

## VOLUNTARY ASSISTED DYING BILL 2021

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

**Mr MARK SPEAKMAN (Cronulla—Attorney General, and Minister for Prevention of Domestic and Sexual Violence) (17:06):** Voluntary assisted dying is a subject on which many members of the New South Wales community hold deeply held and passionate views, often based on their own personal experiences of the deaths of family and friends or their personal religious convictions. The Cronulla electorate is no different. I thank the many constituents who provided me with their views for and against the Voluntary Assisted Dying Bill 2021. I am grateful for all the time, effort and care they have taken in submissions, emails and discussions that have helped me make a decision about this bill.

The arguments in favour of legalising voluntary assisted dying appear to follow two broad themes. The first theme is freedom of choice. It is said that an individual should be free to choose to die at a time of their own choosing. It is said that no-one has the right to impose the choice not to undergo voluntary assisted dying that they would make for themselves on someone else who wants to choose it for themselves alone. The second theme is the compassionate alleviation of suffering. It is said that we should show compassion towards someone suffering and allow them to end that suffering by dying. These are formidable arguments, but I have reached the conclusion that because of the far wider consequences of legalising voluntary assisted dying, in the end these arguments do not justify it. Former Prime Minister Paul Keating, speaking in 2017 of broadly similar Victorian legislation, put it as follows:

The justifications offered by the bill's advocates—that the legal conditions are stringent or that the regime being authorised will be conservative—miss the point entirely. What matters is the core intention of the law. What matters is the ethical threshold being crossed. What matters is that under Victorian law there will be people whose lives we honour and those we believe are better off dead. In both practical and moral terms, it is misleading to think allowing people to terminate their life is without consequence for the entire society.

While I am a Christian, I do not base my objection to legalising voluntary assisted dying on theological grounds or on the basis that someone's choice to die ahead of their terminal illness killing them is an immoral choice by that person. Indeed, I can see how a Christian could reason to a conclusion in favour of legalisation. The second of the two greatest commandments on which "hang all the law and the prophets", is "love your neighbour as yourself". Some Christians might argue that this points to a conclusion in favour of legalisation—namely, that we should love our neighbours as ourselves by allowing them choices to alleviate suffering that we would want if we were terminally ill. They might also argue that the sixth commandment is better translated as "thou shall not murder" rather than "thou shall not kill" and that the sixth commandment therefore does not prohibit some limited justified cases of killing such as self-defence.

My opposition is instead based on protecting the vulnerable. Of course, palliative care will not work in all cases. Those like me who oppose legalising voluntary assisted dying cannot airbrush away that this means some people will die horrible deaths and that they could have died more peacefully or easily if we allowed voluntary assisted dying. But no law can deal perfectly with all circumstances. We cannot make the perfect the enemy of the good. Paul Keating, speaking again in 2017 of broadly similar Victorian legislation, put it succinctly:

It is true that if this bill fails then some people will endure more pain and this is difficult for legislators to contemplate. It is also true, however, that more people in our community will be put at risk by this bill than will be granted relief as its beneficiaries. This is the salient point.

As the Archbishop of Canterbury said last month in a similar debate in the United Kingdom:

... 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.

Whatever benefit there is—and of course there is a significant benefit—in allowing voluntary assisted dying so we can alleviate suffering in some truly awful cases, where no amount of palliative care will be enough, this is outweighed in my view by the risks posed to a far greater number of other vulnerable people. These risks can be grouped into four classes, although they overlap and are interrelated.

The first is the difficulty in ensuring adequate protection against the risk of people being pressured by individuals into choosing voluntary assisted dying. It is inevitable that there will be pressure placed on the

vulnerable, and manipulation of the vulnerable, to do what is said to be the right thing. That pressure and manipulation may be subtle, albeit over an extended period, and it may not rise to the level of outlawed coercion. But it may go undetected by the coordinating practitioner or the consulting practitioner engaged by the model proposed by this bill. We only need look, for example, at the shocking revelations before the Royal Commission into Aged Care Quality and Safety to know the reality of elder abuse. This could be motivated by financial reasons, by a perception that the elderly are a nuisance, or for any number of reasons. With his characteristic bluntness, Paul Keating put it this way:

An alarming aspect of the debate is the claim that safeguards can be provided at every step to protect the vulnerable. This claim exposes the bald utopianism of the project—these advocates support a bill to authorise termination of life in the name of compassion, while at the same time claiming they can guarantee protection of the vulnerable, the depressed and the poor. No law and no process can achieve that objective. This is the point. If there are doctors prepared to bend the rules now, there will be doctors prepared to bend the rules under the new system.

Professor John Keown of Georgetown University has written:

As for the Netherlands where, unlike Oregon, comprehensive official surveys of medical decision-making at the end of life have been carried out, those surveys have shown that since the Supreme Court declared (what he calls voluntary euthanasia) and (physician assisted suicide) lawful in 1984, doctors have, in violation of key legal "safeguards", failed to report thousands of cases to the authorities and have given lethal injections to thousands of patients without an explicit request. Referrals to prosecutors by the review committees for breach of the law have been rare, and prosecutions rarer still.

I said that the risks to the vulnerable can be grouped into four classes. The second is the difficulty in ensuring adequate protection against the risk of people being pressured by society more broadly into choosing voluntary assisted dying. Over time, even without further legislative reform beyond this bill, what will start out as a "right" to choose is likely to morph into a social norm to prefer that choice. There is the prospect that over time there will develop a societal expectation that terminally ill patients should prefer the choice—that is the least burden on society in general and those around them in particular. As Paul Keating put it:

Once this bill is passed the expectations of patients and families will change. The culture of dying, despite certain and intense resistance, will gradually permeate into our medical, health, social and institutional arrangements.

He goes on:

A change of this kind will affect our entire community not just a small number of dying patients. It is fatuous to assert that patients will not feel under pressure once this bill becomes law to nominate themselves for termination.

The third class of risk is the temptation for governments to invest less in palliative care provision and research if voluntary assisted dying is a commonly available alternative to palliative care. Mike Baird, former Premier and now CEO of HammondCare, said:

Our multidisciplinary palliative care teams find that people often conclude they need to end life because they don't understand that palliative care will vastly reduce their symptoms without prolonging their life. They have not heard that palliative care does not promote futile treatments, pointlessly keeping someone from dying who is ready to die. Instead, with exceptional, holistic skill, palliative care eases the way from life to death without influencing the timing, but uplifting the experience. They have not heard that in the face of a prognosis that seems devoid of hope, palliative care teams are hugely successful at restoring and maintaining hope in a way that is often completely unexpected and would otherwise have been abandoned.

Clinical professor Richard Chye, director of Sacred Heart Supportive and Palliative Care at St Vincent's Hospital, has written to all members of the New South Wales Parliament stating the following:

My experience in more than a quarter of a century in palliative care is that about one in 20 people who are faced with a terminal illness request VAD in some shape or form, but when they do access good care, which addresses the existential distress as well as their pain, they often change their mind.

He goes on:

If there are gaps in people's end of life care, they should be addressed through improving their access to high-quality care which is consistent with the community's expectations of a care system committed to healing and the provision of comfort, and never killing.

The fourth risk to the vulnerable is that inevitably there will be a push for further liberalisation in years to come. Social reform is usually incremental. This bill is a bridgehead in piercing the sanctity of life as it nears its end. Look at the arguments underpinning the bill that I identified earlier. This bill is said to allow freedom of choice and alleviation of suffering at the moment only where the individual has a prognosis of a terminal illness that would cause death within six months, or 12 months if an individual has a neurodegenerative disease, illness or condition. If the premises of free choice and compassionate alleviation of suffering are accepted, it seems illogical to allow free choice and alleviation of suffering only where there is a terminal illness; there will inevitably be a push to legislate further. I seek an extension of time. [Extension of time]

As Paul Keating wrote:

... once termination of life is authorised the threshold is crossed. From that point it is much easier to liberalise the conditions governing the law. And liberalised they will be. Few people familiar with our politics would doubt that pressure would mount for further liberalisation based on the demand that people are being discriminated against if denied. The experience of overseas jurisdictions suggests the pressures for further liberalisation are irresistible.

I cannot support the bill. I agreed with Paul Keating again when he wrote:

This is a threshold moment for the country. No matter what justifications are offered for the bill, it constitutes an unacceptable departure in our approach to human existence and the irrevocable sanctity that should govern our understanding of what it means to be human.

Having said that I agree with that statement by Paul Keating, that line of argument would justify my personal opposition to voluntary assisted dying, but it may not go far enough to justify stopping others having a lawful choice to exercise a different ethical view. In the end, my opposition to the bill cannot be about sitting in judgment on those who would wish to have their own access to voluntary assisted dying, on those physicians who would wish to provide it or on those who advocate for this bill. They are generally all motivated by the best of intentions. Instead, my opposition to the bill is based on loving our neighbours as ourselves, which is a golden thread throughout millennia of many and varied religious and secular philosophies and civilisations across the world. Mahatma Ghandi famously said that "the true measure of any society can be found in how it treats its most vulnerable members". Given the four classes of risk I have identified, my opposition to legalising voluntary assisted dying is about the greater public good of protecting the greatest number of vulnerable people.