



Legislative Assembly

Legislation Review Amendment Bill

18/06/2002

Hansard

Extract

Second Reading

Mr WHELAN (Strathfield—Parliamentary Secretary) [5.20 p.m.]: I move:

That this bill be now read a second time.

In October last year the Legislative Council Standing Committee on Law and Justice tabled its report entitled "A New South Wales Bill of Rights". This bill is the Government's response to that report. The standing committee found that it is not in the public interest for New South Wales to have a bill of rights. The Government endorses that finding. As the Premier indicated in his submission to the standing committee's inquiry, a bill of rights transfers decisions on major policy issues from the Legislature to the judiciary. No right is absolute. Rights conflict. The right to free speech will conflict with the right to equality. The right to equality will, in turn, conflict with the right to freely exercise one's religion. A bill of rights could be interpreted only by balancing these rights and interests. This balancing should be done by an elected Parliament, and not by an unelected judiciary. As the standing committee found:

It is ultimately against the public interest for Parliament to hand over such decisions to an unelected Judiciary who are not directly accountable to the community for the consequences of their decisions.

Members of Parliament are ultimately responsible to the people for the decisions we make. The people elect us to make difficult decisions about balancing rights and interests. We should not shirk this responsibility, and nor should we put the judiciary in the position of having to make such decisions. The standing committee also found:

The Committee believes an increased politicisation of the Judiciary is an inevitable consequence of the introduction of a Bill of Rights.

A bill of rights would undermine parliamentary sovereignty, and the independence and quality of the judiciary. It would introduce widespread uncertainty in the law, and would encourage a litigation culture. The Government agrees with the standing committee that a bill of rights must be rejected. The standing committee recommended that the Parliament establish a scrutiny of legislation committee, similar to the Senate Scrutiny of Bills Committee. The standing committee recommended that the new committee should be a joint committee. It also recommended that the new committee should be separate from the Regulation Review Committee. The bill responds to this part of the standing committee's report. Accordingly, the bill proposes to establish a Legislation Review Committee to perform the role proposed by the standing committee.

The Government agrees with the standing committee that the protection of rights and liberties is the responsibility of the whole Parliament. Accordingly, the Legislation Review Committee will be a committee of both Houses. The Government does not agree with the standing committee's recommendation that the scrutiny of legislation committee should be separate from the Regulation Review Committee. The Government notes the standing committee's observation that the criteria for an effective scrutiny committee are already reflected in the way the Regulation Review Committee works. The standing committee recommended a separate committee to ensure that it could give sufficient attention to its task. The Government believes that the standing committee's concern about the Regulation Review Committee's workload can be addressed by the methods adopted in the bill. In particular, the membership of the committee will be expanded from eight members to 12 members. Also, if the Government's proposal is accepted, the Government is prepared to allocate additional funding to the renamed Regulation Review Committee to enable it to carry out this new function.

I now turn to the provisions of the bill. The bill renames the Regulation Review Act as the Legislation Review Act. It also renames the Regulation Review Committee as the Legislation Review Committee. These name changes reflect the proposed new role for the committee in reviewing bills, as well as its current role in reviewing regulations. The bill increases the number of members of the committee from eight members to 12 members. The bill provides for the committee to comprise five members of the Legislative Council and seven members of the Legislative Assembly, which is an increase of two members from each House. The quorum for meetings of the committee is increased from four members to six members. The bill will insert a new section 8A into the Act. This is the section that gives the committee its new functions in relation to bills. The committee will have the function of considering any bill introduced into Parliament and reporting to both Houses on the bill.

The committee will be required to report on whether a bill, by express words or otherwise, trespasses unduly on personal rights and liberties; makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers; makes rights, liberties or obligations unduly dependent upon non-reviewable decisions; inappropriately delegates legislative powers; or insufficiently subjects the exercise of legislative power to parliamentary scrutiny. These are the same matters on which the Senate Scrutiny of Bills Committee may report. New

section 8A will also make it clear that a House of Parliament may pass a bill whether or not the committee has reported on the bill. However, the section also makes it clear that the committee is not precluded from reporting on a bill because the bill has been passed by either House or has become an Act. These provisions are designed to permit flexibility in timing so that bills will not be delayed, but nor will the committee's consideration of a bill be curtailed.

I wish now to make some comments on the intended functioning of the committee. The committee is not intended to be a third House of Parliament. It is not intended to debate matters exhaustively. The committee's decisions will not be final or binding on Parliament. Rather, it is intended to provide a timely digest of brief advice to members on the matters within its jurisdiction. It should be flagging issues for members' attention, rather than attempting to duplicate parliamentary debate. Ultimately, whether a bill unduly trespasses on personal rights and liberties is a matter for Parliament and not for the committee. The committee will make a contribution to Parliament in its new role if it operates as intended by the standing committee—that is, it should put in place mechanisms to refer all new bills quickly to an expert adviser for urgent assessment and advice. As with the Senate committee, a weekly turnaround should be possible—that is, members should have the benefit of the committee's report on a bill in time for debate in the week after the bill was introduced.

The committee should not hold inquiries or invite submissions. This is not the way the Senate committee or committees in other States work. Such a lengthy process would unreasonably interfere with the Government's legislative program and the functioning of the committee. It would be an impossible workload for any committee. If, for example, the Legislative Council wished to inquire more deeply into a particular issue raised by a bill, it could do so through its existing committee structure. Conducting lengthy inquiries is not the role of this committee. As I indicated earlier, if the Government's proposal for the Legislation Review Committee is accepted, the Government is prepared to allocate additional funding to the committee to enable it to carry out its new function. The funding will provide a budget for the committee to obtain academic legal advice, as recommended by the standing committee. This advice, and the budget for it, will be critical to ensuring that the committee can report quickly and avoid delaying the Government's legislative program. I commend the bill to the House.