

VOLUNTARY ASSISTED DYING BILL 2021

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

Mr PAUL SCULLY (Wollongong) (17:31): Voluntary assisted dying is not a new issue for debate. In legislatures and courtrooms around the world over the past few years the matter has been examined from many angles. It is also not a new issue for this Parliament. The matter was the subject of lengthy debate in the Legislative Council in 2017. It is also not a new issue for me. Since prior to my election to the Legislative Assembly I have been considering the issue of voluntary assisted dying. The first time was when I was chief of staff to Federal Minister for Ageing the Hon. Justine Elliot. At the time, the Minister was lobbied regularly about the matter, with many advocating for Federal Government intervention to either allow or stop voluntary assisted dying laws being introduced. Like today, there was passionate advocacy, and well-developed and considered arguments on each side of the debate.

Subsequently the matter was raised with me during my by-election campaign. It was not a central issue of active debate during the campaign, but it was a policy issue that was on the minds of many people who wanted to know my views. Again, I listened to passionate and considered perspectives from both sides of the debate. Since my election, it has been raised with me regularly: in the context of the 2017 debate, as other States considered the matter, and as a matter of policy interest from individuals looking for clarity as to whether it was something likely to be considered by the New South Wales Parliament in the near future. It has also been raised with me in high volume over recent weeks and months. I have carefully read and considered the views in emails and letters I have received on the matter.

As I said, this is an issue that engenders passionate advocacy from both supporters and opponents. Each side of the debate has strongly held views. There is absolutely nothing wrong with that, and no matter what anyone else's perspective is on the issue, no-one should be criticised for holding strong views. It is an issue that warrants the most thorough of consideration, the testing of ideas and the thoughtful consideration of its implications. People come to their views from a range of perspectives, as members have come or are coming to their own views.

Supporters of voluntary assisted dying often have harrowing personal stories of helplessly watching a loved one suffer immense pain and discomfort in their last days, which has informed their personal position: stories of pain and discomfort that, despite the best modern medical treatments, was pain that could not be taken away. No-one likes to see a loved one suffer in any way, let alone in a way in which there is little to nothing one can do to help. It is harrowing for everyone involved.

Supporters often cite that other jurisdictions have introduced laws that allow for voluntary assisted dying. Thirty years ago voluntary assisted dying was only legal in Switzerland. It has now been progressively introduced in a number of jurisdictions throughout the United States and Europe; a number of South American nations have introduced it or are contemplating it; other Australian States have introduced it, and I note that in some of those States the legislation is yet to come into effect. I have heard some advocates make the argument that because other jurisdictions have introduced it, it leaves New South Wales alone and that is reason enough for New South Wales to introduce voluntary assisted dying now. I am not convinced that just because other jurisdictions have done it, that is reason enough in itself for New South Wales to adopt it also. But it does provide us with a number of jurisdictions to examine to see what has worked and what has not and to see what improvements can be made in considering it in New South Wales. I believe that in the crafting of the bill, consideration has been given to the operation of voluntary assisted dying in other jurisdictions and that the lessons of those jurisdictions have been taken into account in developing the bill we have before us.

While those arguments resonate with me and I have reflected on the experience of my own friends and relatives who have suffered through incredible pain and discomfort in their final days, the argument that has had the most impact on me is the provision of control for people at the end of life. The right of individuals to have a degree of control at the end of their life is important to me. In my view, individuals should have control over their own end-of-life decisions, just as they are afforded control and choice over the medical treatments for their illness. Individuals should have some control over how they live their final days and whether they

wish to end their lives if they are terminally ill and if they are suffering intolerably. I do not walk in their shoes so I cannot fully understand their choices, but I do recognise the desire and the ultimate right to have that choice.

Those who oppose the underlying concept of the bill also provide compelling arguments in support of their position. They point out that we have some of the best palliative care in the world available to people and that provides excellent care. I have no doubt that some parts of the State do provide excellent palliative care. I welcome the Premier's commitment to continue to increase support for palliative care and will be carefully watching that he fulfils that promise and that it is available in all parts of the State. As we heard through the inquiry into rural and regional health, a your postcode is worryingly starting to dictate the level of health services and care that you have available to them. The difference in health services and care throughout New South Wales should not extend to palliative care.

When considering the practical arguments against voluntary assisted dying, those with that view often cite that there is no way that a legislative framework can be put in place with the necessary provisions that will safeguard people or that it will result in older or terminally ill people being subject to pressure and duress from less scrupulous people. In my view, those arguments have merit. It is important in considering the legislative framework that we do consider how it may be subject to abuse or misuse. We can make laws with the best intentions for people to operate within as we would like them to, but we have to recognise that it is not always the case, and if we are contemplating change, we need to do our best to make sure that there are no unintended consequences or shortcomings. That is particularly important when considering voluntary assisted dying.

Others have presented me with ethical arguments around the sanctity of life; that voluntary assisted dying ends up valuing some lives more than others; or that once passed, the law can be easily changed to extend to more people or to relax restrictions. With all of those arguments in mind, I have considered the provisions of the Voluntary Assisted Dying Bill 2021. Under the provisions of the bill, to be eligible a patient must be at least 18 years of age, an Australian citizen, permanent resident or a resident for at least the past three years, and live in New South Wales. The proposal is limited in its scope and limited in those who can access it.

A patient must have been diagnosed with at least one disease that is advanced and progressive, and that is likely to cause death within six months or in the case of neurodegenerative disease 12 months. Again, there are clear limits on access. The disease or illness must cause sufferance that cannot be tolerably relieved and the patient must have the decision-making capacity to make the necessary decision for voluntary assisted dying. The process is voluntary and patients can at any stage withdraw. Patients will be asked multiple times during the process whether they wish to continue. The inclusion of an opt-out provision is an important protection for everyone involved. A doctor can refuse the request to provide voluntary assisted dying because they have a conscientious objection to the process or are unwilling or unable to perform the duties required of the coordinating practitioner.

This too is an important provision. The bill proposes new offences for pressuring someone into making an application for voluntary assisted dying, including seven years' imprisonment for inducing another person to request voluntary assisted dying. These measures are intended to combine with the other safeguards that are built into the process. Administering a prescribed substance to another person outside the provisions of the bill will incur a maximum penalty of life in prison. Penalties also exist for advertising a substance as a voluntary assisted dying substance, for failing to return any unused substance and for privacy protection. Taken together these safeguards, limits and tough penalties in the bill are proposed to be part of the overall protection of individuals and are absolutely necessary to include. For me, they are minimum conditions.

I have seen a number of family and friends suffer and die from cancer. I mentioned a number of them in my first speech in this place. Those who have suffered have been older relatives as well as good, smart young women who were taken far too early. I cannot say with absolute certainty that had the option of voluntary assisted dying been available to them they would have taken it up. Each had very different medical and family

situations, as well as different treatments, lives, views, attitudes and beliefs. However, I believe that each one of them would have appreciated the option to make their own decision. Ultimately, that is what the bill is about—the option of having a choice. It is so that option is available, whether it is exercised or not, that I will support the bill.

I note that the bill may be subject to substantial changes by way of amendments in this place and, should it pass this place, in the other place. If this occurs, I will consider the proposed amendments on their merit and vote according to my conscience. My ultimate conclusion on the bill differs from the conclusion that others have drawn. My position may disappoint some friends, family and constituents, but I assure them all that my position is not one that I have not determined lightly. [*Extension of time*]

As I said at the outset, I have considered this matter in various roles and from various perspectives over a long time. I admit that my position has evolved. However, I consider that my support for the bill reflects the overwhelming views of my constituents in the Wollongong electorate. While reflecting those views is a consideration that all members should apply to the important issues that we deal with in this place, it is not the sole determining factor for my position on this case. In exercising a conscience vote on any matter that comes before the House, I feel that one has to be true to one's own beliefs, views, opinions and values as well as being mindful of the public view. In supporting the bill I strongly believe I have achieved this.

Despite the power vested in each of us as legislators, unfortunately we cannot legislate away the terminal illnesses that will bring pain and suffering to the people we love. However, as lawmakers we can remove the barriers to individual choice over end-of-life decisions and do so in a sympathetic way with protections from abuse enshrined in law. I consider this bill to achieve those objectives but I note that while voluntary assisted dying should be a choice, it should not be allowed to become the only choice. It is for the reasons that I have outlined in my contribution to this debate that I support the bill.