

House of Representatives

Supplementary Order Paper

Tuesday, 21 May 2019

End of Life Choice Bill

Proposed amendments

Louisa Wall, in Committee, to move the following amendments:

Clause 1 amended

In *clause 1* (page 2, line 3) replace “the End of Life Choice Act **2017**” with “the Court Consent to Physician Assisted Dying Act **2019**”.

Clause 3 replaced

Replace *clause 3* (page 2, line 9 to page 4, line 13) with:

3 Interpretation

In this Act, unless the context requires another meaning,—

assisted dying, in relation to a person, means—

- (a) the administration by a medical practitioner of a lethal dose of medication to the person to relieve the person’s suffering by hastening death; or
- (b) with the support of a medical practitioner, the self-administration by the person of a lethal dose of medication to relieve their suffering by hastening death.

medical practitioner means a health practitioner who—

- (a) is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine; and
- (b) holds a current practising certificate

minister means the Minister of the Crown who is responsible for the administration of this Act—

- (a) under the authority of a warrant; or
- (b) under the authority of the Prime Minister

ministry means the Ministry of Justice

palliative care means health services delivered to a person with a terminal illness that aims to optimise a person’s quality of life until death

psychiatrist means a medical practitioner whose scope of practice includes psychiatry

psychologist means a health practitioner who is, or is deemed to be, registered with the Psychologists Board continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of psychology

specialist means—

- (a) medical practitioner:
- (b) psychiatrist:
- (c) psychologist

terminal illness means a progressive condition that is reasonably expected to cause the death of a person within 12 months.

Clause 4 deleted

Delete *clause 4* (page 4, lines 14 to 31).

Clauses 6 to 28 replaced

Replace *clauses 6 to 28* (pages 5 to 19) with:

Part 2

Assisted Dying

6 Application to the Family Court

A person (the **applicant**) and a medical practitioner may jointly apply to the Family Court for an order consenting to assisted dying.

7 Hearing of application

- (1) Where an application is made under **section 6**, a Family Court Judge must hear and determine the application as soon as practicable and in no case later than 21 days after the application is filed in the court, on the condition that a Judge may extend that 21 day period in appropriate circumstances.

- (2) Despite section 9 of the Family Court Act 1980, the hearing may be conducted—
 - (a) at the applicant’s place of residence, a hospital, or a hospice;
or
 - (b) at any other place the Judge thinks fit.

8 Attendance at hearings

- (1) The only persons who may attend a hearing of the application made under **section 6** are as follows:
 - (a) officers of the court:
 - (b) the applicant and the medical practitioner:
 - (c) any spouse or partner of the applicant:
 - (d) any child of the applicant of or over the age of 18 years unless the Court determines that a younger child may be present:
 - (e) persons whom the Family Court Judge permits to be present as support persons for a party on a request by that party:
 - (f) any specialist appointed under **section 10**:
 - (g) any lawyer appointed under **section 12**:
 - (h) any other person whom the judge permits to be present.
- (2) The Family Court Judge must agree to a request under subsection **(1)(e)** unless the Judge considers there is a good reason why the named support persons should not be permitted to be present.
- (3) No support persons may help a party conduct his or her case.
- (4) If, during a hearing, the Family Court Judge requests a support person whom the Family Court Judge permitted to be present under **subsection (1)(e)** to leave the courtroom, the person must do so.
- (5) Nothing in this section limits any other power of the Court—
 - (a) to hear proceedings in private; or
 - (b) to permit a McKenzie friend to be present; or
 - (c) to exclude any person from the court.

9 Orders of the Family Court

- (1) The Family Court may, on an application made under **section 6**, make an order consenting to assisted dying.
- (2) The court may only make an order under **subsection (1)** if it is satisfied that—
 - (a) the applicant is aged 18 years or over; and
 - (b) the applicant is—

- (i) a person who has New Zealand citizenship as provided in the Citizenship Act 1977; or
- (ii) a permanent resident as defined in section 4 of the Immigration Act 2009; and
- (c) the applicant has a terminal illness; and
- (d) the applicant is receiving palliative care; and
- (e) all reasonable treatment options to cure the terminal illness have been exhausted; and
- (f) the applicant understands—
 - (i) the nature of assisted dying; and
 - (ii) the consequences for them of assisted dying.

10 Appointment of a specialist to assist court

- (1) In any proceedings under this Act, the Family Court may—
 - (a) appoint a specialist to provide a medical opinion on an applicant's eligibility for an order under **section 9(2)(c) to (e)**; or
 - (b) direct the Registrar of the court to appoint a specialist to provide a medical opinion on an applicant's eligibility for an order under **section 9(2)(c) to (e)**.
- (2) The fees and expenses of the specialist appointed must—
 - (a) be determined in accordance with regulations made under **section 11** or, if no such regulations are made, by a Registrar of the court; and
 - (b) be paid in accordance with that determination out of public money appropriated by Parliament for the purpose.

11 Regulations relating to payments to specialists

- (1) The Governor-General may, from time to time, by Order in Council, make regulations determining—
 - (a) the fees payable to a specialist for doing either or both of the following:
 - (i) providing a medical opinion;
 - (ii) attending as a witness in the proceedings for which the specialist provided a medical opinion;
 - (b) the expenses payable to a specialist for doing either or both of the following:
 - (i) providing a medical opinion;
 - (ii) attending as a witness in the proceedings for which the specialist provided a medical opinion.

- (2) Regulations under **subsection (1)(a)** may—
 - (a) prescribe the maximum hourly rate or rates for the fee payable, and different rates may be prescribed depending on—
 - (i) the complexity of the proceedings;
 - (ii) the number of proceedings in which the specialist is engaged during a specified period;
 - (b) prescribe the maximum number of hours for which the fee is payable, and different numbers of hours may be prescribed depending on—
 - (i) the complexity of the proceedings;
 - (ii) the number of proceedings in which the specialist is engaged during a specified period;
 - (c) provide that any rate prescribed under **paragraph (a)**, or any number of hours prescribed under **paragraph (b)**, or both, may be increased by the court in a particular proceeding if the court is satisfied that the increase is justified because of exceptional circumstances.
- (3) Regulations under **subsection (1)(b)** may prescribe the following:
 - (a) the types of expenses for which a specialist may claim reimbursement;
 - (b) the rate of reimbursement of those expenses;
 - (c) the circumstances in which expenses may be reimbursed.
- (4) In this section, **specialist** means a person who is appointed under **section 10** to provide a medical opinion on an applicant's eligibility for an order under **section 9** of that Act.

12 Appointment of lawyer to assist court

- (1) In any proceedings under this Act, the Family Court may appoint a lawyer to assist the court in accordance with section 9C of the Family Court Act 1980.
- (2) So far as may be practicable, it is the duty of the lawyer appointed under **subsection (1)** to—
 - (a) contact the applicant and explain the reason for his or her appointment; and
 - (b) satisfy themselves whether the applicant is making the application of their own free will.
- (3) The lawyer appointed under **subsection (1)** must report to the Court—
 - (a) on the application with any recommendations; and

- (b) advise the Court whether any further enquiries into the application should be made.
- (4) The fees and expenses of the lawyer appointed must—
 - (a) be determined in accordance with regulations made under section 16D of the Family Court Act 1980 or, if no such regulations are made, by a Registrar of the court; and
 - (b) be paid in accordance with that determination out of public money appropriated by Parliament for the purpose.

13 Appeals to the High Court

- (1) A person listed in **subsection (2)** may appeal to the High Court against the decision of the Family Court in relation to the proceedings under this Act.
- (2) The persons who may appeal are as follows:
 - (a) the applicant;
 - (b) a spouse or partner of the applicant;
 - (c) a child of the applicant aged 18 years or over.
- (3) However, an appeal under **subsection (1)** may only be on a question of law.
- (4) An appeal under **subsection (1)** must be made in accordance with the High Court Rules 2016, except to the extent that those rules are inconsistent with **sections 7 to 11**.

Part 3 Related matters

14 Effect on contracts of death under this Act

A person who has been granted a court order under **section 9** for assisted dying and dies as a result of the provision of assisted dying is, for the purposes of any life insurance contract, or any other contract,—

- (a) taken to have died as if assisted dying had not been provided; and
- (b) taken to have died from the terminal illness referred to in **section 9(2)(c)** from which they suffered.

15 Immunity from criminal and civil liability

- (1) A medical practitioner who, together with a person (**person A**), is granted an order under **section 9**, is immune from civil or criminal liability for any action or inaction done in good faith for the purpose of assisting the death of person A.

- (2) Nothing in this section affects the right of any person to—
 - (a) bring disciplinary proceedings against a health practitioner under the Health Practitioners Competence Assurance Act 2003; or
 - (b) bring proceedings under section 50 or 51 of the Health and Disability Commissioner Act 1994; or
 - (c) apply for judicial review.

16 Annual report on operation of Act

- (1) The ministry must report to the minister by the end of June each year on the following matters for the year:
 - (a) the total number of applications made under **section 6**;
 - (b) the total number of orders made under **section 9**;
 - (c) the total number of deaths recorded as resulting from the provision of assisted dying;
 - (d) any other matter relating to the operation of this Act that the ministry thinks appropriate.
- (2) As soon as practicable after receiving a report under **subsection (1)**, the minister must present a copy of the report to the House of Representatives.

17 Review of operation of Act

- (1) The minister must, not later than 3 years after commencement of this Act, refer to the Law Commission for consideration the following matters:
 - (a) review the operation of this Act; and
 - (b) whether any amendments to this Act or any other enactment are necessary or desirable; and
 - (c) report on its findings to the minister within 1 year of the date on which the reference occurs.
- (2) The ministry must, not more than 3 years after the Law Commission report on the matters in **subsection (1)** and then at intervals of not more than 5 years,—
 - (a) review the operation of this Act; and
 - (b) consider whether any amendments to this Act or any other enactment are necessary or desirable; and
 - (c) report on its findings to the minister within 1 year of the date of beginning the review.

- (3) The minister must present a copy of a report provided under this section to the House of Representatives as soon as practicable after receiving it.

18 Amendments to other enactments

Amend the enactments specified in the **Schedule** as set out in that Schedule.

Schedule amended

Replace the *Schedule* (page 20 to 23) with:

Schedule **Amendments to other enactments**

s 18

Part 1 **Amendments to Acts**

Burial and Cremation Act 1964 (1964 No 75)

In section 2(1), definition of **certificate of cause of death**, replace “or 46C” with “, 46C, or **46CA**”.

After section 46C, insert:

46CA Certificate of cause of death in relation to assisted dying

- (1) This section applies if a person dies as a result of the provision of assisted dying under the **Court Consent to Physician Assisted Dying Act 2019** and an order was granted under that Act by the Family Court to that person.
- (2) The medical practitioner who was available to the person until the person died must, immediately after the person’s death, give a certificate of cause of death.
- (3) However, a certificate of cause of death must not be given under this section if the coroner has decided to open an inquiry into the death.

Coroners Act 2006 (2006 No 38)

After section 13(2), insert:

- (2A) However, subsections (1) and (2) do not apply in any case in which the death was a result of the provision of assisted dying under the **Court Consent to Physician Assisted Dying Act 2019** and an order was granted under that Act by the Family Court to that person.

Coroners Act 2006 (2006 No 38)—*continued*

In section 60(1)(a), after “self-inflicted”, insert “(other than as a result of the provision of assisted dying under the **Court Consent to Physician Assisted Dying Act 2019**)”.

Replace section 71(1) with:

- (1) This section applies in respect of a death if the death occurred in New Zealand or on or from an aircraft or a ship specified in section 14(1) and either—
 - (a) the death was self-inflicted or there is reasonable cause to suspect that the death was self-inflicted; or
 - (b) the death was a result of the provision of physical assisted dying under the **Court Consent to Physical Assisted Dying Act 2019** and an order was granted under that Act by the Family Court to that person.

Crimes Act 1961 (1961 No 43)

In section 41, insert as subsection (2):

- (2) However, a person who knows or has reasonable grounds for believing that a person has an order for assisted dying under the **Court Consent to Physician Assisted Dying Act 2019** is not justified under **subsection (1)** in using any force to prevent the person from exercising that option.

In section 48, insert as subsection (2):

- (2) However, a person is not justified under **subsection (1)** in using any force to defend any health practitioner who is taking any action that they are required or authorised to take under the **Court Consent to Physician Assisted Dying Act 2019**.

Family Court Act 1980 (1980 No 61)

After section 11(1)(gd), insert:

- (ge) the **Court Consent to Physician Assisted Dying Act 2019**.

After section 11D(h), insert:

- (ha) an applicant or a medical practitioner under **section 6** of the **Court Consent to Physician Assisted Dying Act 2019**:

After section 12A(2)(j), insert:

- (k) **Court Consent to Physician Assisted Dying Act 2019**.

After section 16A(4)(b), insert:

- (ba) the **Court Consent to Physician Assisted Dying Act 2019**.

Family Court Act 1980 (1980 No 61)—*continued*

After section 16D(1)(b)(viii), insert:

- (ix) **section 12** of the **Court Consent to Physician Assisted Dying Act 2019**.

Part 2**Amendments to legislative instruments****Births, Deaths, Marriages, and Relationships Registration (Prescribed Information) Regulations 1995 (SR 1995/183)**

Replace regulation 7(1)(a)(xiii) with:

- (xiii) the cause or causes of the person’s death, subject to **subparagraph (xiiia)**:
- (xiiia) in respect of a person who died as a result of the provision of assisted dying under the **Court Consent to Physician Assisted Dying Act 2019**, the terminal illness that gave rise to the person’s eligibility for assisted dying:
- (xiiib) in respect of a person who died as a result of the provision of assisted dying under the **Court Consent to Physician Assisted Dying Act 2019**, the fact that the person died as a result of the provision of assisted dying under that Act:
- (xiiic) the interval between onset of the cause of death and death, in respect of each cause of death, subject to **subparagraph (xiiid)**:
- (xiiid) in respect of a person who died as a result of the provision of assisted dying under the **Court Consent to Physician Assisted Dying Act 2019**, the interval between onset of the terminal illness that gave rise to the person’s eligibility for assisted dying and death by assisted dying:

Cremation Regulations 1973 (SR 1973/154)

In regulation 7(1)(a), replace “or 46C(1)” with “, 46C, or **46CA**”.

In Schedule 1, form B, replace “or 46C(1)” with “, 46C, or **46CA**”.

In Schedule 1, form B, replace items 6 and 7 with:

- 6 Did you attend the deceased before the deceased’s death?
If so, for how long?
- 7 If you attended the deceased before the deceased’s death, when did you last see the deceased alive?

Cremation Regulations 1973 (SR 1973/154)—continued

In Schedule 1, form B, item 8, delete “Period elapsing between onset of each condition and death (*years, months, or days*).”

In Schedule 1, form B, replace item 9(a) with:

- (a) immediate cause—the disease, injury, or complication that caused the death, or assisted dying? [*specify*]

In Schedule 1, form B, replace item 10 with:

- 10 What was the mode of death if other than by assisted dying?

In Schedule 1, form B, replace item 14 with:

- 14 In view of your knowledge of the deceased’s habits and constitution, do you feel any doubt whatever as to the cause of the deceased’s death?

In Schedule 1, form B, replace the paragraph immediately following item 17 with:

I certify that the answers given above are true and accurate to the best of my knowledge and belief, and that there is no circumstance known to me that can give rise to any suspicion that the death was due wholly or in part to any other cause than that stated that makes it desirable that the body should not be cremated.

Explanatory note

This Supplementary Order Paper (SOP) amends the eligibility criteria for assisted dying and the process for the administration of assisted dying currently in the End of Life Choice Bill.

This SOP gives people with a terminal illness, who are receiving palliative care and have exhausted all possible treatment options, the option, with their medical practitioner, of applying to the Family Court for consent to physician assisted dying. The foundation of this SOP is the judgment of Justice Collins that the law did not permit Lecretia Seales’ doctor to assist her to die of a terminal illness at the time of her choosing.

Lecretia Seales applied to the High Court to allow her doctor to assist her to die if her suffering became intolerable. Justice Collins did not grant the application on the basis that such a law change should be a matter for Parliament.

This SOP allows people who are supported by their medical practitioner and who are eligible under *new clause 9* of the bill, to end their lives in peace and dignity at a time of their choosing.

This SOP reinforces modern concepts of patient-centred care identified by research¹ as eight dimensions:

- respect for patients’ preferences and values;
- emotional support;

- physical comfort;
- information, communication and education;
- continuity and transition;
- coordination of care;
- the involvement of family and friends; and
- access to care.

This SOP amends the End of Life Choice Bill by including a mechanism of consent through the Family Court as advocated by Sir Geoffrey Palmer QC and retired Judge, Paul von Dadelszen, QSO who served as a District Court Judge specialising in the Family Court for 23 years.

This SOP is a collaboration between Louisa Wall MP for Manurewa and Lawrence Yule MP for Tukituki.

¹ “Through the Patient’s Eyes: Understanding and Promoting Patient-Centered Care” (1993)
Picker Institute, in conjunction with Harvard School of Medicine