Voluntary Euthanasia Trial (Referendum) Bill.

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VOLUNTARY EUTHANASIA TRIAL (REFERENDUM) BILL

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Mr IAN COHEN [2.51 p.m.]: I move:

That leave be given to bring in a bill for an Act to provide for a referendum in relation to a legally and medically supervised trial of voluntary euthanasia for a period of 18 months.

Reverend the Hon. FRED NILE [2.52 p.m.]: Some years ago there was debate about whether a bill should come on if it was disagreed with. There has been a convention in the House that even if a bill is opposed the member is not obstructed from bringing on the bill, with leave, for its first reading. The member is then able to make his or her second reading speech. If there are objections to the bill, those objections can be expressed during the second reading debate.

Motion agreed to.

Bill introduced, read a first time and ordered to be printed.

Second Reading

Mr IAN COHEN [2.53 p.m.]: I move:

That this bill be now read a second time.

Honourable members would be well aware that some time ago in this House I introduced a bill that dealt with the rights of the terminally ill. The bill, which went through all the parliamentary processes, was defeated by the Parliament. I respect the Parliament's decision. Although the Voluntary Euthanasia Trial (Referendum) Bill deals with similar issues it is somewhat different from that earlier legislation. The Greens in New South Wales and throughout Australia strongly support the Voluntary Euthanasia Trial (Referendum) Bill, which will provide for the holding of a referendum. The overview of the bill clearly states:

The object of this Bill is to require the holding of a referendum to determine whether the people of New South Wales approve in principle of a legally and medically supervised trial of voluntary euthanasia for a period of 18 months.

The outline of provisions include:

Clause 3 requires a referendum to be held on the question of a legally and medically supervised trial of voluntary euthanasia for a period of 18 months.

Clause 4 sets out the question to be asked in the referendum.

Clause 5 requires the vote for the referendum to be taken in conjunction with the next general election of members of the Legislative Assembly and that the voters at the referendum are to be the persons entitled to vote at that election.

Clause 6 requires the referendum to be held in accordance with the Constitution Further Amendment (Referendum) Act 1930. Regulations may be made to adopt that legislation for the purposes of holding the referendum.

Clause 7 requires the Electoral Commissioner to publish a case for and against the referendum proposal (approved by certain members of Parliament) in 2 or more newspapers circulating in New South Wales.

This legislation is an appropriate measure. Many people have argued for citizen-initiated referendums [CIRs]. This legislation will not enable a citizen-initiated referendum; the referendum will be initiated by an elected member of Parliament. There is a great deal of support in the community for this type of referendum. It is seen as a sensible way of breaking a deadlock on an important and heartfelt issue throughout the community. Citizen-initiated referendums, which have a long history in Australia, were included in the first draft of the Australian Constitution but they were deleted, along with other clauses, so that consensus could be reached on the Constitution. Moves were made to introduce CIRs to most Australian States and to New Zealand in about 1916 and 1918. All those early efforts failed.

At different times CIRs have been supported by all the major Australian political parties, but when in power they have not legislated for it. Draft enabling legislation has recently been tabled in all State parliaments and in the Federal Parliament, but only the Canberra State Parliament has debated the issue. In local government the Burnie council and North Sydney Council have introduced CIRs on an informal, non-binding basis. In 1993 the residents of Gympie in Queensland opposed council on the issue of council amalgamation. An unofficial, unsanctioned and strongly debated referendum was organised, paid for and conducted by local citizens. Over 26 per cent of eligible voters took part, with 76 opposed to amalgamation. The referendum forced council to hold an official poll later that year. Over 90 per cent of electors voted and the result stopped amalgamations from taking place.

Direct democracy is possible in Australia, as the examples I have given clearly show. There is a keenness on the part of Opposition members to give local government issues proper ventilation. Should that same right not be applied to this issue? Many members will complain about the nature of this issue but when Jeff Shaw was Attorney General in this House he said that often the most testing examples made the best law. I abide by his statement. The Local Government Amendment (No Forced Amalgamations) Bill was introduced earlier today by the Deputy Leader of the Opposition. I believe that the argument that was used by him in relation to that bill can equally be used in relation to this bill. The holding of a referendum such as this is a logical next step in the devolution of power.

Power has gradually been devolved to the people over the last few centuries. The logical extension of that is for direct democracy, or CIRs. The history of democracy in the British and Australian political systems shows a clear trend for the devolution of power from the ruling elite to the people. The story begins in England in the eleventh century with the ascension to power of the Norman kings after the battle of Hastings. The Norman kings were an aggressive lot of monarchs who ruled England in something akin to a military dictatorship. Their feudal system relied on landowning barons to administer the land and collect taxes.

Gradually, these barons came to resent the arbitrariness of the monarch's rule and they made increasing demands to share in the powers of the king. That manifested itself in the signing of the Magna Carta in 1215. It was, in the words of one historian, "legalised rebellion". The Magna Carta limited royal rights and prevented the king from abusing the law in his favour. Throughout history that tension continued until the great struggle took place between the monarchs and the Parliament. Parliament eventually won and the resulting Bill of Rights guaranteed the supremacy of Parliament. At the Melbourne Constitutional Convention the then Attorney-General of Victoria, Sir Isaac Isaccs, said:

Since [1688], there has been a gradual but sure shifting of power from the Parliament to the people, and it was well said in the House of Commons some years ago that the people were tired of the deluge of debate, and were looking forward to the consultation of the constituencies. This is a tendency which we cannot resist.

The Greens are keen to have greater voter involvement in this issue. It would make governments more accountable to the people and certainly enliven our system of representative democracy. It could be said that one failing of our present system is that people tend to feel alienated from the decision-making process that impacts upon their daily lives. That is certainly true of this issue. People feel they get one chance every three or four years to be involved in the political process and sometimes the choices on offer are quite limited. A referendum gives people a chance to play

a far greater role in the process of government by offering a mechanism through which governments can be held to account for their faithfulness to their promises between elections. Theodore Roosevelt once said:

I believe in the Initiative and Referendum which should be used not to destroy representative government, but to correct it whenever it becomes misrepresentative.

The 1967 referendum sought to alter the Constitution by giving the Commonwealth the power to make laws with respect to Aboriginal people wherever they lived and to make it possible to include Aboriginal people in the national census. That question was passed overwhelmingly by the Australian people.

Many other countries have had referendums. For example, Liechtenstein, a small principality between Austria and Switzerland, knows and practises the three basic procedures of direct democracy—popular initiative, facultative referendum, and obligatory referendum—on a regular basis. Switzerland, a federal state in the heart of Europe, has the most varied, wide and comprehensive experience of citizen lawmaking of any country in the world. After Switzerland and Liechtenstein, Italy has the greatest practical experience of initiative and referendum [I and R]. Over the past 30 years 50 million Italians have put legal issues to the vote more than 50 times in so-called abrogative referendums, which are similar to popular initiatives.

The Republic of Slovenia, one of the new I and R countries in Europe, can subject all laws passed by Parliament to popular approval by means of facultative referendums. The situation is similar in Latvia. Irish citizens—many members in this place take an interest in Irish history—have the last word not only on questions of European integration but also on moral and institutional questions. France has a tradition of presenting important constitutional changes to the people, whose decision is binding. Before his re-election, President Chirac announced that he would promote the introduction of the popular initiative in his second term of office. Since the Revolution France has had a de facto street referendum, but this has been used only very selectively.

In 1999, 2002 and 2003 Reverend the Hon. Fred Nile tried to introduce the Constitution (CIR) Referendum Bill in this place. There is an obvious eagerness to democratise our society further. Others say that citizens-initiated referendums can be manipulated by those with much power and money who are able to advertise and promote their views in society. The parliamentary process could provide an opportunity to hold referendums, and my legislation would offer people the chance to vote on the heart-felt issue of euthanasia. Several members have asked me how I would vote on legislation that permitted a referendum on capital punishment. That is a fair call. It is a challenging question to which I gave serious thought and it is worth mentioning in the context of this debate, which is essentially about the right to hold referendums rather than about their subject matter. The capital punishment debate has raged for many decades. The issue was much ventilated in society until the States phased out capital punishment over time.

Reverend the Hon. Fred Nile: There was no referendum.

Mr IAN COHEN: No, but the issue was well ventilated. The people have never had their say about voluntary euthanasia. If the capital punishment issue again came to the fore, I would deal with it at that time. However, I believe the issue has been put to bed in Australia and the capital punishment argument is tangential to this debate. There have been many referendums in New South Wales and in Australia as a whole. There were referendums on the reform of the upper House in New South Wales and the separation of a New England State in the north of the State. The capital punishment debate has raged for more than a century and I believe it has been dealt with effectively.

Before the Northern Territory Parliament enacted legislation in this area euthanasia was barely discussed in public, although it was much practised in private. I believe it is appropriate to take the euthanasia debate a step further and consider the issue seriously. Euthanasia involves the rights of the individual and the changing nature of society. As I have said many times in this place, we respect those with certain religious convictions but we must also respect the many people in society who hold differing views. This year Dr Philip Nitschke participated in "The Life Debate" with Bishop Elect Reverend Professor Anthony Fisher at the University of Sydney. Dr Nitschke recounted how he had watched a debate on euthanasia in the Legislative Council, and said:

I watched three-quarters of the politicians of the Upper House of New South Wales parliament turn down what three-quarters of the people walking down Macquarie street wanted. Now why is this?

Dr Nitschke, I and many others in society believe it is appropriate that people follow their own

beliefs on contentious issues such as this. Euthanasia involves an individual's making a choice that will affect that individual; it does not involve criminal action against another person or the community. Those who support euthanasia have certain rights that they should be able to exercise at a critical time, particularly in an age when the process of dying is so elongated. Modern technology and drugs help people to live longer but often prolong and complicate the process of dying. That was not necessarily the case a few generations ago. I appreciate fully the views of those with strong religious convictions. Debates in this place can sometimes become heated but I have always said that while I may not share certain religious convictions I defend the right of people to hold and to express those convictions.

Therefore, I ask honourable members to consider whether they agree with the substantive issue in relation to voluntary euthanasia. They may see the need for a referendum to give the population an opportunity to make a judgment on what is effectively an 18-month trial. Voluntary euthanasia may be very radical but I believe it is practised every day in our society and in most societies throughout the world. The trial will be open, transparent, clear, properly educated and a significant step forward. If a referendum similar to the one conducted in Oregon is conducted here, people can make a choice. The media and people to whom I have spoken have prompted me to move the original bill because I know that this is a very vexed issue. However, with the right checks and balances, a humane society should make such an allowance for its citizenry if an individual wishes to end his or her life in a peaceful and painless manner when other methods of palliative care have failed.

There have been many debates in this House on this controversial topic. I ask honourable members to agree with my point of view, as it may be that the majority of the community believe that people with a terminal illness, who in many cases experience great pain and distress, should be able, as a fundamental human right, to make their own decisions about how to die. I believe that individuals have a right to make that decision, and accordingly, debate on this important matter should be re-instituted in the community between those for and against such legislation. Such a debate would present the ideal opportunity for people to argue their case with clarity and fortitude. Debate will heighten the public awareness of all the issues involved in voluntary euthanasia, and it will show whether the public is prepared to accept and assess an 18-month trial. I commend the bill to the House. I hope that honourable members will consider the issue with an open mind.

Debate adjourned on motion by the Hon. Peter Primrose.

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Speakers: Cohen, Mr Ian.

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