

THE VULNERABILITIES OF THE ELDERLY UNDER A EUTHANASIA REGIME

Statistically speaking, it will most likely be *elderly*, terminally ill New Zealanders who will primarily access assisted dying under the new End of Life Choice Act, seeing that this is overwhelmingly the case in those jurisdictions where euthanasia is lawful.¹ One therefore needs to consider the myriad of upstream political, economic and social pressure points that reveal the particular vulnerabilities elderly New Zealanders will face under our new euthanasia regime. It is likely that many elderly New Zealanders will immediately or eventually find themselves eligible for assisted dying after the Act enters into force, at a time when -

1. New Zealand's under-funded and over-burdened health system is already failing to meet their needs;²
2. their numbers are growing rapidly. Up to 20-22% of New Zealanders (around 1.1 million) are projected to be aged over 65 years by 2032, 27% by 2050 and up to 33% by 2068;³
3. New Zealand's rapidly aging population is placing increasing pressure on its over-burdened health system. The most recent figures show that elderly New Zealanders consume at least 42% (\$983 million) of the health services budget of the Ministry of Health, the same Ministry now vested with administering the Act;⁴
4. medical reports have found that the introduction of euthanasia and assisted suicide practices can lead to a significant reduction in health spending;⁵
5. one in five elderly New Zealanders identify as being extremely lonely;⁶
6. in Canada in 2020, 18.6% of those Canadians euthanised or assisted in their suicide under its Medical Assistance in Dying ("MAID") law reported "*isolation or loneliness*" as one of the reasons underlying their request;⁷

¹ In Canada in 2019, 4342 out of 5,389 represented euthanasia / assisted suicide deaths were of elderly persons aged 65 years or over (80.5%); see Health Canada: *First Annual Report on Medical Assistance in Dying 2019, 23*, at <https://www.canada.ca/en/health-canada/services/medical-assistance-dying-annual-report-2019.html>. In Oregon, 80% of those who died as a result of assisted suicide in 2017 were 65 or over, see Public Health Division *Oregon Death with Dignity Act: 2017 Data Summary*, at 6; In Belgium, 83.5 per cent of those who received EAS were 60 or over, Sigrid Dierickx and others "Euthanasia in Belgium: trends in reported cases between 2003 and 2013" (2016) 188 CMAJ at E407 at E410. In the Netherlands, 78 per cent of those who received EAS were 65 or over, Centraal Bureau voor de Statistiek [Statistics Netherlands] "Overledenen naar medische beslissing rond levenseinde; behandelaar,leeftijd" (42 May 2017) StatLine <<https://opendata.cbs.nl/>>. In Victoria (Australia), the average age of persons euthanized during the past year was 71 years, according to the Voluntary Assisted Dying Review Board *Report of Operations* (June – Dec 2019, Jan – June 2020); at <https://d3n8a8pro7vhmx.cloudfront.net/australiancarealliance/pages/264/attachments/original/1598933513/V_ADRB_Report_of_operations_August_2020_FINAL_0.pdf?1598933513>

² Audrey Young "Huge demand for services in Auckland stretches health system to the limit say bosses" *The New Zealand Herald* (online ed, New Zealand, 22 February 2018); and 1 News "'The system is so overstretched' – Andrew Little says health system underfunded by \$2.3 billion" 1 News Now (online ed, New Zealand, 7 June 2017).

³ Statistics New Zealand *National Population Projections* (8 March 2017) Stats NZ <<http://archive.stats.govt.nz/>>.

⁴ Ministry of Health *DHB spending on services for older people* (13 July 2016) www.health.govt.nz; Helen Harvey "Aging population puts pressure on health system" *Stuff* (online ed, New Zealand, 20 September 2015); and Lyndon Keene and others "Funding New Zealand's public healthcare system: time for an honest appraisal and public debate" (2016) 129 NZMJ 10 at 14.

⁵ In 2017 Canadian researchers cautiously estimated that legalising euthanasia and assisted suicide could save Canada between \$34.7 million and \$138.8 million on annual health care expenditure, see Aaron J Trachtenberg and Braden Manns "Cost analysis of medical assistance in dying in Canada" (2017) 189 CMAJ E101 at E104.

⁶ Hamish A Jamieson and others "Profile of ethnicity, living arrangements and loneliness amongst older adults in Aotearoa New Zealand" *A national cross-sectional study* (2017) 37 Australasian Journal on Ageing 68, 71.

⁷ Up from 13.7% the previous year. See Health Canada: *Second Annual Report on Medical Assistance in Dying 2020*, 38. Accessible at <<https://www.canada.ca/content/dam/hc-sc/documents/services/medical-assistance-dying/annual-report-2020/annual-report-2020-eng.pdf>>;

7. 10 per cent of elderly New Zealanders suffer some form of abuse, either physically, sexually, psychologically, financially or through neglect;⁸
8. isolation and loneliness are common denominators in many cases of elder abuse.⁹ Some 79% of elderly abusers are family / whānau members, and children are the most common category of abuser (48%). In elder abuse cases involving older people living in residential care, 67% of abusers are family / whānau members and 20% are staff of the facility;¹⁰
9. financial and psychological abuse are the most common forms of elder abuse and neglect. Both forms are increasing in New Zealand's population;¹¹
10. on average there are 313 inheritance dispute cases each year in New Zealand's Family Courts and High Courts;¹²
11. some 59% of the (mostly elderly) Oregonians assisted in suicide under Oregon's Death With Dignity Act in 2019 stated that being a "*burden on family, friends or caregivers*" was the reason or one of their reasons for requesting assisted suicide.¹³
12. some 35.9% of the (mostly elderly) Canadians who were euthanised under Canada's Bill C-14 MAID law during 2020 cited "*perceived burden on family, friends or caregivers*" as the reason or one of their reasons for requesting euthanasia;¹⁴
13. the UK Supreme Court has found that elderly people are particularly vulnerable to real or perceived pressures to end their lives under an assisted dying law.¹⁵

Additionally, many elderly New Zealanders who will immediately or eventually find themselves eligible for euthanasia post-November 2021 are likely to be Māori, at a time when:

14. Māori are disproportionately represented in New Zealand's suicide, terminal illness and sickness rates, and in the areas of mental health and disability;
15. Māori constitute a significant proportion of New Zealand's burgeoning older population who are poor and sick. The number of older Māori needing care on a more than daily basis could increase by more than 200 per cent by 2026;¹⁶
16. Māori are already being failed by New Zealand's health system, as a recent Waitangi Tribunal claim has argued;¹⁷
17. older Māori face higher rates of elder abuse.¹⁸

⁸ 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; Glasgow K & Fanslow J: *Family Violence Intervention Guidelines: Elder Abuse and Neglect* (MOH, 2 August 2007) at 14–15.

⁹ Cherie Sivignon "Elder abuse often linked to loneliness and isolation: Age Concern Nelson Tasman" *Stuff* (online ed, New Zealand, 13 June 2018).

¹⁰ Penny Brander, Judith A Davey and Jayne McKendry *Elder Abuse and Neglect Prevention: Challenges for the Future* (Age Concern New Zealand, 1 October 2007) at 27 and 37.

¹¹ *Ibid*, 2.

¹² B Munro: "A troubling inheritance", *Otago Daily Times*, 11 February 2019.

¹³ Oregon Public Health Division, *Oregon Death With Dignity Act: Data Summary 2019* (March 2020), 12.

¹⁴ Canada: *Second Annual Report on Medical Assistance in Dying in Canada 2020*, July 2021, 38 ("*Nature of Suffering of Those Who Received MAID, 2020*"). Accessible at: <<https://www.canada.ca/content/dam/hc-sc/documents/services/medical-assistance-dying-annual-report-2019/maid-annual-report-eng.pdf>>

¹⁵ *R (Nicklinson) v Ministry of Justice* [2014] UKSC 38, [2015] AC 657, at 226 – 228.

¹⁶ Ngaire Kerse and others *Intervals of care need: need for care and support in advanced age* (The University of Auckland, 21 April 2017) at 11.

¹⁷ Carmen Parahi "Waitangi Tribunal investigates sick, racist health system that 'fails Māori'" *Stuff* (online ed, New Zealand, 15 October 2018).

¹⁸ Office for Senior Citizens *Towards gaining a greater understanding of Elder Abuse and Neglect in New Zealand* (June 2015) at 5.