

VOLUNTARY ASSISTED DYING BILL 2021

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

Mr NATHANIEL SMITH (Wollondilly) (15:46): I contribute to debate on the Voluntary Assisted Dying Bill 2021—a euphemistic bill that raises issues about life and death. My values are well-known in this place and throughout my electorate. They have evolved over many years and were heavily influenced by my parents, my Catholic faith and my wife. Unlike most members in this House, as a candidate during the last election, I stood on a platform to oppose any bill legislating euthanasia. To break an election promise would require compelling reasons. At the very least, it would require an electorate that understood and agreed with my need to amend the social contract I created with them at the last election. As many proponents of this bill have requested, I have approached this matter with an open heart and mind. I have spoken widely to constituents, people of faith, colleagues, community leaders, party members and friends, and, of course, my family. I have listened. I have contemplated. I have prayed. I oppose this bill for the reasons that I will outline.

There are technical elements in the bill that concern me. I also do not believe there is an overwhelming swell of support for the concept of assisted dying—certainly not enough to excuse breaking an election pledge. The key hurdle that this bill needs to overcome are my values. It will surprise few that it was always likely to fail on that front. I simply cannot reconcile myself with supporting legislation that would permit the killing of another person in the circumstances in which this bill would provide. It is not who I am and I do not believe it is the person that my electorate voted to put in this place to represent them. I concede that my electorate office has received hundreds of letters and emails expressing an opinion on the bill. An overwhelming number expressed support and urged me to break my election pledge. However, on closer inspection and when discounting multiple letters or emails from the same individual, as well as those who live outside my Wollondilly electorate, the numbers between those supporting and those opposing the bill were finely balanced—a difference of four or five, which surprised me. There has been an avalanche of media stories spruiking the strong community support for assisted dying. But as I said, from my experience, the reality has been very different. I cannot help but congratulate the member for Sydney on deploying what seems an effective media machine to push this bill. The disparity between what the media has portrayed and what the reality is has certainly made me stop and ponder.

The issue seems to be building a sense of inevitability and urgency. That is consistent with the many pro-bill emails I have read with their repetitive messages of, "Do it now", "Don't delay any longer", "Everyone else allows it. We must allow it too", and "Just do it." The question that pops into my head is, what is the rush? When the upper House announced last month that it would conduct an inquiry into the bill, hysterical claims were made that an inquiry would delay the passage of the bill. Really? The word "delay" is used to describe a process of careful consideration and community consultation. I remind members of the subject matter. We are considering a bill that seeks to legalise a process of state-sanctioned death. I would have thought that it is something that collectively we would not decide lightly and certainly not without full community consultation.

I accept that community awareness of this issue is quite high, but awareness does not equate to engagement. We have just emerged from a lockdown and we are dealing with a pandemic. Most people are focused on rebuilding their lives. They do not have time to become fully informed on this issue or to become actively opposed to it. That is borne out in polling I have seen. In it, more than one-third of voters say economic recovery is their priority. Supporting the elderly and aged care was identified by a further 16 per cent of voters surveyed, and health services by 15 per cent of voters surveyed. Just 4 per cent identified assisted dying as a priority. Is the reason for the urgency to ram the bill through the Parliament before people have had time to absorb the devil in the detail? To date, the bill has had a privileged path through this House. Any other non-Government bill would have taken months to be where this bill is now. This bill would have been introduced, debated and decided within a matter of a few weeks.

The bill is an affront to our western democratic values and traditions that can be traced to our historic links with English history and legal doctrines. They are what made our State and country strong, stable and safe. Australian courts have been protective of this right to life against harm to oneself or to another. The 1992 Australian High Court decision that would become known as "Marion's case" was a watershed moment. While it did not touch specifically on euthanasia or assisted suicide, its findings are incredibly relevant. The case facts

concerned an application for court permission to sterilise a 14-year-old disabled girl. Sir Gerard Brennan, who would later become Chief Justice, wrote in his decision:

The law will protect equally the dignity of the hale and hearty and the dignity of the weak and lame; of the frail baby and of the frail aged; of the intellectually able and of the intellectually disabled.

...

... the interest of society in the physical integrity of its members precludes the law from giving effect to a consent to the doing of grievous harm ...

The bill only achieves its stated aim of alleviating pain by causing harm and death. It is clearly incompatible with the existing body of law and legal principles. It is alien to norms and societal values. Should it become law, it will override centuries of doctrine that form the core of modern society. It is not just long-established legal doctrines that will be brushed away. Medical professionals are trained to heal and preserve life, not to end it. The Hippocratic oath contains the statement:

I will use treatment to help the sick according to my ability and judgment, but never with a view to injury and wrong-doing.

The last phrase is often shortened to, "First, do no harm." Voluntary assisted dying causes the greatest possible harm; it kills the patient. It goes against everything doctors stand for. We should not expect doctors to use their skills to end the life of their patients. We do not want doctors to start acting like accountants and conducting a cost-benefit analysis on a patient's diagnosis. I now turn to the details of the bill. Much of the bill is premised on the evidently unfounded and dangerous assumption that just because a box is ticked, the statement next to the box represents the actual truth. [*Extension of time*]

It mistakes the fact that two assessing medical practitioners profess that they are satisfied that the patient meets all the eligibility criteria with the separate factual question of whether that is actually true. One of the eligibility criteria in the bill—perhaps the key one—is that a person is:

... diagnosed with at least 1 disease, illness or medical condition that— (i) is advanced, progressive and will cause death ...

Doctors are humans, arguably super humans, but nevertheless not infallible. There is an extensive body of evidence relevant to the existence and extent of misdiagnosis. In jurisdictions that permit assisted suicide or euthanasia it is very rare for any post-mortem confirmation, say an autopsy, of the diagnosis of the disease, illness or medical condition which qualified the person for access to assisted dying. But we can get some idea from the medical literature and the evidence of experts on the frequency of such errors.

According to evidence given by Dr Stephen Child, chair of the New Zealand Medical Association, to the New Zealand parliamentary inquiry into the practice of euthanasia, "On diagnosis, 10 to 15 per cent of autopsies show that the diagnosis was incorrect. Three per cent of diagnoses of cancer are incorrect." Dr Child concluded

that the scope for error was too large when weighed against the outcome, which is of course the irreversible decision to end one's life. Those findings are not out of the ordinary, and a September 2020 article reported that, "In Australia, an estimated 140,000 cases of diagnostic error occur each year," and that, "Overconfidence in incorrect diagnoses was a key factor." Once we bring legalised assisted suicide and euthanasia into the picture, as the bill would do, there is the real, inevitable and unavoidable probability that a false positive diagnosis of cancer or any other terminal disease, illness or medical condition will lead to a person dying prematurely and unnecessarily.

Even Andrew Denton, a critic of mine and proponent of euthanasia conceded, "There is no guarantee ever that doctors are going to be 100 per cent right." Euthanasia is sometimes referred to as "mercy killing", but there is nothing merciful about it. A 2020 review of 216 autopsies conducted after executions in US states by lethal injection found signs of pulmonary oedema, which is a feeling of suffocation or drowning, in 84 per cent of cases. The findings were similar across the States and, notably, across the different drug protocols used. The

conclusion is that lethal injections are neither rapid nor painless. It is also not a humane response to suffering. St John Paul II wrote in *Evangelium vitae*, known as the Gospel of Life in English:

Even when not motivated by a selfish refusal to be burdened with the life of someone who is suffering, euthanasia must be called a false mercy, and indeed a disturbing "perversion" of mercy. True "compassion" leads to sharing another's pain; it does not kill the person whose suffering we cannot bear. Moreover, the act of euthanasia appears all the more perverse if it is carried out by those, like relatives, who are supposed to treat a family member with patience and love, or by those, such as doctors, who by virtue of their specific profession are supposed to care for the sick person even in the most painful terminal stages.

That last point is a concern to me as it goes to the heart of what might motivate some supporters of euthanasia. Dr Brian Pollard, who set up the first palliative care unit in New South Wales, says that in all his years of looking after dying people he never had a request for voluntary assisted dying from a patient. He said that the requests came from family members who, he says, seemed to be saying, "Could you please put him or her out of our misery?" It seems that many people's views are shaped by their experiences of watching a loved one die, not from the perspective of the one that actually died. We should put more of our efforts into government funding of better palliative care. That is what suffering people most want, along with the compassion and care of loved ones. One special moment of this debate was the Premier's speech to the House last Friday. It was raw, personal, compassionate and human. It was the Dominic Perrottet I have known and admired for most of my life. The public saw a side of him they rarely see. Having held portfolios like Treasury, our Premier has had few opportunities to reveal his true self. His admissions were, to quote fictional character Sir Humphrey Appleby, "courageous".

Politicians rarely acknowledge failings, particularly in the areas of health. This leader—our leader—did. It was a significant and historic moment for New South Wales. His confession of failing has led to a renewed and energised commitment to do better and to deliver the world's best palliative care system. This bill, should it become law, puts that vision in jeopardy. Any argument to the contrary is misguided and just plain wrong. New South Wales is the premier State. We are leaders, not followers. Let us lead in building and delivering the best palliative care system in the world. Let us provide hope, not a cheap and expedient exit for our loved ones. That is what civilised societies seek to achieve and what compassionate societies do. I urge members to vote with me and reject this bill.