Assisted dying in New Zealand and 2019 developments

December 2019

Overview
New Zealand, along with many other countries, has examined the complex issue of assisted dying. This paper examines how New Zealand's Parliament has responded to the issue. It briefly considers case law and relevant recent professional and public opinion.

Caution is advisable when using surveys as their terminology, questions and nature of polling can influence the outcomes while margins of error and sample sizes vary. Confusion over the meaning of the term "assisted dying" has also been reported.¹

Terminology
Different terms are used to describe assisted dying. The most common include physician-assisted suicide, physician-assisted dying, medically-assisted dying, aid in dying, death with dignity, euthanasia, and voluntary euthanasia. A distinction is commonly made between assisted suicide as “providing another with the knowledge or means to intentionally end his or her own life”, and euthanasia as a “deliberate action undertaken by one person with the intention of ending the life of another person to relieve that person’s suffering where that act is the cause of death”.² Although this is a common distinction, it is not universally employed.

The 2017 New Zealand Health Committee report for Petition 2014/18 of Hon Maryan Street and 8,974 others noted the varied use of terminology. Medical professionals, lawyers, and ethicists preferred technical terms (such as physician-assisted suicide and euthanasia) while lay people tended to employ more varied and diverse terms. These often reflected their underlying beliefs on assisted dying.³

Parliamentary measures
To date, four bills have proposed a framework for assisted dying and three petitions have been submitted to Parliament. All four bills were Members' bills; two were successfully introduced, one of which reached a first reading where it was negatived and one which received Royal Assent in 2019.

² Dalhousie University Health Law Institute Assisted Suicide.
³ Health Committee Petition 2014/18 of Hon Maryan Street and 8,974 others (August 2017) at 7.
Death with Dignity Bill, 1995
On 2 August 1995 National MP Michael Laws moved that leave be granted to introduce his Member's bill: the Death with Dignity Bill. Debate was interrupted but resumed on 16 August. It concluded with a personal vote which denied leave (by 61 to 29 votes).

Death with Dignity Bill, 2003
The Death with Dignity Bill, 2003 was introduced on 6 March 2003 as a Member's bill by New Zealand First MP Peter Brown. It was almost identical to the Death with Dignity Bill, 1995. At its first reading on 30 July 2003 the bill was negatived following a personal vote (by 60 to 58 votes with one abstention).

End of Life Choice Bill, 2012
Labour MP Hon Maryan Street entered an End of Life Choice Bill in the ballot of Members' bills held on 26 July 2012. With a general election approaching, she withdrew the bill in September 2013 stating: "I'm concerned that it would not get the treatment it deserves. It needs sober, considered reflection, and that's not a hallmark of election years in my experience". At the request of Labour Party leader Andrew Little, the bill was not re-entered in the ballot following the 2014 election.

End of Life Choice Act 2019
ACT MP David Seymour entered the End of Life Choice Bill in a ballot of Members' bills on 15 October 2015. On 4 May 2016 he sought leave to introduce the bill on the first members' day after the Health Committee reported back to the House on its inquiry into the Petition of Hon Maryan Street. Leave was not granted.

The End of Life Choice Bill was drawn from the ballot—and introduced—on 8 June 2017. The bill was reinstated in the 52nd Parliament and passed its first reading following a personal vote (by 76 to 44 votes) on 13 December 2017. It was referred to the Justice Committee. In a press release dated 16 May 2018 the committee's chairperson stated:

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4 New Zealand Parliamentary Debates (NZPD) (2 August 1995) 549 at 8414.
5 NZPD (16 August 1995) 549 at 8696.
6 NZPD, above n 5 at 8725.
7 NZPD (30 July 2003) 610 at 7494.
8 New Zealand Parliament Members' bills (26 July 2012).
9 Hamish Rutherford "Voluntary euthanasia bill withdrawn" Stuff (26 September 2013).
10 Isaac Davison "Labour MP drops euthanasia bill" New Zealand Herald (15 December 2014).
11 New Zealand Parliament Members' bills (15 October 2015).
12 NZPD (4 May 2016) 713 at 10758.
13 New Zealand Parliament Members' bills (8 June 2017) and End of Life Choice Bill. For additional information on the Death with Dignity Bill, 2003 and End of Life Choice Bill see the Parliamentary Library Research paper Assisted dying: New Zealand (20 December 2018).
14 NZPD (13 December 2017) 726 at 1040.
15 Justice Committee "Hearings begin on End of Life Choice bill" (21 May 2018).
16 Justice Committee "Hearings to begin on End of Life Choice Bill" (16 May 2018).
Dedicated committee staff have been engaged to take care of over 35,000 submissions received by the committee with many more to be processed. This is understood to be the highest number of submissions a select committee has ever received and is indicative of the significance of this complex issue to so many New Zealanders.

A tour by parliamentarians to 14 cities to hear views on the bill ended in November 2018. There were over 2,000 oral submissions.\(^{17}\)

In its final April 2019 report on the bill, the Justice Committee made no recommendations relating to the passing of the bill. The committee stated: \(^{18}\)

The eight members of this committee hold diverse views. We decided to report the bill back with minor, technical, and consequential amendments only. We leave it to the full membership of the House to resolve the broader policy matters.

The bill passed its third reading 69 to 51 votes on a personal vote on 13 November 2019, and received the Royal Assent on 16 November 2019.\(^{19}\) The results of a referendum will determine whether the *End of Life Choice Act 2019* comes into force. If a majority of electors voting in the referendum support its commencement, the Act will come into force 12 months after the declaration of the official result.\(^{20}\)

**Petitions**

Since 2003, three petitions have been submitted to Parliament. Both the Petition 2002/53 of G R Harvey and 30 others on behalf of the Friday Friendship Group requesting that the House take some action in opposition to euthanasia (presented by the Hon Maurice Williamson) and the Petition 2002/50 of Colleen Joy Bayer for Family Life International and 9,289 others requesting that the Death with Dignity Bill not proceed (presented by Hon Dr Nick Smith) were referred to the Social Services Committee. The committee reported back on both petitions on 11 September 2003 stating that it had “no matters to bring to the attention of the House”.

The Petition of Hon Maryan Street was presented by MP Iain Lees-Galloway on 23 June 2015 and referred to the Health Committee. The petition requested that “the House of Representatives investigate fully public attitudes towards the introduction of legislation which would permit medically-assisted dying in the event of a terminal illness or an irreversible condition which makes life unbearable”. The committee began oral hearings on the petition in August 2016.\(^{21}\) A total of 21,891 written submissions were received, and it was called “by far” the largest parliamentary investigation undertaken.\(^{22}\)

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\(^{17}\) Thomas Manch *Parliamentary tour for End of Life Choice bill comes to a close* *Stuff* (13 November 2018).

\(^{18}\) Justice Committee *Final report of the Justice Committee* (9 April 2019) at 1.

\(^{19}\) *Hansard* *End of Life Choice Bill — Third Reading draft* (13 November 2019).

\(^{20}\) End of Life Choice Act 2019, s 2.

\(^{21}\) Office of the Clerk *Oral Hearings into ‘Ending One’s Life in NZ’ to Begin* (11 August 2016).

\(^{22}\) Health Committee, above n 3 at 49; and Stacy Kirk *Parliamentary inquiry into record euthanasia submissions: ‘note’ response* *Stuff* (2 August 2017).
The committee’s report on the petition was presented on 2 August 2017. No recommendations about introducing assisted dying legislation were made, and the report noted that decisions on issues like this were “generally a conscience vote”. Palliative care services were also a “common focus in the submissions process”. New Zealand First’s minority view was that it could not: support a fundamental change without a clear sign that this [was] the will of most New Zealanders. That would be achieved by either a binding Citizens' Initiated Referendum, or a Government Initiated Referendum held with a future General Election thus allowing for a period of informed debate.

Case Law
In New Zealand, some who have helped others die have been convicted of murder or manslaughter—which are forms of culpable homicide under s 160(3) of the Crimes Act 1961. If the evidence is inconclusive as to whether a person’s actions caused another’s death, then he or she may be convicted of attempted murder under s 173 of the Act. Others have been convicted of aiding or abetting suicide under s 179 of the Crimes Act 1961.

A sentence of life imprisonment must be imposed in cases of murder unless, given the circumstances of the offence and the offender, this would be manifestly unjust. The maximum penalty for manslaughter is imprisonment for life; the maximum penalty for attempted murder and for aiding and abetting suicide is imprisonment for 14 years. As Andrew Geddis and Colin Gavaghan point out:

Both assisting suicide and the various forms of culpable homicide can, in theory, attract significant prison sentences. In reality, the courts recently have tended towards more lenient treatment of those involved in assisted dying and “mercy killing” cases, imposing sentences of home detention, suspended sentences or even discharging without conviction.

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23 Health Committee, above n 3 at 40 and 47.
24 Health Committee, above n 3 at 48.
25 For example, see R v Law (2002) 19 Criminal Reports of New Zealand (CRNZ) at 500.
26 For example, see R v Stead (1991) 7 CRNZ at 291.
28 For example, see R v Davison HC Dunedin CRI-2010-012-004876 (24 November 2011).
29 Crimes Act 1961, s 172 and Sentencing Act 2002, s 102(1).
30 Crimes Act 1961, s 177(1).
31 Crimes Act 1961, s 173(1), s 179(1).
32 Geddis and Gavaghan, above n 27.
Seales v Attorney General\textsuperscript{33}

In March 2011 Lecretia Seales was diagnosed with a brain tumour which resisted surgery and courses of chemotherapy and radiation treatment. Medical advice was that the tumour would ultimately prove fatal.\textsuperscript{34} In 2015, Ms Seales sought declarations in the High Court:\textsuperscript{35}

- her doctor would not commit either murder or manslaughter under s 160 of the Crimes Act if she “administered aid in dying” to Ms Seales
- her doctor would not be assisting her to commit suicide, which is prohibited by s 179 of the Crimes Act, if her doctor “facilitated aid in” Ms Seales’ dying
- if the Court was satisfied that she was a competent adult who clearly consented to aid in dying and had “a grievous and terminal illness ... caus[ing] enduring suffering” that was “intolerable to her in the circumstances of her illness”.\textsuperscript{36}

In the alternative, Ms Seales sought declarations that ss 160 and 179 of Crimes Act 1961 (to the extent that they prohibited aid in dying) were inconsistent with two rights guaranteed by the New Zealand Bill of Rights Act 1990: the “right not to be deprived of life” (s 8) and the right not to be “subjected ... to cruel, degrading, or disproportionately severe treatment” (s 9).\textsuperscript{37} Both applications for a declaration were declined. In his judgment, Justice David Collins concluded:\textsuperscript{38}

The complex legal, philosophical, moral and clinical issues raised by Ms Seales’ proceedings can only be addressed by Parliament passing legislation to amend the effect of the Crimes Act. ... [T]he fact that Parliament has not been willing to address the issues raised by Ms Seales’ proceeding does not provide me with a licence to depart from the constitutional role of Judges in New Zealand.

Professional opinion

Various opinions on assisted dying have been expressed by health professionals.

In June 2019 an open letter signed by 1,061 doctors, of the 17,000 registered doctors in New Zealand, said that they wanted no part in what they called assisted suicide.\textsuperscript{39}

University of Otago researchers have reviewed existing research investigating New Zealanders’ attitudes to euthanasia and/or assisted dying over the past 20 years. According to their research published in late 2018, support and opposition varied across health professional specialties.

\textsuperscript{33} *Seales v Attorney-General* [2015] New Zealand High Court at 1239.

\textsuperscript{34} *Seales v Attorney-General*, above n 33 at 24.

\textsuperscript{35} *Seales v Attorney-General*, above n 33 at [5-6].

\textsuperscript{36} *Seales v Attorney-General*, above n 33 at [8].

\textsuperscript{37} *Seales v Attorney-General*, above n 33 at [10-11].

\textsuperscript{38} *Seales v Attorney-General*, above n 33 at [211].

\textsuperscript{39} “Doctors sign letter against ‘assisted suicide’ Bill” Radio New Zealand (23 June 2019).
Palliative care specialists were mostly opposed to euthanasia/assisted dying, whereas General Practitioners (GPs) were split more evenly between support and opposition.\(^{40}\)

In April 2018 the findings of a *New Zealand Doctor* magazine commissioned survey by Horizon Research were reported. The survey of 1,540 General Practitioners and registrars, for which 545 responded, found that 52 percent of doctors totally opposed assisted dying if death was imminent, while 32 percent supported it. 56 percent opposed and 31 percent were in favour if the patient's condition was irreversible but death was not imminent.\(^{41}\)

According to a 2017 *New Zealand Medical Journal (NZMJ)* article on New Zealand doctors’ and nurses’ views on legalising assisted dying:\(^{42}\)

In studies over the past decade, small percentages of New Zealand doctors have acknowledged providing patients with a drug that had been “prescribed, supplied or administered explicitly for the purpose of hastening the patient's death”, and nurses were identified as having assisted in hastening patients’ deaths in this way.

It further noted that:

most of New Zealand’s professional medical and nursing bodies have until now consistently either opposed AD [assisted dying] or declined to take a stand, and none of them appears as yet to have actively considered its potential role in providing practice standards or guidelines for its members in the anticipation of AD being legalised. The vocal opposition to legalising AD, in particular from faith-based organisations, has been endorsed by some palliative medicine and palliative care professional bodies.

In October to November 2015 an invitation was disseminated for New Zealand-registered doctors and nurses to take part in an online survey. There was a total of 969 survey respondents. The findings, as published by the *NZMJ* in 2017 were:\(^{43}\)

37 percent of doctors and 67 percent of nurses responding “strongly” or “mostly” agreed—on a 5-point scale from ‘strongly agree’ to ‘strongly disagree’ or ‘not sure’—that AD [assisted dying] should be legalised in New Zealand, assuming provision of appropriate guidelines and protocols. In contrast, 58 percent of doctors and 29 percent of nurses “strongly” or “mostly” disagreed with legalising AD. That is, respondents tended to hold clear, and polarised, views on the topic, with only 4–5 percent of doctors and nurses answering “Not sure”. These findings reflect both recent New Zealand studies and research in other countries prior to AD legislation being introduced, where somewhere between 30–40 percent of doctors have supported legalisation.

\(^{40}\) Jessica Young and others "The euthanasia debate: synthesising the evidence on New Zealander’s attitudes" Kōtuitui: New Zealand Journal of Social Sciences Online (October 2018) and University of Otago "Most Kiwis support some form of euthanasia or assisted dying, Otago review reveals" (1 November 2018).

\(^{41}\) Mike Houlahan "Doctors split over assisted dying issue" Otago Daily Times (27 April 2018).

\(^{42}\) Pam Oliver and others "New Zealand doctors’ and nurses’ views on legalising assisted dying in New Zealand" New Zealand Medical Journal (NZMJ) (2005) 130 (7258).

\(^{43}\) Oliver and others, above n 42.
A postal survey was sent to 3,420 GPs in New Zealand in May 2013. The findings, as published by the NZMJ in 2015, were:

Of the 650 GPs who responded, 547 had contact with the patient prior to death and had the potential to make a medical decision at the end-of-life. Of these, 359 (65.6 percent) reported making a MDEL [medical decision-making at the end-of-life]. The last action before death ranged from decisions to withdraw or withhold treatment (or intensify the alleviation of pain and/or symptoms) with the probability that death would be hastened, through to actions partly or explicitly intended not to prolong life, or to hasten death. The most common MDEL actioned, taking into account the probability that this may hasten end-of-life, was increasing the alleviation of pain and/or symptoms, (88 percent n=359), followed by withdrawal of treatment (50.1 percent n=359). Of the 359 GPs who reported making a MDEL, 16 (4.5 percent) attributed death to a drug that had been prescribed, supplied, or administered explicitly for the purpose of hastening the patient's death. Of these cases, nurses were identified as the agent most likely to administer the drug, either alone or with another.

Various opinions on assisted dying have been expressed by groups:

The Australian and New Zealand Society of Palliative Medicine: The Society “does not support the legalisation of euthanasia and physician assisted suicide, but recognises that ultimately these are matters for government to decide having regard to the will of the community and, critically, informed by appropriate research and consultation with the medical community, including palliative medicine practitioners”.

Hospice New Zealand: Hospice does not support legalising assisted dying in any form. Nor does it consider that a law change would be in the best interests of the people for which it cares. Hospice New Zealand stresses that hospices’ always work strictly within the law, which currently means it is a criminal action to help someone commit suicide and may result in prosecution.

Medical Council of New Zealand: The Council’s 2016 Good Medical Practice details standards which the public and the profession expect a competent doctor to meet. It includes: you must not participate in the deliberate killing of a patient by active means.

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46 “Euthanasia - our opinion” Hospice New Zealand (2017).
47 Good Medical Practice Medical Council of New Zealand (2016).
*New Zealand Medical Association (NZMA):* The NZMA opposes euthanasia and doctor-assisted suicide. It believes these are unethical and harmful to individuals, especially vulnerable people, and society.48

*New Zealand Nurses Organisation (NZNO):* The NZNO advocates for individuals to have the option or choice of assisted dying. Its concern is focused on the impact of legislative changes that may affect the day-to-day practice of nurses who work with dying people.49

*The Palliative Care Council of New Zealand:* The Council believes that euthanasia and physician-assisted suicide do not have a place in New Zealand society. The focus should be on ensuring high quality palliative care is available to all who would benefit.50

**Public opinion**

Strong and increasing public support for assisted dying has been reported.

An April to May 2019 Curia Market Research survey of 1,048 respondents asked “Under New Zealand law, doctors are allowed to turn off life support and stop medical treatment, but doctors are NOT allowed to give drugs with the intention to kill. Do you think a doctor should be allowed to give deadly drugs to deliberately kill a patient?” 57 percent thought doctors should be allowed and 29 percent disagreed.51 In April 2019 a Horizon survey of 1,341 voters asked “Do you support a law change to allow medical practitioners to assist people to die, where such a request has come from a mentally competent patient 18 years or over, who has end stage terminal disease and irreversible unbearable suffering, e.g.: cancer?” Here 74 percent were in support while 19 percent opposed.52 That same month a Curia survey with 500 responses asked “Do you support a legal path of euthanasia for people with terminal illnesses who are likely to die within 12 months?” 69 percent of males and females were in favour while 20 percent of males and 18 percent of females were opposed.53

According to the Otago University review, across all earlier surveys, on average 68.3 percent of people supported euthanasia, and 14.9 percent opposed legislation. 15.7 percent were neutral or unsure. A total of 36,304 people had been surveyed. The lead author said that it seemed “a majority of the public” were “open to the possibility of legislative change”. However, it was “less clear” what forms of euthanasia or assisted dying New Zealanders thought should be available, or when and how it should be accessible, though some form of regulation was expected.

48 “End of Life Choice Bill New Zealand Medical Association Submission to the Justice Select Committee” (February 2018). Also see “New Zealand Medical Association Submission to the Health Select Committee Investigation into ending one’s life in New Zealand” (February 2016).


50 “The Palliative Care Council of New Zealand’s Position on Euthanasia” Palliative Care Council of New Zealand (June 2013).


52 “74% say yes to end of life choice law” HorizonPoll (10 May 2019).

53 The poll was taken before the final bill was changed to a six month time limit. Matthew Littlewood “Poll shows strong support in South Canterbury for assisted dying legislation” Stuff (24 October 2019).
Among studies that specifically differentiated between euthanasia (a lethal injection administered at the voluntary request of a competent patient by a doctor), and assisted dying (when a person obtained a lethal prescription from a doctor and self-administered), support for a doctor to end a person’s life upon request was 67.9 percent. 48 percent supported assistance from someone other than a doctor (e.g. family).

Overall, no differences were found between genders, and results according to age appeared to be mixed. Of all indicators of socio-economic status, only educational attainment was statistically significant, with lower educational attainment associated with higher support for euthanasia. Those living rurally were more supportive of euthanasia.\textsuperscript{54}

According to the 2017 \textit{NZMJ} article already referenced:

\begin{quote}
Surveys and polls over the past 20 years have demonstrated strong and increasing public support for legalising AD [assisted dying] in New Zealand.\textsuperscript{55}
\end{quote}

A January 2018 Newshub Reid Research poll with 1,000 interviewees (750 by phone and 250 online) found that 71 percent supported the End of Life Choices Bill, with 19.5 percent against it and 9.5 percent unsure.\textsuperscript{56}

The majority of submitters to the Health Committee opposed legislation that would allow assisted dying in New Zealand. Advisers reported that 80 percent of submitters opposed any change to assisted dying legislation, while 20 percent favoured a law change to permit it.\textsuperscript{57} The majority of public submissions heard by the Justice Committee were against the Bill.\textsuperscript{58}

An October to November 2017 Curia survey of 894 respondents asked “It has been proposed that people with a terminal or irremediable condition should be allowed assistance to end their lives, also called assisted dying. To what extent do you support or oppose assisted dying? Do you strongly oppose, somewhat oppose, somewhat support or strongly support it?” 62 percent support were supportive while 22 percent opposed it.\textsuperscript{59}

A Research New Zealand poll conducted between May and June 2017 found that 72 percent of New Zealanders stated they agreed “if a person had a painful, incurable disease doctors should be allowed by law to end the patient’s life, if the patient requests it”. In comparison, 19 percent disagreed, 6 percent did not know, and 3 percent did not care. The poll had a nationally representative sample of 500 adult New Zealanders. The same poll was previously conducted in

\textsuperscript{54} \textit{The euthanasia debate: synthesising the evidence on New Zealander’s attitudes} Kōtuitui: New Zealand Journal of Social Sciences Online (October 2018) and \textit{Most Kiwis support some form of euthanasia or assisted dying, Otago review reveals} University of Otago (1 November 2018).

\textsuperscript{55} \textit{New Zealand doctors’ and nurses’ views on legalising assisted dying in New Zealand}, (2 June 2017) \textit{NZMJ} 130 (1456).

\textsuperscript{56} \textit{Newshub poll: Most New Zealanders support euthanasia} Newshub (3 February 2018).

\textsuperscript{57} Health Committee, above n 3 at 15.

\textsuperscript{58} Manch, above n 17.

October 2016 and in June/July 2015. The proportion agreeing was not statistically different across these three polls.\textsuperscript{60}

A May 2017 Horizon survey of 1,274 adults found that New Zealanders supported medical practitioners assisting adults to die by majorities ranging from 66 to 75 percent in specified circumstances.

These circumstances included where such a request came from:

- A mentally competent patient, 18 years or over, with end stage terminal disease and irreversible unbearable suffering: 75 percent support.
- A mentally competent patient, 18 years and over, who has irreversible unbearable suffering which may not cause death in the immediate future: 66 percent support.\textsuperscript{61}

A June and September to October 2015 Curia poll found that 66 percent of respondents supported a law change to allow euthanasia, with 20 percent opposed. There were 2,800 responses.\textsuperscript{62}

An earlier July 2015 Reid Research poll conducted for TV3 News asked “should law be changed to allow ‘assisted dying’ or euthanasia?” 71 percent of respondents said yes while 24 percent said no. That same month a Colmar Brunton poll for TVNZ's One News asked 1,000 people “should a patient be able to request a doctor’s assistance to end their life?” 75 percent of respondents said yes and 21 percent said no.\textsuperscript{63}

A Research New Zealand poll asked 501 people during March and April 2015 “Suppose a person has a painful incurable disease. Do you think that doctors should be allowed by law to end the patient's life if the patient requests it?” 74 percent said yes, 20 percent said no and 6 percent did not know. They were also asked “Still thinking of that person with a painful incurable disease, do you think that someone else, like a close relative, should be allowed by law to help end the patient's life, if the patient requests it?” Here 51 percent said yes with 41 percent saying no and 9 percent not knowing.\textsuperscript{64}

The New Zealand Attitudes and Values Study asked participants aged 18 years and over how strongly they supported euthanasia. Based on the 2014/2015 wave of data collection and sampling of 15,270 New Zealanders, approximately two thirds of the participants (66 percent) supported euthanasia, 12.3 percent opposed and 21.7 percent were undecided.\textsuperscript{65}

\textsuperscript{60} “Should euthanasia be legalised in New Zealand?” Research New Zealand (13 September 2017).
\textsuperscript{61} “New Zealanders’ views on end of life choices” Horizon Research (May 2017).
\textsuperscript{62} Health Committee, above n 3 at 15.
\textsuperscript{63} Health Committee, above n 3 at 15.
\textsuperscript{64} “Should euthanasia be legalised in New Zealand?” Research New Zealand (9 April 2015) at 51-52.
\textsuperscript{65} “Attitudes toward Euthanasia in New Zealand in 2015” New Zealand Attitudes and Values Study (2016).
An August to September 2013 Curia poll of 1,000 respondents found that 57 percent agreed (and 31 percent disagreed) with the statement that “If someone really wants to die, doctors should be allowed to help them kill themselves”.66

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