

VOLUNTARY ASSISTED DYING BILL

Second Reading

Adjourned debate on second reading.

(Continued from 2 December 2020.)

The Hon. S.G. WADE (Minister for Health and Wellbeing) (17:42): I rise to speak on the Voluntary Assisted Dying Bill 2020. I advise the council that this bill is a conscience vote for government members and accordingly I speak for myself alone. I have not supported any of the euthanasia bills that have come before the parliament since I was appointed to the Legislative Council in 2006. While I will be supporting the second reading of this bill I will consider my position on the third reading after the completion of the committee stage.

I do not come to the bill with a fundamental opposition to euthanasia. I would describe myself as a person who is conservative on euthanasia rather than a person who is opposed to euthanasia in principle. As a liberal, I accept the right of every individual to personal autonomy, including the right to make end-of-life decisions. While my Christian faith teaches me that euthanasia is not an option for me, in a pluralist society other people will hold differing views and should have the freedom to live their lives according to their values and their moral codes, as long as their actions do not cause harm to others.

Society, and each individual within it, has a strong interest in making sure that euthanasia does not become a cloak for murder. As a House of Lords Select Committee on Medical Ethics put it in 1994, 'Society's prohibition on intentional killing is the cornerstone of law and of social relationships.' The prohibition protects each of us impartially, embodying the belief that all are equal. By acts of omission and acts of commission people can already act to hasten their own death. People can already choose to do so by not taking food and drink, by not consenting to necessary medical treatment or by taking their own life by other means.

Voluntary assisted dying is fundamentally different because it involves the state allowing certain third parties to hasten death directly or indirectly without fear of action being taken against them. In considering this bill, we need to ask ourselves whether it is reasonable for a citizen to expect that the state will take active steps to support them to hasten death.

Of course, the key factor that turns assisted suicide or voluntary assisted dying into murder is the will of the person who dies as a result of the act. The first test for any euthanasia legislation is whether it provides strong confidence that medical assistance in dying will not be administered without the consent of the subject. Are we sure that the person who will die as a result of voluntary assisted dying wants to die? We also need to be sure that the intention is enduring. We want to protect people from transient desires. This bill puts in place a process that in my view provides sufficient assurance that the person's intention to terminate their life is clear, voluntary and enduring.

The desire also needs to be well founded. I do not consider that it is reasonable for a citizen to expect that the state will take active steps to support them to hasten their death in any and every circumstance. This bill says that the state will only provide voluntary assisted dying in the context of imminent death. The person needs to be in the last six to 12 months of a terminal illness. Previous bills put before the South Australian parliament have proposed too broad and subjective tests for eligibility. In my view the threshold in this bill is sufficiently clear and appropriately narrow.

Since the parliament last considered euthanasia legislation the context has fundamentally changed. If the Parliament of South Australia had passed previous bills, we would have been the first jurisdiction in Australia to have legislated for voluntary assisted dying. If we pass this bill, we are likely to be

joining four other states who are moving to legally allow voluntary assisted dying. Three of those states have already legislated, and Queensland is well advanced.

This changes the context of our deliberations, because we now need to consider issues of equity of access to health services. Not putting in place a voluntary assisted dying regime would deny South Australians access to a health service which is becoming available to a majority of Australians. Let me be clear that access is a factor; it is not determinative. In my view, it is better not to have access to a health service than to have access to the service under a flawed law.

The changed context—the wave of voluntary assisted dying legislation in a relatively short period—also gives our nation an unprecedented opportunity to establish nationally consistent legislation in a very sensitive area of health law. The voluntary assisted dying laws enacted or emerging in other states are very similar to each other, drawing in particular on Canadian legislation. They are so similar that I think it is fair to describe all of them as reflecting the Australian model.

The Australian model of voluntary assisted dying laws shares a number of core elements. The Queensland Law Reform Commission summarised those elements as follows:

- eligibility requirements that limit access to competent adults with a diagnosed disease, illness or medical condition that is advanced and progressive, will cause death and involves intolerable suffering;
- limitations on access to voluntary assisted dying based on the adults' voluntary and enduring requests;
- independent assessments of eligibility by two suitably qualified and experienced medical practitioners;
- the right of conscientious objections by health practitioners;
- providing for self-administration of a voluntary assisted dying substance or, in limited circumstances, administration by a medical practitioner;
- oversight provisions including reporting obligations, monitoring by a review board and tribunal review of certain decisions; and
- a period after enactment but before commencement of the legislation to prepare for implementation.

I think it is helpful for patients, for clinicians and for regulatory bodies if the laws in an area of law such as this are similar across Australian jurisdictions. Consistency would support access, it would support quality and safe practice and it would reduce the pressure for what is sometimes called medical tourism.

I support South Australia joining our sister states in enacting the Australian model of voluntary assisted dying. In that context, I want to be clear on my general stance in relation to amendments. I think that the basic framework of the bill is sound and should be supported. I think there is significant value in national consistency of voluntary assisted dying legislation.

Accordingly, I indicate to the council that I will only support amendments to the bill that do not undermine close national consistency, and I will not support the third reading of the bill if the bill is amended in committee in a way that does not maintain close national consistency. The sponsors of this bill may well get majority support for this bill without my support, but they should be in no doubt that I will not support the bill at the third reading if significant changes are made.

Within the Australian model, different jurisdictions have made different calls on what I would call secondary issues, for example, whether to allow the use of telehealth. I am willing to consider amendments on secondary issues, but I am not willing to consider amendments that amend the primary elements of the model. Further, I am open to amendments that adjust the Australian model for the South Australian context. As the Queensland Law Reform Commission put it:

Caution is required in drawing comparisons and guidance from legislation adopted in jurisdictions with different legal and health care systems.

It goes on to state:

It is also important to ensure that the draft legislation is well adapted to Queensland's specific needs.

That statement is just as true of South Australia. One area where I think the bill does need to be adapted is to clarify the relationship between restorative care, palliative care and assisted dying. In particular, this is important in South Australia. In my view, we have superior legislation supporting consent to medical treatment and palliative care, and I would not want this bill to undermine that law.

If I could beg the forbearance of the council, I would like to quote a relatively large section of the recent University of Tasmania report that addressed the legal status of the double effect principle arising in palliative care. The report stated:

Elsewhere in this report (Section 6.6), consideration has been given to the provision of palliative care in Australia and its relationship with VAD. For the purposes of this analysis, the focus is on the legal status of the doctrine of double effect in Australia with the aim of differentiating this from VAD.

The doctrine of double effect, which had its origins in moral theology, recognises that palliative medication administered to a patient with the intention of relieving pain and symptoms will be lawful even if that will have the unintended effect of hastening the patient's death.

Central to this doctrine is the focus on intention: provided the primary intention is to relieve pain and symptoms rather than to cause death, the doctrine holds that the medical practitioner or other authorised person administering palliative medication will not be criminally liable even where death was foreseen.

Based on the circumstances of the cases where this doctrine has been relied on, it is generally understood that the doctrine of double effect only applies to a person who is near death.

Palliative medication administered to a patient with the intention of relieving pain but which may hasten death is an accepted part of medical practice.

It is important that this is clearly differentiated from VAD, which involves the intentional assistance to bring about death at the request of the patient.

The critical distinction is intention; for palliative medication, the intention of the medical practitioner is to relieve pain, not to cause death. The consent of the patient is not a prerequisite; indeed, the patient may not be in a position to consent. VAD, by contrast, involves the deliberate and intentional bringing about of the death of the patient at the patient's clear and explicit request further to the detailed substantive and procedural legislative requirements.

Whilst the doctrine of double effect is supported by case law in the UK (Adams Case) and other common law jurisdictions, there is no Australian authority directly on this issue. However, South Australia, Queensland and Western Australia have legislated to clarify the law in this area, providing that authorised persons who provide palliative medication will not be criminally liable provided that certain criteria specified in the legislation are met. Under the legislation of Queensland and Western Australia the palliative medication must have been provided in good faith, with reasonable skill and care, and be reasonable having regard to the person's state at the time and in the circumstances of the case (Criminal Code (Qld) s282A; Criminal Code (WA) s259). The South Australian legislation requires additionally that the person is in the terminal phase of a terminal illness and that the palliative medication is administered with the consent of the person or their representative (Consent to Medical Treatment and Palliative Care Act 1995 (SA) s17).

Further, the University of Tasmania report states:

In conclusion, even though practices that constitute this double effect and VAD are distinctly different, perhaps because of this very difference, legislation could be considered to clarify the double effect issue.

I advise the council that I intend to develop a set of amendments to seek to support the integrity of palliative care by differentiating it from assisted dying and protecting South Australia's laws on double effect. Current health law and practice, in particular in palliative care, in my view would benefit from enhanced clarity. Clinicians, patients and their families often conflate palliative care, double effect and euthanasia. This bill may also provide an opportunity to provide clarity. I also indicate that I am yet to consider possible further amendments.

I must admit that I am uncomfortable that this bill has not been the subject of detailed legal analysis in South Australia. Tasmania recently released the report commissioned by the University of Tasmania

before they legislated. Queensland has commissioned a report from the Queensland Law Reform Commission, which is due to be finalised by 10 May. I would prefer that the committee stage of this bill did not progress until the QLRC report is available, but I will not be insisting on that. In conclusion, I reiterate that I will be supporting the second reading, I look forward to the committee stage of the bill, and I reserve my position on the third reading.

The Hon. I.K. HUNTER (17:57): I rise tonight to speak to the Voluntary Assisted Dying Bill. As with previous such bills, this is a matter of conscience for Labor members of this place. This bill represents, I think, perhaps the 17th attempt to have parliament allow voluntary assisted dying in certain circumstances. I have supported legislation for voluntary assisted dying each time it has come before the Legislative Council since I was first elected to this place in 2006—I think perhaps four or perhaps even five times—so it will surprise no-one here then to know that I will be supporting this bill as well.

In past debates, some members of parliament have expressed concerns about previous bills in regard to the lack of safeguards, or their view of sufficient safeguards, in various iterations of the legislation that has appeared before us. Concerns about misuse of the scheme have outweighed the community desire to allow death with dignity in the minds of many members over many years. That is why I would particularly like to acknowledge the Hon. Kyam Maher and the Hon. Mark Parnell for their approach in this bill. I understand that the bill before us is an almost direct translation of the successful Victorian legislation, which has been in operation in that state since 2019.

That scheme was described by Victorian Premier, Dan Andrews, as 'the safest and most conservative scheme in the world'. Whilst I am not often one to jump at supporting conservative approaches to anything, it is clear to me that the Victorian model is the one that perhaps may allow legislators in this place, and the other place as well, to adopt dignity in dying legislation, which we have not been able to do in the past. Certainly, we have passed it in this place, but it has fallen very narrowly in the other place.

I hope the approach adopted in this bill will get us over the line in the lower house. It will enable enough legislators to accept that we can allow people the dignity of choice in dying to alleviate extraordinary suffering at the end of life safely and with medical supervision and safeguarded by the law. This is a scheme that members of parliament and the wider community can have some confidence in. It has extensive safeguards, as I outlined. They include:

- the requirement that a person take it upon themselves to ask their doctor about voluntary assisted dying rather than having it offered;
- the requirement for assessment by two doctors to ensure a person meets the criteria for access to voluntary assisted dying;
- provisions that make clear that a person's request must be clear and unambiguous;
- that records be kept of that request and that a range of information must be given to the person about all of their end of life options; and
- a minimum time frame of at least nine days between the first request and the actual provision of a voluntary substance, unless a person's life expectancy is less than nine days.

This is a safe scheme. It is one that operates in Victoria well. It has been reviewed in Victoria and found to operate within the parameters that were set for it in the legislation. It has protections against coercion and misuse and, most importantly, it offers people dignity and choice when facing the end of their life, often in unimaginable, painful circumstances. For those reasons, I will be supporting this bill.

The Hon. I. PNEVMATIKOS (18:01): I thank the Hon. Kyam Maher and the Hon. Mark Parnell for their continued work on voluntary assisted dying legislation and their advocacy on this issue. This is the 17th time legislation on voluntary assisted dying has come before this parliament. Fitting with our state's slow rate of dealing with social and human rights, South Australian laws have fallen behind and we have again failed to address the public's interest in this issue.

Over 80 per cent of South Australians agree that voluntary assisted dying should be legalised in South Australia. There is a nationwide call for voluntary assisted dying to be addressed. In 2017, the Victorian government was the first jurisdiction to pass legislation enabling voluntary assisted dying. Western Australia was next in 2019. Tasmania has followed suit in the last couple of months. In fact, the South Australian Voluntary Assisted Dying Bill is based upon the Victorian model of legislation. We are also aware that New South Wales and Queensland currently have active legislation on voluntary assisted dying.

The Joint Committee on End of Life Choices, established in 2019, was able to provide a thorough review of the Victorian legislation and analyse how implementation in South Australia could be done. Over 120 individual submissions and dozens of witnesses gave evidence to the committee. As to be expected, a range of views were given to the committee. Some were personal stories and views on the issue, others were considered, research-based evidence. No matter how protective or restrictive certain schemes were, some people who appeared before the committee were just opposed to voluntary assisted dying altogether.

Perhaps two of the most compelling submissions given to the committee were by the South Australia Police and the Coroner's office. Both wrote in support of voluntary assisted dying legislation. In January 2019 alone, 10 people took their own life as a result of a terminal illness. Of these deaths, many were in undignified circumstances, violent and often committed in isolation, which on occasion results in the death not becoming known to others for some time.

SAPOL acknowledges that VAD legislation will not provide for every circumstance, but to many individuals it would provide a dignified end to life. Around 10 per cent of suicides attended by first responders are of people who have chosen to take their own life because they are facing a terminal illness. This bill goes beyond giving a compassionate option to the person with a terminal illness but also affects first responders and families and friends, who are all connected to the person.

The committee also took evidence from multiple health professionals. Some of those health professionals practised in Victoria and regarded the Victorian model as restrictive, and worldwide considered to contain the most checks and balances. As stipulated within the Victorian legislation, the Victorian Voluntary Assisted Dying Review Board reviews systems and practices of VAD and releases public reports every six months. The board is currently overseen by former Supreme Court Justice, Betty King, and she has just handed down her third report. Each case satisfied the legislation, and there was no evidence that VAD had been used for other than the purpose of ending one's life with dignity.

I note that the Hon. Stephen Wade has indicated he will be proposing amendments to the bill. I look forward to his contribution and to considering matters further. As this is a conscience vote, members will be compelled by their own experiences to shape their decision-making on this bill. Just as critical is the need for members to heed the views of their electorates. I support this bill in its totality and commit to voicing the views of 90 per cent of South Australians.

Contrary to some of the arguments that we have already heard, and heard before, this bill is not a bill to hasten death but a bill to alleviate the suffering of people who are in pain and whose death is imminent; they are already dying. There is no question that this is a serious issue, and this bill provides choice and relief for seriously and terminally ill citizens. However, it is not an obvious decision to make voluntary assisted dying legal in this state and, most importantly, to provide choice to those members in our community who are needlessly suffering at the end of their life with a terminal illness.

The Hon. J.E. HANSON (18:06): I am not normally a person who likes to speak on social bills. I like to keep my thinking, where there is a conscience vote, to myself, because I am granted that ability. I want to speak here because I do not like this bill, and the reason I do not like the bill I will elaborate on in a minute. I appreciate that in here, commonly, there is the idea of political compromise, because that is sometimes how you get things done. What colours my dislike of this bill is that it seems exactly that, and a few speakers have gone to that already.

With a lot of people that I have spoken to about this bill there is a common concept that comes up that is pretty critical, which is time. Any person you have ever dealt with who is looking at ending their life is concerned about time, either not having enough or wanting to have a whole bunch less. More than that, all critical responders talk about time: nurses, doctors, ambulance drivers talk about how much time they think someone has left. They talk about doing no harm, because they are worried about how much time a person has left. Family members of people who are considering ending their life understandably talk about the amount of time they have left with their loved one.

What bothers me in regard to this bill is the political compromise we have done around time. The best bill, according to people who are undoubtedly pro having a VAD option, would have empowerment and control shifting to the patient and, in an ideal world, there would not be time limits around a person choosing to end their life, because wanting to initiate a process should not have an artificial time frame on it. I understand we are not going to get that bill through, but having an artificial time frame that is so limited to six months for the vast majority of people is something I am having a lot of trouble accepting.

Equally, there is the argument that has been put by many to me around the elephant in the room that is palliative care. We are not making a bill on palliative care, and we cannot bind future governments—I get that too—because the spending on palliative care, I think everyone is acknowledging, is inadequate in regard to the problem.

Some people have remarked to me that essentially palliative care does not have all the answers. I agree with that, but a better palliative care system surely should be something that we can at least be working towards in regard to this bill. In thinking about that, I do not see enough measures within this bill that are at least creating push-pull mechanisms to achieve that.

Not wanting the majority of people to be made vulnerable at the expense of the minority is an argument that has been put to me for voting down this bill. I want to be clear in saying that I do not accept that argument. I would love to see more options provided to those who are looking at a situation where the pain is intolerable and their illness is terminal. I remain unconvinced that this bill will achieve that, so I am going to spend a bit of time listening to the debate in the committee stage around that and, indeed, some of the amendments that are going to be put.

If you want to avail yourself of the withdrawal of treatment, you can now. That is something I do accept. Whether that is providing good medical care I think is something that maybe puts too much pressure on emergency responders and the existing systems that we have, and I think that is unfair.

I also have a problem somewhat with the conscientious objector provisions. I worry that we are creating something of a war within a profession, where some will engage with those provisions in a world where that may be detrimental to them. I worry that some may seek employment where they may not then agree with their colleagues about decisions that they have to make. I am not a doctor, I do not live in that world, but I do worry about that. I have not had enough evidence provided to me by those that I have spoken to that the conscientious objector provisions will not create that problem.

I would like to see everybody have more time. The reason why I think that is an ideological one. We have a problem in our society around death. That problem is a cultural one. Families do not enjoy talking about it with other family members. When there is a particularly painful death in the family, it can be very hard to talk about with even those people who arguably you spend most of your life with, your work colleagues, or even sometimes the medical professionals who are treating your loved one. We also have a problem with it culturally, and I mean that in terms of the multicultural society we live in. Different cultures do have different approaches to death and how they deal with it.

I think there is overwhelming support for euthanasia in our society. I think there is overwhelming support for a bill like this, but I think people want a bill that is going to deliver the kind of result that they overwhelmingly support. I again go back to the concept of time: I do not know that six months achieves that. I worry about the ability of having enough doctors within the system and who are going

to sign on to that system, as well as, indeed, they had that problem somewhat in Victoria, albeit that is now solved.

I worry about families not having enough time with someone who wants to initiate that process at six months to discuss that with them. I have concerns around the time frame. I have concerns around the conscientious objector provisions. I guess I will find out during the debate if those can be somewhat resolved for me, and I look forward to them being so. I am not against having solutions for what is clearly a problem in our society, but I want them to actually work when we put a bill in and not just have a political compromise that delivers a result for not all people.

I underline again that I do not believe in the concept that the majority is made more vulnerable at the expense of a minority. I do not believe that is a legitimate concept. I do not think the system we have in place now is achieving the best result for anyone in it, but I want to see it replaced with something that does achieve a good result for everyone in it.

The Hon. T.A. FRANKS (18:16): I rise to support this bill. It will come as no surprise that the Greens support voluntary assisted dying legislation as a party position. We have the chance here to ensure that people are able to make their own choices with dignity in their final days. Stories of family, friends or loved ones who are slowly fading away in a hospital bed or a nursing home with no other option but to just wait are absolutely heartbreaking and far too common. I believe each and every one of us would have our own stories to share. With these pieces of legislation, I always recall my grandfather.

As this is the 17th occasion voluntary assisted dying has come before this parliament, I believe, in the last 25 years, it is an issue that this place has grappled with for some time now. It is far from a simple issue with a simple answer. We have seen in Victoria that this is something that can be implemented effectively and compassionately.

The latest report from the Voluntary Assisted Dying Review Board released in August 2020 states that since June 2019, when the act commenced, there have been 348 people assessed for eligibility, and of that 272 were eligible; 231 permits were issued and 124 people voluntarily died from taking the prescribed medication. It was found that four out of five of those who took the medication were suffering from terminal cancer, and the average age was 71, although ages of course ranged from, I believe, 32 to 100.

There has been only one case that was found to be noncompliant with the Victorian act, which resulted from a failure to comply with a procedural matter and was not an issue of eligibility. As with the bill before us, the Victorian act does have a lot of safeguards, which are certainly necessary to try to avoid abuse of the system as much as possible.

However, a consequence of this is that the scheme is much easier to access if one lives in a metropolitan area. This is because having greater access to medical services ensures that one is able to more easily fulfil the more than 60 requirements within the set time frame—much easier. Only 38 per cent of the 348 applicants under the Victorian act lived in a regional or rural area, and it is accepted that the bill before us will likely have similar consequences.

The mover, the Hon. Kyam Maher, has described it as 'one of those balancing acts'. Whilst it is no doubt important to have these safeguards in place, we must also ensure that this service is equally accessible to all South Australians. Every South Australian deserves the chance to die peacefully and with dignity if they so choose, regardless of where they may reside.

As we debate this legislation I want to pay tribute to my former colleague and a former Victorian Greens MP, Colleen Hartland. She was the one who introduced the first voluntary assisted dying legislation in Victoria as a private member's bill in 2008, and she has tirelessly campaigned for it since. Indeed, Colleen and I listened to the broadcast of the previous debate in the other place as it reached that very disappointing vote in the House of Assembly.

She put in such hard work leading the debate in Victoria, which has of course led to the bill we have before us now and to the breakthrough in Victoria. In one of her many speeches on this issue she highlighted that on more than 30 occasions where voluntary assisted dying had been discussed across Australia—back then, when she made her speech—it had overwhelmingly been the Greens party of that jurisdiction behind those bills.

I would like to thank my colleague the Hon. Mark Parnell for co-introducing this bill and for previously speaking to it in the chamber and to previous bills. I am proud to be part of a party that has co-sponsored this bill and long supported the issue in many other jurisdictions. Voluntary assisted dying forces us to think about something unpleasant and complex that may make us uncomfortable, but our communities have shown their overwhelming support for this issue and I believe it is time we listened.

I have received thousands of pieces of correspondence, and I want to let them know that I am listening. There are three I wish to remark upon, and share not just with the council but also with the community, that have particularly affected me. One is from an aged-care worker in a local aged-care facility. That person wrote to me that they had seen many people suffer a painful, slow and undignified death. They said:

The pain is not the hardest part of it. It's the person who is suffering and wishes they could have a choice of how they leave this world. Nobody likes hearing 'it took so and so two weeks to pass away even though they were end-of-life.' I have had residents who have just laid there in bed for months on end unable to move, communicate and eat. The fact is, if you are bedridden at the end of your life you will not be showered, your hair will be washed in a shower cap, your food will be minced and your fluids thickened. There is no dignity, pride or joy.

Another that struck me read:

I am an ex-Catholic nun who has been diagnosed with a terminal bowel disease in 2020.

This person went on to say:

For me it's when I'm still of sound mind but in palliative care, that I want to choose to die, before my bowel explodes within me and I'm vomiting up my own faeces, causing me to be in excruciating pain. I do not wish to be under palliative sedation, dehydrated nor starved to death. I wish to be at peace and say goodbye to my family without trauma to them and to myself.

She goes on to say:

I believe that I'm dying anyway, and that God would not want to see me or anyone else for that matter die such an intolerable death. It isn't suicide or killing, it's dying at a time when its most dignified, respectful and it's of my choosing.

I thank her for her correspondence. Finally, there is one particularly sardonic piece of correspondence by somebody who is known very closely by myself and the Hon. Mark Parnell. Indeed, he is a member of the Greens family. He wrote to us:

...a year ago I was a perfectly healthy, gainfully employed, lapsed Catholic 44-year-old man.

Until that fateful day when I told my wife, 'I don't feel well', which turned out to be a golf ball-sized tumour in my brain that can't be removed. So, finding out you're terminally ill, not as much fun as it sounds. I sit through chemo every month to try to keep me alive. Chemo, also not as much fun as people said it would be.

Eventually soon I'll be dead. That's okay, happens to everyone. Morbid sure, but I'll be damned if I don't go out on my terms. No way in hell am I making my wife watch me wither into nothing where I can't feed myself or go to the bathroom, [expletive] that. So please support this bill.

To him I say, 'I will,' and to the chamber I commend the bill.

Debate adjourned on motion of Hon. C.M. Scriven.

At 18:26 the council adjourned until Thursday 18 March 2021 at 14:15.