ADOPTION AMENDMENT BILL 2011

Introduction and First Reading

Bill introduced, on motion by **Hon Robyn McSweeney (Minister for Child Protection)**, and read a first time.

Second Reading

HON ROBYN McSWEENEY (South West — Minister for Child Protection) [3.22 pm]: I move —

That the bill be now read a second time.

This bill amends the Adoption Act 1994 to introduce policy reforms to improve the adoption process, including most recommendations of the 2007 Adoption Act legislative review. The legislative review committee examined the operation and effectiveness of the act, paying particular attention to its effect on birth parents, adoptees, prospective adoptive parents and other relatives of parties to an adoption.

Reforms contained in the Adoption Amendment Bill 2011 include increased independence and transparency of decision making in the adoption process, starting with changes to the membership of the adoption applications committee, which is the body responsible for decisions about whether applicants to adopt a child are suitable to do so. The committee's membership will be required to be predominantly independent of the Department for Child Protection, including the chair of the committee. Indeed, these changes have already been implemented by that department. The chief executive officer of the Department for Child Protection will also be able to direct the adoption applications committee on policy and procedural matters in the performance of its functions. However, this power will not apply to decisions of the committee about an applicant's suitability to be an adoptive parent. On application of an aggrieved person, the CEO will be able to review decisions of the AAC on the merits of a case. If unhappy about the CEO's decision on review, a person will then have access to the State Administrative Tribunal. This replaces the limited review provisions that currently exist.

I am very pleased to be reintroducing relative adoptions in Western Australia through the proposals contained in this bill. This represents a significant reform in support of children and relatives seeking the permanency of adoption in circumstances in which other legislative options are inappropriate or unsuitable. Western Australia is one of the few jurisdictions in which adoption by a relative is not permitted. Provisions for relative adoptions were repealed in 2003 by the former Labor government. Although I recognise that, in many cases, alternatives to adoption may be preferable for the child than adoption by a relative, there will be situations in which adoption is the best way of meeting a child's best interests, and the option should be available. Before making an adoption order in such cases, the court will have to be satisfied that there are good reasons to redefine relationships in the way the child's adoption would, and that adoption is preferable to a parenting order under family law legislation. I will return to the amendments dealing with relative adoptions under later clauses in the bill.

The legislative review committee recommended a number of policy adjustments to update and strengthen the eligibility and assessment criteria for prospective adoptive parenthood. The amendments include updating the criminal record checking provisions to reflect contemporary legislation in this area. The bill also contains more equitable application criteria in respect of applications by married and de facto couples. The effect of these amendments under clause 26 will mean people in married or de facto relationships applying to adopt must do so as joint applicants, provided they have been in the relationship for at least three years; and people whose marriage or de facto relationship has broken down will not be eligible to apply to adopt as a single person unless they have been separated for at least 12 months. Other amendments will allow a person who jointly applies to become an adoptive parent to continue the application as a single person if the marriage or de facto relationship breaks down, without returning to the beginning of the assessment process. It is intended the Adoption Regulations 1995 will be amended to require a 12-month suspension of these applications so that applicants can adjust to their new circumstances and consider their plans to adopt in light of these.

The legislative review committee also examined the difficult issue of the age restrictions that apply to prospective adoptive parents at the point at which a child is finally able to be placed for adoption. Age restrictions will always be contentious in adoption law, particularly given the long and intrusive adoptions assessment process, which can then be followed by a long wait before the suitable placement of a child becomes possible. Debate continues in the general public on the trend towards delayed parenthood, as more people are choosing to consolidate relationships and careers before embarking on raising a family. Amendments to the act in 2003 increased from 40 years to 45 years the age differential between the youngest adoptive parent and the child being placed, in recognition of these trends and the increasing waiting times before a child may be placed. An upper age limit for the oldest of a couple wanting to adopt was also introduced at that time. For first adoption placements, the upper limit for the older person is currently 50 years, and for subsequent adoptions it is 55 years. Clause 36 of the bill reflects the legislative review committee's recommendation to remove these upper age limits, while maintaining the current restrictions in respect of the younger of an adoptive couple in the best

interests of children. Included in the criteria by which people approved to adopt are assessed is whether they are physically and mentally able to care for and support a child. There are safeguards by which reassessment may occur prior to the placement of a child if there are concerns that the circumstances or age of an approved adoptive parent has impacted on his or her continued suitability to adopt.

I turn now to the important area of adoptions involving children who are known to their prospective adoptive parents—that is, the step-parent, carer and, as earlier referred to, relative adoptions proposed in the bill. There are many circumstances in which such adoptions may come about; in the case of carer adoptions, some of the children and carers may already be known to the Department for Child Protection, having been placed with approved foster carers or relative carers by the department. The amendments seek to clarify and strengthen the adoption process in respect of step-parent and carer adoptions, as recommended by the legislative review committee. The provisions enabling relative adoptions have been drafted to be compatible with those enabling carer adoptions.

Clause 38 of the bill clarifies the process by which the chief executive officer may approve the placement of a child with a carer for the purposes of adoption, and introduces assessment criteria for such approval. Consistent with the introduction this year of protection orders, special guardianship, under the Children and Community Services Act 2004, carers or relatives will be able to apply for the CEO's approval if the child they wish to adopt has been in their care for the preceding two-year period, rather than the three years that currently applies in carer adoptions. If the CEO has parental responsibility for the child, before approving the placement for adoption, the CEO must be satisfied adoption would be preferable to a protection order, special guardianship. Consistent with the principle under section 3 of the act that adoption should occur only in circumstances in which there is no other appropriate alternative for the child, clause 43 of the bill requires the court to consider certain matters before making an adoption order in respect of relative or carer adoptions: whether the proposed adoption is preferable to certain orders under family law legislation; in the case of relative adoptions, whether there are good reasons for redefining family relationships, as adoption would; and, for children under parental responsibility of the CEO, whether a protection order, special guardianship, is preferable for the child.

Other amendments propose to remove overly restrictive criteria that work against approved prospective adoptive parents being able to foster children while awaiting the placement of a child for adoption. The changes will make it easier for adoption applicants to remain on the register of approved persons awaiting placement of an adoptee, while at the same time being able to foster children in the care of the CEO under the Children and Community Services Act 2004. Fostering opportunities may involve respite, short-term or long-term care, including the opportunity to foster as a Home for Life carer. The Department for Child Protection's Home for Life program enables children who are the subject of a protection order until the age of 18 under the Children and Community Services Act 2004 and for whom reunification with their birth families is not possible to be placed with approved carers who are interested in providing a home for life for a child. In some cases, these placement arrangements may progress to special guardianship orders for the child or even carer adoptions if, under amendments in this bill, adoption is preferable to other orders.

The importance of a permanent, caring home to a child's health, growth and development is undisputed. All children need consistent and emotionally available parenting to give the feeling of safety, belonging and wellbeing. The removal of these restrictions will enable assessment of applicants' suitability for the placement of a particular child for adoption, at the same time as providing opportunities for meeting the permanent care needs of children who are otherwise unable to live with their own families. The placement of children, whether under the Adoption Act 1994 for the purpose of adoption, or the Children and Community Services Act 2004 for the purpose of fostering, will continue at all times to be focused on the best interests of the child.

In considering the issue of the name of a child to be declared in an adoption order, the legislative review committee recommended there be greater flexibility than the act currently allows. Amendments under clause 45 propose that in declaring a child's name, the court is to have regard to the principle that the adoptee's first name should be included in the name by which he or she is to be known, and also to the child's relationships with birth parents or others, and the principle that his or her cultural background should be recognised in the name.

In contrast to the secrecy that has surrounded adoptions in the past, the bill continues reforms towards more open adoptions, in recognition of the need expressed by many adoptees and relinquishing parents, and their relatives, for information about or contact with the other parties to an adoption. The bill gives siblings the right to access identifying information about a biological sibling who was adopted, once each has reached adulthood. Past reforms have included discontinuing the option for parties to an adoption to lodge information or contact vetos against another party. No new information or contact vetos could be placed from 1 June 2003, and any existing information vetos ceased to have effect from 1 June 2005. Currently, there are 840 remaining contact vetos in Western Australia. In support of decriminalising the arena of contact between parties to an adoption, clause 54 of this bill removes the offence for breach of an undertaking not to contact a person who has a current contact veto

in place. Persons who are the subject of a contact veto will still be required to give an undertaking not to contact the other party in order for the CEO to grant their access to identifying information. The retention of the general harassment offence under section 126 of the act provides an avenue for responding to those few individuals who may be unable to respect the requirements of a contact veto and their undertaking against contacting the relevant party. In addition, new offences for providing false or misleading information, and for failure to notify information that may be relevant to a proposed adoption, are introduced under clause 63. These provide important added protections to ensure that adoptions are conducted justly for all concerned and in the best interests of children.

The Adoption Act 1994 contains provisions specific to the adoption of Aboriginal or Torres Strait Islander children in acknowledgement that such adoptions should occur only if there is no other suitable alternative for the child. Since 2001, only seven Aboriginal children have been adopted, two of whom were known to the adopting parents. Clause 10 of the bill amends the requirements for consultation under section 16A of the act, in line with recent amendments to the Children and Community Services Act 2004. The amendment regarding the adoption of an Aboriginal or Torres Strait Islander child will ensure that consultation conducted with individuals or agencies is more meaningful and effective, if external to the Department for Child Protection, because it must be carried out with those who hold relevant knowledge of the child or the child's family or community.

The bill also replaces the terminology of "guardianship" to be consistent with use of the more contemporary term "parental responsibility" in other legislation; makes minor drafting updates and corrections to the act; and provides for a further legislative review after five years of these amendments becoming operational. I commend the bill to the house.

Debate adjourned, pursuant to standing orders.

Sitting Suspended from 3.37 to 4.30 pm