

IN CONFIDENCE

End of Life Options Bill

Member's Bill

Explanatory note

General policy statement

The purpose of this Bill is to provide individuals with a choice to end their lives and to receive assistance from a medical practitioner to die under certain circumstances.

Those circumstances are:

- that the person making the request must be mentally competent, as attested by 2 medical practitioners:
- that the person suffers from a terminal illness which is likely to cause death within 6 months, or from constant and unbearable physical or psychological suffering which cannot be relieved in a manner the patient deems tolerable.
- when implementing a registered End of Life Directive which is consistent with the circumstances above.

Any person making a request for physician (that is, medical practitioner) assisted death must be encouraged to consult with family or a close friend and to seek professional counselling during the course of making his or her request. They must be given a period of at least 7 days for reflection on the decision. The certifying medical practitioner must certify that the person has made a valid request to end his or her life, that he or she is mentally competent and has the condition specified in the request, and that he or she has been advised of all available options,

including palliative care. A second medical practitioner must certify similarly, after a separate examination of the applicant.

The Bill also provides for a person, while mentally competent, to draw up a registered End of Life Directive in which he or she specifies his or her wishes for physician assisted death in the event that he or she suffers from a terminal illness or constant and unbearable physical or psychological suffering which cannot be relieved in a manner the patient deems tolerable, and is not mentally competent otherwise to make a request for physician assisted death. Such End of Life Directives must be consistent with the provisions of this Bill and must be refreshed every 5 years and may be cancelled or varied at any time. One or more people may be appointed by the person registering an End of Life Directive as advocates for him or her if he or she becomes mentally incompetent. The role of the advocate so appointed will be to ensure compliance with the person's End of Life Directive.

The Bill provides for levels of protection against abuse or coercion. First, the person making such a request must be able to attest, to the satisfaction of a medical practitioner, that he or she has not been subjected to any coercion from any interested party, including family members. The person is also protected from having his or her express wishes made in accordance with this Bill altered or frustrated by another person. Secondly, no medical practitioner may be coerced or required to participate in the provisions of this Bill. Such medical practitioners who do participate are protected from civil or criminal liability. Thirdly, no family members or loved ones called upon to assist may be coerced or required to participate, but if they choose to do so, they are also protected from civil or criminal liability.

The Bill further provides for the procedures surrounding physician assisted death. Where a medical procedure is required, such as an injection or administration by gastric tube, it will be performed by an attending medical practitioner. Where a medical procedure is not required, such as taking life-ending medication orally, the attending medical practitioner may be assisted in his or her functions by another person who has been explicitly requested by the applicant to assist.

The responsible Minister will appoint a Registrar who will establish and maintain a register of End of Life Directives and Physician Assisted Deaths. It is envisaged that this Bill will fall under the portfolio of the Minister of Health. Requisite forms and certificates will be devised and promulgated by regulation.

A representative review body will be established to report to the House of Representatives on the operation of and compliance with this Bill. The purpose of this is to ensure that the Bill is working as it was designed to and to reassure the New Zealand public that it is not being distorted or abused in its application.

Bills similar to this one have been debated twice before by the New Zealand Parliament: once in 1995 and again in 2003. The first time, the Bill was defeated by 61/29 votes. The second time, it was defeated by 60/58, with the two outstanding votes consisting of 1 abstention and 1 failure to vote or register a proxy. Twelve years on, it would appear that the social conversation around this controversial issue has moved. There has been much publicity in recent times of court cases where family members of people suffering from terminal illnesses have been necessarily prosecuted for assisting their loved one to die, at their request. The courts have treated such cases with increasing leniency and compassion, as evidenced by an 18-month custodial sentence a few years ago softening to a 5-month home detention sentence more recently. Police have prosecuted such cases out of the necessary observance of current law. Public reaction to such trials has been overwhelmingly compassionate and understanding.

This Bill seeks to provide a law which prevents such convictions from occurring when the request for physician assisted death comes from the express will of the person suffering. It aims to promote compassion and the preservation of human dignity. It also reinforces the notion that someone who is an autonomous, self-determining person throughout their life should be entitled to be self-determining at the end of their life, without criminal proceedings being visited on any professionals or loved ones who might assist them.

The provisions of this Bill are not set up as an alternative to competent, accessible palliative care. This Bill is to be seen alongside the need for universally accessible, consistently high quality, palliative care. It does not contradict, but complements the right to such care. It would simply provide a legal option to those who wish to avail themselves of it.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides that the Bill is to come into force on the day after the date on which it receives the Royal assent.

Part 1

Preliminary provisions

Clause 3 sets out the purpose of the Bill.

Clause 4 is the interpretation clause. It provides definitions of terms used in the Bill.

Clause 5 provides the meaning of mentally competent, and the corresponding meaning of mentally incompetent. These are key terms used in the Bill.

Part 2

Physician assisted death

Subpart 1—Entitlement to, and procedures for, physician assisted death

Entitlement to physician assistance

Clause 6 provides that a qualifying person (as defined in *clause 4*) has the option to receive physician assistance to end his or her life in certain circumstances, in accordance with the Bill's provisions.

Request made in person for physician assisted death

Clause 7 sets out how a request can be made in person for physician assistance to end the person's life.

Clause 8 requires the certifying medical practitioner to encourage the person making a request for physician assistance to end his or her life to consult with family or friends, and to seek counselling. The medical practitioner must also point out that the person is not obliged to consult family or friends.

Clause 9 provides for a certificate to be made by a certifying medical practitioner regarding matters specified in *clause 9* that are relevant to the person and his or her request.

Clause 10 requires a second medical practitioner to provide a confirming medical certificate.

Request made through End of Life Directive

Clause 11 allows a mentally competent person to make an End of Life Directive that will come into effect when the person becomes mentally incompetent but is in one of the same situations that would allow him or her, if he or she were mentally competent at the time, to make a request in person for physician assistance in ending his or her life. The formal requirements of an End of Life Directive are also set out in *clause 11*.

Clause 12 provides for a certificate to be made by a certifying medical practitioner regarding matters specified in *clause 12* that are relevant to the person and his or her End of Life Directive.

Clause 13 sets out how an End of Life Directive may be registered in the register of End of Life Directives and Physician Assisted Deaths, and what the Registrar does after the Directive is registered.

Clause 14 provides the procedures for a person to cancel or vary his or her registered End of Life Directive.

Clause 15 provides for the expiry of an End of Life Directive 5 years after it is registered, and for the Registrar to give 12 months' notice of the expiry date. An End of Life Directive does not expire if the person to whom it relates becomes mentally incompetent before the date on which notice of the expiry date would otherwise have to be given.

Clause 16 sets out how a registered End of Life Directive can be renewed.

Clause 17 allows for a person to name an advocate in an End of Life Directive. The advocate's role is to ensure compliance with the Directive, in the ways set out in *clause 17*.

Clause 18 provides for a certificate to be made by a certifying medical practitioner when a situation specified in an End of Life Directive has come about, and the Directive is to be put into effect.

Clause 19 requires a second medical practitioner to provide a confirming medical certificate for putting into effect the End of Life Directive.

Carrying out physician assisted deaths

Clause 20 sets out the prerequisites enabling lawful provision of a physician assisted death.

Clause 21 states a mentally competent person's right to make decisions about the method and other matters concerning his or her physician assisted death.

Clause 22 describes the procedures that may be involved in a person's physician assisted death, and that will vary according to the person's physical and mental condition.

Clause 23 allows a medical practitioner, at the request of the person who is to undergo the procedures set out in *clause 22*, to be assisted in the procedures for a person's physician assisted death.

After procedure completed

Clause 24 requires a report, as specified in *clause 24*, to be made to the Registrar after a procedure is completed in accordance with *clause 22*.

Clause 25 requires a medical practitioner to include in the death certificate of a person who has undergone a physician assisted death in accordance with *clause 22* the person's underlying disease or condition as the cause of his or her death.

Subpart 2—Legal consequences

General legal consequences

Clause 26 states that it is lawful to provide a person who is entitled under this Bill to receive physician assistance to end his or her life with physician assistance to do so, and provides immunity from civil or criminal liability for actions done in good faith under the Bill, despite any inadvertent failure to comply fully with the Bill's requirements.

Clause 27 specifies the right not to participate in any aspects of physician assisted deaths but requires medical practitioners and solicitors who decline to participate to provide alternative sources of physician assistance and legal advice.

Clause 28 states that contracts, including insurance contracts, are to be unaffected by the fact that death is due to a procedure under *clause 22*, and that the cause of death is to be regarded as due to the person's underlying disease or condition.

Clause 29 provides for the confidentiality of requests made in person or by means of End of Life Directives.

Part 3 **Miscellaneous provisions**

Offence

Clause 30 provides for an offence of altering or frustrating the wishes of a person in regard to his or her choice of physician assisted death in accordance with the Bill.

Regulations

Clause 31 is a regulation-making power for forms, certificates, and other necessary matters under the Bill.

Registrar

Clause 32 requires the Minister of Health to appoint a person as Registrar of End of Life Directives and Physician Assisted Deaths. *Clause 33* requires the Registrar to establish and maintain the register. *Clause 34* requires the Registrar to report annually to the review body established under *clause 35*, and sets out the matters that must be covered in the report.

Review body

Clause 35 establishes a review body: the End of Life Options Review Body.

Clause 36 provides that the review body is an independent Crown entity for the purposes of the Crown Entities Act 2004.

Clause 37 sets out the functions of the review body.

Clause 38 states that further provisions relating to the review body are to be found in the Bill's *Schedule*. The *Schedule* provides for the membership of the review body, its procedures, and similar matters.

*Consequential amendment to Crown Entities
Act 2004*

Clause 39 contains a consequential amendment to the Crown Entities Act, so that the review body, as an independent Crown entity, is added to Part 3 of Schedule 1 of that Act.

*Support and Consultation for End-of-Life in NZ
(SCENZ)*

Clause 40 establishes a body called Support and Consultation for End-of-Life in New Zealand to support and inform the medical processes and procedures in this Act.

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Member's Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the End of Life Options Act **2015**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1
Preliminary provisions

3 Purpose

The purpose of this Act is to—

- (a) provide individuals with a choice to end their lives in certain circumstances; and
- (b) enable the provision of physician assistance to give effect to the individual's choice; and
- (c) provide for related legal and other matters.

4 Interpretation

In this Act, unless the context otherwise requires,—

applicant means a person who makes a request under **section 7**

certifying medical practitioner means a medical practitioner who provides a certificate under **section 9 or 18**

medical practitioner means a health practitioner who 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

mentally competent has the meaning given to it in **section 5**

Minister means the Minister of Health

New Zealand citizen means a person who has New Zealand citizenship as provided in the Citizenship Act 1977

permanent resident has the same meaning as in section 4 of the Immigration Act 2009

physician means a medical practitioner as defined above

qualifying person means a person who is—

- (a) either a New Zealand citizen or a permanent resident; and
- (b) aged 18 years or over

register means the register established and maintained under **section 33**

registered End of Life Directive means an End of Life Directive that is entered into the register in accordance with **section 13(2)**

Registrar means the Registrar appointed under **section 32**

request means a request by an applicant made under **section 7 or 11**

review body means the review body established under **section 35**

solicitor has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006.

5 Meaning of mentally competent

- (1) For the purposes of this Act, a person is **mentally competent** if he or she has the ability to understand the nature and consequences of a request to end his or her life, in the knowledge that the request will be put into effect; and **mentally incompetent** has a corresponding meaning.
- (2) A person is presumed to be mentally competent unless the contrary is shown.

Part 2 Physician assisted death

Subpart 1—Entitlement to, and procedures for, physician assisted death

Entitlement to physician assistance

6 Option to receive physician assistance to end life

- (1) A qualifying person may receive physician assistance to end his or her life if he or she—
 - (a) is mentally competent; and
 - (b) suffers from either of the following conditions:
 - (i) a terminal disease or other medical condition that is likely to end his or her life within 6 months;
 - (ii) constant and unbearable physical or psychological suffering which cannot be relieved in a manner the patient deems tolerable.
- (2) A qualifying person who is mentally incompetent may receive physician assistance to end his or her life if—
 - (a) he or she has a registered End of Life Directive that comes into effect on the occurrence of a specified situation; and
 - (b) the specified situation has occurred.
- (3) Any entitlement referred to under **subsection (1) or (2)** to physician assistance to end a person's life arises only in accordance with the provisions of this Act.

Request made in person for physician assisted death

7 Request made in person for physician assisted death

- (1) A qualifying person to whom **section 6(1)** applies may request physician assistance to end his or her life.
- (2) A request under **subsection (1)** must be—
 - (a) in writing; and
 - (b) signed by the applicant; and
 - (c) confirmed in writing by the applicant no sooner than 7 days after it is signed by the applicant under **paragraph (b)**.

- (3) Despite **subsection (2)**, if an applicant is unable to write a request or confirm it in writing, he or she—
 - (a) may instead mark the written request or written confirmation with an X; or
 - (b) may indicate a request or confirmation by other means, and that request or confirmation may be recorded in writing by another person.
- (4) No request or confirmation made under **subsection (3)** is valid unless the certifying medical practitioner certifies that he or she believes that the written record of the request or confirmation properly records the wishes of the applicant.
- (5) No family member or friend of the applicant can annul the applicant's request.

8 Consultation and counselling about request

- (1) The certifying medical practitioner must encourage the applicant—
 - (a) to consult with his or her family or a close friend about the request; and
 - (b) to seek professional counselling during the course of making his or her request.
- (2) In performing the duty under **subsection (1)(a)**, the certifying medical practitioner must advise the applicant that he or she is not obliged to consult with his or her family or a close friend about the request.

9 Medical certificate regarding request made in person

- (1) Physician assistance to end the life of an applicant who has made a request under **section 7** must not be provided unless a certifying medical practitioner—
 - (a) provides a certificate relating to the matters set out in **subsections (2) and (3)**; and
 - (b) obtains a certificate from a second medical practitioner in accordance with **section 10**.
- (2) The certifying medical practitioner must certify that he or she has made appropriate enquiries and, based on those enquiries, he or she believes that—

-
- (a) the applicant has made a valid request to end his or her life, and confirmed that request, in accordance with **section 7**; and
 - (b) the applicant genuinely does wish to end his or her life; and
 - (c) there was no coercion placed on the applicant to make the request or confirmation; and
 - (d) the applicant is mentally competent; and
 - (e) the applicant has the medical condition referred to in **section 6(1)(b)(i) or (ii)** that was specified in the request.
- (3) The medical practitioner must also certify that he or she has—
- (a) encouraged and advised the applicant as required by **section 8**; and
 - (b) advised the applicant of all other medical options available, including palliative care.
- (4) The certifying medical practitioner must describe in the certificate the nature and extent of the enquiries he or she made and relied on in completing the certificate.

10 Second independent medical practitioner certificate for request made in person

- (1) The certifying medical practitioner must give a second independent medical practitioner the certificate made under **section 9(1)(a)**, along with all relevant medical information that the certifying medical practitioner has relating to the applicant.
- (2) The second medical practitioner must determine whether he or she agrees that the applicant has the medical condition referred to in **section 6(1)(b)(i) or (ii)** that was specified in the request.
- (3) In order to do so, the second medical practitioner must—
- (a) consider the material provided under **subsection (1)**; and
 - (b) make his or her separate enquiries; and
 - (c) examine the applicant.
- (4) If the second medical practitioner agrees that the applicant has the medical condition referred to in **section 6(1)(b)(i) or (ii)** that was specified in the request, he or she must—
- (a) complete a certificate to that effect; and

- (b) give it to the certifying medical practitioner.

Request made through End of Life Directive

11 Request by means of End of Life Directive

- (1) A qualifying person may request, by means of a registered End of Life Directive, to be provided with physician assistance to end his or her life if he or she is mentally competent at the time of making the End of Life Directive.
- (2) An End of Life Directive must specify the situations when it comes into effect.
- (3) The situations that may be referred to in the End of Life Directive are that the person becomes mentally incompetent and that, in addition, any 1 or more of the following situations also applies to him or her:
 - (a) he or she suffers from a terminal disease or other medical condition that is likely to end his or her life within 6 months;
 - (b) he or she suffers from constant and unbearable physical or psychological suffering which cannot be relieved in a manner the patient deems tolerable.
- (4) An End of Life Directive must be—
 - (a) in writing; and
 - (b) signed by the person.
- (5) Despite **subsection (4)**, if a qualifying person is unable to write an End of Life Directive,—
 - (a) he or she may instead mark the written End of Life Directive with an X; or
 - (b) he or she may indicate a request for that End of Life Directive by other means, and that End of Life Directive may be recorded in writing by another person.
- (6) An End of Life Directive made under **subsection (5)** that is not signed by the person to whom it relates is not valid unless a medical practitioner certifies that he or she believes that the written record of the End of Life Directive properly records the wishes of the person.

12 Certificate regarding request made by means of End of Life Directive

- (1) When the qualifying person to whom an End of Life Directive relates signs the Directive, or is regarded under **section 11(5)** as having made an End of Life Directive, a medical practitioner or solicitor must certify that—
 - (a) the person was mentally competent when making the End of Life Directive; and
 - (b) the person wishes to end his or her life when he or she becomes mentally incompetent and any 1 or more of the situations that are referred to in the End of Life Directive also apply to him or her; and
 - (c) he or she has explained to the person the possible consequences of the End of Life Directive; and
 - (d) the person was—
 - (i) encouraged to consult with his or her family or a close friend about the request; and
 - (ii) advised that he or she was not obliged to consult with his or her family or a close friend about the request; and
 - (iii) encouraged to seek professional counselling during the course of making the End of Life Directive; and
 - (iv) advised that all other medical options would be available to him or her, including palliative care; and
 - (v) advised that the End of Life Directive could be cancelled or varied at any time and in any way, in accordance with **section 14**.
- (2) When performing his or her duty under **subsection (1)(a)**, a solicitor must obtain the advice of a medical practitioner in respect of the person's mental competence.

13 Registration of End of Life Directive

- (1) The medical practitioner or solicitor who provides the certificate under **section 12** must provide to the Registrar—
 - (a) the End of Life Directive; and
 - (b) any certificate provided under **section 11(6)**; and
 - (c) the certificate made under **section 12**; and

- (d) the postal address of the person to whom the End of Life Directive relates.
- (2) If the Registrar is satisfied that the End of Life Directive has been made in accordance with **section 11**, and certified in accordance with **section 12**, he or she must—
 - (a) enter the End of Life Directive in the register; and
 - (b) make a copy of the End of Life Directive; and
 - (c) note on the copy that the End of Life Directive has been registered, and the date of its registration; and
 - (d) send the copy to the person to whom the End of Life Directive relates at his or her postal address; and
 - (e) advise the person to whom the End of Life Directive relates that he or she is entitled to cancel or vary the Directive at any time and in any way, in accordance with **section 14**; and
 - (f) advise the person to whom the End of Life Directive relates that the Directive will expire on the day that is 5 years after the date on which it was registered, unless he or she has earlier—
 - (i) renewed the End of Life Directive under **section 16**; or
 - (ii) become mentally incompetent.

14 Cancelling or varying End of Life Directive

- (1) A person who has a registered End of Life Directive may cancel or vary it at any time and in any way, by sending the Registrar a signed written notice of the cancellation or variation.
- (2) Except as provided in this section, no other person (including any person who holds an enduring or other power of attorney in relation to the person to whom the End of Life Directive relates) may cancel or vary an End of Life Directive.
- (3) **Subsection (4)** applies to a person who—
 - (a) who has a registered End of Life Directive; and
 - (b) is mentally competent; and
 - (c) wishes to cancel or vary the Directive; and
 - (d) is unable to write and sign a letter to the Registrar.
- (4) The person may request a medical practitioner, solicitor, or the holder of a power of attorney in relation to him or her to give

notice on his or her behalf to the Registrar of the cancellation or variation.

- (5) When writing to the Registrar, the medical practitioner, solicitor, or holder of the power of attorney must also—
 - (a) include an explanation of why he or she claims to be entitled to write on behalf of the person to whom the End of Life Directive relates; and
 - (b) provide a certificate from a medical practitioner stating that, on a specified date, he or she examined the person, and, in his or her opinion, the person—
 - (i) was mentally competent at that time; and
 - (ii) wished to cancel or vary the End of Life Directive.
- (6) If the person writing to the Registrar under **subsection (5)** is a medical practitioner, he or she may provide the medical certificate required under **subsection 5(b)**.

15 Expiry of End of Life Directive

- (1) A registered End of Life expires on the day that is 5 years after the date on which it was registered.
- (2) Twelve months before the expiry date, the Registrar must write to the person to whom the End of Life Directive relates at his or her address as last known by the Registrar and notify the person of the expiry date.
- (3) This section does not apply if the person to whom the End of Life Directive relates becomes mentally incompetent before the date for giving notice under **subsection (2)**.

16 Renewal of End of Life Directive

- (1) A person who has a registered End of Life Directive may renew it at any time before it expires under **section 15**, by sending the Registrar a signed written notice of the renewal.
- (2) Each renewal under **subsection (1)**—
 - (a) takes effect from the date the existing End of Life Directive would otherwise have expired; and
 - (b) is for a further period of 5 years from that date.
- (3) Every renewal under this section must comply with the provisions of this Act.

- (4) **Subsection (5)** applies to a person who—
 - (a) has a registered End of Life Directive; and
 - (b) is mentally competent; and
 - (c) wishes to renew the Directive; and
 - (d) is unable to write and sign a letter to the Registrar.
- (5) The person may request a medical practitioner, solicitor, or the holder of a power of attorney in relation to him or her to give notice on his or her behalf to the Registrar of the renewal.
- (6) When writing to the Registrar, the medical practitioner, solicitor, or holder of the power of attorney must also—
 - (a) include an explanation of why he or she claims to be entitled to write on behalf of the person to whom the End of Life Directive relates; and
 - (b) provide a certificate from a medical practitioner stating that, on a specified date, he or she examined the person, and, in his or her opinion, the person—
 - (i) was mentally competent at that time; and
 - (ii) wished to renew the End of Life Directive.

17 Role of advocate in regard to End of Life Directive

- (1) The person to whom the End of Life Directive relates may name 1 or more people in the Directive whom the person appoints to act as an advocate for him or her if he or she becomes mentally incompetent.
- (2) The purpose of the appointment is so that the advocate can ensure compliance with the provisions of the person's End of Life Directive, by—
 - (a) ensuring that medical practitioners and other health professionals involved in the person's care are made aware of the Directive; and
 - (b) ensuring that, when the Directive may become enforceable, a medical practitioner who is prepared to participate in complying with the Directive becomes involved in the person's medical circumstances; and
 - (c) requesting a medical practitioner to examine the person to see if he or she is mentally competent, and whether a situation referred to in the Directive has come about; and

- (d) obtain from the Registrar the expiry date of the Directive; and
 - (e) communicate with the review body on any aspects of the Act or the actions of the medical staff that have affected the person.
- (3) A medical practitioner, hospital, or other medical or caring organisation that is satisfied that an advocate is appointed to act for a person to whom a registered End of Life Directive relates must, on the advocate's request, disclose to the advocate any information regarding the person's health or other matters relevant to the End of Life Directive, including if and when it is likely to be put into effect to end the person's life.

18 Medical certificate for putting into effect End of Life Directive

- (1) Medical assistance to end the life of a person who has a registered End of Life Directive must not be provided unless a certifying medical practitioner—
- (a) provides a certificate relating to the matters set out in **subsections (2) to (4)**; and
 - (b) obtains a certificate from a second independent medical practitioner in accordance with **section 19**.
- (2) The certifying medical practitioner must certify that he or she has made appropriate enquiries and, based on those enquiries, he or she believes that—
- (a) the person is mentally incompetent; and
 - (b) at least 1 of the situations, specified in the certificate, that is referred to in the person's End of Life Directive, has come about.
- (3) The certifying medical practitioner must also certify that he or she has received from the Registrar—
- (a) a copy of the person's registered End of Life Directive; and
 - (b) the Registrar's confirmation as to whether the Directive—
 - (i) is still currently registered and has not expired; and
 - (ii) has not expired because of the operation of **section 15(3)**.

- (4) The certifying medical practitioner must describe in the certificate the medical condition of the person that he or she relied on in completing the certificate.

19 Second independent medical practitioner certificate for putting into effect End of Life Directive

- (1) The certifying medical practitioner must give a second independent medical practitioner the certificate made under **section 18(1)(a)**, along with all relevant medical information that the certifying medical practitioner has relating to the person.
- (2) The second independent medical practitioner must determine whether he or she agrees that the person is mentally incompetent and that the situation, specified in the certifying medical practitioner's certificate and referred to in the person's End of Life Directive, has come about.
- (3) In order to do so, the second independent medical practitioner must—
- (a) consider the material provided under **subsection (1)**; and
 - (b) make his or her separate enquiries; and
 - (c) examine the person.
- (4) If the second medical practitioner agrees that the person is mentally incompetent and that the situation has come about, he or she must—
- (a) complete a certificate describing the person's medical condition; and
 - (b) give it to the certifying medical practitioner.

Carrying out physician assisted deaths

20 Prerequisites for physician assisted death

- (1) When certificates are provided by a certifying medical practitioner and a second independent medical practitioner under **sections 9 and 10** (which relate to a request made in person) or **sections 18 and 19** (which relate to a request made through a registered End of Life Directive), the procedure under **section 22** for a person's physician assisted death may commence and be completed.
- (2) To avoid doubt, it is unlawful for the procedure under **section 22** for a person's physician assisted death to commence or be

completed unless the certificates referred to in **subsection (1)** have been provided.

21 Person's right to choose procedure for physician assisted death

- (1) To the extent that it is feasible, a mentally competent person is entitled to choose the method of his or her physician assisted death.
- (2) A mentally competent person also has the right to do any of the following:
 - (a) decide to delay the taking or administration of life-ending medication:
 - (b) cancel a decision to terminate his or her life:
 - (c) choose who will be present (apart from the medical practitioner supervising the administration of, or administering, the medication) when life-ending medication is taken or administered, who will assist in that process, and where it will take place.

22 Procedures involved in physician assisted death

- (1) Subject to **subsection (6)**, before the attending medical practitioner starts any procedure for physician assisted death, the person must be advised of his or her rights and the attending medical practitioner must ask the person how he or she wishes to exercise those rights.
- (2) If a person is capable of swallowing without undue discomfort, the attending medical practitioner may offer oral life-ending medication.
- (3) If a functioning gastric tube is in place, the attending medical practitioner may use it to administer medication that is normally swallowed.
- (4) Despite **section 21(2)(c)**, if the person is not able to self-administer a drug, or take drugs into the stomach, the attending medical practitioner must administer the life-ending medication.
- (5) A medical practitioner must be present whether the patient is self administering the drug or the medical practitioner is directly administering the drug. He/she must bring the drug to the patient and if not used, must take it away and place it in safe custody. If the drug is taken by way of the stomach and death is taking some hours, he/she may leave other people to monitor the situation, but must always be immediately available to help.

A prior agreement with the patient may allow the medical practitioner to give extra medication intravenously, should the oral dose not be sufficient, or take too long to cause death.

- (6) An attending medical practitioner may reduce or dispense with providing a person with all or part of the information that would otherwise be provided under this section, after taking into account the person's mental condition and ability to comprehend, if the person—
- (a) is mentally incompetent; and
 - (b) has a registered End of Life Directive; and
 - (c) is undergoing physician assisted death in accordance with **section 20(1)**.

23 Medical practitioner may be assisted in the procedure by another person

- (1) An attending medical practitioner may be assisted under **section 22**, if the person who is to undergo physician assisted death explicitly requests that other person to participate and assist in the end of life procedures.
- (2) The other person has the right to refuse to assist in this way.

After procedure completed

24 Report to Registrar

- (1) The attending medical practitioner must provide a report to the Registrar within 14 days after completion of a procedure for physician assisted death.
- (2) The report must contain the following information:
 - (a) the name of the attending medical practitioner and any other attending medical staff;
 - (b) the name and last known address of the deceased;
 - (c) the place where the procedure was carried out;
 - (d) the date and time of the procedure, or, if that is uncertain due to self-administration, the estimated date and time;
 - (e) the means by which the procedure was carried out;
 - (f) that, in the case of a mentally competent person, the attending medical practitioner advised him or her of the person's rights under **section 22**.
- (3) The attending medical practitioner must attach to the report—

- (a) the certificates given by the certifying medical practitioner and the second medical practitioner; and
- (b) a copy of the End of Life Directive, if the procedure was carried out pursuant to a registered End of Life Directive.

25 Death certificate

A medical practitioner who signs the death certificate of a person who has died due to a procedure under **section 22** must include the person's underlying disease or condition as the cause of death.

Subpart 2—Legal consequences

General legal consequences

26 Lawful provision of physician assistance to end life

- (1) It is lawful to provide a person who is entitled under this Act to receive medical assistance to end his or her life with medical assistance to do so.
- (2) A person is immune from civil or criminal liability for any act done or omission made while acting in good faith when assisting or participating in implementing any aspect of this Act.
- (3) **Subsection (2)** applies despite the person having inadvertently failed to comply fully with any requirement of this Act.

27 Right not to participate

- (1) No person is required to participate directly or indirectly in any aspects of this Act.
- (2) A person who refuses to participate in any aspect of this Act is not required to give any reason for the refusal.
- (3) A medical practitioner who is asked by a person to do any of the following, but does not wish to do so, must refer the person within two days to another medical practitioner who is not opposed to physician assisted dying and who will:
 - (a) advise the person of his or her rights under this Act:
 - (b) carry out a physician assisted death in accordance with this Act:

- (c) provide a certificate under this Act.
- (4) A medical practitioner who is asked by a certifying medical practitioner to complete a certificate under **section 10 or 19** as the second medical practitioner, but does not wish to do so, must immediately—
 - (a) advise the certifying medical practitioner accordingly; and
 - (b) return to him or her the material provided under **section 10(1) or 19(1)**.
- (5) A solicitor who is asked to advise a client of his or her rights under this Act, or is asked to certify under this Act, but does not wish to do so, must immediately—
 - (a) advise the client accordingly; and
 - (b) refer the client to a solicitor who is prepared to advise or certify for the client.
- (6) Nothing in this section applies to the Registrar in respect of his or her duties as the Registrar.

28 Contracts

- (1) In any contract, including a contract of insurance, where the death of the person who has died due to a procedure under **section 22** is of relevance, the cause of the person's death is deemed to be the person's underlying disease or condition.
- (2) Any insurance policy applying on the death of the person will continue to be valid if the requirements of this Act have been observed and met.

29 Confidentiality

- (1) The fact that a person has made or is contemplating a request under **section 7** or an End of Life Directive is confidential to the person and any advocate appointed in the End of Life Directive.
- (2) Any other person who becomes aware of that information, whether pursuant to the requirements of this Act or otherwise, must respect that confidentiality.
- (3) No person is prevented by the confidentiality provided by this section from complying with any aspect of this Act.

Part 3

Miscellaneous provisions

Offence

30 Offence of falsifying or concealing, etc, intention or documents

- (1) A person commits an offence who forges, conceals, destroys, or otherwise alters or frustrates the expressed wishes of a terminally ill person, or a mentally incompetent person who has a registered End of Life Directive, or any person who chooses to end his or her life in a manner that fulfils the requirements of this Act.
- (2) A person who commits an offence under **subsection (1)** is liable on summary conviction to a term of imprisonment not exceeding 3 months or a fine not exceeding \$10,000, or both.

Regulations

31 Regulations

The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing forms to be used for the purposes of this Act:
- (b) prescribing the forms of certificates to be used under this Act:
- (c) providing for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect.

Registrar

32 Minister to appoint Registrar

The Minister must appoint a Registrar of End of Life Directives and Physician Assisted Deaths.

33 Registrar to maintain register

The Registrar must establish and maintain a register of End of Life Directives and Physician Assisted Deaths.

34 Reports by Registrar

- (1) The Registrar must report annually to the review body.
- (2) The first report must be made 12 months after this Act comes into force.
- (3) Each report must contain the following information in respect of the previous 12-month period:
 - (a) the number of deaths carried out under this Act:
 - (b) the number of those deaths that were by self-administered medication:
 - (c) the number of those deaths that were by oral medication that was not self-administered:
 - (d) the number of those deaths that were by other means:
 - (e) the number of those deaths that were effected pursuant to an End of Life Directive:
 - (f) the number of current registered End of Life Directives:
 - (g) the number of End of Life Directives that were cancelled:
 - (h) any other matters relating to the functioning of the Act that the Registrar believes to be of relevance.

*Review body***35 Review body established**

This section establishes the End of Life Options Review Body.

36 Review body is Crown entity

The review body is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.

37 Functions of review body

- (1) The review body's function is to report to the House of Representatives in accordance with **subsections (2) to (4)**.
- (2) The review body must enquire into and report on the following matters:
 - (a) the understanding of the general public of the Act, including the rights, duties, and powers of people under the Act:
 - (b) the compliance of all persons involved in granting rights under the Act:

- (c) the compliance of all persons with their duties and obligations under the Act;
 - (d) whether the procedure for physician assisted death under **section 22** is being accomplished in a sympathetic and humane way;
 - (e) whether any changes to the Act are necessary or desirable to improve its operation;
 - (f) whether the review body is functioning as an effective organisation and whether any changes should be made to its structure;
 - (g) any other matters that the review body wishes to draw to the House of Representatives' attention.
- (3) The review body must report to the House of Representatives within 2 months of the date on which the Registrar is required, under **section 34**, to report to the review body.
- (4) If the review body has received the Registrar's report when it must report to the House of Representatives, the review body must attach to its report the information provided by the Registrar.

38 Further provisions relating to review body

Further provisions relating to the review body are set out in the **Schedule**.

Consequential amendment to Crown Entities Act 2004

39 Consequential amendment to Crown Entities Act 2004

- (1) This section amends the Crown Entities Act 2004.
- (2) In Schedule 1, Part 3, in its appropriate alphabetical order, insert "End of Life Options Review Body".

Support and Consultation for End-of-Life in New Zealand (SCENZ)

40 Establishment of SCENZ

- (1) The Ministry of Health will establish a group of experienced participating medical practitioners who will be referred to as Support and Consultation for End-of-Life in New Zealand (SCENZ).
- (2) This body will be responsible for:
 - (a) Forming a system to allow experienced medical practitioners on the body to act as an independent medical practitioner on request from the certifying medical practitioner for help;
 - (b) Creating a system of call which will not allow the first certifying medical practitioner to know who the independent medical practitioner will be;
 - (c) Writing standards of care and administration of drugs protocols, and advising on correct medical and legal procedures involved;
 - (d) Helping inexperienced medical practitioners with the actual administration of drugs where requested.

Schedule

s 38

**Further provisions relating to review
body****1 Membership of review body**

- (1) The review body has the following membership appointed by the Minister after such consultation with the organisations, body, or office holder that the member is to represent as the Minister considers appropriate:
- (a) 2 medical practitioners (one of whom must be a general practitioner) representing the Medical Council of New Zealand:
 - (b) 1 registered nurse representing the Nursing Council of New Zealand:
 - (c) 1 coroner representing the chief coroner:
 - (d) 1 solicitor representing the New Zealand Law Society:
 - (e) 1 person representing the Human Rights Commission:
 - (f) 1 person representing the Health and Disability Commissioner:
 - (g) 1 person representing the medical schools:
 - (h) 1 person representing senior citizens' advocacy groups:
 - (i) 1 person representing Māori:
 - (j) 1 person representing the Interchurch Bioethics Council.
- (2) **Subsection (1)** applies despite section 28(1)(b) of the Crown Entities Act 2004.

2 Timing of appointments

- (1) The Minister must appoint members to the review body within 6 months after the Act comes into force.
- (2) The Minister must appoint any replacement member to the review body within 3 months of a previous appointee ceasing to hold office.

3 Term of office

The term of office of a member of the review body will be at the discretion of the Minister, but no person may hold office for longer than 5 years.

4 Failure to appoint or attend not to affect validity

The failure of the Minister to appoint an appointee, or the failure of an appointee to attend meetings of the review body, will not affect the validity of any meeting or any other actions of the review body.

5 Procedures of review body

- (1) The quorum for any meeting of the review body is at least one-half of its validly appointed members.
- (2) All decisions of the review body are made on the vote of the majority of members present at the meeting.
- (3) The members of the review body may appoint their own chairperson and, except as provided in this Act, may determine their own procedures.