

# ● AN ACCOUNT OF THE LEGISLATIVE BACKGROUND TO THE AUSTRALIAN INSTITUTE OF FAMILY STUDIES

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The Family Law Act 1975 came about largely out of recognition that family structures were changing and the law as it stood was failing to address the needs of very large numbers of families affected by family breakdown. On 7 December 1971 the Senate referred to the Senate Standing Committee on Legal and Constitutional Affairs for enquiry and report "The law and administration of divorce, custody and family matters with particular regard to oppressive costs, delays, indignities and other injustices". Between March and October 1972, the Committee took written submissions and oral evidence from over 300 interested parties. The Committee tabled an interim report on 31 October 1972.

Attorney-General Senator Lionel Murphy introduced the Family Law Bill 1973 on 13 December 1973. An amended bill, the Family Law Bill 1974, was introduced on 3 April 1974. On 8 April 1974, the Senate Standing Committee on Legal and Constitutional Affairs reference was broadened to include consideration of the clauses of the Family Law Bill 1974. Four days later both houses of Parliament were dissolved, and an election called for 18 May 1974.

Following the re-election of the Whitlam Labor Government, the Committee was re-established on 16 August 1974, and on 24 September 1974 it submitted an Interim Report to the Senate (Senate Standing Committee on Constitutional and Legal Affairs, Interim Report on the Law and Administration of Divorce and Related Matters and the Clauses of the Family Law Bill 1974, Parliamentary Paper No. 134 of 1974). The Committee's Final Report was submitted on 15 October 1974. The Bill was reintroduced in the Senate on 19 November 1974 and was continued in Committee on 21, 26 and 27 November.

The Bill made provisions for family counselling services, and a Family Law Council to advise the Attorney-General concerning the working of the Act and other family law legislation, the working of legal aid in relation to family law, and "any other matter relating to family law." A late amendment to the Bill made provision for the establishment of a Family Court. But the Bill made no mention of an Institute of Family Studies.

Debate on the Family Law Bill was intense. More than half the members of both Houses contributed, and the Bill was almost defeated in each House over the issue of how long a couple had to be separated before a divorce could be granted. Some members expressed concerns that the Bill would lead to a "divorce culture", and a further erosion of the family. Others argued that making divorce less difficult and costly would not hasten family breakdown but enable people to finalise already "broken" relationships. Among supporters and opponents of the Bill, there were grave concerns about the future of the family.

During the course of the debate a number of amendments were made to try and allay the fears of a great many members that the Act would undermine the stability of the family. Among

those amendments was the last minute inclusion of a body whose role was to monitor and advise on the effects of the Act – the Institute of Family Studies.

At 9.52pm on 27 November 1974, the last hour of debate on the Bill in the Senate, Attorney General Lionel Murphy tabled an amendment for a new clause, Clause 91a, establishing an Institute of Family Studies. There was no discussion of the clause, which passed without debate (Daily Hansard, Senate, 27 November 1974, p. 2883). Exactly one hour later, Senator Murphy made his Third Reading Speech on the Family Law Bill 1974, as amended by the 139 amendments passed in the final three days of debate. The Bill was passed 49 to 7, and referred to the House. The final paragraph of Senator Murphy's speech reads:

*"In the Bill there are provisions for an ongoing examination by the Family Law Council and also a provision for an Institute of Family Studies to study the problems of the family. In this way the provisions of the Bill, if it becomes law, will be subjected to a rigorous examination in the light of experience and I trust this will overcome some of the reservations which have been expressed by honourable senators opposite. Again I thank all honourable senators for accepting the Bill." (Daily Hansard, Senate, 27 November 1974, p. 2894)*

At 10.31pm on 28 November, the last sitting day of 1974, the Bill was introduced to the House of Representatives. Following some tidying up, the Institute was now referred to at Clause 95. In concluding his Second Reading Speech on the Bill, the Prime Minister, Gough Whitlam MP, said:

*"Finally, I would like to make a special mention of two provisions that have been inserted into the Bill to create a Family Law Council and an Institute for Family Studies ... The Institute for Family Studies is to conduct research into factors affecting marital and family stability in Australia, with the object of promoting and protecting the family in Australia. There has been little research in this field to date in Australia, and this specialised research is much needed." (Daily Hansard, House of Representatives, 28 November 1974, p. 4323)*

## DEBATE AND AMENDMENTS

Through February and April 1975 the debate continued in the House and in Committee. All parties having decided to give their members a free vote on the issue, more than half the members of the House exercised their right to speak in the debate. Only three mentioned the proposed Institute of Family Studies.

*"I support strongly the establishment of an Institute for Family Studies, provided that it operates in a way which promotes a real study of how the family unit may be strengthened. That ought to be its principle objective." (Philip Ruddock, MP, Member for Parramatta, Daily Hansard, House of Representatives, 28 February 1975, p. 912)*



“The formation of an Institute for Family Studies will promote the identification and understanding of factors affecting marital and family stability. These are positive measures aimed at preserving marriage not just as a legal entity but as a functional unit of society.”

(John Hyde, Member for Moore, Daily Hansard, House of Representatives, 28 February 1975, p.917)

“The proposal to establish an Institute for Family Studies for research is a useful one. I do not think anyone would oppose these proposals.” (Malcolm Fraser, MP, Leader of the Opposition, Member for Wannan, Daily Hansard, House of Representatives, 28 February 1975, p.954)

And none did.

The haste with which the Institute was included in the legislation actually delayed its establishment. S116 of the Family Law Act 1975 was so poorly drafted as to make establishment of the proposed Institute impossible. Establishment came after the Family Law Amendment Act 1979, repealed S.116 and inserted

Part XIVA – which spelled out in detail the functions and structure of the Institute. The Bill passed into legislation on 5 April 1979.

Subsequent amendments to the Family Law Act, introduced through the Statute Law (Miscellaneous Provisions) (No. 1) Act 1986, (No. 76 of 1986) saw the name of the Institute amended to include the word “Australian” and the establishment of the Institute as a body corporate, with control and responsibilities for its own financial affairs.

Provision was made for the Attorney-General (later amended by the Family Law Amendment Act 1989 (No. 182 of 1989) to Minister) to request the Board to arrange for the Institute to engage in a particular activity (whether research or otherwise) in relation to a particular matter that is within the functions of the Institute, and after consultation with the Board, to specify the priority to be given such requests. Any requests of this nature were to be reported in the Annual Report. There have been minor changes since 1986, none of which has altered the role and functions of the Institute.



#### EXTRACT OF THE FAMILY LAW ACT 1975 relevant to the establishment of the Institute

##### Family Law Act 1975

Act No. 53 of 1975 as amended

##### Part XIVA—The Australian Institute of Family Studies

##### 114A Interpretation

In this Part, unless the contrary intention appears:

*Board* means the Board of Management of the Institute.

*Director* means the Director of the Institute.

*Institute* means the Australian Institute of Family Studies established by this Part.

*member* means a member of the Board, and includes the Director.

##### 114B Establishment of Institute

- (1) There is established by this Part an Institute by the name of the Australian Institute of Family Studies.
- (2) The functions of the Institute are:
  - (a) to promote, by the conduct, encouragement and co-ordination of research and other appropriate means, the identification of, and development of understanding of, the factors affecting marital and family stability in Australia, with the object of promoting the protection of the family as the natural and fundamental group unit in society; and
  - (b) to advise and assist the Minister in relation to the making of grants, and with the approval of the Minister to make grants, out of moneys available under appropriations made by the Parliament, for purposes related to the functions of the Institute and the supervising of the employment of grants so made.
- (3) The Minister may:
  - (a) request the Board to arrange for the Institute to engage in a particular activity (whether research or otherwise) in relation to a particular matter that is within the functions of the Institute; and
  - (b) after consultation with the Board, specify the priority that is to be given to the activity.
- (4) Each report on the Institute under section 9 of the *Commonwealth Authorities and Companies Act 1997* must specify any requests made by the Minister under this section in the year to which the report relates, the priorities accorded to the matters to which the requests relate and the progress made by the Institute in that year in giving effect to any requests made by the Minister under this section in that year or a previous year.

