

End-of-life care and physician-assisted dying: Volume 1, Setting the Scene

Update – August 2018

Chapter 4 of Volume 1 of our final report on the end-of-life care and physician-assisted dying project outlined the evidence from a number of jurisdictions where assisted dying is permitted, including the Netherlands, Belgium, Oregon, and Switzerland.

This chapter also noted pending legislation in a number of other jurisdictions, some of which has now been enacted. This update outlines the key provisions of the new legislation in place and notes the initial data available on their operation.

Canada

As reported in Volume 1, in February 2015 the Supreme Court of Canada ruled that the country's prohibition on assisted dying violated various rights enshrined within the Canadian Charter of Rights and Freedoms.¹ The Court suspended its ruling for 12 months to allow Parliament and provincial legislatures to respond. In June 2016, the Canadian House of Commons passed an act which amended the criminal code to permit medical assistance in dying, or "MAID".²

The Act permits medical assistance in dying if an individual meets the following criteria:

- they are aged 18 or over;
- they are eligible for government funded health services (e.g., a Canadian citizen or permanent resident);
- they have a "grievous and irremediable medical condition" – defined as an illness, disease or disability which is serious and incurable, and which is causing enduring physical or psychological suffering that is intolerable to them and cannot be relieved by other means;
- their death must be "reasonably foreseeable" (although it is not necessary to make a prognosis as to the specific length of time);
- they have made a voluntary request, in writing, witnessed by an independent person at a time after they were aware they had a "grievous and irremediable condition" (meaning that the law does not permit advance decisions in respect of assisted dying);
- they have given informed consent after being informed of all other options to alleviate their suffering; and
- two medical or nurse practitioners, who are independent from one another, have confirmed that they meet this criteria.

Nurse practitioners are permitted to provide assistance in dying as well as medical practitioners, a feature of the Canadian law which is not seen in other assisted dying legislation. The law allows both for administration of a lethal substance by a medical or nurse practitioner, and the provision of a lethal substance for self-administration.



As noted in Volume 1, the Canadian legislation was predicated by seven months by Bill 52 which legalised assisted dying in the province of Quebec. The Quebec law is narrower than the Canadian legislation and requires individuals to be “at the end of life” rather than for death to be “reasonably foreseeable”. It does not permit nurse practitioners to provide assistance in dying and does not permit self-administration of a lethal substance.³

A report of the first year of assisted dying noted the following key statistics:

- a total of 1,179 people died with assistance between 1 January 2017 and 30 June 2017, amounting to 0.9 per cent of all deaths in Canada over the same time period. (A further 167 individuals received medical assistance in dying prior to June 2016 in Quebec);⁴
- the average age of people using medical assistance in dying was 73 years;
- cancer was the most frequently cited underlying medical condition (in around 60 per cent of cases) followed by neurodegenerative conditions and circulatory and respiratory disease;⁵
- only 5 cases were self-administered deaths, meaning that the vast majority of cases involved clinician-administered assistance in dying;
- although the Canadian legislation permits nurse practitioners to provide assistance in dying, very few have done so: 95.7 per cent of deaths were administered by a physician.⁶

California, United States of America

Volume 1 of the final report of the end-of-life care and physician-assisted dying project noted that California passed the End of Life Options Act in October 2015.⁷ The Act permits physician-assisted suicide for any individual who meets the following criteria:⁸

- they are aged 18 or over;
- they are a resident of California;
- they are terminally ill, with a prognosis of six months or less to live;
- they have capacity to make their own healthcare decisions;
- they are acting voluntarily and have been informed of all other end-of-life care options;
- they have made two oral requests, at least 15 days apart, before making a written request in the presence of two witnesses; and
- two doctors have confirmed that they meet the eligibility criteria.

The Act also requires that the individual is capable of self-administering and ingesting the lethal drug – administration by a medical professional or other person is not permitted.

In the first six months of operation:

- 191 individuals received a prescription for lethal drugs, following which 111 died as a result of ingesting those drugs;⁹
- the average age of individuals who died as the result of ingesting medication was 73 years;
- cancer was the most commonly cited underlying medical condition (58.6 per cent of deaths) followed by neuromuscular disorders (18 per cent) and heart disease (8.1 per cent).¹⁰

In May 2018 the End of Life Options Act was briefly suspended after a judge held that the legislation had been improperly passed.¹¹ That decision was subsequently upheld by California’s Fourth District Court of Appeals.¹²

The case is still on appeal to a higher court, and in June 2018 the appeals court reinstated the Act, ruling that it can remain in place while the legal challenge is considered.¹³

Colorado, United States of America

In November 2016, Colorado voters approved Proposition 106, which amends Colorado statute to include the Colorado End-of-Life Options Act.¹⁴ The Act permits assisted dying for any individual who meets the following criteria:

- they are aged 18 or over;
- they are a resident of Colorado;
- they are terminally ill, with a prognosis of six months or less to live;
- they have capacity to make their own healthcare decisions;
- they are acting voluntarily and have been informed of all other end-of-life care options;
- two doctors have confirmed that they meet the eligibility criteria.

In the first year of operation:¹⁵

- 69 patients received prescriptions for lethal medication;
- the Colorado Department of Public Health received death certificates for 56 of those patients, although it notes that not all of those deaths were as the result of ingesting the prescription and that some may have died from their underlying illness or condition;
- the average age of people prescribed medication was 75;
- cancer was the most frequently cited underlying medical condition (in around 64 per cent of cases) followed by amyotrophic lateral sclerosis and heart disease (both 10 per cent of cases).

Victoria, Australia

The Australian state of Victoria has become the first Australian state to legalise assisted dying after its parliament passed the Voluntary Assisted Dying Act Bill in November 2017.¹⁶ It will permit doctors to assist individuals to end their life, if they meet the following criteria:

- they are aged 18 or over;
- they are a resident of Victoria;
- they have capacity;
- they are terminally ill, with a prognosis of six months or less to live;
- they are experiencing pain and suffering which they find to be intolerable;
- they have, made their request formally through a set process and have been examined by two doctors who confirm that they meet the eligibility criteria.¹⁷

Assisted dying was previously legal in Australia's Northern Territory in 1995 after its legislative assembly passed the Rights of the Terminally Ill Act. The law was overturned two years later by the federal parliament, which has the power to overturn Territory legislation but cannot interfere with laws passed by states.¹⁸

The Victorian legislation is expected to come into force in June 2019.¹⁹

Hawaii, United States of America

In April 2018 the Hawaii Senate passed an act legalising physician-assisted suicide. The Our Care, Our Choice Act will permit doctors to assist individuals to end their life if they meet the following criteria:

- they are aged 18 or over;
- they are a resident of Hawaii;
- they have capacity;
- they are terminally ill, with a prognosis of six months or less to live;
- they must have made two oral requests followed by making a signed and witnessed written request; and
- two doctors have confirmed their diagnosis, prognosis, capacity and voluntariness of the request.²⁰

Doctors are also legally required to inform all patients of other care and treatment options available to them, and to let patients know they can rescind their request at any time.

The Act is due to come into force on 1 January 2019.²¹

References

- 1 *Carter v Canada (Attorney General)* [2015] SCC 5.
- 2 The full text of the Act can be found at: http://laws-lois.justice.gc.ca/eng/AnnualStatutes/2016_3_FullText.html (Accessed 16 March 2018).
- 3 The full text of the Act can be found at: <http://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-52-40-1.html> (Accessed 16 March 2018).
- 4 Health Canada (2017) *2nd Interim Report on Medical Assistance in Dying in Canada*. Health Canada: Ottawa. 8.
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- 6 Health Canada (2017) *2nd Interim Report on Medical Assistance in Dying in Canada*. Health Canada: Ottawa. 6.
- 7 British Medical Association (2015) *End-of-life care and physician-assisted dying: Volume 1, Setting the Scene*. BMA: London. 99.
- 8 The full text of the Act can be found at: http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520162AB15 (Accessed 16 March 2018).
- 9 California Department of Public Health (2017) *California End of Life Option Act 2016 Data Report*. CDPH: Sacramento. 2. Available at: <https://www.cdph.ca.gov/Programs/CHSI/CDPH%20Document%20Library/CDPH%20End%20of%20Life%20Option%20Act%20Report%20-ADA.pdf> (Accessed 16 March 2018).
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- 13 Kristian B. A California court reinstated doctor-assisted suicide for the terminally ill – for now. *The Week*, 16 June 2018. Available at: <http://theweek.com/speedreads/779541/california-court-reinstated-doctorassisted-suicide-terminally-ill-now> (Accessed 14 August 2018).
- 14 More information about the Act, including the full text, can be found at <https://www.colorado.gov/pacific/cdphe/medical-aid-dying> (Accessed 16 March 2018).
- 15 Colorado Department of Public Health and the Environment (2018) *Colorado End-of-Life Options Act, Year One 2017 Data Summary*. CDPHE: Denver. Available at: https://www.colorado.gov/pacific/sites/default/files/CHED_VS_Report_Colorado-End-of-Life-Options-Act-Year-One-2017-Data-Summary_0218.pdf (Accessed 16 March 2018). 2.
- 16 Davey M. Victoria becomes first state to legalise dying as parliament passes bill. *The Guardian*, Wednesday 29 November 2017. Available at: <https://www.theguardian.com/society/2017/nov/29/victoria-becomes-first-state-to-legalise-assisted-dying-as-parliament-passes-bill> (Accessed 16 March 2018).
- 17 The full text of the Voluntary Assisted Dying Act can be found at <http://www.legislation.vic.gov.au/> (Accessed 16 March 2018).
- 18 Alcorn G. Crossing the threshold: how Victoria's assisted dying law finally made history. *The Guardian*, Thursday 23 November. Available at: <https://www.theguardian.com/society/2017/nov/23/crossing-the-threshold-victoria-makes-history-with-assisted-dying-law> (Accessed 16 March 2018).
- 19 Smith P. State of Victoria will allow voluntary euthanasia from mid 2019. *BMJ* 2017; **359**: j5571.
- 20 The full text of the Our Care, Our Choice Act can be found at https://www.capitol.hawaii.gov/session2018/bills/HB2739_.HTM (Accessed 5 June 2018).
- 21 Governor for the State of Hawaii (2018) Governor signs Our Care, Our Choice Act, allowing end of life choices for terminally ill [Press Release] 5 April. Available at <https://governor.hawaii.gov/newsroom/latest-news/office-of-the-governor-news-release-governor-signs-our-care-our-choice-act-allowing-end-of-life-choices-for-terminally-ill/> (Accessed 5 June 2018).