

HOUSE OF ASSEMBLY

Thursday, 11 February 2016

The SPEAKER (Hon. M.J. Atkinson) took the chair at 10:30 and read prayers.

The SPEAKER: At last, a minister. It would be a pity to start proceedings without a minister, as is traditional, but we have one now.

Bills

VOLUNTARY EUTHANASIA BILL

Introduction and First Reading

The Hon. S.W. KEY (Ashford) (10:32): Obtained leave and introduced a bill for an act to provide for choices at the end of life. Read a first time.

Second Reading

The Hon. S.W. KEY (Ashford) (10:32): I move:

That this bill be now read a second time.

I am pleased to introduce today the Voluntary Euthanasia Bill 2016, an act to provide choices for the end of life. As members know, I have been a longstanding supporter of people having the right to choose a dignified death and, as a member of parliament, I feel privileged to be in a position where I can contribute to creating a more equal and humane society, one based on values of fairness and justice where we can take measures to reduce suffering.

The Voluntary Euthanasia Bill 2016 is aimed at reducing suffering at the end of life. Every clause in this bill has been written with that overarching objective in mind—how we can reduce the suffering experienced by people at the end of their life when all other efforts to cure an illness, relieve symptoms, make daily life more bearable have been tried, when there are no more acceptable interventions available to the person and their only option is more suffering until death finally arrives.

Then, I believe we, as members of parliament, have an obligation to enact a law that allows people to say, 'Enough is enough, please end my suffering now.' My analysis of the data from other jurisdictions indicates that possibly 20 or 30 South Australians a year may be in such a position, making a request for assistance to end suffering. Since I introduced the bill last time to enable legal voluntary euthanasia, the Criminal Law Consolidation (Medical Defences—End of Life Arrangements) Amendment Bill 2011, with the Hon. Mark Parnell, Legislative Council, more jurisdictions around the world have passed legislation and courts have made judgements to allow voluntary euthanasia. I just wanted to also bring to the attention of the house an email I received on Monday from a constituent from the electorate of Schubert, 'LG'. What she says is:

Dear Steph,

I am a member of SAVES, and I have received notification of your presentation of

your new VE Bill in the House of Assembly this coming Thursday February 11th.

If I were able, I would be present at Parliament House, together with other members of SAVES, to support you in this endeavour. I am aged 71 and I was diagnosed two years ago with Adenoid Cystic Carcinoma. It is slow growing, but invasive and terminal. I could have another operation when it reappears, together with radiation, but treatment can be pretty brutal too, so the alternative would seem that I must endure another form of seemingly endless suffering to which I would not subject even my dog or my cat.

I am aware that patients in palliative care may be given morphine as required to alleviate pain, but in advance cases sufficient doses induces patients into a state of semi consciousness until they eventually die. It is vital, under appropriate legislation as practised in several other enlightened countries, that our Doctors be given the right to end a torturous 'life' to come to an earlier, dignified end.

Thank you for your care and concern, and best wishes in your endeavour.

Kind regards,

L...G...

I quoted that email because I receive these type of emails, letters and representations from people all the time who get why this is an important piece of legislation. I have done a lot of work over the years and there are many examples I can give, but I know the other members in this house who support the legislation will make this available to members. We have been very lucky in this house to have on a regular basis a joint newsletter from the many voluntary euthanasia groups. I refer members to those newsletters because I think they adequately cover what is happening in this area.

The central core of this Voluntary Euthanasia Bill is an acknowledgement that, when suffering by a person becomes unbearable and the doctor's conclusion is that prognosis is hopeless, a person can request assistance from that same doctor to end their life. The words 'unbearable' and 'hopeless' have a particular meaning in the context of this bill. The words 'unbearable' and 'hopeless' are central to the understanding of the Voluntary Euthanasia Bill and to its eventual administration. In the bill, 'unbearable' means the person has determined that their suffering is no longer bearable to them. Only the person seeking assistance to die can make the determination of what is unbearable and what is bearable. I believe no other person can decide when a person's life is unbearable. No other person can decide when a person's life is bearable.

In the bill, 'hopeless' means the attending doctors can find no further treatment options which could potentially relieve the person's suffering and which would be acceptable to the person. We all know that treatment options have side effects. The person may decide that the likely side effects of a treatment option is unacceptable, that the quality of life associated with the treatment is not acceptable, that the risks associated with a treatment are not acceptable, and that there is insufficient assurance that the treatment will relieve the suffering and provide an acceptable quality of life for a meaningful extension of time.

Under the provisions of this bill, when a person decides that their suffering is both unbearable and hopeless, and providing they meet the stringent criteria detailed in the bill, they would then be able to make a request for voluntary euthanasia. These criteria are:

1. The person determines that their suffering is both unbearable and hopeless, as

- defined in the bill.
2. The person makes a request for voluntary euthanasia using the prescribed form.
 3. The request is witnessed by an adult person who is not a medical practitioner involved in the request, nor a direct beneficiary of the person's estate, and not the owner or operator or employee of the residential facility where the person lives.
 4. The attending doctor and a second doctor confirm that there are no other further treatment options acceptable to the person.
 5. Both doctors confirm that, at the time of making the request, the person is able to understand the information presented about their medical condition, treatment options and the risks associated with voluntary euthanasia.
 6. Both doctors confirm that the person is not acting under any form of duress.
 7. Both doctors confirm that the person making the request is of sound mind and, if there is any doubt, the person is referred for a psychiatric report.
 8. A delay of 48 hours is required from when the person and the first doctor complete the request procedure before voluntary euthanasia can take place.
 9. The request may be revoked at any time.
 10. A person who assists a person either with euthanasia or self administration provides a report to the Coroner.

The person seeking euthanasia must be an adult and must have been a resident in South Australia for at least six months. The request can be made with the assistance of interpreters, audio-visual aids or orally, as needed by the requesting person, with the appropriate documentation, recordings and witnesses.

An insurer cannot refuse to make payment under a life insurance policy on the ground that the death resulted from voluntary euthanasia, nor can the insurer ask whether there was a request for voluntary euthanasia. No doctor or nurse, or anyone else, would be required to participate in a request for voluntary euthanasia.

The bill makes provision for a hospital, hospice, residential facility or nursing home to refuse to allow the administration of voluntary euthanasia within the facility but must make this information known to the person before admission. If this information is not made known to the resident then, if requested by that resident, the facility must arrange for the transfer of the person to an institution which permits voluntary euthanasia under the terms of the bill.

The safety procedures built into the Voluntary Euthanasia Bill have been established following a rigorous review of the law and practice in other jurisdictions. The evidence is overwhelming from all the jurisdictions that the choice of voluntary euthanasia is made after long and careful consideration by the requesting person. There is no evidence that the person requesting voluntary euthanasia has done so on a whim. There is no evidence from any jurisdictions that voluntary euthanasia laws are being used maliciously either by citizens or by the medical profession.

As you know, Deputy Speaker, I am a strong advocate in this place of advance care directives reforms which came into place in July 2013. Planning for the end of life is, to me, as important as planning any other aspects of your life. I must say, this view is reinforced by the number of constituents who come into our electorate office and, I am sure, other members' offices as well.

No-one can know when this will happen or, indeed, if it will happen, but the evidence of those jurisdictions overseas where voluntary euthanasia is available is that

the knowledge that there is a legal option at the end of your life, if it becomes unbearable, is of enormous comfort. For example, approximately one-third of people in Oregon who obtain a prescription for the end-of-life drugs never use that prescription but knowing they have it available makes their final days much more bearable. As I said, I have many examples to emphasise my point but I will just refer to a couple in the remaining time that I have.

Emeritus Professor Ian Maddocks, Australia's first professor of palliative care, former Senior Australian of the Year and resident of North Brighton, writing recently in *The Monthly*, outlined the case for a respectful consideration of voluntary euthanasia, for proponents of palliative care to join forces with advocates of assisted dying and, with mutual respect, ensuring enabling laws are delivered. Professor Maddocks particularly noted the need for 'compassionate consideration for those outside the setting of major disease and imminent death.'

At a public forum hosted by the South Australian Voluntary Euthanasia Society at the Hawke Centre last June, Dr Rob Jonquiere presented an extensive analysis of operation of the Dutch laws, including his experience as a treating doctor for a patient who requested euthanasia. Dr Jonquiere confirmed that there is no evidence of any monitoring reports or academic research from the Netherlands of a slippery slope or of vulnerable people being targeted by either the medical system or their friends and relatives.

At the same forum, the Hon. Marshall Perron, former chief minister of the Northern Territory, who in 1996 introduced the first euthanasia legislation in Australia into the Northern Territory Parliament, explained at length how moves to include more safeguards had the effect of making the law so complex and contradictory that it was unworkable. The safeguards in this bill are captured in the definitions 'unbearable' and 'hopeless' and their careful application to each request for voluntary euthanasia.

Before drafting the bill, I consulted widely with people in South Australia; with Christians, lawyers, doctors, nurses, people with disabilities and varying abilities, and young people, and many constituents across South Australia. I can say that the comments have been overwhelmingly supportive of this bill. I have explained to parliament on numerous occasions that in the 2012 Newspoll, 82 per cent of the population supported giving people the choice to end their life when their suffering had become unbearable and no further medical interventions were available to alleviate their suffering.

I invite members to consider this bill and its intent: to end needless suffering at the end of life when that life has become unbearable and hopeless. I urge members to show compassion when debating the bill. My conscience is very clear: I want to enable a compassionate response to unbearable and hopeless suffering. I am pleased to table this Voluntary Euthanasia Bill.

At this stage, because of the time, I seek leave to have the explanation of clauses inserted in Hansard without my reading it.

Leave granted.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause defines key terms used in the Bill.

4—Unbearable and hopeless suffering

This clause sets out what it means, for the purposes of the measure, to be subject to unbearable and hopeless suffering, which is one of the triggers enabling a person to make a request for voluntary euthanasia.

5—Impaired decision making capacity

This clause sets out what it means, for the purposes of the measure, to have impaired decision making capacity in respect of a decision to make a request for voluntary euthanasia, which would prevent a person from being able to make such a request.

6—Relationship to other Acts

This clause clarifies the relationship between this measure and other Acts and laws.

Part 2—Object and principles

7—Object

This clause sets out the object of this measure, namely to reform the law relating to voluntary euthanasia.

8—Principles

This clause sets out principles to be taken into account in relation to the operation of this measure.

Part 3—Voluntary euthanasia

Division 1—No offence to provide medical information about voluntary euthanasia

9—No offence to provide medical information about voluntary euthanasia

This clause provides that a person is not criminally or civilly liable simply because he or she provides information about voluntary euthanasia, or sells or supplies associated medical equipment. In particular, the clause removes the liability that may otherwise attach by virtue of the laws relating to aiding, abetting or counsel the suicide or attempted suicide of another (set out in section 13A of the Criminal Law Consolidation Act 1935).

Division 2—Making a request for voluntary euthanasia

10—Who may make a request for voluntary euthanasia?

This clause sets out the conditions that must be met before a person is eligible to make a request for voluntary euthanasia under the measure.

11—How to make a request for voluntary euthanasia

This clause sets out how an eligible person makes a request for voluntary euthanasia under the measure, and sets out related procedural matters. The clause also provides for the assistance of an interpreter or other person in cases where English is

not the first language of the person, or where the ability of the person to read or write or otherwise communicate is limited by illness or disability.

12—Preliminary examination and assessment by medical practitioner

This clause sets out the requirements in relation to the preliminary examination of a person wishing to make a request for voluntary euthanasia for the purposes of proposed section 11(2)(a). An examination must comply with these provisions to satisfy the requirement under that section.

13—Examination and assessment by second medical practitioner

This clause sets out the requirements in relation to an examination of a person wishing to make a request for voluntary euthanasia by a second medical practitioner for the purposes of proposed section 11(2)(b). An examination must comply with these provisions to satisfy the requirement under that section. The medical practitioner examining the person must provide a written report to the initial medical practitioner setting out the information specified in the clause.

14—Examination and assessment by psychiatrist

This clause sets out the requirements in relation to the a psychiatric examination of a person wishing to make a request for voluntary euthanasia. An examination must comply with these provisions to satisfy the requirement under that section. The psychiatrist examining the person must provide a written report to the initial medical practitioner setting out the information specified in the clause.

15—Requirements for witnessing request for voluntary euthanasia

This clause sets out the requirements that must be satisfied for a request for voluntary euthanasia to be properly witnessed for the purposes of the measure. The clause also sets out who cannot be a witness (for eg, a direct beneficiary of the person's estate).

16—Revocation of request for voluntary euthanasia

This clause provides that a request for voluntary euthanasia will be revoked if the person who made the request, by any means, indicates that he or she wishes to revoke the request.

17—Duration of request for voluntary euthanasia

This clause provides that a request for voluntary euthanasia has effect from the time the medical practitioner to whom the request is made completes the certification required under proposed section 11(5), and continues in force until revoked under the Act.

Division 3—Administration of voluntary euthanasia

18—Authorised methods of administering voluntary euthanasia

This clause limits the ways in which voluntary euthanasia can be administered to the administration, or self- administration, of drugs.

19—Administration of voluntary euthanasia by medical practitioner

This clause sets out when a medical practitioner can administer voluntary euthanasia to a person pursuant to a request under the measure. The medical practitioner need not be the one to whom the request was made. In particular, the clause sets out the conditions precedent to the administration of voluntary euthanasia.

20—Self-administration of voluntary euthanasia

This clause provides that a person may self-administer voluntary euthanasia if the conditions set out in the clause are satisfied.

21—Person etc may decline to administer or assist in administration of voluntary euthanasia

This clause provides, in general terms, that a person cannot be compelled to administer, or be involved in, voluntary euthanasia. The person does not suffer any legal prejudice for doing so.

However, the clause also provides that hospitals, hospices, nursing homes or other institutions caring for the sick or infirm that refuse to permit the administration of voluntary euthanasia within the institution must advise people before they are admitted to the institution of that fact.

22—Protection from liability

This clause limits the civil and criminal liability of persons (whether medical practitioners or others) who take part in the administration of voluntary euthanasia under the measure, including in respect of disciplinary proceedings.

23—Cause of death

This clause provides that, in the case where voluntary euthanasia is administered to a person pursuant to the measure, the cause of the person's death will be taken to be the underlying medical condition that is responsible for his or her suffering. Moreover, the death will not be considered homicide or suicide.

24—Report to State Coroner

This clause requires a medical practitioner who administers voluntary euthanasia to a person to make a report of that fact to the Coroner. A similar requirement applies to a medical practitioner to whom a request for voluntary euthanasia was made if he or she becomes aware that the person who made the request has self-administered voluntary euthanasia. The clause sets out what must be included with the report.

Part 4—Offences etc

25—Undue influence etc

This clause creates an offence for a person to use dishonesty or undue influence to induce another to make a request for voluntary euthanasia. The maximum penalty is 10 years imprisonment.

26—False or misleading statements

This clause creates an offence for a person to make a false or misleading statement in relation to a request for voluntary euthanasia. The maximum penalty is 10 years imprisonment.

27—Certain persons to forfeit interest in estate

This clause allows a court that convicts or finds a person guilty of an offence against proposed section 25 or 26 to also order that any interest that the person might otherwise have had in the estate of the person who made the relevant request for voluntary euthanasia is forfeit.

Part 5—Miscellaneous

28—Insurance

This clause prevents insurers from refusing to make certain payments following the administration of voluntary euthanasia under the measure. It also clarifies that a person is not required to disclose to insurers that he or she has made a request for voluntary euthanasia. An insurer who requires a person to disclose a request commits an offence.

29—Victimisation

This clause sets out that a person who takes part in a request for, or the administration of, voluntary euthanasia (or refuses to do so) must not be victimised for doing so, and sets out the remedies available for acts of victimisation.

30—Confidentiality

This clause is a standard confidentiality clause.

31—Annual report on operation of Act

This clause requires the Minister to report annually to Parliament in the operation of this measure during the previous financial year.

32—Regulations

This clause is a simple regulation making power.

Schedule 1—Related amendments and transitional provisions

Part 1—Preliminary

1—Amendment provisions

This clause is formal.

Part 2—Amendment of *Advance Care Directives Act 2013*

2—Amendment of section 12—Provisions that cannot be included in advance care directives

This clause makes consequential amendments to section 12 of the *Advance Care Directives Act 2013*.

Part 3—Amendment of *Consent to Medical Treatment and Palliative Care Act 1995*

3—Insertion of section 5

This clause inserts new section 5 into the *Consent to Medical Treatment and Palliative Care Act 1995*. The new section disapplies that Act in relation to the administration of voluntary euthanasia under this measure.

Debate adjourned on motion of Hon. T. R. Kenyon.