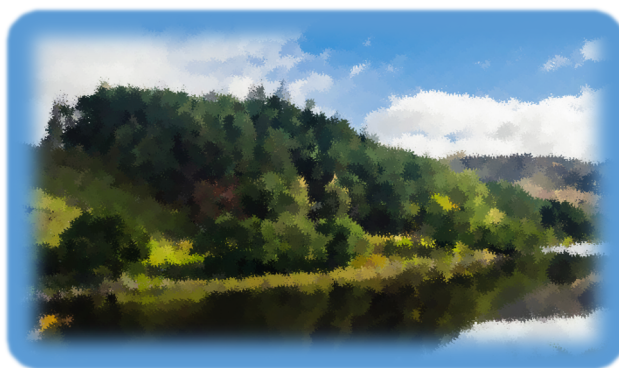


Philosophers' Consortium on Assisted Dying in Scotland



Assisted dying in Australia, Canada, and New Zealand: Lessons for Scotland

Assisted dying is now legal in many parts of the world, including in several US states, Colombia, Switzerland, Spain, and the Benelux countries (Belgium, Luxembourg, and the Netherlands). Three of the countries who most recently passed laws to permit assisted dying are Australia, Canada, and New Zealand. These three nations are perhaps the most similar to Scotland in terms of their legal and political systems and their cultural heritage.

In this policy paper, we compare laws in these three nations with the legislation currently being considered in the Scottish Parliament in order to see what lessons can be drawn for Scotland from their approaches and experiences.

Australia, Canada, and New Zealand's laws compared with Scotland's proposed bill

Country	Australia	Canada	New Zealand	Scotland
Dates of legislation	2017-2022	2016-2023	2019	-
Basis for legislation	Legislation by individual states	National legislation in response to court rulings	National legislation and referendum	Proposed legislation in Scottish Parliament
Administration by patient?	✓	✓	✓	✓
Administration by medical practitioner?	✓	✓	✓	✗
Conscientious objection allowed?	✓	✓	✓	✓
Terminal illness requirement?	✓	✗	✓	✓
Allowed for mental illness?	✗	✓	✗	✗
Age limit	18+	18+	18+	16+
Additional safeguards	<ul style="list-style-type: none"> Request for VAD must be initiated by patient Request for VAD must be 	<ul style="list-style-type: none"> Two independent medical assessments Patient makes a written request 	<ul style="list-style-type: none"> Request for VAD must be initiated by patient Two healthcare practitioners must 	<ul style="list-style-type: none"> Two doctors must make separate assessments of eligibility

	made multiple times • Two healthcare practitioners must make separate assessments of eligibility	signed by an independent witness	make separate assessments of eligibility	• Written request for assisted dying by patient followed by 14-day reflection period
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Australia

In November 2017, the state of Victoria became Australia’s first to pass an assisted dying law. The other five states quickly followed. Only the Australian Capital Territory and the Northern Territory don’t yet have legislation on the books. Victoria’s law was introduced by the state government after three years of public consultation and research.

The Australian laws vary a little by state but have key features in common. To receive voluntary assisted dying (VAD) the person must:

- be an adult
- be an Australian citizen or permanent resident who has lived for at least 12 months in the state in which they are requesting VAD
- be able to make decisions
- have a disease, illness or medical condition that is likely to cause death within a specified time (within 6 months, or 12 months in the case of a neurodegenerative disease; within 12 months for any disease in Queensland)
- have an advanced condition that causes intolerable suffering
- make an enduring request for VAD (meaning that their request must be ongoing)¹

Australian states allow self-administration or administration by a healthcare practitioner. No healthcare practitioner is forced to take part—that is, Australia allows conscientious objection. There are multiple safeguards against abuse, including that the request for assisted dying must be initiated by the patient, that it must be made multiple times, and that two healthcare practitioners must independently assess the eligibility of the patient for assisted dying.

Rollout of access to assisted dying continues, state by state. In Victoria, whose law has been in effect since June 2019, there were 306 deaths from assisted dying in the last year.² Median age of those availing themselves of the service is 74 and three-quarters of them have cancer. We are not aware of any allegations of misuse or abuse in Australia, barring a recent incident in which a Queensland man committed suicide using his partner’s

¹ Healthdirect Australia (2023). Voluntary assisted dying. <https://www.healthdirect.gov.au/voluntary-assisted-dying>, accessed 29 September 2023.

² Safer Care Victoria (2023). Voluntary Assisted Dying Review Board: Annual report July 2022 to June 2023. <https://www.safercare.vic.gov.au/reports-and-publications/voluntary-assisted-dying-review-board-annual-report-july-2022-to-june-2023>, accessed 29 September 2023.

medication (she had recently died in hospital).³ This may lead to a further tightening of the law.

More information on Australia's assisted dying laws can be found at: <https://www.healthdirect.gov.au/voluntary-assisted-dying>

Canada

In February 2015, Canada's Supreme Court ruled that the law prohibiting assisted dying violated the Canadian Charter of Rights and Freedoms. It gave parliament a year to pass a law. Canada's first assisted dying law was passed in response in June 2016. Further provincial court rulings forced parliament to expand the scope of the law so that it would permit access to assisted dying to individuals with "grievous and irremediable" conditions that were not terminal.

To receive medical assistance in dying (MAID) the person must:

- be eligible for health services funded by a province or territory, or the federal government
- be at least 18 years old and mentally competent
- have a grievous and irremediable medical condition (which need not be terminal)
- make a voluntary request for medical assistance in dying
- give informed consent to receive medical assistance in dying⁴

Canada allows self-administration or administration by a healthcare practitioner. Canada also allows conscientious objection for healthcare practitioners opposed to assisted dying. There are multiple safeguards against abuse, including a requirement for two independent medical assessments and that the patient's request should be written and signed by an independent witness. In 2024, the law will permit assisted dying for people with mental illness.

The number of people requesting assisted dying in Canada has increased each year.⁵ In 2021, 10,064 Canadians availed themselves of the law. Two-thirds of recipients had cancer and their average age was 76. The implementation of "medical assistance in dying" has been controversial, with allegations of people being inappropriately recommended to consider it, or applying for assisted dying because of poverty. Requirements of medical confidentiality make the truth of such allegations hard to assess. We are aware of no cases where it has been proven that someone received assisted dying who was ineligible for it. Despite the controversy, assisted dying remains broadly popular in Canada, with a recent survey showing 78% in favour of allowing medical assistance in dying in at least some circumstances.⁶

³ Messenger, Andrew. [Queensland to examine voluntary assisted dying rules after man uses wife's euthanasia drugs](#). *The Guardian* Mon 25 Sep 2023.

⁴ Government of Canada (2023). Medical assistance in dying: Overview. <https://www.canada.ca/en/health-canada/services/health-services-benefits/medical-assistance-dying.html>, accessed 29 September 2023.

⁵ Government of Canada (2022). Third annual report on Medical Assistance in Dying in Canada 2021. <https://www.canada.ca/en/health-canada/services/publications/health-system-services/annual-report-medical-assistance-dying-2021.html>, accessed 29 September 2023.

⁶ Canseco, Mario. Most Canadians Back Status Quo on Medical Assistance in Dying. Research Co. May 5 2023. <https://researchco.ca/2023/05/05/maid-canada-2023/>, accessed 29 September 2023.

More information on Canada's assisted dying laws can be found at: <https://www.canada.ca/en/health-canada/services/health-services-benefits/medical-assistance-dying.html>

New Zealand

New Zealand passed its End of Life Choice Act in November 2019. This was then ratified by an October 2020 referendum in which 65% of voters supported it. The Act began as a private member's bill four years earlier and the views of the public were extensively consulted during its progress through parliament.

To access assisted dying in New Zealand, a person must be:

- aged 18 years or over
- a citizen or permanent resident of New Zealand
- suffering from a terminal illness that is likely to end their life within six months
- in an advanced state of irreversible decline in physical capability
- experiencing unbearable suffering that cannot be relieved in a manner that the person considers tolerable
- competent to make an informed decision about assisted dying.⁷

New Zealand allows self-administration or administration by a medical practitioner or nurse practitioner. It also allows for conscientious objection. Among the law's safeguards are that the request for assisted dying must be initiated by the patient and that two healthcare practitioners must make separate assessments of the patient's eligibility.

In the last year reported, 328 people had an assisted death in New Zealand. Of these, three-quarters were aged 65 and over and two-thirds had a cancer diagnosis.⁸ The laws remain broadly popular and we are not aware of any allegations of misuse or abuse.

More information on New Zealand's assisted dying laws can be found at: <https://www.health.govt.nz/our-work/regulation-health-and-disability-system/assisted-dying-service>

Lessons learned

The table above lays out key aspects of each country's laws and compares it with the proposed Scottish legislation. Though it is early days for all three countries, assisted dying appears broadly popular at present. Reports suggest that it is vitally important to prepare the health care system for the adoption of an assisted dying law, including by preparing health care workers for the new roles they will play.

The bills in the three jurisdictions share a number of characteristics. These include restricting eligibility to adult residents who are able to make their own decisions, strict requirements for voluntariness, and mandating independent confirmation of someone's eligibility for assisted dying by a second healthcare practitioner. The proposed Scottish

⁷ Te Whatu Ora Health New Zealand (2023). Assisted dying eligibility and access. <https://www.tewhatauora.govt.nz/for-the-health-sector/assisted-dying-service/assisted-dying-information-for-the-public/assisted-dying-eligibility-and-access/>, accessed 29 September 2023.

⁸ Assisted Dying Service – Ngā Ratonga Mate Whakaahuru. Registrar (assisted dying) Annual Report to the Minister of Health – June 2023.

legislation contains similar protections. In fact, it is even more restrictive, since it would require patients to administer the lethal medication themselves, rather than having the option of a medical professional do so.

Two important differences distinguish Canada's law from those in Australia and New Zealand (and the proposed Scottish bill). First, Canada's law was passed in response to a court ruling that required their parliament to legislate. By contrast, in Australia, New Zealand, and Scotland the laws originate in parliament and can be more easily shaped to suit the will of the electorate. In addition, Canada's law was crafted and implemented very quickly (in about a year). In our estimation, many of the challenges the Canadian law has faced are due to this fact. In contrast, the bill under consideration in Scotland has undergone a lengthy and unprecedented period of public consultation and follows upon public conversations arising from three previous bills that would have legalised assisted dying. It is difficult to envision a piece of legislation that has been more thoroughly vetted and debated than the assisted dying bill Scotland is currently considering. Second, Canada's law is more permissive. It does not include a terminal illness requirement and from 2024 it will allow people to request assisted dying on the basis of a mental illness alone. Though we think many of the criticisms of Canada's practice are misplaced — resting on factual error or bad ethical reasoning — we do not expect Scotland to follow the Canadian model. Both the origins (in parliament) and the content of the proposed Scottish legislation are far closer to Australia and New Zealand's. Their successes and the lack of controversy following their laws coming into effect show that assisted dying can be safely implemented in ways reflective of Scotland's values.

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