VOLUNTARY ASSISTED DYING BILL 2021

Legislative Assembly Second Reading Debate – copied from Hansard 12 November 2021

Mrs TANYA DAVIES (Mulgoa) (14:59): I speak in debate on the Voluntary Assisted Dying Bill 2021. Like many in this place I, too, have personal experience of death and dying of my loved ones. However, I wish to take this time to speak on the details of the bill which I believe are alarming, ill-thought through and problematic. The member for Sydney has claimed that his bill is very conservative and is aimed at a very small number of people in the last six months of their lives who are in intolerable pain and who know they are going to die in a horrific way. The member for Sydney circulated a frequently asked question document on the bill which states that the provisions of the bill are for people who are "suffering beyond any meaningful medical help and who are in the end stage of a terminal illness".

However, neither of those things is an eligibility criterion for access to the provisions of the bill. In relation to suffering, the bill requires the assessing medical practitioners to decide whether a person has a disease, illness or medical condition that is causing suffering to the person that cannot be relieved in a way the person considers tolerable. That is a very different meaning to concluding that the suffering is beyond any meaningful medical help. Suffering is not defined in the bill. Evidence from jurisdictions, such as Oregon, Washington State and Victoria where similar laws also have an eligibility criterion that the person be suffering, indicates that the most common forms of suffering cited by applicants relate to existential concerns rather than pain and other physical symptoms. For example, of the 1,905 cases of assisted suicide in Oregon over the 23 years from 1998 to 2020, 90.6 per cent of requests related to a steady loss of autonomy; 89.9 per cent to being less able to engage in activities making life enjoyable; 73.6 per cent to a loss of dignity; and 47.5 per cent to concerns about being a physical or emotional burden on family, friends or caregivers. These are not matters which medical help can resolve.

The suggestion that we should be authorising people in New South Wales to commit suicide or authorising a doctor to actively end the life of a person because the person is concerned about being an emotional burden on family, friends and caregivers is profoundly disturbing. However, it is important to understand the legal effect of the bill and the mechanics of its operative provisions. Clause 7 of the bill provides for the Health secretary to approve a schedule 4 poison or a schedule 8 poison for use under this Act for the purpose of causing a patient's death. Clause 59 of the bill provides for a medical practitioner to prescribe such a poison in a sufficient dose to cause the death of a person by self-administration. Clause 60 of the bill provides for a medical practitioner to prescribe such a poison in a sufficient dose to cause the death of a person and for that medical practitioner, or another medical practitioner, or nurse practitioner, or registered nurse to administer the poison to the person to cause their death.

I now turn to the key legal effects of the bill. The bill would create two significant exceptions to what would otherwise be offences under the Crimes Act 1900—the offence of murder and the offence of aiding, abetting, inciting or counselling another person to commit suicide. The key action authorised by clause 60 of the bill enabling the administration of a poison to a person for the purpose of causing the person's death clearly fits within the legal definition of murder in section 18 of the Crimes Act. It is the act of administering a poison in sufficient dose to cause the death of a person that, provided it succeeds, will cause the death of that person, and it is clearly the intent of the medical practitioner, nurse practitioner or registered nurse in administering the poison to cause the death of the person—that is, to kill the person. In the event that the administration of the poison failed to cause the death of a person, as has happened sometimes in the Netherlands and on at least eight occasions in Oregon, the medical practitioner, nurse practitioner or registered nurse in administering the poison to cause the death of a person would then be guilty of an offence against section 27 of the Crimes Act 1900; namely, doing an act to a person with intent to murder that person. That section reads in part:

Whosoever—
administers to, or causes to be taken by, any person any poison ...

with intent in any such case to commit murder, shall be liable to imprisonment for 25 years.

However, clause 138 of the bill would provide complete immunity from prosecution for murder or attempted murder and from prosecution for aiding murder for the medical practitioner, nurse practitioner or registered nurse who administers the poison, the witness to an act of practitioner administration, the medical practitioner who prescribes the poison, the pharmacist who provides the poison and the public servant who issues an authority for the prescription of the poison for the purpose of being administered to the person in order to cause that person's death. We should think very, very carefully before creating exceptions to the law on murder.

I turn now to a consideration of the second mechanism for causing a person's death that would be authorised by the bill, namely, the self-administration of a prescribed poison in a sufficient dose to cause the death of the person. Section 31C of the Crimes Act prohibits aiding, abetting, inciting or counselling another person to commit suicide. The bill would provide immunity from prosecution for those offences. Clauses 124 and 125 would create new offences of inducing a person to make a request for or to self-administer a poison in order to cause a person's death but limits the offence to instances where the inducement is done by dishonesty, pressure or duress. Pressure or distress is defined in the dictionary of the bill to mean abuse, coercion, intimidation, threats and undue influence. That still leaves a wide scope for making suggestions, including planting the idea in the head of a person who otherwise would never have considered the course of action.

I turn now to the immunity given to persons whose actions would otherwise be considered as offences of aiding or abetting suicide. Carving out such significant and broad exceptions as has been described for the person who is preparing the poison, the contact person, the agent, the medical practitioner and others is a very, very serious matter. The onus is on those proposing these carve-outs to establish that this change to the law will not facilitate a single wrongful death. It is certain that the bill will ensure that only a very small number of people who would otherwise die a horrible death and in terrible pain that cannot be relieved, who could not be helped in any other way and who with full decision-making capacity, fully informed consent and full voluntariness request to have their death caused by either self- or practitioner-administered poison will be the only people to have their death caused by a poison prescribed under the provisions of the bill. Is that something that we all in this place can absolutely guarantee? I do not believe that we can. The proponents of the bill need to establish this beyond a reasonable doubt and that has not been done.

I turn to some of the comments about the concerns of the bill. In Oregon a number of people indicated that they chose to go down this pathway of taking the poison to facilitate their speedy demise. However, they found that many people have lived well beyond the estimated six months cut-off time. We know that the law in Oregon has been in operation for 23 years. What is evidenced by data is that beyond a reasonable doubt, and not merely a balance of probabilities as to whether the doctors are prescribing someone this poison to end their life, is actually full of significant errors. [*Extension of time*]

Oregon's Death with Dignity Act provides that before prescribing a lethal substance, a doctor must first determine whether a person has a terminal disease and it is defined as a disease that will produce death in six months. That is a more stringent test to pass than the one in the bill we are debating today. Oregon, unlike most other jurisdictions, provides a range of data. That data shows that in 2018 one person ingested lethal medication for 807 days. That is two years and two and a half months after the initial request for the lethal prescription was made. That means this person lived four and a half times longer than the doctors predicted. The longest duration recorded between initial request and ingestion is 1,009 days, which is two years and nine months, or more than five and a half times longer than predicted. Evidently the prognosis in those cases was widely inaccurate.

Washington State's Death with Dignity Act, which was based on Oregon's act, came into operation in March 2009. However, the reports from Washington show that in each year between 5 per cent and 17 per cent of those who die after requesting a lethal dose do so more than 28 weeks later. In 2012 one person lived for 150 weeks, nearly three years after the initial request. These examples show that we are relying on doctors to determine, on their best ability, whether a person will die within six months. But evidence from other jurisdictions demonstrates that there are plenty of occasions where people have lived well beyond that date. If someone in this State or another State accesses poison to accelerate the death of a loved one and succeeds, we do not know whether that person could have lived well beyond six months. Jeanette Hall voted for this legislation in 2000. Once she was diagnosed with a terminal illness she wanted to take advantage of voluntary

assisted dying but her doctor dissuaded her, gave her hope through other solutions such as care and effective treatment and 21 years later she is still alive.

The question is: How many wrongful deaths from assisted suicide following a mistaken prognosis are too many? How many years of life will be needlessly thrown away under the reckless provisions of this death-facilitating bill? Imagine a law on capital punishment that allowed a person to be executed based on a balance of probabilities that the person was guilty. This bill allows a person to have their life ended by a lethal poison on the authorisation of a State-appointed bureaucrat based on the view of two medical practitioners, neither of whom is required to have any experience or qualification in the specified disease, illness or medical condition that supposedly on the balance of probabilities—51 to 49—will cause the death of the person within six months. That, as well as many other issues associated with this bill, demonstrates that it is fatally flawed and it is a bill that I cannot support.

On that note, I would like to make some personal reflections. This is an emotionally charged, difficult and sensitive issue that communities, politicians and leaders must face, debate, pay attention to and listen to. As a member of Parliament I have not actively gone out in my electorate to seek feedback from my community. On the contrary, I have remained silent about this matter. I wanted to test the waters by obtaining feedback from my electorate. Overwhelmingly, the unsolicited feedback that I received has been for me to oppose this legislation. A lot of the feedback was based on people's religious views, which is a fair and reasonable reason to reject this bill. As an individual representing my community I must also consider future citizens—young people and older people in this State.

In my role as Minister for Ageing under the former Liberal-Nationals Government I engaged with stakeholders and older people—not representatives of advocacy groups—and was frequently told that their children and family members were inheritance hungry. They were eager to get the inheritance so they could get on with their lives, buy their homes, et cetera—something that we cannot ignore. We cannot pretend that that will not be a factor if this legislation is passed. A number of other concerns and worrying features about this bill that cannot be adequately resolved include: that no-one will be unfairly influenced; that no-one will be coerced; and that doctors will be able to make perfect assessments and thereby ensure that the system will be without error, fault or problems.

If this bill becomes law it will put at risk the lives of people. As has been evidenced in Oregon, people are choosing this course of action because they are fearful of the loss of autonomy, loss of life, loss of enjoyment of life and pressures from family. Those are not sound reasons for them to opt for voluntary assisted dying. Oregon has had this law in place for decades and no doubt it began with an altruistic view, which is what we have today. If this bill is passed we will go down the slippery slope. For that reason I oppose the bill.