

VOLUNTARY ASSISTED DYING BILL 2021

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

Mr GARETH WARD (Kiama) (15:08): I contribute to debate on the Voluntary Assisted Dying Bill 2021. Conscience votes have provided for some of the most interesting debates during my time in this place. They provide a window into the calculus of issues and unvarnished values that each member holds when deciding which way to vote on some of the most controversial topics that have been discussed in the Parliament. This debate has elicited quotes from Edmond Burke to John Stuart Mill; questions have been posed about the value of human life and of liberty, wisdom and virtue. We have heard from Christians, atheists and everyone in between. What has made this debate so fascinating is that it is literally a debate about life and death. From the moment we come into the world, all that we have is time.

Prior to question time in this place we stand to respect former members who have passed away.

~break Every member who is debating this bill today will one day have their names read out as a journey on earth comes to an end. For all my decisions as a local representative I consider two matters before coming to a conclusion: first, the views of the constituency that I have the honour to represent; second, fidelity to my own values when applied to the text of the legislation before the House. I will now deal with both matters in turn before raising some questions I have for the mover of the bill and foreshadowing some amendments.

In this debate, dealing with the first matter was simple. I undertook an electorate-wide survey. In doing so I said at the outset I would vote according to the wishes of my electorate, and 88 per cent of respondents indicated their support for this Voluntary Assisted Dying Bill. Along with this, I also had the incredible privilege of hearing stories from those who had felt so strongly about this issue. They had encountered personal emotional stories and they shared them with me. I read all of them and they touched me deeply. I thank all of those who allowed me a window into their lives. I will therefore will be supporting the bill, which represents the fifth attempt to introduce rights for the terminally ill in our State. However, in no way do I disrespect the views of those who wanted me to oppose this bill. In fact, I would say to those opposed that I could not in good conscience simply support any bill on such a serious matter as ending someone's life.

The reason I support this bill is that it has the most conservative approach to the introduction of voluntary assisted dying in Australia and I do not wish to invite weaker models that do not have the right protections and safeguards. Should this bill pass, it will have more safeguards than legislation of this type in any other State. It may interest members of the House to know that as part of my studies in my master of laws, I selected voluntary assisted dying as my research topic. I am therefore a rarity in this place in that I actually know what I am talking about. To answer my second consideration, of fidelity to my values, this should be obvious. I am a liberal in the mould of John Stuart Mill. While I may not agree with the choices that others make, it is the option of a choice that I deem to be an indelible and inalienable right of each individual when it comes to matters concerning one's own life. This is not a matter for the State. The role of the Government should be limited to regulating this freedom to ensure the choice of an individual is unfettered by pressure or duress and that the choice of each individual is exercised voluntarily and is enduring after being furnished with all treatment options, as well as the likely outcomes. These are all elements of this bill.

Interestingly, those who seek eligibility do not always choose to end their own life. Since the Victorian scheme began, 581 people have been assessed as eligible but less than half—only 224 people—have made the decision to die at a time of their choosing. This fact is a reflection on the want and willingness to live, the improvement and quality of modern palliative care and support, the love of family and friends and the comfort of knowing that if suffering is too much, the option is always there. For all of those reasons, not everyone will choose this path; in fact, a vast and overwhelming majority will not. But who am I to tell another that I know their body, their condition and their circumstances better than they do? How can I insist that someone should be kept alive longer only to die an agonising death? Why is it that opponents of the bill argue that this proposal is an affront to the sanctity of human life when the very absence of this choice leaves a terminally ill person in suffering with nothing other than an agonising and undignified wait for the inevitable?

I deeply respect those colleagues who have genuine concerns with this bill. For the most part, those opposed have worn their hearts on their sleeves with care and compassion. I know that, in the main, those opposed have consistently opposed these moves and their opposition to assisted dying laws stems from many places. That includes members who believe this is simply a matter that the Government has no right or role to regulate. The Premier and the member for Albury were two examples of members who expressed genuine and considered concerns. To those genuine members, I thank you for your contribution, your compassion, your care and the respect you have extended to those with different views. However, I have been, frankly, stunned by the handful of so-called conservatives whose ideological inconsistencies resemble a weathervane during a typhoon. In the past two years this small group of ideologically extremist fringe-dwellers have exposed themselves as utter frauds. In the last two years this small group of the grand panjandrum have been autocrats about birth and libertarians in life and are now authoritarians about terminal illness and death.

It seems these Fabian, fraudulent and fringe-dwelling conservatives campaign with an invisible hand while governing with a clammy one. It was only months ago that those fringe conservative members were frothing at the mouth over the prospect of coercion when it came to COVID vaccinations. Their clarion cry was that people should have a right to decide what they do with their own bodies. But where are those values now? In fact, some of the opponents of this bill have been downright dishonest. They have deliberately referred to it as a euthanasia bill. I would never support a euthanasia bill; that would be State-sanctioned murder. While there are many models to end the life of a person who is suffering terminal illness, and while it is true that euthanasia is one such model, the subject of this bill is not euthanasia.

At the heart of this bill is choice at every step. It is the patient who must raise the option of voluntary assisted dying. It is the patient who must undergo and pass two separate assessments. It is the patient who must make the final request and it is the patient who can discontinue the process at any time. The medical definition of euthanasia is a process where a decision is made for someone, not by someone. Euthanasia, by medical definition, involves the absence of choice by a patient. Voluntary assisted dying has at its heart the presence of a clear and unambiguous choice by an individual about their own circumstances. For instance, sick animals are euthanised to prevent their pain and suffering. This is not the standard we should ever reserve for human beings—although I am sure the irony is not lost on many that we reserve a greater degree of dignity for terminally ill animals than we do for humanity.

The other dishonest argument I have heard is that this is not the right bill and that the safeguards as outlined are not sufficient. Setting aside that this bill has more safeguards than similar legislation anywhere else in Australia, the reason this argument is dishonest is that no-one who has advanced it has done so alongside amendments to address their alleged concerns. If those members were so serious about their views on the paucity of safeguards, why not bring forward the changes they believe are needed? They are as much a part of this process as anybody else. They can move amendments. Why is it that some members have suddenly abrogated their roles as legislators and thrown it all in the too-hard basket? This argument is not only disappointing; it is also oleaginous, weak and pathetic. Those members are simply playing politics by seeking to opportunistically walk both sides of the street.

For those members, this debate is all about constituency management. I have no doubt they will tell people in their electorates who are in favour of voluntary assisted dying that they support the concept—just not this bill. Those same members will tell those opposed that they voted against the bill. In short, those members are what is wrong with politics. They embody the stereotype of a spineless and slick politician. I trust that if those people were speaking to a convention of cannibals, they would happily hand over a missionary. Let me assure those members: Your community is not as silly as you may think they are. Even the blind can see your hypocrisy.

The other fraudulent argument is the comparison of voluntary assisted dying with capital punishment. The people electing for voluntary assisted dying are not criminals, but they currently could be, and so could those supporting a person who presently wants to end their own life because of pain and suffering caused by a terminal illness. Because assisting suicide is a criminal offence in New South Wales, it is more likely that those who have a terminal illness and who are wanting to end their own lives will do so in an unpleasant and undignified manner, in solitude, in isolation and alone. I believe our civic maturity is well beyond this. For a person to be eligible for voluntary assisted dying, this bill makes clear that they must have a terminal illness

that is advanced and progressive and that will cause death; the request must be voluntary, free of pressure or duress and must be enduring; and the person making the request must not merely be in pain but must be suffering. How can these provisions be characterised in the same way as capital punishment? This argument should be resigned to the loony bin and those who are advancing it do themselves absolutely no credit. In the light of all the safeguards, I ask those advancing this argument: Did you read the wrong bill? Or perhaps a better question is did you read the bill at all?

This bill is not about giving sick people the opportunity to end their life. This bill is about allowing someone with a terminal illness, who will die in agony and gross discomfort, the opportunity to avoid an end to their life that affords no dignity. One of the most hurtful arguments I have had to contend with during this debate is that a yes vote is unchristian. While I have genuine and great respect for religious leaders of all faiths, my own observation is that the overwhelming majority of believers do not share the views of religious leadership on this topic. As a quiet Anglican, I know that many Christians share my view that while we may not want voluntary assisted dying for ourselves, it is not our place to say what others should do. If a person's faith prevents them—as mine would prevent me—from using assistance to die, it is entirely a matter for them. My faith, based on my understanding of the life and works of Christ, tells me that I will have to account for the choices that I make. The teaching of Christ is all about refusing to accept conventional religious wisdom, which would be easy but thoughtless, and instead steadfastly making one's own moral choices. [*Extension of time*]

Jesus chose to die rather than compromise this point. Like his gift to Jesus, God has given his children the gift of choice. There are no reductionist solutions to human ethics. Each choice is challenging. I am responsible for my choices. You are responsible for yours, even if I disagree with what you decide. I am unlikely to accept as loving the sort of god that demands that we suffer unnecessarily. While we cannot always avoid all suffering, I find it incompatible with my conception of God that a patient be effectively tortured by being kept alive with no hope of anything but pain and deterioration. I believe that God's will is decisive. If you agree, I cannot then understand how God's decisive will can consistently approve of medical intervention to sustain life against a natural end, but not approve intervention so that a patient can find death when they no longer want to be kept alive by medical intervention. The God I believe in is nothing if not consistent; a good God must be, by definition.

I seek clarity from the member for Sydney on some important matters of definition. Should the bill pass into law, those definitions are important and the intention of lawmakers should be clear. I invite the member for Sydney to address three matters in his speech in reply. Before I turn to those questions, I thank the member for Sydney, the member for Lake Macquarie and all the co-sponsors for introducing the bill to the Parliament. In the time I have been in this place, I have made few new and genuine friends. I hope I do not damage the reputations of the member for Sydney and the member for Lake Macquarie by including them in that category.

Firstly, I ask the member for Sydney to expressly define what is meant by the terms "advanced" and "progressive". Based on a reading of debates on similar bills in other States, I assume that advanced and progressive mean that the person's condition must be deteriorating, and that deterioration must be at an advanced stage. Applying the ordinary meaning of the term "advanced" suggests the condition must have significantly progressed along its expected trajectory. When read together with its partner term "progressive", the two terms imply a declining trajectory. The challenge is understanding the threshold because both criteria are ultimately a question of degree. Both criteria require deterioration that will cause death within six to 12 months so in spite of the lack of an expressed definition, it is likely that any confusion caused by those terms will be limited.

Given the seriousness of the debate, I draw that concern to the attention of the House in the hope that the understanding of members can be put beyond doubt. The second question relates the definition of "suffering". I note that other jurisdictions have defined suffering and I invite the member for Sydney to offer a definition to put that matter beyond doubt. My final question involves the use of the legal term "the balance of probabilities". During its debate, the Parliament of Western Australian discussed its understanding of the application of the standard of proof by equating it to the same standard as the Victorian model. However, the New South Wales bill has no such guidance on how that standard is to be interpreted in the context of its application by a medical practitioner; nor does the bill offer any clarity as to why other standards such as "expected time of death" or "reasonably foreseeable" were not chosen instead. That is not a criticism; it is simply a comment for clarity and completeness. I ask the member for Sydney to provide clarity on that standard and to consider a reference to standards used in other States to put that matter beyond doubt.

I wish to foreshadow an amendment to withdraw section 10 (5), which relates to profession-specific prohibitions on initiating discussions around voluntary assisted dying by a disability care worker and possible disciplinary action. That provision is redundant because the New South Wales Government no longer provides disability services. Because all funding and services are managed in accordance with the National Disability Insurance Scheme, all matters concerning disciplinary action can only be resolved through the NDIS Quality and Safeguards Commission. Questions concerning prohibitions and possible disciplinary action are therefore matters for the Commonwealth. I also do not believe the reference to the Disability Inclusion Act is relevant, given that the statutory purpose of that Act is regulatory and aspirational in nature and is not connected with funding, and any withholding of funding would be punitive for people with disabilities.

I also foreshadow an amendment to apply one time bar to all conditions as part of the eligibility criteria, rather than the current dichotomy that exists. The introduction of voluntary assisted dying is not the reason I stood for Parliament. I came to be a voice for my community on a range of matters, and that was never a factor in my thinking. As my community's representative in Parliament, I have always kept my promises. I made clear that I would follow the wishes of my community by establishing a democratic process where anyone could have their say. I will discharge that duty in this place knowing that is what my community wishes me to do. The bill does not degrade the sanctity of human life; it is an affirmation of choice and control. Those that do not share that view never need to access the provisions of the bill. I say to those opposed: Just as I respect your beliefs, please respect the rights of others to theirs. This is as much a debate on the detail of the bill in front of us as it is a judgement about our faith in our fellow citizens. My vote in favour of the bill is not about me making a choice; it is about allowing you to have yours.