

VOLUNTARY ASSISTED DYING BILL 2021

Legislative Assembly Second Reading Debate – copied from Hansard 12 November 2021

Mr KEVIN CONOLLY (Riverstone) (12:27): I contribute to debate on the Voluntary Assisted Dying Bill 2021. Like the Premier, I oppose the bill in principle. But I also take on board the points made by the member for Ku-ring-gai and the member for North Shore that as parliamentarians we are being asked to vote on a particular bill, not just on a principle. And we should pay close attention to what is in that particular bill. This bill would permit one person to kill another and it would permit a person to provide the means for another to kill him or herself. The proponents are squeamish about that language, yet there is no doubt the bill would legalise killing, in the form of euthanasia, and assisted suicide. Those are the facts. If it were not so, we would not be having this debate. A change to a fundamental principle of our law is being proposed. I make no reflection on the motivations of those who take a different view. I recognise sincerity, genuine concern and strongly-held passionate views in people on both sides of the issue. Yet, in my view, it is simply not safe to change the law in this way. I believe that inevitably it would leave vulnerable, voiceless people at risk of premature involuntary death. For that basic reason, I oppose the bill.

The military have a term for the unintended deaths that occur as a result of military action. They call these deaths "collateral damage". I believe it inevitable that this kind of legislation will also bring about collateral damage if it were to pass in New South Wales, just as we have heard about collateral damage in other jurisdictions that have had laws like this for longer periods of time. One way in which that would occur is simply to recognise that doctors are not infallible. Diagnoses and prognoses not only can be wrong but are wrong a certain proportion of the time. If a person is told incorrect information and makes a decision around accessing voluntary assisted dying [VAD] on the basis of that incorrect information, that person would be denied a properly informed choice. That would not be fully voluntary.

We have also heard from many speakers, and we know from our own experience, that elder abuse is real. Subtle pressure applied over an extended period can lead to vulnerable people doing things they ordinarily would not choose to do. You do not need to be an MP for too many years before you get cases through your office showing the ugly side of family dynamics when wills, inheritances and properties are involved. In this situation, that subtle pressure, that exertion of pressure on somebody who is vulnerable to being persuaded, cajoled, manipulated can lead to fatal consequences.

In this bill there is a presumption of decision-making capacity. I ask why a presumption rather than a standard or a test to satisfy, given the gravity of the decision involved. Why is there no psychological assessment required? Obviously the possibility of depression is quite high in circumstances where a terminal illness has been diagnosed. This bill sets the bar dangerously low. That too is one potential path to that collateral damage because there is no test, no criteria, no standard and no process stipulated to determine whether a person has capacity to make this very grave decision. If there are no specific rules stipulated to be followed, there are no rules that can be deemed to have been broken. Any enforcement action relating to decision-making capacity will be simply impossible.

Beyond all of that, there is the reality of noncompliance with the law—people cutting corners; sadly, some people knowing best for others; conniving with those who have improper motives in the family, as we have considered; things that are the ugly side of human nature that we should not be opening a door to. All of these can lead to the collateral damage of involuntary deaths. I believe they are inevitable if we pass legislation of this kind. So the question becomes: If we pass such a law, what level of this collateral damage is acceptable to this Parliament? Can we vote in good conscience, knowing that would be a concomitant outcome? That might sound like a rhetorical question, but, unfortunately, in this debate it is a matter of life and death, so it is a very real and very serious question.

We have been told that this proposal will provide dignity. The debate has been framed in a way that is presented as a choice between suffering and indignity in a small number of cases on the one hand and, on the other hand, dignity and the absence of suffering. We have heard much said about the reality of those small number of very difficult deaths. Yet how much do we really know about the alternative that is being proposed? We have been told the bill will enable death with dignity, but that is all we have been told. What kind of death will actually occur if this bill passes? How do you and I, the MPs who have to vote on it, know? We cannot know because that level of information is not in the bill. Just what is it that we are being asked to legalise? Where in

the bill does it explain what substance is being legalised or what form of administration is to be permitted? Where can MPs look to find out what will actually be done to people if this bill is passed? Why is it that key information not in the bill? Why are we being asked to legalise something as drastic, as irretrievable as killing another person without all the information being in front of us? You would not buy a car if the salesperson would not let you look at it first, give it a test drive, answer specific questions about its design and features and so on.

Yet we, as elected representatives of the people of New South Wales, are being asked to buy the proposition that we should legalise a means of delivering death without knowing what that means is. We do not know what substance or what method of delivery will be used. We do not know the effects that this substance and administration will have on different people, how long it will take different people to die, or what they would experience during the process. We cannot know any of that because, under this bill, we are effectively going to outsource all of that detail to a bureaucrat. Members, this is a life and death decision for us. Few of the matters we debate in here ever reach that threshold. It is unthinkable that we should pass a bill that crosses this threshold without ourselves knowing exactly what we are permitting.

If the rationale offered for taking this momentous leap is to provide the option for a more dignified, less painful death, should we not at least satisfy ourselves that we explicitly know what would be done to achieve that end and that it will, in fact, have the outcome that is intended? This bill has many flaws. I have heard members say it is the most robust and most well-prepared bill in the country. To that, I will give one simple response: five days. That is less than for other bills around the country between the first and last step in this process. So this cannot be the most robust, most safeguarded, strongest, best protected system on offer. It is far from that. If I had unlimited time, I would talk about many other flaws in the supposed safeguards.

The bill does not contain the safeguards for vulnerable people that it should. It does not sufficiently respect the right of those who in good conscience want to have no part of this. They are, in fact, obligated in the case of an aged care facility to allow it to occur on those premises, in the residential home of people who have chosen to be in a context where they would not expect that to occur. It does not give the DPP or the Coroner or the police sufficient capacity to maintain oversight on behalf of the community because it restricts the right to prosecute to the Health Secretary. It does not even contain the protections that previous bills presented to the New South Wales Parliament contained. It is weaker in many respects, many protections than the 2017 Khan bill that was defeated in the Legislative Council. [*Extension of time*]

I have been told that those behind this bill have said to some members, "Well, it is what it is. It won't be changed." If that is the case and you know that it is not the best law available, even if you were inclined to accept the principle, then you should not support it. This is too grave a matter to accept something that you know as a member of this place with a responsibility to vote for the future of the people of New South Wales; if you do not believe it is the very best to suit the purposes being offered, you should not support that. Disturbingly, given the life and death nature of this issue, the bill proposes to take decisions for a prosecution for an offence under the Act out of the hands of the independent prosecuting authority of the DPP and place it in the hands of a bureaucrat, the Health Secretary—and this is in the proposed section 134.

The Health Secretary has no expertise in the business of prosecution, nor any investigative capacity. Disturbingly, nor is the Health Secretary at arm's-length from the agency involved in administration of VAD. Surely the business of putting people to death should be the very last activity you would consider appropriate for self-regulation. It is essential, if we go down this path, that that should be independent of, separate from and at arm's-length from those involved in administering the process. There is no mandatory reporting to the Coroner, whose access to records about the whole process is restricted by proposed section 130. Worst of all, the bill imposes a two-year time limit on the commencement of any prosecution. This is an extraordinary proposition when the stakes are so high. There is no coming back from a decision that involves death. In effect, the combination of these provisions works to prevent prosecutions from ever being likely, regardless of whether wrongdoing occurs. In fact, the strongest protection in this bill is for the doctors involved because they are deemed to not be liable if they believed they were acting in accordance with the law, not if they actually were. The protection for them is greater than it is for the vulnerable people for whom this bill really matters.

I turn to one other specific example before I finish my contribution, namely proposed section 28. It appears to impose some obligations on the coordinating practitioner. The first three of those state:

... the coordinating practitioner must inform the patient about the following matters—

(a)the patient's diagnosis and prognosis,

(b)the treatment options available to the patient that would be considered standard care for the disease, illness or medical condition with which the patient has been diagnosed and the likely outcomes of treatment,

(c)the palliative care and treatment options available to the patient and the likely outcomes of the care and treatment ...

However, under this bill the coordinating practitioner does not need to have expertise in any of the areas that would allow that person to give that information. They are not qualified to do so—or, at least, not necessarily; it is not a requirement of the bill. Here we have the first three fundamental obligations of the coordinating practitioner, which could be carried out by a person unqualified to carry them out. It is a nonsense in terms of protections. At the very least, if somebody is going to be able to do those things they must have the requisite expertise or they have to undertake the consultations to acquire that relevant information.

But the bill does not provide for that. The bill does not require that either of the doctors involved in this decision have any relevant expertise in the condition the patient is suffering from. The bill does not require that either of the doctors involved in making the decision has to consult the treating practitioner. The bill does not require that either of the doctors involved in making the decision has expertise in palliative care in order to be able to provide the information required in proposed section 28. The bill is incoherent even in itself. It does not set up a structure that would allow compliance with proposed section 28, at the same time as the requirement is placed on who can be the coordinating practitioner. In fact, I think what looks like a whole lot of detail, protections and structure is an edifice designed to confuse, to hide the weaknesses in the bill and the fact that it is really about facilitating the process of voluntary assisted dying, not about protecting those who may unwittingly, involuntarily be caught up in this process. That is the fundamental problem here.

I finish with the words of the Archbishop of Canterbury, Justin Welby, in a debate on this issue in the United Kingdom not so long ago. He stated:

... no amount of regulation can make a relative kinder or a doctor infallible. No amount of reassurance can make a vulnerable or disabled person feel equally safe, equally valued, if the law is changed in this way.

...

But it does not serve compassion if by granting the wishes of one closest to me, I expose others to danger.

And it does not serve dignity if in granting the wishes of one closest to me I devalue the status and safety of others.

I oppose the bill.