

Second Reading

Reverend the Hon. FRED NILE [11.48 a.m.]: I move:

That this bill be now read a second time.

The purpose of the Crimes Amendment (Grievous Bodily Harm) Bill 2010 is to amend the Crimes Act 1900 to ensure that offences under that Act relating to the infliction of grievous bodily harm extend to destruction by a person, other than in the course of a medical procedure, of a child in utero. The proposed amendment extends the application to any form of human life in the embryonic stage. Such offences are currently limited to human life in the foetal or later stages—that is, at eight weeks or 56 days gestation. For many years statistical research has shown a causal correlation between pregnancy and domestic violence. In 1994 the *Medical Journal of Australia* published a paper that found that one in 10 Australian women had experienced domestic violence during pregnancy.

In 2008 the *Australian Journal of Primary Health* reported that the incidence of domestic violence during pregnancy was one in every five women and of those women 40 per cent were more likely to have their child die in utero. Two public incidents, one in 2001 and another in 2002, draw attention to the deficiency of the law in the protections extended to women during pregnancy. In November 2001 Renee Shields was the victim of a road rage incident that led to the death of her unborn child, Byron. Byron's law has since been passed—the legislation I am hoping to amend—and I am pleased to use that title for this bill. In August 2002 Kylie Flick refused the demands of Phillip Nathan King to abort the child they had conceived. Kylie was subsequently punched and stomped on by Mr King, which resulted in the death of their unborn child.

At that time the definition of "grievous bodily harm" found within section 4 of the Crimes Act was non-exhaustive and essentially limited to circumstances in which the person directly concerned was permanently or seriously disfigured. Hence the law failed to address the loss of a woman's unborn child. The New South Wales Attorney General subsequently commissioned the Hon. Mervyn Finlay, QC, to conduct an inquiry into the "distressing and difficult" circumstances in which a criminal act against the mother of an unborn child resulted in the death of that child. In her submission to the inquiry Renee Shields stated:

Unborn children should be acknowledged in our society, an amendment to the current legislation might lessen the constant attention someone experiences with this kind of incident and maybe make the incomprehensible a little easier to handle.

In April 2003 the Finlay report came to the same conclusion. It contained the recommendation that:

New South Wales legislate to introduce the offence of 'killing an unborn child' relating to a criminal act causing a child, capable of being born alive, to die before it has an existence independent of the mother.

Later that year, in December 2003, in the case of Ms Flick and Mr King the Court of Criminal Appeal made the ruling that:

The close physical connection between a pregnant woman and her unborn child means that the loss of that child can constitute grievous bodily harm to the pregnant woman, even in the absence of other injury to her.

On 1 March 2005 the Government gave notice that it intended to follow the recommendations of the Finlay report, and in doing so codified the principles enunciated by the Court of Criminal Appeal in December 2003. The subsequent legislation, the Crimes Amendment (Grievous Bodily Harm) Bill 2005, amended the definition of "grievous bodily harm" within the Crimes Act to include section 4 (1) (a), which states:

The destruction (other than in the course of a medical procedure) of the foetus of a pregnant woman, whether or not the woman suffers any other harm.

The Legislative Assembly passed that legislation on 22 March 2005, and the Legislative Council passed it on 4 May 2005. Whilst the legislation enjoyed unanimous support from both Houses, concerns were raised in the Legislative Council as to the wording and eventual implementation of the legislation. Those concerns involved the scope of the legislation being limited by the definition of "foetus". Women 55 days or less into their pregnancies were afforded no protection under the legislation. Further, given the inherent ambiguity surrounding exact dates of conception, the legislation lacked clarity for women that may have been several weeks further into their pregnancy. The objective of the legislation was therefore not fulfilled.

On behalf of the Christian Democratic Party I attempted to address that issue by amending the bill. Unfortunately some in this House seemed to miss that intent and became distracted by other matters. The term "child in utero" was used because no other term was applicable. The term is a technical and legal description used by other nations. The amendments I moved were narrowly defeated by 17 votes to 22 votes. Several members commented to me after the vote that if the matter were to be resubmitted at a later time they might consider supporting it. That has taken some time—from 2005 to 2010—but I am doing it now. Today, almost five years

later, I pray that all members have had sufficient time to consider this important issue and I submit the Crimes Amendment (Grievous Bodily Harm) Bill 2010 for the consideration of the House.

The intent of the bill is the same as the intent of the amendments moved in 2005: to provide all women equal protection under the law, especially during the vulnerable time of pregnancy. Losing a child in the first trimester is an incredibly dramatic experience for any expectant mother. I make it very clear that the bill is about grievous bodily harm inflicted on pregnant women. The bill seeks to remove discrimination against pregnant women who do not fulfil the selective criteria defined in the Crimes Act 1900 No 40, and provides clarity and certainty to the application of the law in light of ambiguity surrounding exact dates of conception. The bill removes arbitrary limitations and provides all pregnant women with recourse to the law. Each case is to be rightly determined within the judicial system in accordance with normal judicial procedure and based on expert medical advice. In other words, all the evidence can be put before a court for the judge to decide on.

On the previous occasion, a number of members spoke favourably in support of the proposition embodied in the bill. I understand the Coalition will now allow its members to take a conscience vote. In the interest of fairness and when dealing with a bill that concerns life, the Government should extend to its members the same privilege. The bill will not be voted on until further consultation has been had with both sides to ensure that everyone is happy with its wording, and to determine whether further amendments are proposed. It should then receive support from both sides of the House. I call on all members to give the bill their earnest consideration. This is an important bill. When the matter was previously debated members such as the Hon. Greg Pearce said:

I will vote in support of this amendment and the other two amendments moved by Reverend the Hon. Fred Nile.

The Hon. Michael Gallacher said:

I support the amendment; it provides consistency but does not set any other precedent.

Other members also spoke in the same vein during that debate. The Greens did not support the amendments on that occasion. The Hon. David Clarke supported the amendments. The final vote was quite close—17 votes to 22 vote. As I have said, some Government members indicated to me after the vote that had they been allowed a conscience vote they would have voted for the amendments. It is vital for the Government to allow the traditional right to its members to exercise their conscience in this important matter—members of the Australian Labor Party have previously been allowed to do this under its constitution.

International Women's Day has been recently discussed in this House. The passing of this bill will help those women who experience violence when pregnant. Sadly, a large number of women experience violence, which is a tragedy, but to endure violence whilst pregnant is beyond comprehension, particularly if the husband or partner—which has happened—inflicts the violence. The current law of 56 days or eight weeks is very arbitrary. The Government has sensed that this is a sensitive issue and has made a compromise on the restrictions contained in the original bill.

The bill has been so widely supported and the Attorney General has been so warmly congratulated on the original bill, it is time for the Government to take another step—not a big step but an important one—and support my bill. Although my bill contains minor amendments, it will make the legislation far more effective. Members often say in this Parliament that we must respect our courts and the judicial system. The bill will put the onus back onto the judicial system to make decisions on the offence that has been committed by a violent person who attacks a pregnant woman. I commend the bill to the House.