of 48 hours between the health practitioner writing the prescription and administering the lethal dose [[s 19\(4\)](#)].

In contrast, a 15-day waiting period is required before the prescription is written in Oregon, unless the person is expected to die within this period [[s 3.06](#)]. It is 9 days in Victoria [[s 38](#)] and 10 days in Canada [[s 241.2\(3\)\(g\)](#)]. Parliament voted down adding a waiting period of 1 week [[SOP 308](#)] and without debating this.

The first doctor must communicate with the person about their wish “at intervals determined by the progress of the person’s terminal illness” [[s 11\(2\)\(b\)](#)]. The Act doesn’t specify exactly when these communications need to happen or how many there must be. If a doctor were to decide that their diagnosis, communications and eligibility assessment could all occur on the same day, the doctor would not be breaking the law.

No mental competence test when receiving lethal dose

The End of Life Choice Act requires that a person is mentally competent when being assessed as eligible. However, it may be months later when they receive the lethal dose [[s 20](#)]. On that day the doctor or nurse practitioner needs to ask the person whether they still want to receive it, but the Act doesn’t require them to confirm that the person is still mentally competent at that time.

The nurse practitioner asking the question may not have met the person before. No witnesses are required to confirm that the person is of sound mind and that they are not being pressured.

In Victoria [[s 66](#)] and Canada [[s 241.2\(3\)\(g\)-\(i\)](#)] doctors need to confirm that the person is mentally competent when receiving the lethal dose. This important safeguard was not debated by Parliament.

Death tourism is possible

We could expect some death tourism from Kiwi-passport holders who are living overseas.

In the US and Australia an eligible person needs to live in a particular state to use their assisted dying law. The End of Life Choice Act requires eligible people to have NZ citizenship or permanent residence [[s 5\(1\)\(b\)](#)], but they don’t have to be living in New Zealand. Parliament didn’t discuss this.

Assisted dying laws in English-speaking countries

USA

In the US a terminally ill person with 6 months to live can receive a lethal dose to self-administer. Oregon legalised assisted dying in 1997. Eight other US states have laws similar to Oregon's law. Assisted dying is also allowed in Montana as result of a court decision.

Australia

Two Australian states have legalised assisted dying: Victoria's law came into force in June 2019. Western Australia's law is similar to Victoria's one and is coming into force mid-2021.

These laws allow a lethal dose for terminally ill people who are expected to die within six months and people with neuro-degenerative conditions who are expected to die within a year. Unlike the NZ Act, a doctor in Victoria can administer it only if the person is unable to do so themselves.

Canada

In Canada a person doesn't have to be terminally ill to receive a lethal dose. The law states that a person's death has to be "reasonably foreseeable" but the Canadian Parliament is expected to pass a bill this year to remove this clause. A person can administer the lethal dose themselves, but it's usually administered by a doctor or nurse. Québec's law has fewer safeguards.

How the End of Life Choice Act compares

Eligibility criteria:

Like the US laws, the NZ Act requires eligible people to be terminally ill and be expected to die within 6 months. However, unlike the US and Australian laws, the NZ Act doesn't require eligible people to live in NZ and it also requires a physical disability ("an advanced state of irreversible decline in physical capability").

Like the Canadian law, the NZ Act makes euthanasia available to eligible people, whether they can self-administer the lethal dose or not.

Safeguards:

Without Parliament debating the reasons why, the End of Life Choice Act leaves out safeguards that have been included in assisted dying laws since Oregon's law came into effect in 1997. The Act we're voting on is therefore riskier than US, Australian and Canadian assisted dying laws.

Hyperlinked references are at www.euthanasiadebate.org.nz

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