



Full Day Hansard Transcript (Legislative Council, 11 September 2014, Proof)

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Extract from NSW Legislative Council Hansard and Papers Thursday, 11 September 2014 (Proof).

SUMMARY OFFENCES AMENDMENT (FULL-FACE COVERINGS PROHIBITION) BILL 2014

Bill introduced, and read a first time and ordered to be printed on motion by Reverend the Hon. Fred Nile.

< 4 >

Second Reading

Reverend the Hon. FRED NILE [10.00 a.m.]: I move:

That this bill be now read a second time.

I thank members for giving me another opportunity to present my second reading speech on this important security bill. I will propose that debate on this bill be adjourned until 16 October to allow time for members to consider it. My bill has come before the House at an opportune time because yesterday the Australian Federal Police arrested two men in Brisbane suspected of being terrorists. One of the men is the brother of Australia's first suicide bomber who went to Syria and drove a truck loaded with explosives into a security post killing 35 people and wounding hundreds.

The Hon. Amanda Fazio: Point of order: My understanding of the standing orders with regard to second reading speeches is that the comments made must in some way relate to the long title of the bill. The comments being made by Reverend the Hon. Fred Nile do not refer to the long title of his bill. I ask you to draw him back to the bill.

The PRESIDENT: Order! The Usher will stop the clock. Are copies of the bill available for honourable members to see the long title?

The Hon. Amanda Fazio: If not, it is out of order for the honourable member to present his second reading speech.

Reverend the Hon. FRED NILE: To the point of order: I accept the point made by the Hon. Amanda Fazio. However, I was about to make a statement that would have addressed her concerns.

The PRESIDENT: Order! The Clerk has advised that the required three copies have been tabled. If any members wish to see the bill to clarify whether there is any validity to the Hon. Amanda Fazio's point of order, they can obtain a copy from the Clerk.

Reverend the Hon. FRED NILE: I was going to make—

The PRESIDENT: Order! I have not made a ruling yet. Did the honourable member wish to address the point of order?

Reverend the Hon. FRED NILE: Only to say that the next comment I was going to make dealt with face coverings.

The Hon. Lynda Voltz: To the point of order: The member has introduced a bill specifically regarding burqas, which relate to women and their religious beliefs about the wearing of face coverings. He has raised the issue of men and terrorism and that is in no way relevant to the bill before the House.

The PRESIDENT: Order! Rulings have been consistently made in this regard. For example, Deputy President Kelly stated that "this Chamber always allows wide latitude to members making speeches on the second reading of bills, but comments should generally be within the leave of the long title of the bill". Those rulings were also given by the honourable member when she was President and by me. I do not believe that the mover was going

to make lengthy comments along the same lines. Therefore, I will not uphold the point of order at this stage. I invite the honourable member to continue.

Reverend the Hon. FRED NILE: As I was going to say, we also face the new Islamic State terrorist threat. The Islamic State's black uniforms, worn by both men and women, include face coverings to prevent identification. They specifically protect the 12,000 foreign fighters, who according to reports include an estimated 500 Australians. As members know, ASIO is considering lifting the terrorist threat level to high over the next few days.

I will now address the issue of face coverings. As members know, a number of countries have passed similar legislation. Belgium was one of the first countries to pass legislation dealing with face coverings. Denis Ducarme, a Belgian Liberal Party member, said that he hoped other European countries would follow Belgium's example. Members of the Belgian Chamber of Representatives and the Senate passed the legislation with almost unanimous cross-party support. As often happens in these situations, the legislation was challenged, and on 2 December 2012 the Belgian Constitutional Court held that the 2011 law did not violate the constitution. The law renders it an offence "to publicly cover or conceal one's face in whole or in part so that one is unrecognisable". Exceptions are limited to legal provisions, labour regulations and local ordinances regarding festivals that impose or allow for face coverings. My bill is based on the Belgian model.

The Belgian legislation was intended to guarantee public safety. Other stated purposes include considerations of a social nature, including promoting living together, with an emphasis on communication, recognisability and protecting women's rights. All this was claimed to violate the principle of legality, which requires laws to be clear, ascertainable and sufficiently precise. The court found that that principle had not been breached. Concepts such as "recognisability", "covered in part" and "places accessible to the public" are all deemed sufficiently clear to allow a citizen to determine their scope. Any remaining margin of appreciation for the judge does not pose problems of legality.

The court also considered the "promotion of living together" to constitute a legitimate aim. In this context, the Belgian legislator referenced the French philosopher Emmanuel Levinas, who according to the legislator stated that "our humanity is expressed through our face". The legislator declared that a person of whom only the eyes are visible would be "unable to participate in domestic dynamics". The Belgian Constitutional Court accepted that gender equality also justifies a ban if wearing the veil is instead a "well-considered choice by the woman".

< 5>

The reasons the court allows for this are twofold. To begin with, the court points out that the requirement to wear such clothing is limited to women. Additionally, the full veil serves to deprive its wearers "of a fundamental element of their individuality". The only restriction the Constitutional Court imposed is the face-covering ban may not apply in places of worship as this would unduly restrict freedom of religion. A similar reservation was made by the French Constitutional Court in respect of the French ban. Government interference in religious matters has gone far and deep, and it has become necessary to point out there should still be a right to cover one's face in a place of worship. My bill provides for the recognition of freedom of religion.

On 11 May 2010 the French Parliament held a similar debate and unanimously passed a resolution to prohibit any face coverings that conceal a person's identity. That resolution included quotes from the Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention on the Elimination of All Forms of Discrimination Against Women, the Charter of Fundamental Rights of the European Union and others.

The French ban on face covering was titled, "Act prohibiting concealment of the face in public space". This Act of Parliament was passed by the Senate of France on 14 September 2010, resulting in the ban on the wearing of face-covering headgear including masks, helmets, balaclavas, niqabs and other veils covering the face in public places, except under specified circumstances. The ban also applies to the burqa, a full-body covering, if it covers the face. The bill had previously been passed by the National Assembly of France on 13 July 2010 by a vote of 335 to one. On 14 September 2010 it was passed by the French Senate by a vote of 246 to one. That included all members of the Assembly and the Senate from the extreme Left to the extreme Right. The Constitutional Council of France declared the ban constitutionally valid on 7 October 2010, clearing the final legal obstacle for the law, but the law was designed to come into force after the elapse of six months from the day of its publication.

The key argument supporting this proposal is that face coverings prevent the clear identification of a person, which is both a security risk and social hindrance within a society which relies on facial recognition and expression in communication. The law applies to all citizens including men and non-Muslims, who may not cover the face in public except where specifically provided by law, such as motorbike riders and safety workers, and during established occasional events, such as some carnivals. The law imposes a fine of up to €150 and/or participation in citizenship education for those who violate the law. The bill also penalises, with a fine of €30,000 and one year in prison, anyone who forces another person by violence, threats or abuse of power to wear face

coverings. These penalties may be doubled if the victim is under the age of 18.

The laws were challenged and taken to the European Court of Human Rights, which should be of interest to the members who are interjecting, which upheld the French law on 1 July 2014, accepting the argument of the French Government that the law was based on "a certain idea of living together". France's legislation banning face covering was upheld by the judges at the European Court of Human Rights who accepted arguments that it encouraged citizens to "live together". The French and Belgian laws were aimed at helping everyone to integrate.

A news report on 4 September 2014 said that Spain too is considering a ban on face covering as part of a new security package. Speaking at a press conference, interior Minister Diaz said that now would be a good time to obtain "a level of consensus" on the proposal. This comes as Spain's Parliament debates the draft Citizen Security Law, which already includes a provision to ban people from covering their faces during demonstrations. If members of Parliament thought there was will in the country to do so, they could insert clauses to limit the wearing of burqas, niqabs and other face veils worn by Muslim females, on the grounds that such garments make identification difficult. The regional government of Catalonia is also working on a law to restrict the wearing of burqas and other face coverings "for reasons of public safety". Facial coverings are now banned in France, Belgium and Italy. The predominantly Muslim countries of Tunisia and Turkey also have bans in place in public spaces such as universities, schools and government buildings.

The bill I am introducing is relatively straightforward. It is based on the Belgian model. The bill will prohibit the concealing of a person's identity while in public without a reasonable excuse to do so. As I have already stated, nowhere does the bill mention "burqa" or "Muslim". The scope of the bill is much broader than just one item of clothing. This is spelt out in schedule 1, part 2, where division 2C, section 11I is inserted. New subsection (1) creates an offence for a person without reasonable excuse to wear any face covering while in a public place. Penalty on conviction is five penalty points, which translates to a \$550 fine. New subsection (2) defines "face covering" as any item of clothing or personal wear, such as helmets, which conceals a person's identity. This is the case in all such circumstances where identity is concealed, even if, as stated in new subsection (5), part of the face is still visible.

The bill does not automatically criminalise anyone found in identity-concealing attire. The practical defence of reasonable excuse protects citizens from inadvertently committing an offence. If one takes part in a parade, or Sydney is suddenly hit by a blizzard and ski masks are the latest fashion, there is a reasonable excuse in evidence. New subsection (3) provides further clarification by explicitly stating certain circumstances that qualify as a reasonable excuse: the lawful pursuit of the person's occupation; participation in a lawful entertainment, recreation or sport; and vehicle regulatory requirements. In relation to the defence of reasonable excuse, the onus of proof lies with the defendant, as specified in new subsection (6).

In many cases throughout the history of human civilisation those seeking to circumvent the law of the land have taken steps to conceal personal identity to avoid being caught, either prior to or post the commission of an offence. For this reason banks and other institutions have long prohibited the wearing of any item that conceals people's identity whilst within their premises. Another relatively recent development in world events is the increasing prominence of identity concealing attire being worn in public by rioters, thugs and social anarchists. Such attire is a regular feature at events such as the G7, G12 and G20 conferences, where individuals seek to avoid prosecution from criminal acts when they smash windows, usually of bank buildings, or attack those they regard as the enemy of society.

Some seek public concealment in order to facilitate a criminal act rather than to avoid the consequences. Since 2001 there have been dozens of cases around the world where terrorists have made use of an ancient cultural item of clothing called the burqa to conceal weapons and explosives intended for murderous purposes. Terrorists have repeatedly used burqas for such purposes in Afghanistan, Pakistan, the United Kingdom, Iraq, the Gaza Strip, India, Somalia and other countries. I want to make this clear: I am not saying that concealing attire alone makes a person a criminal or a terrorist.

In some cases individuals are required to wear concealing attire due to false cultural or religious pressures. For example, some women within Islamic society are being forced to wear the burqa in contravention of the principles of freedom and equality of sex in our society. Many Islamic clerics and political leaders have joined a worldwide chorus to have this clothing banned.

The Hon. Lynda Voltz: Name them.

Reverend the Hon. FRED NILE: I will name them in answer to the request. Sheikh Mohammed Tantawi, who was the Grand Mufti of Egypt and the highest Sunni authority in the Islamic world, banned the burqa from the al-Azhar Islamic college stating "it had no connection with religion".

< 6>

The Muslim Canadian Congress has stated:

The Quran teaches modesty, however it does not have one word about covering the face. It is a tribal custom that is promoted by extremists such as al-Qaeda and the Taliban.

I would add: and ISIS. The Conference of French Imams echoed those sentiments. Dounia Bouzar from the French Council of Muslim Faith has stated:

The imposition of this garment on women is one manner Salafists get individuals to renounce their individuality and submit to extremist cult thinking that masquerades as Islam but which is an abomination of it.

Those words came from the representative of the French Council of the Muslim Faith. French member of Parliament and Muslim Fadela Amara went further, calling it the "cancer of fanaticism". Dalil Boubakeur, the Grand Mufti of the Paris Mosque, the largest and most influential in France, testified to Parliament during the bill's preparation. He commented that the burqa or niqab was not prescribed in Islam, that in the French and contemporary context its spread was associated with radicalisation and criminal behaviour, and that its wearing was inconsistent with France's concept of the secular state.

Abdel Muti al-Bayyumi, a member of the council of clerics at Al-Azhar Mosque in Cairo, Egypt, applauded the ban and stated that the burqa and niqab had no basis in Sharia. He also said:

I want to send a message to Muslims in France and Europe. The niqab has no basis in Islam. I used to feel dismayed when I saw some of the sisters (in France) wearing the niqab. This does not give a good impression of Islam.

Both the burqa and niqab are full body coverings; the burqa includes a cloth covering the eyes and the niqab has a slit so the eyes are visible. Hassen Chalghoumi, a notable imam of the mosque in Drancy, near Paris, expressed support for the ban. He stated that the full facial covering "has no place in France, a country where women have been voting since 1945" and that "the burqa is a prison for women, a tool of sexist domination and Islamist indoctrination".

Further impetus for this bill is provided through the recognition that we are signatories to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women. We are also signatories to the Universal Declaration of Human Rights, which states:

All human beings are born free and equal in dignity and rights.

Earlier I quoted from the French Parliament's resolution and their legislation. As we know, the French Revolution is the source of liberty and freedom, and we expect France to promote liberty and freedom in its legislation.

In the bill before the House the new subsection (7) stipulates that a person who compels another person to conceal their identity is guilty of an offence. The penalty on conviction is 10 penalty points, which translates to a \$1,100 fine. New subsection (4) stipulates that "religious or cultural belief does not constitute a reasonable excuse", except within a religious place of worship, which includes a mosque or any other religious place of worship. Therefore, Muslim women can wear the burqa or similar clothing at a religious service in the mosque.

I emphasise that while there appears to be some disagreement in this House, as indicated by the interjections, in the Parliaments of those two important countries, France and Belgium, with all political views from the extreme Left to the extreme Right, the votes were virtually unanimous. Some members in this House must have a very poor opinion of the politicians in the French and Belgian parliaments if they think that this bill is in some way extreme. I note that Switzerland also passed a similar motion in its Council of States, which said, "The burqa is a symbol of dominance of men over women", and it will introduce legislation. Spain has stated that it too will ban face coverings in public. Various surveys conducted by newspapers have shown that the great majority of Australians support this legislation.

On 17 March 2010 two suicide bombers dressed in burqas were killed in a gunfight outside the offices of a United States aid group in Afghanistan. It turned out that these suicide bombers were, in fact, two men. The bombers were wearing explosives-packed vests beneath traditional women's all-cover dress when they arrived at the International Relief and Development compound on a motorised tricycle. As I said, 16 October 2014 is the preferred date that I propose for debate on this bill to allow quite a number of weeks for all members to give serious consideration to this issue and not to have a knee-jerk reaction.

There are many other statements supportive of this legislation but I will not take the time of the House now to quote any more. I have clearly shown that it is our duty to pass this bill as elected members of the New South Wales Parliament. We should not be afraid to do our duty and we should not be deterred by any misguided criticism. Our duty demands that, like the elected members of the French Parliament, the Belgian Parliament, the Italian Parliament and other parliaments, this bill should be voted on and passed by this House and become law

in New South Wales. As I said, the other parliaments were virtually unanimous in their voting and support for this type of legislation. I believe that especially with the current threat of terrorism around the world and with the current high-level threat in Australia and the threat of ISIS, members should give their genuine support for this legislation in due course. I commend the bill to the House.