ADOPTION AMENDMENT BILL (NO. 2) 2002

Second Reading

Resumed from 12 March.

HON GIZ WATSON (North Metropolitan) [2.01 pm]: Last night I was talking about the emotive nature and importance of adoption. Hon Derrick Tomlinson made some pertinent comments about the historical experience of adoption in Western Australia. It is worth briefly touching on that matter to explain the reason this issue has generated so much debate. The period in our history when Aboriginal children were separated from their families, which created what is now known as the stolen generation, has had a significant impact on Western Australian Aborigines directly and has also impacted culturally and socially on the general community. People are sensitive and rightfully concerned about not repeating those mistakes. The amendment to this Bill that recognises the primacy to adopt children of Aboriginal heritage into Aboriginal families is totally appropriate and commendable. No doubt during the committee stage we will discuss in more detail how that is defined, which, of course, is difficult.

Historically, many children migrated to Western Australia from the United Kingdom. That has not been a positive experience for many people. It has caused the children who were transferred from the UK, as well as their relinquishing parents, emotional upheaval, which has had enormous repercussions. That is not true in every case; many people have said that the experience was positive. Each individual has a story about the experience of being made a ward of the State and being raised in Western Australian institutions.

Hon Derrick Tomlinson: It is also true that many Aborigines have said that relocation has been a positive experience.

Hon GIZ WATSON: Absolutely. It is true that some Aboriginal people had positive experiences and said that they benefited from being removed from their families and sent to institutions. However, that is probably the exception rather than the rule. Nevertheless, it is an interesting reflection on the way people respond to different circumstances and challenges. Some people will gain a positive experience from what would appear on the face of it to be a negative experience. Western Australians are well aware of the legacy of the translocation of children from the UK.

During his contribution to the second reading debate, Hon Derrick Tomlinson discussed the changing social values with regard to unmarried mothers. Until the 1970s, the stigma attached to unmarried mothers meant that a significant number of children were not recognised. A social stigma was attached to the mother of the child and her family. Often those children became wards of the State. They were either put up for adoption when adoption legislation came into place, or were raised by other members of the family. It is positive that today by far the majority of the community accepts that no stigma should be attached to unmarried mothers.

Another factor for the decrease in the number of unrecognised children is that women are now able to access legal terminations. That has a great bearing on the number of children who are available for adoption. Today, a significant number of babies are terminated rather than carried through to birth. They are the issues that surround the context of this legislation.

We have acknowledged that the amendments we will debate will affect only a small number of people. Nevertheless, it is important that we do our best to put legislation in place to provide the best outcome for that relatively small number of people. More recently, the adoption of children from other countries, either to Australia or other western countries, for example, has opened up debates about the ethics, emotions and pros and cons of adopting children from other cultures. Indeed, some of the foreshadowed amendments tackle that phenomenon.

The age limitation of the prospective adoptive parents is the most debated aspect of this Bill. It is important to understand that the existing legislation already has an age limitation provision that there should be no more than a 40-year age difference between the prospective parent and the child. One of the amendments we will debate today will make the age difference between the parent and the child more generous. The committee that reviewed the Adoption Act recommended that the age difference be increased to 43 years. The Government has now increased it to 45 years. Some allowances have been made for the age of the prospective parent's other partner. The Bill now has a more generous provision for older partners of a 45-year-old. It is important to reiterate that we are talking about an age difference rather than an absolute cut-off. If someone were over the age of 45 years but still wanted to adopt a child, he or she could adopt a child of three, five or 10 years. I understand that, for various reasons, a majority of prospective adoptive parents seek to adopt a baby. However, we should not lose sight of the fact that there are a significant number of children who need all the parenting, love, care and assistance that can be provided by adults but not necessarily within the formal context of an adoption. It is important to realise that there are other opportunities than adoption for people to express their

support, love and care for children. It is a difficult, emotive issue. I have had people in my office for hours on end telling me their stories about their attempts to have a natural pregnancy and then go through the IVF procedure, which is lengthy, exhausting and very invasive. When they realised they were running out of time for that process they looked at their next option, which they believed was adoption, only to find that there was a time limitation on that as well. I have an enormous amount of sympathy for those couples who are seeking to have a child of their own, but I think it is necessary to again reiterate that the onus in the Adoption Act is to ensure and provide the best outcome for the child. However, by saying that, I do not deny the ability of older people to be very good parents and provide support for children.

I refer to a letter I received from the Adoption Research and Counselling Service. I paid particular attention to the opinion of that organisation as it has dealings with relinquishing mothers, adoptees and a range of service providers. The letter by Jennifer Newbould, the manager of ARCS, dated 8 August 2002, addressed to members of Parliament states -

> Adoption is a complex and emotive issue but one must not lose sight of the fact that adoption exists to meet the needs of the child. The onus lies with the State to ensure that the child is placed with a family where the best outcome is possible. Adoption is about finding families for children who have been separated from their family of birth. It is not about finding children for childless couples.
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> It is only too easy to evoke poignant images of children in orphanages while at the same time speaking of the sadness of older childless couples who are waiting with open arms to provide a loving family for these "poor" children. We urge you to step back from these emotive images and simplistic solutions and question this complex issue. Place yourself in the child's position remembering that this child grows into a teenager and an adult. What questions will this child ask throughout its life of the placement decision made on their behalf? The child has no voice in this decision process. They are dependent on adults acting in their best interests.
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> The assertion that there are millions of children in orphanages in overseas countries waiting to be adopted is a myth.

The second reading speech mentions that in 1999 the United Nations children's fund estimated there were 50 applicants for each child available for intercountry adoption. There is a large degree of debate between those who are very strong advocates of international adoption and others, including the Department for Community Development, who argue that a limited number of children are available for intercountry adoption. Countries set their own age and other requirements for prospective adoptive parents. The letter continues -

> The number of children made available to be adopted to another country is determined by the country of origin. These countries prefer to try and help their children stay in their country of birth and not export their children. Increasing the number of couples prepared to adopt children from overseas does not increase the number of children available for adoption.
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> Children in overseas orphanages are predominantly not orphans in the true sense of the word. They are economic orphans or separated from their families for social reasons. For those who are true orphans most still have extended family. If altruism underpins the motivation to adopt children from overseas surely removal from their country of birth should be the last resort. The cost of an overseas adoption ranges from $10,000 to $20,000 - this could enable many children to stay within their own country and even their families.
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> Children who are adopted struggle with feelings of difference no matter how loving their adoptive family, they have to make sense of why they were "given away" by their family of birth. Why weren't they wanted? What was wrong with them? Given that only 2.7% of women have children after they are forty, having no age limit for adoptive parents adds another difference that adopted children have to deal with - having parents who could be their grandparents. Children adopted from overseas also need to face looking different and wondering why their birth country didn't want them.

That letter makes some very strong points that best sum up my final attitude on the issue of age. There is no doubt that the Act and the amendments we are debating are discriminatory. There is no doubt they discriminate against older prospective adoptive parents. The reality is that that discrimination occurs in the selection process. We know there are many more people applying to adopt than there are children available for adoption. The argument is that it is more honest to have the criteria defined in the legislation so that people are not under any misconception that they will be able to adopt a child who is more than 45 years younger than them. It is also worth noting that most relinquishing mothers who wish to have their views taken into consideration choose to have the child adopted by parents in their 30s. I understand that the 30 to 35-year age gap is the most popular. That also needs to be considered when deciding whether it is appropriate to apply a maximum age limit. The other interesting aspect of the argument about discrimination is that the Bill potentially discriminates against

someone with an older partner. The age difference will apply to both adopting parents rather than just one. In most cases, there is a younger wife and an older husband. If the older partner were more than 45 years older than the prospective adoptee, both parties would be ineligible to adopt. That raises some very interesting issues about discrimination.

Hon Derrick Tomlinson: Why would it be a younger wife and older husband and not the other way around?

Hon GIZ WATSON: My understanding is that that is more often the case.

Hon Derrick Tomlinson: It is changing because women are getting smarter and getting younger men.

Hon GIZ WATSON: That could well be the case! Would Hon Derrick Tomlinson like me to comment on that?

The amendments will go some way towards addressing that age discrimination and will build in more flexibility to recognise that we are trying to accommodate, as much as possible, a reasonable range of ages. Having made those comments, we will be happy to support the Bill and to debate and support the amendments to the age criteria. In a less than perfect situation, we will not be able to please everyone. I know some people will be very disappointed that the Parliament has not simply removed the age criteria, which I understand was the proposition put by a member of the other place, Dr Constable, who introduced a Bill to achieve that outcome. It is a matter that I have considered over a great deal of time - it has kept me awake at night - and I have taken as much information as possible from anyone who has wanted to provide it. However, the role of this Parliament is to make decisions that will be in the best interests of the child, and I believe that having some age limitations will help us achieve that aim. I look forward to the debate in committee, and we will support the Bill.

HON MURRAY CRIDDLE (Agricultural) [2.22 pm]: The purpose of the Adoption Amendment Bill (No. 2) is to give effect to the recommendations of the 1997 review of the Adoption Act 1994. The basis of the amendments is grounded in the principle that adoption is a service for children. The Bill furthers the conceptual change that occurred in 1995, which introduced open adoption among three main parties to adoption: the adoptee, the adoptive parents and the birth parents. The Bill also introduces additional amendments related to administrative matters. These amendments will improve the operation of the Act.

We have received a fair amount of correspondence on the Bill, mostly expressing differing opinions about the proposed extension of the age limit. The two most contentious issues are, of course, the extension of the age limit and the change to information and contact vetos. The proposed changes to the age criteria are interesting. From my point of view, prospective adoptive parents should not be restricted by age criteria. The Bill proposes to change the age criteria for prospective adoptive parents from a maximum age gap of 40 years between the parents and the adoptive child to 45 years for a first child and 50 years for subsequent children. The Adoption Legislative Review Committee recommended an age differential of 43 years. I have some concerns about age limits, because when we put age limits in legislation we always seem to affect someone who is outside those age limits. Hon Giz Watson has pointed out the process that occurs before people reach the age at which they may wish to adopt a child and become a parent. I have a couple of friends who would make very good parents but who will be affected by this change.

Vetos will always be a vexed question. I do not think we will ever get to a situation in which everyone is totally happy. However, that issue needs to be addressed, and perhaps the changes proposed in this Bill will be for the better. The Bill highlights the principle that adoption is a service to the child rather than to adults. That is the crucial point when we consider this issue.

The Bill deals also with the adoption of Aboriginal and Torres Strait Islander children. It provides that an Aboriginal and Torres Strait Islander officer shall be involved in the adoption of these children, and it includes the principle that adoption is not part of the Aboriginal and Torres Strait Islander culture. That raises some interesting points. There is great advantage in Aboriginal and Torres Strait Islander children being adopted by parents who can be totally responsible for them. From the conversations I have had over a number of years with Aboriginal people who have been adopted, the environment into which they are adopted is the crucial factor, and the outcome is certainly better if they are placed in the right environment.

I turn now to some of the information that we have received after consultation with groups and organisations about the impact of the Bill. Adoptions International of Western Australia opposes most of the amendments in the Bill, in particular the age restrictions. It believes the age criteria are not an issue for local adoptions, as birth parents generally choose to place their children with adoptive parents aged in their thirties, and that they apply more to intercountry adoptions. It believes also that there are double standards, because there are no age restrictions for foster parents, birth parents or kin parents, including grandparents. In 2001-02 only 20 intercountry adoptive children came to Western Australia. At the same time, quite a large number of families were interested in intercountry adoptions.

We also received correspondence from citizens supporting the complete lifting of age restrictions for adoptive parents. There are no age restrictions in New South Wales, Victoria and the Australian Capital Territory. Their arguments are based on a trend towards later parenthood, equal opportunity legislation, and decisions being made on the basis of providing the best home for the child, which of course complements what I said earlier. The Adoption Research and Counselling Service supports the provisions of the Bill. It disagrees with Dr Constable's attempt to remove the age criteria for adoption and argues that adoption should meet the needs of the child. Birth parents in Western Australia have input into choosing the adoptive parents for their child, and statistics demonstrate that they choose parents between 30 and 35 years of age. The Association Representing Mothers Separated From Their Children by Adoption - ARMS - supports the Bill, in particular the lifting of all information vetos within two years of the Bill's commencement. The two main issues that are of interest to me are the age limits and the vetos, and I will watch closely as this Bill goes through committee.

HON LJILJANNA RAVLICH (East Metropolitan - Parliamentary Secretary) [2.28 pm]: I thank members for their contributions. The paramount consideration that needs to be taken into account in the administration of the Adoption Amendment Bill (No. 2) is what is in the best interests of the child. Many members have become bogged down in the detail of the legislation, thinking that the level of detail is more important than that overarching principle. The department will always deal with what is in the best interests of the child. Therefore, when dealing with the merits of this Bill, that overarching principle should be paramount.

As a result of the 1997 review of the Adoption Act 1994, the Act will be strengthened and tidied up. Some changes will also be made to the area of adoption application committees. In the past there has been provision for a number of these committees. Under this Bill there will be only one state adoption application committee; it makes no provision for the licensing of a range of adoption application committees. The Government wants to avoid the notion that we can set up a lot of these committees and prospective adoptive parents will be able to shop around to see who will give them the most favourable report and hence the best deal.

I have been very heartened by the preparedness of the members from other parties to seek a resolution of the age criteria. There has been considerable concern among members, but legislation is not an exact science in dealing with matters such as this. There is no right and wrong, and it always boils down to what is best on balance. The age ranges agreed to for the various categories of adoptive parents will always allow the relinquishing mother to have the last say in local adoptions. This may be more problematic for overseas adoptions, which number about 35 per annum, so we are not talking about hundreds of children. This Bill as it currently stands will affect about 40 children in the State. The difference between local and overseas adoptions - with local adoptions numbering seven or eight annually - is that in an overseas adoption the relinquishing mother does not always get to say who the adoptive parents will be. Sometimes, the relinquishing mother cannot be found, and sometimes the administrative arrangements are not in place, making it much more difficult for the relinquishing mother to have the same level of influence on the age categories of the prospective parents.

Other key areas covered by this legislation include information vetos and contact vetos. Information vetos will be removed from the Act after two years. No new contact vetos will be granted, but existing contact vetos will stay. It is important to remember that the amended Act will be reviewed after three years. Contact vetos are a tricky area. It is very difficult for any Government to say that people will not be adversely affected by them in the long run. However, extensive consultation has taken place on this legislation, and the Government is as a result convinced that the amendments being made on contact and information vetos will be a major benefit in the long term. These areas of concern seemed to be the same for Hon Derrick Tomlinson, Hon Giz Watson and Hon Murray Criddle.

These amendments to the Adoption Act were not dreamed up in the Labor Party room. They resulted from a number of years of extensive consultation. For example, 2 000 copies of an issues paper were distributed; 108 written submissions and 14 verbal submissions were received; and two market research projects were commissioned. Special consultations were carried out with Aboriginal groups, which have indicated their support for the amendments contained in the Bill that impact on Aboriginal and Torres Strait Islander people. A report on the findings was distributed, and further feedback received. A final report was released in November 1997, and further comment was taken well into 1998. The Cabinet of the previous coalition Government endorsed the recommendations of the adoption legislative review, and ordered the preparation of a Bill to amend the Adoption Act in 1998. The coalition Government supported all but 15 of the original recommendations, and the present Government also does not support 10 of those 15. Even at that stage there was virtual unanimity about the direction in which to proceed.

The Bill seeks to improve the operations and the standard of the existing adoption process, and to address some of the administrative changes that have become necessary with the passage of time, and the consequences of amendments to other legislation, such as the Family Law Act. As a result of the changes to the legislation made by this Bill, more children will be adopted, and adopted children will have the opportunity to be raised in a

family with a sibling. This results from an amendment in clause 30 to replace section 53 and allow the director general to place a child with a prospective adoptive parent, even if that placement does not fulfil all the requirements of section 52(1).

I want to pick up a point about information and contact vetos raised by Hon Derrick Tomlinson. He cited a case about the two sisters who were never really told about their relationship to one another and of their linear relationship to some of their other family members. This case is very tragic, and is repeated in one shape or form in many parts of our community. We live in a much better society now than in the past, when young unwed mothers were ridiculed and shamed, and became social isolates unless they were prepared to undertake these drastic measures, and live a lie. We are moving into a more enlightened period, in which these things will be much more in the open. It is a positive reflection of our society that these days, if a woman has a child out of wedlock, it is accepted as her choice, and life goes on. It is not the end of the world. However, I am amazed at the extent to which these circumstances arose 30 or 40 years ago. I have a friend who found out that the woman she thought was her sister was in fact her mother. On the weekend I was at a barbecue where I spoke to a man who said he had a number of brothers, one of whom turned out to be his nephew. There are many examples of this situation. We may not get the information and contact veto provisions exactly right, but there is a provision to review the legislation, so we are moving in the right direction. I made the point, by way of interjection while Hon Derrick Tomlinson was speaking, that there is nothing really at law that prevents somebody trying to track down their linear relationships, and their parents, but the contact veto does prevent the department from having access to information which could identify the party which placed the veto, unless the requesting party signs an undertaking not to contact the other party. The breach of that undertaking attracts the penalty, but if an individual suspects that he or she is adopted, there is nothing to stop that person from seeking information from anybody in the community. There is much more transparency than there used to be, and that information can often be sought and pieced together.

I will touch quickly on the question of age because it concerns many people. I have already made some comments on it. People are having children later in life. It is accepted that not everyone has a child at 21 years of age. It is quite common for women in their mid-30s to start having children. The feedback from community consultation is that it is in the best interests of children for them to be placed with adoptive parents whose age profiles do not differ significantly from the general population. Adopted children may feel quite different if the age differential between them and their parents is too large. The amendment will provide greater stability with that issue.

I wish to speak about the principle of Aboriginal child placement. I thank Hon Derrick Tomlinson for his contribution to that part of the debate. I was enlightened and very impressed by his understanding of the history and plight of Aboriginal people. He has obviously read very widely on the history of the issue. I am sure he would have read the report into the stolen generation, "Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families", which highlights many of the practices of the past that have badly scarred Aboriginal and Torres Strait Islander people. The placement principle for Aboriginal and Torres Strait Islander children attempts to provide a legislative framework to ensure that culturally appropriate processes are implemented when placing an Aboriginal or Torres Strait Islander child through adoption. Importantly, it does not require a woman to have her child placed with an Aboriginal or Torres Strait Islander person when it is against her wishes. That is important to note. The last option of the principle is to place a child with a non-Aboriginal or Torres Strait Islander person. Section 45 of the Act requires the director general to provide the birth parents with a selection of prospective adoptive parents consistent with the wishes of the birth parents, if practicable. The term "if practicable" is included because applicants to be prospective adoptive parents may not meet all the wishes of the birth parents. When looking at the placement principle of Aboriginal and Torres Strait Islander children, we must keep in mind that the department will always act in the best interests of a child. That does not mean that Aboriginal children have to be adopted by Aboriginal parents. There is no point placing an Aboriginal child with someone who is racist towards Aboriginal people. Much has been made of this provision by people who do not understand what it is trying to achieve. It is a positive step.

Hon Giz Watson commented on a statistic purported to have been quoted in a 1999 United Nations International Children's Emergency Fund document. According to the department and experts in the field, that claim does not appear to be recorded in any official UNICEF publication or statement, including any kept at the department, and is not the subject of any research or monitoring, past or present.

A lot of people have the notion that there are hundreds of unwanted children in orphanages in countries like Romania. The perception is that the children - whether in Romania, China or Korea - are available for adoption. It leads people to hold the view that there are 50 children for every prospective adoptive parent. People must realise that, due to poverty or whatever, parents in those countries leave their children in an institution but have

not necessarily signed over their children to the State. It is something that confuses many people. The State is often not the rightful guardian of the children and has no right to give them up for adoption.

I hope I have covered the concerns of members. This Bill is a positive step in the right direction for adoptions in Western Australia. I have been heartened by the cooperation of members in dealing with the legislation in this place. They are committed to progressing the legislation. I thank them for their contributions. I urge members to support the Bill.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chairman of Committees (Hon Kate Doust) in the Chair; Hon Ljiljanna Ravlich (Parliamentary Secretary) in charge of the Bill.

Clauses 1 to 3 put and passed.

Clause 4: Section 3 replaced -

Hon DERRICK TOMLINSON: I move -

Page 2, after line 23 - To insert -

(c) the adoption of a child should occur only in circumstances where there is no other appropriate alternative for the child.

It is with some reservation that I move this amendment. When I originally moved the motion, which uses words taken from proposed section 3(2), I felt that if that were the case for an Aboriginal child, a non-Aboriginal child should be treated in the same manner. Therefore, I put it in the principle. After the amendment was placed on the Notice Paper and published, I received a submission from a citizen who said the effect of the amendment is to make it more difficult to adopt a child. He saw it as being a negative provision. I hope that it is not read that way because it is not my intention to make it more difficult for adoption to proceed. In fact, it is a restatement of the overriding principle that the best interests of the child are to always be the prior consideration. In some respects, the words that I have moved are a restatement of that principle. I hope that is not interpreted to mean that I want to make it more difficult for adoption to occur. In some respects, it is perhaps a redundant provision because it is the relinquishing parent or, in the case of a ward of the State, the State that makes the decision. The relinquishing parent, regardless of the circumstances of that enormous decision, is doing what he or she believes is in the best interests of the child. I move the motion in the spirit that it is intended to reinforce the proposition that the overriding principle of adoption and, for that matter, child welfare legislation must be that we always act in the best interests of the child.

Hon LJILJANNA RAVLICH: I thank the member for his contribution. That amendment is acceptable to the Government and the minister is of the view that it strengthens the legislation. Proposed section 3(2) stated that adoption -

. . . should occur only in circumstances where there is no other appropriate alternative for that child.

That provision is applicable to Aboriginal and Torres Strait Islander children. This amendment strengthens that provision so it is the case for all children. Therefore, the amendment will be accepted. Having said that, the member has an amendment to proposed section 3(2). The Government will not support the dilution of that provision.

Amendment put and passed.

Hon DERRICK TOMLINSON: I move -

Page 2, lines 24 to 29 - To delete the lines.

We have now put a principle into the legislation that applies to all children regardless of ethnic heritage.

When I spoke in the second reading debate, I expressed my concern about giving statutory effect to what is not a fallacy but an inappropriate statement. There is no doubt that adoption is not part of the Aboriginal and Torres Strait Islander culture; that is irrefutable. Neither is it a part of the non-Aboriginal or Torres Strait Islander culture. I made the point last night that it is a nineteenth century legal construct. However, what is the mischief that we are trying to address? I talked at length on the policy that emerged in the 1933 and 1936 legislation and continued - I think - until 1972 in Western Australia; that is, the so-called assimilation policy. One of the things that I did not talk about when referring to the assimilation policy was the deliberate initiative to have children of mixed Aboriginal descent adopted by white families. I talked about the experience at Sister Kate's. One of the

initiatives of the Queens Park Cottage Home for Children was to enable those children to become enculturated into the prevailing white society. They were allowed to have holidays with and be eventually adopted by non-Aboriginal families. That was part of the deliberate process of assimilation. We have seen the negative consequences of that process. A different consciousness now exists about indigenous Australians than existed at that time. However, we are wearing the consequences of that policy in Australia. That is the mischief that we are trying to address with this provision. We are saying that those principles that operated from 1936 to 1972 for Aboriginals will not be repeated. It is more effectively said in schedule 2A. The Aboriginal and Torres Strait Islander placement adoption principle is a very worthy principle that I wholeheartedly support. However, it is a statement that was developed only as a consequence of the policies that operated under the so-called name of assimilation. An example of this can be found in the "Bringing them home" report of the Human Rights Commission. However, that is only one example of the way in which those policies were demonstrated.

I am disappointed that the Government will persist with what is a legislative trap to give statutory force to something that is intellectually indefensible when it has its own answer in schedule 2A, which outlines the placement for adoption principle for Aboriginal and Torres Strait Islander children. I urge members to support that and to not reject my amendment to remove those unnecessary and indefensible words from clause 4.

Hon BARBARA SCOTT: I support the views expressed by Hon Derrick Tomlinson. I missed my opportunity to speak earlier in the debate as a result of a misunderstanding. The Bill acknowledges that adoption is not part of Aboriginal or Torres Strait Islander culture and that adoption should occur only when other appropriate alternatives cannot be found for those children. I suggest that this is a manufactured issue. It is tied up with the legislative framework that Hon Derrick Tomlinson referred to last night during the second reading debate when he looked at the original construct of legislation surrounding adoption. It is my view that very few women, whether Aboriginal or Torres Strait Islander women or whatever, really want or have ever wanted to give up babies for adoption. The issue is not one in which it can be said that adoption is not a part of Aboriginal and Torres Strait Islander culture only. I had hoped to refer to a detailed inquiry conducted by the Parliament of New South Wales on adoption practices in 1999. That report researched the power that was exerted over many women to put up their children for adoption. I agree with my colleague's amendment. I do not believe that one can say that adoption is foreign only to Aboriginal and Torres Strait Islander cultures. I believe it is foreign to all cultures. Therefore, there needs to be cultural sensitivity in adoption. That sensitivity involves taking the best interests of the child into account, as well as the cultural mores and perhaps even the religious preference of the relinquishing mother, if the relinquishing mother is given the opportunity to consent. Mothers are given that opportunity under current adoption legislation, but that was not always the case in the past, such as in the 1950s, 1960s and 1970s. I support my colleague on this amendment.

Hon GIZ WATSON: I seek some clarification. I am leaning towards being persuaded to the amendment moved by Hon Derrick Tomlinson. It seems that the previous amendment clarified the priority on adoption occurring only when no other appropriate alternative is available for the child. We have discussed the matter that although we all acknowledge that adoption is not a part of Aboriginal and Torres Strait Islander culture, it is also not a part of our culture. The removal of proposed section 3(2) would not detract from that. The member made a good argument that the principles that we are supporting are enshrined in the schedule anyway, and we are happy to agree with them. However, it seems that proposed subsection (2) is perhaps redundant. Perhaps the parliamentary secretary can provide some feedback on why she considers it necessary to retain that proposed subsection.

Hon LJILJANNA RAVLICH: I thank members for their contributions. The Government will not support the amendment to delete lines 24 to 29 on page 2 of the Bill. Proposed subsection (2), as part of the principles of the Bill, acknowledges -

> . . . that adoption is not part of Aboriginal or Torres Strait Island culture and that therefore the adoption of a child who is an Aboriginal person or a Torres Strait Islander should occur only in circumstances where there is no other appropriate alternative for that child.

The Government accepted the amendment to insert a proposed subsection (1)(c). However, the reasons for not accepting the amendment currently before us are numerous. Firstly, this was one of the review recommendations: that specific recognition should be given to Aboriginal and Torres Strait Islander culture on adoptions.

Hon Barbara Scott: What was the rationale?

Hon LJILJANNA RAVLICH: I will get to that. Secondly, Aboriginal stakeholders who were consulted on this matter were strongly of the view that this provision should be included as a principle in the legislation. The amendment to insert proposed subsection (1)(c) has already been carried. These amendments were placed on the supplementary notice paper. Departmental representatives obviously went back to stakeholders and sought some feedback on the inclusion of proposed paragraph (c) and whether it would be acceptable to delete subsection (2),

which is what the amendment before us attempts to do. The stakeholders were very strong in their resolve that both elements be included in the Bill. Hon Giz Watson made the point that the principle is enshrined in the schedule. The principle before us and what is included in the schedule may involve two different things. I will read some information to Hon Giz Watson, Hon Barbara Scott and Hon Derrick Tomlinson from the Western Australian Indigenous Child Care Agencies Council, which was received by the director of strategy and policy of the department on 21 March 2002. It states -

> When contemplating this legislative draft document, in the first instance, attention is drawn to the fact that, in the Nyoongar community, the area in which this legislation is tabled, the concept of adoption is abhorrent.

It goes on to speak about the need for clear reference to the community's role in the decision-making process and so on. It is not just that it is unacceptable to them; it is abhorrent to them. That is why the stakeholders wanted to enshrine this matter in the principles. It is the Government's view that proposed subsection (2) strengthens the legislation. For that reason I urge members to defeat the amendment currently before us.

Hon GIZ WATSON: I seek some further clarification from the parliamentary secretary. I understand from her response that this is a clear statement of principle that Aboriginal people in particular would like inserted in this legislation. I can understand that. What would be the legal ramification of taking it out? Would there be any repercussions in terms of weakening the application of the schedule? Is the move to retain this proposed subsection a reflection of a strong desire among certain people that this principle should be in the legislation as a statement of policy, rather than because it would have a direct impact on the placement of Aboriginal children?

Hon LJILJANNA RAVLICH: The removal of proposed subsection (2) would not weaken the application of schedule 2A. However, the message was very strong from the stakeholders: they wanted this acknowledged as a principle and they wanted it acknowledged up-front in the legislation.

Hon DERRICK TOMLINSON: It is an irrefutable fact that adoption is not part of Aboriginal or Torres Strait Islander culture. That is not taking it too far. The second part of that statement was included by an amendment that created new section 3(1)(c). It states that the adoption of a child who is an Aboriginal or Torres Strait Islander should occur only when there is no other appropriate alternative for the child. It is also contained in schedule 2A, which reads -

> If there is no appropriate alternative to adoption for the child, the placement of the child for adoption is to be considered in the following order of priority.

It is a redundant statement. The clear principles contained in schedule 2A are a much better and far more comprehensive statement. I reaffirm that it is an irrefutable fact that adoption is not part of the Aboriginal and Torres Strait Islander culture. I listened to the parliamentary secretary's emphatic statement that it is repugnant and abhorrent to the Nyoongah people. The people most affected by the adoption principles contained within the assimilation program from the 1930s through to the late 1960s and early 1970s were the Nyoongah people, and not necessarily those Aboriginal people north of the twenty-sixth parallel. Most of the policies that are abhorrent to the Nyoongah people came from that period. I do not want to labour the point about who the Nyoongah people are. As I stated last night, the Nyoongah people - Aboriginal people of the south west of Western Australia who identify themselves as Nyoongah people - are in some instances five generations removed from their cultural origins. I will not pursue that argument any further. Let us return to the proposition that they were the most affected, and, therefore, they find it abhorrent. However, that is not a consequence of the culture but of the policy that had a continuing affect upon their lives, and that continues to affect their lives. That principle is addressed in Western Australia with this legislation and throughout Australia in legislation that adopts the Aboriginal placement principle. It is the Aboriginal placement principle that addresses the issue that the Nyoongah people in particular find abhorrent, not the irrefutable proposition of their cultural heritage. The issue has been addressed in schedule 2A, where it is better addressed.

Hon GIZ WATSON: I am trying to find a way through this issue. Having just passed a new section 3(1)(c) which states that the adoption of a child should occur only in circumstances in which there is no other appropriate alternative for the child, if we defeat the amendment and retain proposed section 3(2), the last half of that paragraph will be a repeat of new section 3(1)(c). It seems to me that we could have it read, "It is acknowledged that adoption is not part of Aboriginal and Torres Strait Islander culture" and leave it at that. The remainder of proposed section 3(2) is simply a repetition of what is now new section 3(1)(c). If it is about having that principle up front, I can be persuaded. However, to a large extent it is repetitious and does not address the issue that people can argue that adoption is also not part a of our culture.

Hon LJILJANNA RAVLICH: In response to Hon Derrick Tomlinson, it is dangerous for us as legislators to adopt the attitude that we know best about everything.

Hon Derrick Tomlinson: If I have given that impression I apologise.

Hon LJILJANNA RAVLICH: Never! I say that within the context that consultation has been ongoing for five years and many different groups of people have been consulted about this matter. The inclusion of this provision within the principle is a direct result of that lengthy consultation. Hon Giz Watson is quite right in that it may well be repetitive because it is covered within the principle and in the Aboriginal placement principle in schedule 2A. If we delete that wording, it will be against the wishes of the people to whom we have committed our support. It is my understanding that Hon Giz Watson was happy to retain the wording; however, there has been a shift in her position. That is fine, because she is well within her rights to change her opinion. However, all stakeholders have accepted the current wording of new section 3(1)(c) and the inclusion of proposed section 3(2). However, I accept the point that there may be some repetition and if she would like to move an amendment to delete the words she deems repetitious, the Government will accept it. Having said that, however, we would prefer the member to not move the amendment because of the commitment that was undertaken to those respective groups.

Hon GIZ WATSON: I move -

> Page 2, lines 25 to 29 to delete all words after "culture"

The clause would then read -

> It is acknowledged that adoption is not part of Aboriginal and Torres Strait Island culture.

I am not trying to be difficult, but I have been thinking that this is a nonsense. It seems that we have just accepted an amendment that states -

> . . . the adoption of a child should occur only in circumstances where there is no other appropriate alternative for the child.

That would mean every child whether or not they are Aboriginal. Hon Derrick Tomlinson's amendment simply repeats what is already in the Bill more explicitly. The Bill states -

> . . . the adoption of a child who is an Aboriginal person or a Torres Strait Islander should occur only in circumstances where there is no other appropriate alternative for that child.

It is not worth dying in the dish for, but it seems clumsy drafting to move a generic amendment and then to go back to a more specific definition. I understand that proposed section 3(2) clearly states that adoption is not part of the Aboriginal and Torres Strait Islander culture, which is fine; however, the rest of it is mere repetition of Hon Derrick Tomlinson's new section 3(1)(c).

Hon LJILJANNA RAVLICH: The Government will accept Hon Giz Watson's amendment.

Hon DERRICK TOMLINSON: I do not accept the member's amendment. In fact, it is a statement of what I consider to be a legal nonsense. To state the obvious in those terms is a legal nonsense. I do not support the notion of giving statutory force to a legal nonsense. It is an irrefutable cultural truth that adoption is not part of the Aboriginal and Torres Strait Islander culture. Adoption is not part of the non-Aboriginal culture either. Hon Giz Watson is trying to make a statement that is a legal nonsense. The whole lot should either be deleted or accepted as it is. We have already dealt with proposed section 3(2) and decided to insert the latter part of it into new section 3(1)(c). The Aboriginal placement principles are already included in schedule 2A. I will not support the enactment of a legal nonsense. I acknowledge and accept that this is probably a very important symbolic statement in the legislation for Aboriginal and Torres Strait Islander people. I do not like it, but I am not going to slash my wrists over this issue.

Hon GIZ WATSON: I withdraw my amendment. It is not worth pursuing.

Amendment put and negatived.

Clause, as amended, put and passed.

Clause 5: Section 4 amended -

Hon DERRICK TOMLINSON: I move -

> Page 4, lines 4 and 5 - To delete the lines and insert instead -
>
> > **"Aboriginal person"** means any person living in Western Australia who is descended from the indigenous inhabitants of Australia who claims to be an Aboriginal and who is accepted as such in the community in which he or she lives.

I spoke on this issue last night. Self-identification is the most common approach to the definition of an Aboriginal child throughout Australia. Using that formula, an Aboriginal person is defined as a person of Aboriginal descent, who identifies as an Aborigine and who is accepted as such in the community in which he or she lives. That definition is contained in the Aboriginal Heritage Act. The definition before us states -

"Aboriginal person" means a person who is a descendant of Aboriginal people of Australia;

That is the preferred definition of the Department for Community Development, which I understand will include such a definition in its amendment of the Child Welfare Act. I understand also that it is the preferred definition of the Aboriginal peoples who were consulted at a forum as late as a week or so ago. I acknowledge those things. Yesterday I spoke at length about some cautionary principles and argued that the three-way test of Aboriginality should apply to the adoption of Aboriginal children.

Hon LJILJANNA RAVLICH: The Government will not accept this amendment; it is too restrictive. The amendment has three parts to it. Firstly, the person must be a descendant from the indigenous inhabitants of Australia. Secondly, he must be able to self-identify; that is, he must be able to claim that he is Aboriginal. Thirdly, he must be accepted as being a member of an Aboriginal community. However, children cannot self-identify. In many cases, for example, although a person is of Aboriginal descent, for a range of reasons he is not an integral member of the Aboriginal community. As a result, although he may be of Aboriginal descent, that community might not accept him. The Government believes that this three-tiered system is too rigorous and imposes limitations on people being able to legitimately claim their Aboriginality. In the Government's view, this amendment is designed to screen people and make them jump through hoops. It is nowhere near as simple as the definition of "Aboriginal person" in the current legislation, which means a person who is a descendant of Aboriginal people of Australia.

Having said that, the Department for Community Development deals with at least four 400 or 500 Aboriginal children annually. The question of Aboriginality is only ever an issue in a very small number of cases. Usually, the fact that the person is a descendant can be easily proved under the existing provisions. The Government does not support Hon Derrick Tomlinson's amendment. We believe it would make the definition too restrictive; therefore, we will vote against it.

Hon DERRICK TOMLINSON: I do not want to prolong the debate. However, of course a child cannot self-identify. A child has no legal status for self-identification until he is 18 years old. Until then, the parent or guardian decides all matters of legal identification.

I refer to intellectual awareness. At the stage of concrete operations, a person might claim to be Aboriginal. Some people reach the stage of abstract conceptualisation when they are 14, others when they are 17, and, in the case of some members of the Labor Party, it never happens. Aborigines become aware of their Aboriginality during adolescence. I do not think it is a defence to say that a child cannot claim Aboriginality, because the parent or guardian claims Aboriginality on the part of the child. In fact, if the parent did not want to acknowledge Aboriginality, how would descent be proved? It is the parent who must say that his or her child, his or her baby, is Aboriginal. It would be different if the child were clearly Aboriginal, but what would happen with people who are four or five generations removed?

Hon Ljiljanna Ravlich: When the child gets older, he may claim it on his own account.

Hon DERRICK TOMLINSON: Sure. Let us look at this from the other end. The placement principle says the child should be placed with an Aboriginal family. In that instance "Aboriginal" is defined by descent only. Although the parliamentary secretary says the definition I have proposed is restrictive, I suggest it is inclusive.

Hon LJILJANNA RAVLICH: We have a point of difference over that. We could argue about it for a long period. Unfortunately, we do not have that much time. There was extensive consultation over the definition of "Aboriginal person". The Aboriginal Legal Service, the Aboriginal and Torres Strait Islander Commission, members of the Derbarl Yerrigan Committee, Aboriginal advisers and a range of other people were consulted. The preferred definition of all parties is that which is in the Bill. Therefore, we will not support this amendment.

Amendment put and negatived.

Clause put and passed.

Clauses 6 to 28 put and passed.

Clause 29: Section 52 amended -

Hon DERRICK TOMLINSON: In the light of the agreements that have been reached behind the Chair, I will not move the amendments in my name. The Government and the Opposition have agreed to a formulation, which Hon Ljiljanna Ravlich will move.

Hon LJILJANNA RAVLICH: The honourable member is quite right. Clause 29 deals with the issue of the age of adoptive parents. All the amendments listed on the supplementary notice paper under the name of Hon Derrick Tomlinson will not be moved.

Hon Derrick Tomlinson: With my agreement!

Hon LJILJANNA RAVLICH: Yes, and that is very much appreciated. I move -

Page 13, line 20 - To delete "has" and insert instead -

is the younger of prospective joint adoptive parents who, as a couple, have

Amendment put and passed.

Hon LJILJANNA RAVLICH: I move -

Page 13, line 24 - To delete "has" and insert instead -

is the older of prospective joint adoptive parents who, as a couple, have not

Amendment put and passed.

Hon LJILJANNA RAVLICH: I move -

Page 13, after line 25 - To insert -

(iiib) is not more than 50 years older than the child in the case where the prospective adoptive parent is the younger of prospective joint adoptive parents who, as a couple, have adopted a child before;

(iiic) is not more than 55 years older than the child in the case where the prospective adoptive parent is the older of prospective joint adoptive parents who, as a couple, have adopted a child before;

(iiid) is not more than 45 years older than the child in the case where the prospective adoptive parent is a prospective sole adoptive parent and has not adopted a child before (whether as a joint or sole adoptive parent); or

(iiie) is not more than 50 years older than the child in the case where the prospective adoptive parent is a prospective sole adoptive parent and has adopted a child before (whether as a joint or sole adoptive parent);

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 30 to 87 put and passed.

Title put and passed.

Bill reported, with amendments.

Leave granted to proceed forthwith through remaining stages.

Report

Report of Committee adopted.

Third Reading

Bill read a third time, on motion by Hon Ljiljanna Ravlich (Parliamentary Secretary), and returned to the Assembly with amendments.