ADOPTION AMENDMENT BILL (NO. 2) 2002

Second Reading

Resumed from 3 December 2002.

HON DERRICK TOMLINSON (East Metropolitan) [8.28 pm]: The Liberal Party Opposition supports this Bill. I regret, however, that I will take some time of the House to advise of some cautionary matters. I have proposed some amendments relating to those matters and I have had discussions with the minister's advisory officers and the minister and we have come to agreement on one of those matters. I could summarise my cautions about the Bill in a matter of 15 minutes. Regrettably, when I did so with the parliamentary secretary in a briefing we had a few days ago, the parliamentary secretary - I hope I do not misrepresent Hon Ljiljanna Ravlich - said, "I am a little bit confused. Could you slow that down for me and run it past me once again?" I will take it very slowly and be rather expansive in my explanation, because some of what I present might be controversial and perhaps even incomprehensible to some people.

In 1994 the then Court Government and the minister of the day, Hon Roger Nicholls, introduced amendments to the Adoption of Children Act 1896, which, I think it is fair to say, brought the adoption principle very close to the twenty-first century, but not all the way. Because it was a Bill that liberalised the whole approach to adoption - I use "liberalised" in the small "l" sense of the word - there was considerable caution about aspects of it. Because of that caution, the Government of the day was reluctant to accept all the recommendations of a long and comprehensive process of community consultation, reporting and re-consultation before presenting the Bill. It was a Bill that had a long period of gestation over successive Governments. The Government that introduced the amendments to the Adoption of Children Act 1896 in 1994 erred on the side of caution. However, recognising the significance of the changes that were made, it provided that the Act be reviewed two years after its operation to test the efficacy of some of the reforms and to determine whether further changes might be advisable.

The process of review was begun by a previous minister in the Court Government, Hon Rhonda Parker. A report on the adoption legislative review was presented in 1994. The Government then proceeded to amend the Act in line with some of the recommendations of the final report of the Adoption Legislative Review Committee. Regrettably, that legislation was not presented for consideration by the Parliament before there was a change of government and, as is quite appropriate, the new minister reconsidered the legislation, accepted many of the propositions of the previous Government, made some changes according to changed values and we now have the Bill before us. In effect, the Bill is a product of that process of public review, public consultation, reporting, assessment by a Government and reassessment by another Government, and represents what might be regarded as a public consensus - a political consensus in some respects. That is why I think we could very well say that the Opposition supports this Bill in principle and sit down. However, I think it is too important to be treated that way.

The three matters for which I want to advise some cautionary principles relate to the elimination of information vetos, the discrimination on the basis of age against persons who are eligible to become adoptive parents and, I think most controversial and most vexing of all, those provisions relating to the adoption of Aboriginal children. I can dismiss the first item fairly quickly by saying that the Opposition supports the principle of the elimination of information vetos. At the time this issue was debated in the Parliament in 1993-94, it is fair to say that there was some division of opinion among members about whether there should be information and contact vetos. On the one hand, it was argued that every person has a right to know his or her heritage; every person has a right to know his or her roots. On the other hand, it was argued that the privacy of individuals must be respected. The tension between the protection and privacy of individuals and the right of the person to know his or her roots was resolved by the Government legislating in favour of information and contact vetos. Therefore, an adoptive parent, a relinquishing parent and an adoptee over the age of 18 could register an information veto excluding access to information about their heritage, including their identity and so on. Adoptive parents and adopted children could register contact vetos so that they were not to be contacted by the relinquishing parents. That was an awful human dilemma we all had to face. I remember the debates we had.

I am very conscious of the effect of the denial of the right to information and the protection of the privacy of individuals upon people's lives. I am mindful of two sisters.

About 1939 the first sister gave birth to a daughter and about 1941 the second sister gave birth to a son. Both were conceived and born out of wedlock. Members can imagine the stigma that was associated with illegitimate births in that period. The children were brought up by their grandmother and were never told that the people who they thought were their sisters were in fact their mothers. They were never told that the person who they thought was their mother was their grandmother. They were never told that the persons they thought were their brothers and sisters were their uncles and aunts. They were never told that the persons they regarded as their nieces and nephews were their cousins. That protection was exercised until the son was 21, by which time the

grandmother - who he believed was his mother - was deceased. He decided that he wanted to travel overseas. To travel overseas he required a passport. To get a passport he required a birth certificate. This was before the 1990 series of amendments that eliminated discrimination against exnuptial children in the registration of births. When he applied for his birth certificate, he was told that he could not have it because there was a veto on access. He could not understand that, so he went to his assumed sister, who was his cousin, and asked her why.

Hon Giz Watson interjected.

Hon DERRICK TOMLINSON: No, his assumed sister, who was his cousin. He did not talk to his mother-sister or to his aunt; he talked to his sister-cousin, because the two of them had been brought up together by their grandmother-mother. It is complicated, is it not? Apparently she knew or had somehow divined - she was never told but had been able to work out - that the person who she was brought up to believe was her sister was her mother. As a consequence of working that out, as children are able to do intuitively as they mature, she had also worked out that her brother-cousin was the child of her aunt-sister. How was she to tell her brother-cousin that? She approached her brother-uncle, because the mother-grandmother was deceased and therefore she could not tell her grandchild the truth of his birth. The brother-uncle then met the young man and told him of his birth and of the 20 years of protection. That was 30 years ago. The young man has never spoken to any of his family since then. He is now 62 years of age. When I spoke to him, he did not know my father was dead, nor did he know that his much revered uncle had died only a few months beforehand. He has still not spoken to any member of his family, other than an accidental meeting with me.

I tell members that story to illustrate the poignancy of the consequences of the laws we make and the changing community values. Now we must confront this reality of an amendment to the Adoption Act, which at an intellectual level is totally defensible; that is, to remove an information veto so that any child can have access to information about this roots. The child might ask, "Who am I? Who is my mother? Who is my father? Who is my aunt? Who is my uncle? Who is my cousin?" People have a fundamental right to know of their roots. The abolition of the information veto is defensible at an intellectual level. However, it is interesting to look at the final report of the Adoption Legislative Review Committee, which was published in 1997. Table 6 on page 14 of the report outlines the number of vetos lodged by status - that is, type - between 1 October 1994 and 31 December 1996. The table lists information vetos only, contact vetos only and information and contact vetos, and identifies whether the vetos were lodged by adoptees, adoptive parents, birth parents or other relatives. The column "Information Veto only" shows that 24 adoptees lodged an information veto. Adoptees over the age of 18 years can lodge their own vetos. Sixteen adoptive parents lodged information vetos in that time. Birth parents lodged seven, and none were lodged by other relatives. Three times as many adoptees as birth parents imposed an information veto. I found that to be an interesting statistic. The column "Contact veto only" shows that 36 contact vetos were lodged by adoptees, 24 by adoptive parents, 36 by birth parents and four by other relatives. Adoptees and birth parents lodged an equal number of contact vetos. The table also shows that between 1 October 1994 and 31 December 1996, 260 adoptees lodged both contact and information vetos. They did not want their relinquishing parents to know or contact them. Information and contact vetos were lodged by 272 adoptive parents and 128 birth parents. A total of 807 vetos were lodged. Most were contact vetos or information and contact vetos. That is interesting.

There is a question I want answered, although I am sure there are as many answers as there are people involved; that is, why would an adoptee impose an information or contact veto? Such vetos have been lodged. However, from the date of the commencement of this legislation, the information vetos will be void, although the contact vetos will remain. I can accept that at an intellectual level; my concern is the practicality. Information vetos are gone; therefore, any person has the right to know the name of his or her relinquished child, and any adoptee has the right to know the names of his or her birth parents. The adoptive parents will no longer have the "protection" - I wish there was another word for that - of an information veto. That is supportable at an intellectual level when we consider that we are talking about 100 years of changing values and we are seeking to impose the values of today on the circumstances of 40, 50 or 60 years ago. I can support at the same intellectual level the retention of contact vetos. My concern is how can we maintain a contact veto when there is no veto on information. Once a person has a name, many avenues of public information make it very easy to find out where, for example, Derrick Tomlinson lives and to find out all kinds of things about him; mind you, I am not aware of any relinqished children of mine to whom I can relate this. We are proposing to maintain contact vetos and eliminate relinquishing vetos. My concern is that defensible as both of those might be, the intention is impractical. I will leave it at that.

Hon Ljiljanna Ravlich: There is nothing to stop a child from seeking access to whatever information is available - albeit it may not be information held in government agencies - from individuals within the community to establish who his or her birth parents are and from making contact with them. It is not against the law to bump into anyone you want to bump into at a shopping centre, for example.

Hon DERRICK TOMLINSON: There are agencies that run advertisements saying, "If you want to know, we will find out for you". Despite the fact that there have been information and contact vetos for all this time, the circumstance has still arisen in which someone has picked up the phone and has said, "Is that Mrs Kafoops?", to which the other person has said, "Yes, this is Sarah Kafoops", and the person has then said, "Good day, mum. I just wanted to make contact with you", and for the first time Sarah Kafoops has heard the voice of her son. How did he find out? It is almost impossible to stop people from finding out if they want to find out, although some people who would love to know, in fact would give their right arm to know, have not been able to find out. We are being asked to have the wisdom of Solomon in making this decision. Okay, it is our job as legislators to make decisions, and this is a decision that is fraught with all those difficulties, but it is a decision that we will make in this Parliament and that we will have to live with -

Hon Ljiljanna Ravlich: But we do that for all legislation, because legislating is not an exact science. We have to do our best.

Hon DERRICK TOMLINSON: Let us be honest. Not all legislation has the same human impact as legislation of this kind. Legislation imposes the limits of acceptable behaviour, but some legislation has a profound impact on the lives of ordinary people. That is the first thing I want to say, and it is nothing more than a cautionary statement that I wish to make. The second is in some respects an unnecessary provision of the Bill; that is, to impose an age limit on the eligibility to be an adoptive parent. The Act of 1994 imposed an age limit of 40. Any person above the age of 40 was not eligible to be considered as an adoptive parent, and a person who had been on the waiting list for some time and reaches the magic -

Hon Giz Watson: That refers to the age difference, not the age of the parent.

Hon DERRICK TOMLINSON: Hon Giz Watson is quite right in picking me up on that, because it is an important point. The age difference between the adopted child and the adopting parent may not be more than 40 years. If the child is a new-born baby, the maximum age of the parent is 40, while if the child is five, the maximum age of the parent is 45. I thank Hon Giz Watson for that very important point. However, most adoptions are of babies, and most parents request them. Last year, there were six babies available for adoption, and the year before that eight or nine, so we are talking about a very small number of cases, but babies are still the preferred option. Children over the age of three are available for adoption, but regrettably there is very little interest in adopting children over the age of three, and they tend to be fostered. Likewise, children with special needs are very difficult to find adoptive parents for. That is a very significant point. Even so, that question of the age difference - that it is possible to discriminate on the basis of age difference in adoption - is in some respects an unnecessary provision. The procedures built into the 1994 Act provide that after a period of 28 days after the birth of the child, the relinquishing parents - the birth parents - can make a decision to relinquish their child for adoption. During that time, the parents are to be counselled, so it is not a decision that can be made without proper information. It is required to be a considered decision without coercion.

Hon Peter Foss interjected.

Hon DERRICK TOMLINSON: That is the intention - that the decision is to be made without coercion. I know the reality, but let us talk about the intention. There is to be no coercion on any part. Having made the decision to have their child adopted, both parents, or the birth mother in cases where the father cannot be identified, may specify the kind of parent they want for their child: age, religion, education, physical characteristics, and so on. It is interesting that the bulk of them identify adoptive parents in the age range of 30 to 35 years old. There is good sense in that, I suppose. Given that the relinquishing or birth parents specify the preferred parent, and they are looking at that age range, the age discrimination becomes quite meaningless. What if the birth parents had a preference for someone of mature years, such as me? God forbid that anybody would think that I would make a good father. I have a couple of sons who say "Dad, you are an idiot."

Hon Murray Criddle interjected.

Hon DERRICK TOMLINSON: Hon Murray Criddle is lucky; he has daughters who would say, "Dad, you are a lovable idiot." It should be a matter of the relinquishing parent's choice. It is also interesting that the Equal Opportunity Act prohibits discrimination on the basis of age in employment, housing, education etc; yet we can say, "Sorry, you're too old to be a mother or father." I wonder what would happen to me. I am 62, but I am not too old to be a father. I might boast about that! If we were being honest in providing that at 40 or 45 under this law one is too old to be a parent - into the snicker snacker for this old man and into the nip and tuck for that old woman - we would make it unlawful to have natural parenthood after that age. I suppose we could argue that when a State has responsibility - it is a state responsibility - for the adoption of children, its responsibility is to make decisions in the best interests of the child. If it is in the best interests of the child that the minimum age difference is 45 years, the State has that responsibility. I have proposed an amendment, which we will no doubt debate in Committee, to make the age of 45 the age of the younger of the prospective adoptive parents. I am pleased that the minister has responded with a counter proposal that the upper age be 50. I will accept that. Why

discriminate on the basis of age when in all other areas in our community we do not discriminate against parents on the basis of age? If I were a grandfather and a tragedy occurred, I would be very proud to take care of and have responsibility for my grandchildren. Regrettably, I am not a grandfather and, thankfully, no tragedy has occurred to my children.

I will now launch into a long and perhaps controversial discourse. I want to examine the placement principles for an Aboriginal child. The first matter I will challenge is the proposition contained in proposed section 3 of the Bill, particularly proposed subsection (2), which reads -

> It is acknowledged that adoption is not part of the 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 words I cannot accept are "It is acknowledged that adoption is not part of the Aboriginal or Torres Strait Island culture". Let me go back one step and say that that is an irrefutable truth on two grounds. In terms of traditional Aboriginal practice, there is no evidence whatsoever that the family structure could even contemplate the notion of adoption. It is so very different from the nuclear or expanded family in its conceptualisation that the notion of adoption is alien to it. That is an accepted truism of Aboriginal culture. It could not be part of the Aboriginal and Torres Strait Islander culture because adoption is a legal construct of the late nineteenth century. There have been forms of adoption in modern history, whether it was accepting the responsibility of being a ward of a child, whether it was grandparents or extended family members taking care of a child, or private arrangements. The legal construct of adoption as we know it first emerged in Massachusetts in 1851. The second jurisdiction to legislate was New Zealand in 1881. The third was Western Australia in 1896. Tasmania legislated in 1920 and the United Kingdom in 1926. Western Australia was early in dealing with this legal construct.

What was the fate of children before 1896; before the legal construct was created? It was a matter of private arrangement. The private arrangement was that a friend or family member took on the care of a child. Alternatively, the care of a child was bought and paid for in a lump sum or through a weekly payment. That led to the practice of child farming. In most cases, the unwed mother of a bastard would pay someone to look after her child. In turn, that person would contract the care of the child for a lesser price and therefore make some money. Those accepting the lesser income - the child farmers - made their profit by denying the child decent food and clothing.

Hon Giz Watson: What about orphanages?

Hon DERRICK TOMLINSON: Orphanages are interesting. If the member really wants to have a close look at the early public attempts for the care of foundlings she should read chapter 2 of Charles Dickens' *Oliver Twist* or *Les Miserables* by Victor Hugo. The member should then move on to orphanages and have a look at the role of the churches, particularly in the care of children during the period 1914 through 1965. The member should have a close look at the history of places like Bindoon and Clontarf and I think she will find her answer.

One of the consequences of these private arrangements became manifest in Western Australia in the 1890s with the gold rush. This is insignificant when we consider the Adoption of Children Act 1896, because during periods of high unemployment the child becomes a different economic unit. Instead of being an economic cost it can become an economic asset. Instead of it being a burden to maintain the child, it becomes an asset to exploit because the child is a unit that can earn income. In Western Australia in the 1890s, particularly in the goldfields, children who had been placed in the care of foster parents - and the mother was paying for that - were suddenly being demanded back. Why were they demanded back? Because they could now be put out to employment and become a source of income. This is an interesting view of the child, because if members look at the adoption laws, the history of workhouses and so on, they must also look at the history of the industrial revolution, the agrarian child, the child labour laws, the poor laws and so on, and they will start to see the child emerging as a different economic entity. This phenomenon occurred in the 1890s in Western Australia.

The 1896 Adoption of Children Bill was introduced by the then member for North Fremantle, Mr Moss. The debate is instructive. It went through in what we would regard as record time. Hon Kim Chance would have been laughing in his sleep. The second reading was delivered by Mr Moss on 22 July 1896. There was one speaker in the debate and it occupies one column of the *Hansard* record of the day. Mr Moss had experienced the adoption laws in New Zealand in 1881 prior to coming to Western Australia. He stated -

> There is also protection given to the foster parent to have the legal status of a natural parent. Hon. members will follow me in this, that in many instances it has occurred that, after a child has been deserted, and has been well taken care of by those who have adopted it, the parents seek to claim the child; but the Bill provides that, when it has been proved that a child has been deserted, the parents shall have no claim upon it.

That is simply a response to that phenomenon I just described, of claiming back a child because a child was a productive economic unit. The intention of the 1896 Bill was not in the interests of the child per se but in the interests of what we would now call the adoptive parents. If the parents claimed back the child, the adoptive parents - as they would be called today - would have no rights whatsoever. The 1896 Bill gave legal rights of parenthood and all the protections that go with that to the adoptive parents. That was the legal construct of Massachusetts in 1851, New Zealand in 1885 and Western Australia in 1896. Of course it demonstrates that it has no bearing on Aboriginal culture. However, neither is it - by the same argument - adoption as we know it. The legal rights of the adoptive parents are part of the western culture. It is a legal construct of the late nineteenth century. Therefore, my objection to the words in proposed section 3(2) in clause 4 of the Bill is that it will give statutory force to a logical falsehood. How can we give statutory force to something that is historically indefensible? Why do we want this acknowledgment of aboriginality? What issue are we trying to address? We are trying to address the infamous period in Australian history of Australian apartheid - the period of the separation of children of mixed blood from their heritage.

I will move onto my third cautionary principle.

Hon Ljiljanna Ravlich: I thought you were on your third one.

Hon DERRICK TOMLINSON: I have only just finished my second. The third deals with the definition -

Hon Ken Travers: There are two parts to the second one.

Hon DERRICK TOMLINSON: It is a long and complicated story but now I will go onto something that is even lengthier and probably more intellectually complicated, so the member may go home. I will deal with the question of what is an Aboriginal. I will rehearse a series of legislative definitions. The first is the long title of the so-called Aborigines Protection Act 1886, which states -

> . . . to provide for the better protection and management of the Aboriginal Natives of Western Australia, and to amend the law relating to certain Contracts with such Aboriginal Natives.

Section 45 of the Act has the side heading "Who to be deemed an Aboriginal", and the following is offered -

> EVERY Aboriginal Native of Australia, and every Aboriginal half-caste or child of a half-caste, such half-caste or child habitually associating and living with Aboriginals, shall be deemed to be an Aboriginal within the meaning of this Act, and at the hearing of any case the Justice or Justices adjudicating may, in the absence of other sufficient evidence, decide on his or their own view and judgment whether any person with reference to whom any proceedings shall have been taken under this Act is or is not an Aboriginal.

An Aboriginal can be an Aboriginal native, a half-caste Aboriginal native or the child of a half-caste Aboriginal native habitually associating and living with Aboriginals, or a person can be an Aboriginal native because justice deems the person to be so. That was the position in 1886.

The Aborigines Act 1905 is perhaps one of the most infamous pieces of legislation that this Parliament has ever provided. Referring to "Persons deemed to be Aborigine" section 3 reads -

> Every person who is -
>
> *(a.)* an aboriginal inhabitant of Australia; or
>
> *(b.)* a half-caste who lives with an aboriginal as wife or husband; or
>
> *(c.)* a half-caste who, otherwise than as wife or husband, habitually lives or associates with aborigines; or
>
> *(d.)* a half-caste child whose age apparently does not exceed sixteen years,
>
> shall be deemed to be an aboriginal within the meaning of this Act, and of every Act passed before or after this Act, unless the contrary is expressed.
>
> In this section the term half-caste includes any person born of an aboriginal parent on either side, and the child of any such person.

Then one goes to the definition of half-caste, which reads -

> . . . any person being the offspring of an aboriginal mother and other than an aboriginal father: Provided that the term "half-caste," wherever it occurs in this Act, elsewhere than in section three, shall, unless the context otherwise requires, be construed to exclude every half-caste who, under the provisions of the said section, is deemed to be an aboriginal, but shall not apply to quadroons.

If there is an Aboriginal mother and a non-Aboriginal father, the person is a half-caste. If a person has an Aboriginal grandmother, the person is not an Aboriginal. This is interesting, is it not? What about an Aboriginal

father and an other than Aboriginal mother? The Act does not identify that person as an Aboriginal. Why? When one reads the history of the Act, the explanation given is this: no white woman would lie down with a black man. Therefore, any half-caste child must be the product of the union of an Aboriginal woman and a totally disreputable white man.

It is interesting that the quadroon, the child under that definition whose grandmother is Aboriginal, is excluded from the Act of 1905. It is also instructive of course that the 1905 Act has many, many protections of the Aboriginal child by the Chief Protector, not the least of which is that contained in section 60, which reads -

> The Governor may make regulations for all or any of the matters following (that is to say):-
>
> . . .
>
> *(d.)* Enabling any aboriginal or half-caste child to be sent to and detained in an aboriginal institution, industrial school, or orphanage:

That was the beginning of the separation that bedevilled Australian Aboriginal history from 1905 to the present, and will continue to do so into the future.

In 1929 a Bill to amend the Aborigines Act 1905 was passed by the Legislative Council but defeated in the Legislative Assembly. Curiously, it was a government Bill. The Government defeated its own Bill in the Legislative Assembly. I think it was a Labor Government. The Bill states -

> "'Aboriginal' means and includes any person being either of full blood or of not less than three-quarters blood of the aboriginal race of Australia, and a male half-caste whose age exceeds twenty-one years, and who in the opinion of the Chief Protector -

In 1929 we moved to include the quadroon. However, that government Bill was rejected by the Legislative Assembly, having been passed by the Legislative Council.

A further Bill to amend the Aborigines Act 1905 was introduced in 1936. It provided a redefinition of the term Aborigine -

> (e) by inserting a further definition after the definition of "Minister" as follows :-
>
> "Native" means -
>
> (a) any person of the full blood descended from the original inhabitants of Australia;

In 1886 that was described as an Aboriginal native of Australia. It continued -

> (b) subject to the exceptions stated in this definition any person of less than full blood who is descended from the original inhabitants of Australia or from their full blood descendants, excepting however any person who is -
>
> (i) a quadroon under twenty-one years of age who neither associates with or lives substantially after the manner of the class of persons mentioned in paragraph (a) in this definition unless such quadroon is ordered by a magistrate to be classed as a native under this Act;

Under the Bill, if a person were a quadroon but did not live according to the manner of Aborigines or did not associate with other Aborigines, he was not Aboriginal, unless a magistrate decided otherwise or -

> (ii) . . . requests that he be classed as a native under this Act; and
>
> (iii) a person of less than quadroon blood who was born prior to the 31st day of December, 1936 -

I know that I have laboured the point. I have done so for a good reason: this is the caution that I want to sound on the definition of Aborigine, because the Bill before us provides that an Aborigine is a person descended of the indigenous people of Australia, or words to that effect. In other words, it is merely a definition of descent, which is the 1886 definition, to one generation removed. In 1886 the definition included a descendant, an Aboriginal native or a half-caste Aboriginal native. We are now returning to a definition of Aboriginal descent. They are different words, but they have the same meaning.

Hon Ljiljanna Ravlich: But you could be one-eighteenth Aboriginal.

Hon DERRICK TOMLINSON: I know. I thank Hon Ljiljanna Ravlich, because that is my point. What we saw in the history that I have just canvassed - between 1886 and 1936 - was a redefinition of Aborigine to make it more inclusive of people of mixed heritage. It went from including Aboriginal natives and half-castes to

Aboriginal natives, half-castes but not quadroons, to Aboriginal natives, half-castes and quadroons, except those quadroons who lived according to the manner of white Australia. Why did the law become increasingly inclusive? I put it to the parliamentary secretary the other day that it became more inclusive to become more exclusive. We are talking about a 1905 Act of the day that stated that children could be taken away from their families for their education. Accompanying that was the prevailing social belief of two kinds. The first was described as social Darwinism; namely, the assumption that the Aboriginal people were a dying race, and that their demise was unavoidable and inevitable. In the words of John Flynn, or Flynn of the Outback, our role was to smooth the pillow of the dying race. That attitude prevailed in the latter part of the nineteenth century, and was characterised in the social attitudes of the nineteenth century.

At the beginning of the 1920s a new concept of race emerged as anthropology establishes itself as a discipline - I hate to say that it is a science, and prefer discipline. One then started to define race according to shape and size of the skull, colour and texture of the hair, shape of the nose and shape of the lips. One started to talk about Caucasians, Negroids, Caucasoids, Mongoloids and Australoids. One then added to that the Darwinian principles of the survival of the species through the survival of the fittest, and one can look at the history of Aboriginal people.

In Western Australia in 1907, Daisy Bates mourned the passing of the last of the full-blood Aborigines. Some time ago they were called the full bloods of the south west of Western Australia. The people we now call Nyoongahs are people of Aboriginal descent, but of mixed heritage - they are not full bloods. In the north of Australia today, regrettably, the same trend is evident for different reasons. Add to that the Mendelian principles of genetic inheritance and recessive and dominant genes. Take a fruit fly, and one can identify recessive and dominant genes. If one has blue eyes, and brown-eyed children, that can be explained; however, if a brown-eyed man has blue-eyed children, he would start to ask who the father is.

The 1920s saw the emergence of a school of thought led by people like Tindale from the South Australia Museum who coupled the proposition that Aborigines were a dying race with the view that one could breed out colour. To breed out colour, a nation would have to do two things: ensure that a half-caste person did not breed with a full-blood person and encourage a half-caste person to breed with a white person or another half-caste person. Restrictions would have to be imposed - as the 1905 Act did - preventing an Aboriginal person from marrying another person other than an Aboriginal without the permission of the chief protector and making it unlawful for any Aboriginal to cohabit with anyone other than another Aboriginal; that is, assuming "cohabit" means to have sexual intercourse. In 1935, the Solicitor General of the day said that "cohabit" did not mean "to have sexual intercourse"; therefore, the attempt to charge Merton Fitzpatrick with cohabitation did not hold up. Merton Fitzpatrick was the father of at least one Aboriginal child and he obviously had sexual intercourse with a half-caste woman, which was thought to be unlawful. However, the Act simply said "cohabit". The 1936 Act therefore said, "Thou shalt not have sex with an Aboriginal person" because the Legislature wanted to control not only marriage but also sexual intercourse. That Act was really about controlling breeding.

The history of the removal policies must be overlaid with the concept of assimilation, which is baldly stated as "biological absorption". When I said that this was an infamous period of Australian history, which I described as Australia's apartheid, I meant that there was no distinction between the apartheid as we know it was practised in South Africa and apartheid as it was practised in Australia. A report of the United Nations Commission on Human Rights brought that to attention in Australia.

When the Constitution was amended in 1967 to exclude discrimination against Aborigines and to give Aboriginal people citizenship by right rather than by consent, the definition of Aboriginal was, first, that the person be a descendant of the Aboriginal people of Australia - in other words have heritage by birth - secondly, that the person must identify himself or herself as Aboriginal; and thirdly, that he or she be accepted by his or her peers as Aboriginal. The definition therefore became totally inclusive.

I return to the interjection by Hon Ljiljanna Ravlich that a person could be Aboriginal 16 times removed. Yes, of course that is possible. By 1936 the 1905 definition had to be expanded to include quadroons. That occurred in 1936 three years after the establishment of Sister Kate's home for children, first in Cottesloe and later in Queens Park. The Chief Protector of Aborigines of the day, A.O. Neville, preferred to call it the home for quarter-caste children. The first of the children selected for Sister Kate's home in 1912 were chosen from a list of children whom A.O. Neville, who visited Mogumber, described as too white to be regarded as Aboriginal. Who were these children? The half-caste children at Mogumber and at Carrolup, which was closed in 1918, were trained to be either household servants or farm labourers. Then, at the age of 16, they were sent to work on farms and in households. Many of the girls came back to Mogumber pregnant, in some situations with the child of their employers, and the child was a quadroon. A.O. Neville said that they were too white to be Aboriginal. What did he do with these children? His proposition - it is not his proposition; it can be found in every Australian State - is that if these children who are too white to be Aboriginal can be raised as whites, they will be

accepted in the community socially and economically as whites, and their Aboriginality will be bred out of them. Therefore, Sister Kate's home was regarded as an interesting experiment, and the descendants of children from Sister Kate's home will tell anyone how brutally their Aboriginal identity was denied them. I have a copy of a letter Sister Kate wrote to A.O. Neville, in which she said, "I have a problem on which you might give me advice. Should I allow my girls to receive letters from their Aboriginal parents, because I have noticed that when they receive letters from their Aboriginal parents they become very disturbed and fractious? It is easier to manage them when they are not reminded of their Aboriginal identity." This is Western Australian history. My cautionary argument is this: I am advised that the definition used in this Bill will be the definition that will be used in the Child Welfare Act 1947, which is being revised. History tells us that although we start with a principle of inheritance, we then must start making the definition more inclusive as some aspects of it become exclusive.

Now let us return to the point. The half-caste is the child of the Aboriginal mother and an other-than-Aboriginal father. The quadroon or the quarter-caste is the grandchild of the Aboriginal woman. The octoroon is the great-grandchild of the Aboriginal woman - whatever the term is for whatever comes next, I do not know. We are now five generations removed. I am five generations removed from my Welsh great-great-grandmother. I can claim Welsh heritage. However, the Welsh would not recognise me as being Welsh and I would not represent myself as being Welsh.

Hon Peter Foss: It explains your voice though.

Hon DERRICK TOMLINSON: My voice and my name represent my Welsh heritage.

Why did we make the definition of Aboriginal more inclusive over that period of history? We made it inclusive to impose the exclusions upon children who were further removed from their Aboriginal heritage to deny them their Aboriginal inheritance. Now it is 2003 and my cautionary principle is this: do not make the mistake of repeating history. The Aboriginal Heritage Act, for example, already contains the definition of Aboriginal, which is the three-way test; that is, heritage, self-identification and acknowledgment. That is the definition that I would strongly urge, and I have given notice of motion to move an amendment to that effect.

I suppose I should apologise to the House for taking such a long time to present those cautionary arguments. We support the Bill. The Bill will have profound effects upon the individuals who will be caught by it. We have a different sort of responsibility in the decisions that we make.

I accept the abolition of the information veto; however, I advise the Government that it could become a troublesome and problematic issue. I believe that the age discrimination provision is unnecessary and unfair. We do not discriminate against people on the basis of age other than positively in any other dimension, yet this Bill has a provision for negative discrimination. I accept the important argument that we are imposing a legal construct upon children whose interests must be paramount. Therefore, I accept the proposal and am pleased that the Government has compromised on it. However, I emphasise the cautionary principle.

Most importantly, I raise a controversial matter with which I know some members disagree with me wholeheartedly, including some members of my own party. However, that period of Australian history to which I have referred is one from which we must learn. One of the lessons that we must learn is not to legislate to be exclusive of a particular group, or any group in our society. With those cautionary statements, I commend the Bill to the House.

HON GIZ WATSON (North Metropolitan) [9.48 pm]: I acknowledge that this Bill has been the subject of a great deal of consideration, particularly by those of us who have had responsibility for debating it in this Chamber. I appreciate the amount of cooperation that has occurred between the parties to come up with the best piece of legislation, which deals with some very difficult issues. I have made a great deal of effort within my own party to discuss the issues broadly. Hon Derrick Tomlinson raised the same issues on which I have been lobbied very strongly. I have received more correspondence and have been more persistently lobbied on this Bill than almost any other Bill during my time in this place. Indeed, the issue of age, the provisions regarding Aboriginal adoption and the veto matter were discussed. Probably the other issue that we have considered in some detail is that of providing for recognition to be given to the value and needs of ethnic continuity for a child being put up for adoption.

As has been noted in the second reading speech and by the previous speaker, this Bill arises from the recommendations that were made as a result of the 1997 review of the Adoption Act. Obviously, the amendments have taken a while to come up for debate and passage through the Parliament. My first point about the support of the Greens (WA) for this Bill is that it strengthens and recognises the best-interests-of-the-child provision, and acknowledges that adoption is a service for the child. This came out of recommendation 1 of the report prepared by the Adoption Legislative Review Committee entitled "Adoption legislative review: Adoption Act (1994): Final Report", which states -

> That section 3 be amended to include a statement which reinforces the notion that adoption is a service for the child.

In proposed section 3(1)(b) of the Bill, the principle that adoption is a service for a child who is an adoptee or a prospective adoptee is included. I do not think there is any dissent from support for that clarification.

I enjoyed Hon Derrick Tomlinson's contribution concerning some of the historical aspects of adoption. It is a complicated issue, and it is useful to understand the attitudes and policies regarding provisions for children who have been put up or relinquished for adoption. It is important that we adapt legislation to reflect contemporary values. It is interesting to note that the number of children put up for adoption has fallen to approximately one-tenth of those available in 1973-74. However, even though it has been noted that intrastate adoptions accounted for only six children last year, it is still a very important and emotive issue. I acknowledge that it is a long and arduous process for those people who are seeking to become parents by adopting. I understand that approximately 100 people apply each year, and that number dwindles to about 30 after approximately 12 months because the selection process is rigorous.

It has been noted that there are obviously no requirements if a person is to become a parent by natural means, but once the issue of providing parenting for a child who has been relinquished arises, the important onus is on the State and on us, as decision makers in creating the laws, to set the right parameters and criteria. It is an interesting exercise. As Hon Derrick Tomlinson said, there are no age limitations if one is to become a parent naturally, only the limitations of biology.

Hon Derrick Tomlinson: Whether you have the breath in you.

Hon GIZ WATSON: Breathlessness - we will not pursue that!

From memory only two per cent of natural births involve women over the age of 40 years. I will speak in more detail later about the specific issue of age, but I believe that the Bill has addressed this issue fairly. I also support the amendments that have been discussed between the various parties. I am pleased to say that I think those amendments will do something to address the concerns of older couples seeking to adopt. Although they will not please everybody, they go some way towards addressing those concerns.

I want to make some comparisons between the recommendations of the Adoption Legislative Review Committee and what is contained in this legislation. I refer first to the question of Aboriginal children. Recommendation 36 on page 65 of the committee's final report is -

> That in respect of an Aboriginal child, where a conflict of wishes exists between the birth parent and the Aboriginal community, the child's best interests must take precedence, with the final decision resting with the Director General, following consultation with an appropriate departmental Aboriginal officer.

The Bill reflects that recommendation in proposed new section 3, principles, which states -

> (1) The paramount considerations to be taken into account in the administration of this Act are -
>
> (a) the welfare and best interests of a child who is an adoptee or a prospective adoptee; and
>
> (b) the principle that adoption is a service for a child who is an adoptee or a prospective adoptee.
>
> (2) It is acknowledged 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.

Hon Derrick Tomlinson raised some interesting issues about the definition of "Aboriginal", and I will comment on those in more detail in the committee stage. The history of how aboriginality has been defined in Western Australian legislation is controversial. The term has served different purposes at different times. It is important that this definition be suitably comprehensive. One of my concerns with Hon Derrick Tomlinson's proposed amendment is that it is not possible for a baby to self-identify. That immediately creates some problems in supporting such an amendment, although I understand the intent.

Hon Derrick Tomlinson: It is interesting also that the child will not be able to be identified as Aboriginal unless the mother makes the identification. That will apply in situations in which the person is four or five generations removed.

Hon GIZ WATSON: Absolutely. I do not think there are any easy answers to that question. Any attempt to resolve the definition will be imperfect.

My next point relates to recommendation 41 of the review committee, which states -

That the legislation provide for recognition to be given to the value of, and need for, cultural and ethnic continuity for a child being placed for adoption.

Section 52 of the Act states -

(1) The Director-General is not to place a child with a view to the child's adoption unless -

(a) the prospective adoptive parent . . .

(v) meets, if relevant, the child's wishes and shows a desire and ability to continue the child's established cultural, religious or educational arrangements;

Clause 29(2) of the Bill states -

Section 52(1)(a)(v) is deleted and the following subparagraphs are inserted instead -

"

(v) meets, if relevant, the child's wishes;

(va) recognises the value of, and need for, cultural and ethnic continuity for the child;

(vb) shows a desire and ability to continue the child's established cultural, ethnic, religious or educational arrangements;

".

That is an important and relevant matter to include in the Bill. It has been suggested to me by some of the people who are involved in international adoptions that this is a discriminatory and potentially even racist inclusion. I do not read it that way. Some people are perhaps offended that this should be made explicit in law. However, my feeling is that if these people are genuinely concerned, as I am sure most of them are, about allowing international adoptees to have an understanding of their cultural, ethnic and religious origins, they will do this anyway.

Debate interrupted, pursuant to standing orders.