



Legislative Council

Family Impact Commission Bill

Hansard - Extract

11/04/2002

Second Reading

Reverend the Hon. FRED NILE [4.24 p.m.]: I move:

That this bill be now read a second time.

We are recommencing debate on a bill that has a long history in this House and has previously been passed by the House—a unique situation. I am reintroducing the bill and am about to commence my second reading speech. I will update the House with details of the committee of inquiry that was held into the bill. As the overview of the bill states:

The object of this Bill is to provide for the establishment of the Family Impact Commission.

The Commission is to study and report on the moral, social and economic impact on New South Wales families of existing laws and proposed laws and Government expenditure, for the purpose of ensuring that the following principles are recognised and upheld:

- (a) The family, consisting of those individuals related by blood, adoption or marriage, is the foundational social unit of the nation.
- (b) The family is to be given the widest possible protection and assistance as the natural and fundamental unit of society, particularly where it is responsible for the care and education of dependent children.
- (c) The family has primary responsibility for the welfare, education and property of its members.
- (d) The sanctity and unique sphere of authority of the family is to be recognised and preserved.
- (e) Optimum conditions for maintaining the integrity of the family unit are to be preserved and promoted.

The Bill provides for the following:

- (a) the preparation of Family Impact Studies and Assessments for all Bills introduced into Parliament and for all expenditure or programs of expenditure of public money,
- (b) the preparation of those Studies and Assessments for other matters considered appropriate by the Commission,
- (c) the principles to be taken into account when preparing such Studies and Assessments,
- (d) the constitution of an Advisory Committee,
- (e) the conferring of investigation powers on the Commission,
- (f) the publicising and review of Studies and Assessments.

As honourable members will remember, when I first spoke on this bill in my second reading speech in 1996 I explained that the reasoning for it arose from the debates we were having about environmental assessments, which I support. There is a need for environmental impact statements. The longer I listened to those debates I thought that something was missing and that we should have a similar concern for the family unit. This bill would simply bring a balance into debates in this House and in other places like the Land and Environment Court. We are assessing environmental impacts but we are not giving the same priority to what I call the human factor, the family factor, and that is what this bill seeks to do.

I notice now that similar bills have been introduced in the United States. I have had requests for copies of this bill and I have sent copies to the United Kingdom and the United States. Similar bills have been introduced into some of the State Congresses of the United States—the equivalent of our State Parliaments. I was very encouraged by that.

This bill was introduced into the Legislative Council on 26 October 1995—seven years ago. Government members will realise how patient crossbench members have to be when trying to bring a bill before the House, let alone having it passed. The new arrangement we now have for precedence of bills has brought a great deal of efficiency into the operation of the House and has given crossbench members, as well as members of the Government and of the Opposition who wish to introduce private members bills, the knowledge that they will be dealt with. In those days, right back to when I was elected in 1981, it was almost a unique experience to have a private members bill debated in the House.

I introduced the bill on 26 October 1995, but it lapsed due to the prorogation of Parliament in January 1996. Following the reopening of Parliament in April 1996 the Legislative Council resolved that the bill be restored. On 23 May 1996 I completed my second reading speech, and debate on the bill commenced. The debate continued on 12 and 26 September and 24 October 1996.

The unique feature of this bill is that it is the same bill that I introduced in 1995. I have not changed it; I have kept it exactly the same, because on 26 October 1996 it was passed at its second reading in the Legislative Council. Following the second reading of the bill, it was indicated that a number of members had substantial amendments both in number and in impact. Some of the amendments could have changed the whole purpose of the bill. As there were a number of amendments, I agreed to the proposal that the bill should be referred to the Standing Committee on Law and Justice because of the unique nature of the whole debate about family, whether family impact statements could be undertaken, who should make the assessments, the advisory council members and so on.

Before debate on the amendments commenced, the Committee resolved to refer the bill and the amendments to the Standing Committee on Law and Justice for inquiry and report. The law and justice committee would seek submissions so that we would have feedback from the public and organisations concerned with family matters, children, social issues and so on, including religious organisations and the churches. The standing committee conducted its inquiry under the chairmanship of the Hon. Bryan Vaughan, who has since left this House. He was a valuable member of this House. The committee then presented its report to the House. The referring motion stated that the bill:

... be referred to the Standing Committee on Law and Justice for inquiry and report on:

- (a) any public comments on the bill; and
- (b) any proposed amendments to the bill.

(2) That the committee report by Tuesday, 25 November 1997.

In general, that was agreed to. The law and justice committee conducted its inquiry. It placed advertisements in newspapers calling for submissions and so on. I am pleased that the committee produced an information pack containing the parliamentary debate on reference to the committee, my second reading speech, a copy of the Family Impact Commission Bill 1995 and, most importantly, copies of the amendments proposed by members of the House. I am not sure how many members proposed amendments. The Opposition certainly did and the Hon. Richard Jones is specifically mentioned, but other members may also have had amendments. The proposed amendments to the bill were printed and included in the information pack so that members of the public wishing to make submissions or to have additional information could be given the information pack. That idea was good, and it is one that could be followed for other bills.

It is important to note that the bill was read a second time before it was referred to the Standing Committee on Law and Justice. I do not think it is helpful for the House to refer draft bills to committees, as happened with the bill relating to the removal of the royal coat of arms. The law and justice committee is inquiring into a draft bill that has never been before the House. In my opinion if the Committee of the Whole has concerns about a bill that has been read a second time, it can refer the bill to the relevant committee for further examination. It is pointless to have a committee working hard on a bill that the House will not pass. In other words, we should get things in the right sequence, as happened with this bill. It was passed by the House and then referred to the law and justice committee.

The law and justice committee received 42 written submissions which were made available in the report on the Family Impact Commission Bill that was ordered to be printed on 25 November 1997. In addition to the written submissions, the committee secretariat received 11 telephone calls from individuals expressing support for the bill in its current form. The report itself is important as a resource document. The only negative aspect from the point of view of this House is that the committee decided not to make a recommendation, for reasons that are known to members of the committee. Obviously they discussed the matter. They may have decided not to make a recommendation because of the complexity of the bill, the wide-ranging views on the bill and the wide-ranging views within the law and justice committee. The report states:

... the Committee has not sought to conduct any analysis of the submissions received. Neither has the Committee sought to test any of the comments made in the submissions through inviting the authors of submissions to give evidence at hearings.

However, rather than merely presenting copies of the submissions received to the Legislative Council, the Committee has sought to summarise the main issues raised in the submissions. This report therefore includes chapters which contain:

- a brief overview of the Bill;
- a summary of the main points made in the submissions arguing in favour of the Bill;
- a summary of the main points made in the submissions arguing against the Bill;
- a summary of the comments contained in the submissions concerning the proposed amendments; and
- a summary of the comments contained in submissions suggesting greater recognition of children or that the Bill be recast as a Commissioner for Children Bill.

The committee also included, in appendix five, a copy of correspondence between the committee chairman and the Premier concerning the consideration of the impact on families of Cabinet proposals and the establishment of the Office of Children and Young People within the Cabinet Office. In paragraph 1.3.6 of the report the Committee makes

this important point:

The Committee has deliberately not drawn any conclusions or included any recommendations in this report. Rather, the Committee has left it up to the Legislative Council to decide what to do with the Bill when the Committee stage resumes. It is the Committee's hope that this report will be of assistance to all members in their consideration of the Bill.

The law and justice committee must be commended for its diligence in conducting the inquiry, collating the submissions, and summarising them. The House now has what is basically a resource document on the bill; it puts responsibility back on the shoulders of all members of the House for what to do with the amendments. So there are two distinct stages in this debate, the first of which is the bill itself. As I said, the bill was passed by the House on 24 October 1996. I do not have the actual numbers of the vote but, from memory, it was quite a strong vote in support of the bill; it did not pass by only one vote. One could say that the principles embodied in the bill were agreed to by the House with clear statements in the second reading debate that amendments would be made during the Committee stage.

I understand that the bill was referred to the law and justice committee because of the complexity of the amendments. Although it is not procedurally correct, I hope that we are at the point that the bill will again be read a second time. Then the Committee can debate the bill clause by clause and express its views on each clause. There could be some aspects of the bill that are not controversial. The core of controversy between honourable members is how to define a family. All the other amendments deal with minor matters such as who should be on the advisory committee and how big should it be. I do not have a strong position in relation to those matters and, as the mover of the bill, I am happy to accept the wisdom of the House. However, I have strong views on the definition of "family", which is the key to the bill. Some honourable members want to remove the definition from the bill, but that would make the bill pointless. It would be a bit like what happened with the United Nations Year of the Family.

As honourable members, we researched all the documents that came from the United Nations and were surprised that they did not contain a definition of "family". How could there be an International Year of the Family when the United Nations would not define "family"? I understand that the original motion proposed by the Vatican to the United Nations that there be a Year of the Family was absolutely clear about what a family was. But somewhere between the proposal and the United Nations bureaucracy taking it up, the definition of "family" disappeared. In the end people could do or believe whatever they liked.

This bill would not have a focus if it did not contain a definition of "family", or if it contained a meaningless definition. I was hesitant in moving this bill again if a number of honourable members thought the definition should be reviewed or stated in such vague terms as to be meaningless. There is not much point, other than a bit of kudos, in passing a bill that has no real purpose. The whole point of the bill is to say that there is a need. The views I have expressed are based on the views of the United Nations and our Federal legislation that deals with marriage and family, which specifically states the values about which we should be concerned and which we should support in this Parliament. For example, this bill seeks to enshrine in legislation article 16 (II) of the Universal Declaration of Human Rights, which is supported by all honourable members. We all profess to be 100 per cent behind the Universal Declaration of Human Rights. The principle to which I refer states:

The family is the natural and fundamental group unit of society and is entitled to protection by society and the state

This bill will confirm that the State Parliament and the Government have a role in protecting the family. It cannot be left to the churches or social welfare organisations. Honourable members also remember when the controversial Family Law Act was debated in the Federal Parliament it contained a change of grounds for divorce. A long discussion occurred about the family and the importance of marriage, the basis of a family. It was thought that the Federal Parliament, by its more liberal views on divorce, was voting against families.

Even though it was dealing with divorce, prior to the grounds for divorce becoming more liberal, the Family Law Act restated what is in this bill. The relevant section in the Family Law Act was supported by the Labor Party and the Coalition parties and other members of the House of Representatives and the Senate. We are working within that umbrella. I am not putting a radical position that is not in line with other State or Federal legislation. Section 43 of the Family Law Act provides:

The Family Court shall, in the exercise of its jurisdiction under this Act, and any other court exercising jurisdiction under this Act shall, in the exercise of that jurisdiction, have regard to:

- (a) the need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into for life—

this is the paragraph that is most relevant to this bill—

- (b) the need to give the widest possible protection and assistance to the family as the natural and fundamental group unit of society, particularly while it is responsible for the care and education of dependent children;
- (c) the need to protect the rights of children to and promote their welfare; and
- (d) the means available for assisting parties to a marriage to consider reconciliation or the improvement of their relationship to each other and to their children.

This bill has a very solid foundation both in the Universal Declaration of Human Rights and in our own Commonwealth legislation, which always overrides State legislation if there is a conflict between the two. I can now inform the House that when this bill passed through the second reading stage on 24 October 1996 the vote was 22 ayes and 17 noes, which was fairly clear-cut support for the bill.

In the main, those who voted no had expressed reservations about some parts of the bill and had proposed amendments, although the Coalition also foreshadowed that it would move amendments in Committee. I do not know whether some of the 17 honourable members who did not support the bill would have reconsidered their vote if their amendments had been adopted. I hope that on this occasion all honourable members will allow the bill to proceed into Committee so it can be discussed objectively clause by clause, as we usually do. Hopefully, the majority vote at the second reading stage will be increased at the vote on the third reading.

The report of the Standing Committee on Law and Justice contains submissions from a number of important organisations in our State. Submission No. 17 came from the then Catholic Archbishop of Sydney, Archbishop Clancy. He detailed his views on the role of legislation and said:

If this legislation is to be regarded as a worthwhile part of the legislative activity of the Parliament in promoting the *peace, welfare and good government of New South Wales* it needs to be demonstrated that an assessment of the impact on *families* of legislation and government policy merits specific attention.

The support for such a proposition, and hence for this proposed legislation, lies in an acceptance of the special place of the family in society.

Even if there be some arguments about definitions, all members would regard the family, as the Catholic submission said, as having at least a special place in society. That submission also repeats the terms of Article 16 (III) of the United Nations Universal Declaration on Human Rights:

The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

The submission indicates that the Catholic Church supports that declaration. I quote also from that submission:

It would be tragic if the impact of Government policy on families was ignored.

This proposed Bill provides a mechanism for bringing information before the Parliament. The Parliament can then, in the light of the information available, more prudently assess the matters before it in the light of the impact on families.

It concludes:

I commend the principles underpinning this proposed legislation to the Committee.

Similar submissions were received from the Women's Action Alliance. Obviously, similar statements were made by the Festival of Light Community Standards Organisation, of which I am an honorary official, the Presbyterian Women's Association of Australia in New South Wales, the Presbyterian Church of Australia General Assembly of New South Wales, Church and Nation Committee, and particularly the Salvation Army Australia Eastern Territory. The further value of the Salvation Army submission was that it dealt with the amendments on part 1:2, Objects and Principles, of the bill. The Salvation Army comments:

We support this strongly as it stands.

We refute the proposed amendment to omit lines 12-14 by reference to the Family Law Act.

Some honourable members said that those words, taken from the Family Law Act, should not be included in the bill. A sensitive aspect of the bill in the minds of some honourable members relates to definitions. The Salvation Army Australia Eastern Territory says, in relation to part 1:3, Key Definitions, of the bill:

We support this strongly as it stands.

We refute the proposed amendment to omit lines 25-32 by reference to the Family Law Act.

So, in principle, the Salvation Army supports the bill and rejects the proposed amendments. Obviously, other organisations have different views. It is not my role in this second reading debate to spend a lot of time dealing with the statements of those who have other views. However, from my reading of the submissions of those who have reservations, it seems there was some confusion in their minds in asserting that we should not have a Family Impact Commission Bill but a children's impact commission bill, or a child impact commission bill. I think they missed the point that we already have some very effective machinery that focuses particularly on matters related to children, such as their protection from physical and sexual abuse.

This Parliament has just debated the establishment of an inquiry into the Department of Community Services, an umbrella organisation. We also have special child protection units in the police department, and children's commissioners. DOCS, in arguing against a parliamentary inquiry, pointed to, I think it said, some 17 organisations already overseeing such matters, emphasising that many of those bodies are new. In my view, since the bill was first introduced we have set up an abundance of organisations and authorities specifically to look at matters relating to children. However, in my view, there is a vacuum when it comes to consideration of matters concerning the family unit, which is not to do with children only. It has to do with parents and children, grandparents and the extended family.

The importance of the family is referred to in the United Nations declaration and the Family Law Act. This bill focuses on the family unit. It is very important that this House supports that concept. I am sure that all members of this House would support that concept in principle. I trust that the House will agree to the second reading of the bill. The amendments can then be discussed, one by one, in Committee. I do not want to press for urgent consideration in the Committee stage. Honourable members should have the opportunity for further consideration of the amendments. I will speak to both the Government and Opposition to seek agreement on when it is appropriate to commence discussion in Committee. I commend the bill to the House. I trust that, with God's blessing and guidance, it will be finally passed and become part of the legislation of New South Wales. This is unique legislation and a model for the rest of the world.