

VOLUNTARY ASSISTED DYING BILL 2021

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

Mrs WENDY TUCKERMAN (Goulburn) (09:53): The Voluntary Assisted Dying Bill 2021 is an emotive and contentious issue, one that evokes strong feelings on both sides of the argument, and for good reason. New South Wales is currently the only State that does not allow terminally ill people to seek medical assistance to end their own lives. We know that in 2017, when this issue was last debated in the New South Wales Parliament, it was defeated in the upper House by a single vote. It is time we have this discussion again. I have researched, spoken with many people and spent countless hours studying this regulation, learning about what other States and countries have in place. We are in a unique position where we can learn from their outcomes. One of the biggest arguments against voluntary assisted dying in any form is that with the correct palliative care processes and systems in place, voluntary assisted dying is not required.

Voluntary assisted dying and palliative care are two distinct processes. Most people access palliative care before they seek voluntary assisted dying, aiming to maximise their quality of life and reduce pain and suffering. Voluntary assisted dying is available when palliative care and treatment can no longer relieve suffering in a way that is tolerable to the person. It has been suggested that in States where voluntary assisted dying has been implemented, the palliative care resources have increased due to sharing of resources and services. Not everyone who has a terminal illness will be interested in assisted dying. This is all about choice—the choice to end suffering and die with dignity, which may not otherwise be possible. Palliative Care Australia estimates that 4 per cent of patients are beyond its realm of assistance. It is this gap we are potentially closing through this legislation. Palliative care must be strengthened, particularly in regional areas, and I welcome the commitment by the Premier to this end.

One thing I noticed in my reflection of this legislation being implemented in other States is the number of participants accessing this service. The most recent report from the Victorian health service shows that, since that State's Act commenced in June 2019, some 581 people have been assessed for eligibility to access voluntary assisted dying. Some 465 permit applications have been made, 405 permits have been issued and 224 people have died from taking the prescribed medications. As the figures suggest, not all those who applied and were eligible to administer their end of life did so. This resonated with me; even though they were eligible some did not proceed. They knew it was their safeguard, their peace of mind, but ultimately it was not the choice they made. As the member for Goulburn, I have reached out to communities in the Goulburn electorate and I have received over 1,400 contributions from constituents. The overwhelming majority, some 88 per cent of those contributions, have urged me to support the bill.

I thank each and every person who has reached out to me, particularly those who have shared their deeply personal experiences—whether in support or opposition—many describing their experience of watching the slow and painful deaths of their nearest and dearest or the distress of coping with a degenerative or terminal illness. I relay some thoughts and experiences conveyed to me on the matter of voluntary assisted dying by a close friend about her husband's journey of a diagnosis of stage 4 secondary liver cancer to his death. John's case is simply an anecdote of one person, but it provides insights that are worth noting. Julia told me:

Journeying with John through his last six months gave me a close up view of how an individual comes to terms with the knowledge that their life is ending. It took time for John to accept his fate and to be at peace with that acceptance. When he did accept his fate his physical suffering was agonising for him and agonising for his sons and I to watch. Had he had the choice for assisted dying when he knew he had limited time left he would have chosen that path. We considered going to Switzerland. We considered all options. There is a terrible point in this end of life journey when the person and their family know clearly that there is no coming back from this point. Prior to that point there is always a glimmer of hope and a preparedness to try different treatments to see if meaningful life can be prolonged. But when you reach the point of no return all that both the patient and the family can see is an unknown period of suffering. The emotional and psychological suffering is hard enough on its own. Adding physical pain to the mix, and not knowing how long the suffering will continue, is cruel beyond belief. And to what avail?

The decision is essentially a personal moral, philosophical decision and should rest with an individual not the Government of the day. I thank Julia for taking the time to share your story; I know how hard it must have been to do so. The task and/or responsibility of the Government of the day is to ensure that processes,

procedures and regulations are in place to ensure the rights of the individual are safeguarded. I will share just one of the responses to my electorate survey. The respondent wrote:

After watching my father suffer, I fully support this Bill. I am a cancer survivor and lost my sister to the same cancer in 2019. I not only cared for her until she passed, but also juggled chemotherapy, radiation and radical surgery also. I was lucky, I was at an earlier stage than my sister. Because of our experiences, and nursing our father and mother, one with prostate and bone cancer, and the other with pancreatic cancer, we feel we can speak firsthand. We both supported assisted dying when sufferers were palliative and nearing the end, and are in terrible pain and suffering. We know, that even the strongest of medications don't always work and enabling to ease someone's suffering at the end is a blessing not a curse.

It is hard to disagree with these types of comments, and they both particularly stuck with me as I have struggled with my decision on this bill. The constraints and regulations of this critical piece of legislation are worth noting here today, particularly the eligibility criteria. Proposed section 16 of the bill states the person must be a minimum 18 years of age, a permanent Australian citizen, and be diagnosed with at least one disease or medical condition that is advanced, progressive and will cause death most likely within six months, or 12 months in the case of a neurodegenerative disease. The most crucial criterion, in my view, is that they must also have decision-making capacity. They must be acting voluntarily and without pressure or duress and the request must be enduring.

Part 6 of the bill also allows the Supreme Court to review certain administrative decisions, including a decision that a person does not have decision-making capacity, is not acting voluntarily, or is acting because of pressure or duress. People who lack decision-making capacity, such as people suffering from dementia or who lose decision-making capacity during the process, are not eligible for voluntary assisted dying. The question here is: Are we satisfied these criteria are adequate and protect our most vulnerable members of society? Members have heard, and will hear, very well-meaning and considered contributions from those who oppose the bill and fear the dire consequences for the vulnerable in our society. I have also struggled with this very question.

I reserve the right to consider any amendments to the bill that strengthen these criteria. I will closely examine those amendments to see if they might help to make this bill work as effectively, safely and practically as possible. However, we must acknowledge that forms of assisted dying already occur each and every day across the State. This occurs behind closed doors and is unregulated. It takes place without protections for the vulnerable, without protections for the medical practitioners, without ensuring that it is voluntary and without ensuring against the very risk of abuse or coercion.

I also briefly mention the provision for the conscientious objection of health practitioners contained in the bill. Voluntary assisted dying is a voluntary process for all participants at all stages. There is no obligation on health practitioners to provide assistance and the bill includes express provisions to confirm that all health practitioners are able to refuse to provide assistance due to conscientious objection or any other reason. They can refuse to participate in any part of the process, including the request and assessment process; prescribing, supplying or administering the substance; or being present at the administration of the substance. Under this bill, health practitioners have the ability to refuse or not provide services relating to voluntary assisted dying. I believe this to be critical. After all, we are debating personal choice here. In many forms, the choice to end one's life when terminally ill is an individual's right. The passing of this bill will not impinge on the rights of those that do not want to choose this pathway. However, not supporting this bill will deny this option for those that do. It is with the majority of my electorate that I make my decision. I support the bill.