

VOLUNTARY ASSISTED DYING BILL 2021

Legislative Assembly Second Reading Debate – copied from Hansard 19 November 2021

Mr PHILIP DONATO (Orange) (12:32): I contribute to the debate on the Voluntary Assisted Dying Bill 2021, which was introduced by the member for Sydney. I acknowledge the work the member for Sydney has done on the bill. I know it is an issue he is very passionate about, and he has undertaken a great deal of work with various stakeholders to get the bill to this stage. I also note that 28 members across both Houses are co-sponsoring the bill. That is unusual and unprecedented, and demonstrates the level of support the bill has across both Houses and differing political parties. Not many subjects or topics of conversation invoke the level of emotion and debate that voluntary assisted dying does. It is a topic that stirs conversation and, in some cases, causes debate and divided opinions in communities. There will be those in my community, and indeed in my own family and among friends, who may be disappointed in my decision to ultimately support the bill, but it is a decision I am comfortable with after much consideration and reflection as I believe it is the right thing to do.

My office has been inundated with correspondence both for and against this legislation; I have no doubt that many other members' offices were too. I thank everyone who contacted my office in Orange to express their views and opinions. I read the hundreds of emails and letters and stories and experiences that were sent through to me. Many who oppose the bill view it as morally unacceptable. Is the bill the thin edge of the wedge? Many believe the value of human life should be preserved above all else. That view is often borne by one's religious, cultural, moral and/or personal beliefs. Many are concerned that voluntary assisted dying goes fundamentally against the natural journey of life. A legitimate view is that more resources and funding should be allocated to palliative care. Those in favour of the bill believe a person who is suffering from intolerable pain and who has been diagnosed with a terminal illness should have the right to freely choose to die with dignity surrounded by loved ones at a time of their choosing. That is usually based on one's heartbreaking personal experiences of having loved ones, friends or family members who regrettably may have died in enduring ongoing pain and prolonged suffering.

The reality is that death is not always peaceful, quick or convenient; it can be cruel, prolonged, painful and distressing. Palliative care is important, and I have been a vocal advocate for it in Orange since I was elected. After many years, I was successful—along with other passionate local community members—in obtaining a dedicated facility at the Orange Health Service. The feedback from my community has been extremely positive. However, more needs to be done for palliative care in our communities, especially in regional areas. Importantly, however, I note that even the best palliative care in some rare cases does have its limitations to adequately address severe pain and suffering that a person may be experiencing. New South Wales is the last State in the nation to legalise voluntary assisted dying. Victoria, Western Australia, Queensland and South Australia have all legalised voluntary assisted dying in recent years, and I have considered the legislation in those States.

Apart from some nuances, the legislation on voluntary assisted dying in interstate jurisdictions is reasonably similar insofar as eligibility criteria is concerned relating to age, residency conditions, terminal diagnoses, mental capacity, suffering from intolerable pain, a decision made freely and voluntarily without duress or influence and, importantly, a conscientious objection available to medical professionals, along with the oversight of a Voluntary Assisted Dying Board and other review provisions. The fact that New South Wales is the last State to consider voluntary assisted dying laws has some benefit as we can learn how existing laws work in practice and in design in those States and improve on them. We can also look through the lens of hindsight at some of the case studies, stories, feedback and experiences in those States.

I turn now to the content of the bill. The bill sets out the detailed principles and objectives of the legislation; eligibility criteria; the steps a person must take; protections for medical professionals and healthcare workers to ensure they can conscientiously object; the rights and responsibilities of institutions and facilities; the eligibility criteria of other persons involved, such as doctors, nurses and witnesses; the composition of the Voluntary Assisted Dying Board; review and appeal options via the Supreme Court; criminal offences; and review requirements. For a person to be eligible for voluntary assisted dying, the bill provides that the person must be at least 18 years of age, be a citizen of Australia or a permanent resident or have been living in Australia for at least three consecutive years and reside in New South Wales.

A person must be diagnosed with at least one disease, illness or medical condition that is advanced and progressive and which, on the balance of probabilities, will cause death within six months or, in the case of a neurodegenerative disease, within 12 months and, as stated in proposed section 16 (1) (d) (iii), be causing:

... suffering to the person that cannot be relieved in a way that the person considers tolerable.

That is a subjective test. The Macquarie Dictionary defines the word "tolerable" as "able to be tolerated or endurable". The Merriam-Webster Dictionary similarly defines it as "capable of being borne or endured". The Collins Dictionary defines it as "you can bear it even though unpleasant or painful". The bill also requires that the person must have the decision-making capacity to make a free and voluntary decision that must not be affected by duress, pressure or undue influence, and that the request must be enduring.

Much has been raised by opponents of the bill in relation to elder abuse, and the pressure and influence that may be placed on vulnerable people to go down this path—perhaps prematurely, as a means of convenience—if this bill were to be passed. It is said that there may be some family members motivated by greed who coerce a person to embark on this course. There are serious criminal sanctions for anyone who may consider placing any pressure, influence or duress on an individual to do this. Those offences are outlined in part 7 of the bill and carry significant periods of imprisonment for those convicted of such offences. Importantly, the bill stipulates that consent can be withdrawn by the person at any time in the process. The bill sets out a step-by-step process that a person must undertake under the guidance of medical professionals. Each step must be recorded, overseen and approved by the voluntary assisted dying board. There are also review provisions available to the Supreme Court.

Of course, one of the most important aspects of the bill surrounds the availability of conscientious objection to medical professionals contained in section 21 (2) (a). This is an important aspect of the bill. For their own personal reasons many medical professionals will not wish to participate in this process—and that must be maintained and respected. The bill ensures that medical practitioners who for their own legal, moral, ethical or other personal reasons do not wish to participate in this process are appropriately protected. I make this clear: There should be no duress or pressure placed on any medical professional to undertake any part of the process if they do not wish to do so.

When a similar bill to this was last brought before the Parliament in 2017 I conducted an electorate-wide mail-out survey on this issue. The response was overwhelming, with over 80 per cent of the thousands of responses in support of this type of legislation. This is also consistent with the Vote Compass surveys conducted in 2019, where 79 per cent of those surveyed supported voluntary assisted dying in my electorate of Orange. As elected members of Parliament, however, that is one of many issues to consider. We are elected to lead and to turn a critical eye over legislation, and to consider potential unintended consequences and the wider public interest policy considerations. We deal with legislation and bills on a daily basis, but rarely on issues of life and death. It is for that reason we must closely consider the bill. Without doubt, all members have heard heartbreaking stories of relatives, friends or constituents having to stand by helplessly and watch someone they love die when nothing more could be done to ease their enduring pain and suffering. Many of us may have experienced this ourselves. I seek an extension of time. [*Extension of time*]

I thank the House. My father-in-law, when suffering the final stages of lung cancer, was in extreme discomfort, struggling to breathe due to the level of fluid in his lungs. He was drowning in his own fluid and being administered dose after dose of morphine, to the extent where that was the only way to relieve the pain, distress, anxiousness and discomfort he was suffering. Was that dignified? No. It was cruel and it was unbearable. I have read letters and emails by some of those against this legislation that argue this is a part of life's natural journey. I do not necessarily agree with that. Is it any different from turning off a life support machine, or administering more and more morphine to a person knowing that this will no doubt cause the person's premature death? Yes, it is. Under the legislation before the House the person gets to make the choice, not distressed family members, and there is a legal framework and protections in place that oversee the process.

As many members have said, this is a difficult matter. It is one I have sought to deal with on a factual basis, not on my personal ideological view or some left versus right theory but on an objective consideration of the bill, public sentiment, community expectation and what I think most people would want available to them in this most difficult of times. I believe we should allow this choice to terminally ill people who meet the strict criteria outlined in the bill. To those who do not support the bill, I say that is fine, but why deny others who want to have the freedom to make this choice? Only they can make that determination. We should allow that person

their right to end unnecessary pain and suffering in a dignified and humane way. It is for those reasons that I support the bill.