

VOLUNTARY ASSISTED DYING BILL 2021

Legislative Assembly Second Reading Debate – copied from Hansard 25 November 2021

Mr MICHAEL DALEY (Maroubra) (11:40): I make a brief contribution in debate to the Voluntary Assisted Dying Bill 2021. I thank the many people from my electorate and all over the State, who have taken the time to give me their views about this bill. I have sat through six or seven of these conscience debates in this place during my time in this Parliament. They have all been attended by the realisation amongst all members that the duty upon them weighs heavily. The laws that they are presented with and deliberate on will make significant changes in New South Wales. They are rare times when political allegiances are forgotten—a throwback almost to the days before political parties existed. On each occasion each member has attended their duties in good faith, with the best of intentions and with a desire to seek as much information as possible.

When these bills come before the House it is my wont not to declare my hand particularly early. I have said to the opponents and proponents of each of those bills that the devil is in the detail. If I like the bill I will support it and if I do not I will not. It has been the case and it is the case with this bill as I stand here today. I made that point to each of the people who have made representations to me and the groups that they represent. I have listened to them carefully in good faith and I will make up my mind having listened to days, weeks and months of argument. Having availed myself of the information that they have given me I can say to the House and to the people of New South Wales generally that I will be supporting this bill.

The position I have come to is uncomplicated. It has involved months rather than years of deliberation on the bill. On the question of voluntary assisted dying, I recall as a young fellow at the age of 13 or 14 that I started to become self-aware. The world became a bigger place, my eyes widened at the possibilities, I started to become aware of issues and my conscience developed. In those early days I came to the conclusion that my life belonged to me. If it does not belong to me to whom does it belong? If someone is in a position where they want to end their life that is a decision for them to make. The bill applies to people who are adults, who are acting voluntarily without pressure or duress, who are diagnosed with at least one illness, disease or medical condition that is advanced, progressive and will cause death within a certain time, and is causing suffering to the person that cannot be relieved in a way that he or she considers tolerable.

Do people in those circumstances have a right to end their own life? It is a simple question. For me the answer is yes. As a legislator I give consideration to the converse. As I consider this bill I have to metaphorically look into the eyes of a person who is asking me to let them go on their own terms in a dignified way. If they say to me, "What right do you have to say to me that I cannot do this? What right do you have to stop me from doing this?"—I can think of none. Despite all the arguments advanced in good faith by those who oppose the bill, I can think of no answers to that question. Every person has a right to go with dignity and on their own terms. As a legislator I have a right and a responsibility to ensure that the regime surrounding the person who is leaving protects him or her from duress and pressure.

I am satisfied that this bill seeks to address all those issues to ensure that people go voluntarily and on their own terms. That is my primary concern with this bill and it will be my primary concern as move amendments in Committee. Having progressed through a great deal of debate, the Committee stage is the most precarious stage for those who support the bill. It reminds me of this adage: Anyone who is trying to design a racehorse should not take it into Parliament as there are so many helping hands they might end up with a camel. Having regard to the many amendments that have been circulated and to others that will pop up during the amendment phase, there are many helping hands. The proponents of the bill have to be careful that they do not try to help too much so as to make the bill unworkable.

This is not the last word on this bill. It will leave this place today, having been supported, and go to the Legislative Council where it will also go into Committee. People like the Hon. Trevor Khan, who is an expert in this field and who has promulgated similar legislation, will apply his caring hands to it as well. Amendments will come back to this place and we will again debate the issues. A piece in *The Sydney Morning Herald* today by Lindy Willmott and Ben White puts it quite well:

The voluntary assisted dying (VAD) debates in the NSW Legislative Assembly show that while each state is different, some things stay the same.

We have watched parliaments around the country debate this issue and patterns emerge. After each VAD bill is tabled, what follows is generally an onslaught of proposed amendments. Most recently, in the Queensland debate, there was a suite of 54 proposed amendments.

In Western Australia, one MP proposed 357 modifications. Often these changes are delivered very late, despite extensive periods during which the bill has been open for consultation.

There is now talk of this happening again in NSW. Caution is needed as this last minute "piling on" of safeguards is risky. As it currently stands, the NSW bill is largely based on the VAD laws passed in other Australian states, themselves a product of extensive consultation and expert input. These amendments would be "add-ons" to an established model, and could make the law unwieldy, incoherent and even unworkable.

Generally, these amendments involve adding new safeguards. For example: let's make a psychiatric capacity assessment compulsory; let's require one of the doctors to be a specialist in the patient's illness, and let's mandate consultation first with a palliative care specialist. These are three real examples from proposed amendments in Queensland—all ultimately rejected by that state's Parliament.

How would amendments like these affect the operation of NSW's Voluntary Assisted Dying Bill 2021? They would raise significant barriers for patients to access voluntary assisted dying. The key is to see these amendments together. When viewed collectively, they add three new specialist health practitioners to the process, each of whom must be available in the person's location and not have a conscientious objection.

This would make access to voluntary assisted dying unworkable.

But it is not just important to understand the collective effect of any amendments - they must also be understood in the context of the bill as a whole. Like its other Australian counterparts, the NSW bill is narrow and conservative with extensive procedural safeguards.

For example, it becomes clear that a mandatory psychiatric assessment is unnecessary when viewed in the light of the bill's existing requirements. There must be two independent assessments of capacity by doctors whose usual medical practice would require them to assess patient capacity every day; who will be trained on their additional legal duties under the bill, and who are required by the legislation to refer to an expert if they are unsure about capacity.

It is not surprising that the NSW bill already addresses this and other issues. Every other state has already considered, debated and resolved how best to deal with them through detailed processes that included multiple parliamentary committees, expert panels and extended parliamentary debates. The NSW bill has the benefit of all of that experience and largely reflects the Australian model. In other words, the issues that are likely to be raised in amendments will not be new.

There should be a heavy onus on those proposing new amendments - particularly if it is a suite of amendments - to justify why they are needed ...

Given the risk of unintended consequences and of making the bill unwieldy, incoherent and unworkable, it is not enough to say that the amendments "might just help a bit". It is also not sufficient to propose amendments to deal with issues that the bill already addresses well.

The onus is squarely on those who propose late changes to make a compelling case for them. We propose two questions to be asked of amendments, individually and as a whole. First, what is the new problem that the amendments are trying to solve that is not already addressed well by the bill? Second, because this law is about terminally-ill patients, what impact would any amendments have on their ability to access voluntary assisted dying?

We are fortunate that the answers to those questions can be informed by evidence. The broad model proposed by the NSW bill has been in operation in Victoria for over two years, so the NSW Parliament can draw on that experience.

I read that into *Hansard* because it probably expressed it better than I could have. [*Extension of time*]

For my part, I will be applying the cautionary principle in the next many hours as we consider the amendments. I would like to finish where I began by thanking everybody who has come to me to talk about this issue. I have not felt that I have been cajoled, pressured or disrespected by any person. They have all been greatly respectful of views and I thank them for that. I arrive at a position today that I am quite comfortable with.