Agreement in Principle

Ms LINDA BURNEY (Canterbury—Minister for Community Services) [10.06 a.m.]: I move:

That this bill be now agreed to in principle.

I am pleased to bring before the House the Adoption Amendment Bill 2008. The bill seeks to update the Adoption Act 2000 to ensure that its policy objectives and provisions remain relevant. The bill gives effect to the changes arising from a review of the Adoption Act 2000 undertaken by the Department of Community Services, as required by the Act. The review involved the report entitled "Review of the Adoption Act 2000", which was tabled in Parliament in late 2006 following extensive public consultation, and further advice from a ministerial advisory committee comprising experts in the area of child and family welfare law and practice.

The objects of the bill are: to streamline the adoption application process for certain adoptions by removing unnecessary procedural impediments to making an application directly to the Supreme Court; to simplify the eligibility criteria to have greater focus on parental capacity; to encourage open adoption practices by facilitating access to personal information for all parties to an adoption for future adoption; to relax publishing restrictions imposed on the parties to an adoption to strengthen the involvement of Aboriginal and Torres Strait Islander agencies in the placement of Aboriginal and Torres Strait Islander children; and to ease restrictions on changing the given name of an adopted child.

The bill also updates the objectives and principles of the Act to recognise the detrimental effect on children of undue delay in the adoption process and the legitimate parental aspirations of prospective adoptive parents. The issue of adoption for same-sex couples was raised as part of the review process. The Government's policy is to eliminate discrimination in law for same-sex couples demonstrated in the Same Sex Relationships Bill 2008, recently tabled in this Parliament. The State Government is currently working with the Commonwealth and other States on a consistent approach to surrogacy law and the issue of same-sex adoption will be considered as part of that discussion.

I now turn to the details of the bill. One key purpose of the bill is to make it quicker and easier for prospective parents to adopt children, by removing procedural impediments to applications being made directly to the Supreme Court for intercountry, step-parent, relative and adult adoptions. The bill amends sections 87 and 91 of the Act to cut the unnecessary red tape of requiring the Department of Community Services to file reports and provide consent in adoption proceedings that do not arise out of child protection concerns. Given that step parent, adult and relative adoptions are essentially "known" adoptions where the person to be adopted already has an established relationship with the prospective adoptive parents, where there are no child protection concerns, the bill dispenses with the need for the director general to consent to the application and file reports in such matters. Instead, the Supreme Court will be able to directly accept independent reports from an approved adoption service assessor or an accredited adoption service provider.

For intercountry adoptions, the Act enshrines rigorous assessment and compliance with the Hague Convention on the Protection of Children and Co-operation in respect of Inter-country Adoption. Members of the House may be aware that the Commonwealth manages and establishes these adoption programs with other countries and ensures strict compliance with The Hague Convention. The bill will also facilitate a direct pathway for intercountry adoption applications and reports to be filed directly by the applicants with the Supreme Court, rather than the director general having to make the report and file them with the court by way of affidavit.

The bill, however, ensures that the safety and wellbeing of adoptive children remains a Department of Community Services priority. It does so by making provision in section 91 of the Act that the Supreme Court may request the director general, or Community Services may of its own accord provide a report on an adoption application where there are child protection concerns, or serious concerns about the reliability, or independence of reports filed in the Court or other exceptional circumstances. The bill facilitating prospective adoptive parents filing mandatory reports directly to the Supreme Court will, I am sure, make the adoption process speedier and easier for everyone, while maintaining assessment standards and placement processes.

As to the circumstances that must exist before the Supreme Court would make an adoption order pertaining to step-parent, relative or foster carer adoptions, the bill introduces important changes to simplify the eligibility criteria so that greater emphasis is placed on the quality rather than the duration of the relationship. The bill reduces the currently prescribed minimum length of the pre-existing child-parent relationship, for relative adoptions, from five years to two years. In step-parent adoptions, the amendment will reduce the required time for the child to be in the care of the applicant, from three years to two years. Likewise, consent to adoption of a child over the age of 12 years will require a two year relationship between the child and his or her proposed adoptive parent or parents, rather than the existing five year requirement.

To ensure consistency across the Act on the length of a relationship for eligibility to adopt, the bill also amends section 28 of the Act to reduce the period a couple must be living together from three to two years before an application for adoption can be made. Two years is considered a sufficient period of time to establish an adequate commitment to the relationship that will support an adoptive parenting capacity. The bill also simplifies the circumstances for adult adoptions, by removing the requirement of a minimum five-year parent-child relationship, which effectively meant that the adopted person had to come into the care of the adopting parents by the time he or she was 13 years old. The bill clarifies that the key prerequisite for an adult adoption is that the prospective adoptive parent has brought up the child. The intent of these amendments is to simplify the conditions that must exist before the Supreme Court can make an adoption order, legally formalising family arrangements where there is, or has been, an established, caring child and parent relationship.

In the interests of transparency, the general eligibility and assessment criteria will be published and set out in amendments to the Adoption Regulation 2003, rather than published in the *Government Gazette*. In making regulations with respect to eligibility and assessment criteria, this Government's policy is that the criteria be less prescriptive and focus more on factors that directly affect adoptive parenting capacity. For that reason, the prohibition on accepting adoption applications from those pursuing fertility treatments will be removed, in order to not exclude applicants with an overall good range of skills, qualities and support networks from being considered as prospective adoptive parents.

The Government also wants to make it easier for children in out-of-home care to become permanently part of their foster care family. Accordingly, the Government has made a commitment for foster carers to continue to receive the statutory care allowance for children and young people that have been in their care for a minimum of two years, following the making of an adoption order. The continuation of the statutory care allowance for foster carers who adopt children will be by regulations under section 201 of the Act, which is a provision that enables the director general to provide financial assistance to adoptive parents.

I turn to the important issue of access to adoption information. The Government acknowledges the historical and social context in which decisions to adopt have been made, and the very personal way this aspect of the law impacts on the lives of people. The bill preserves and ensures the continuation of the access entitlements applying to adoptions that have occurred in the past. The bill also preserves responsibility and obligations of the Department of Community Services under the Act to maintain services relating to adoption information. These services include administering the reunion and information registers, and authorising the release of information subject to any advance notice requests and in accordance with the access to information scheme or the old contact veto scheme that applied to adoptions until 1990.

However, a significant reform introduced by this bill is the support it provides to facilitating open adoption practices for future adoptions. The bill seeks to establish equitable and open rights to access information, such as birth certificates and birth records, by inserting a new division in the Act, so that a new scheme of general access entitlements will apply to applications for adoption made after the commencement of the division. Under this new scheme, adoptive parents, adopted children, birth parents, and siblings will be more easily able to access adoption information. To enable adopted children to have an accurate picture of their identity from an early age, the new scheme allows for adoptive parents, after the adoption orders are made, to automatically be entitled to receive adoption information. They will be able to access their adopted child's original birth certificate and other prescribed information held by the adoption service provider or an information source such as a hospital, or the Registry of Births, Deaths and Marriages.

Birth parents of an adopted person over the age of 18 years and adopted persons over 18 years will similarly have open access entitlements to information such as birth certificates, birth records and other identifying information. To ensure adopted children under the age of 18 years have the appropriate support when accessing information, the bill makes provision for information to be accessed, with their adoptive parents' consent. In circumstances where the adoptive parents cannot be found or where other sufficient reasons apply, the director general may dispense with the adoptive parents' consent. In balancing the need for equitable entitlements to information to birth parents and the need to provide protections to an adopted child under 18 years of age, the bill gives birth parents an entitlement to information, provided the release of identifying information would not pose a risk to the safety, welfare or wellbeing of the adopted child or adoptive parents.

Under the new scheme, the Director General of the Department of Community Services will be responsible for making an assessment whether supplying the information would pose a risk to the adopted child or the adoptive parents. The director general's discretion will be exercised in accordance with guidelines prescribed by regulation. The bill also makes provision for non-adopted and adopted birth siblings to have reciprocal rights to access information. This will address the anomaly that currently exists where siblings who are in foster care and are not adopted are not entitled to information about adopted siblings, and vice versa.

I now refer to removing the restrictions on the publication of names. The bill furthers opens adoption practices by lifting the blanket restriction on the publication of identifying material of parties to adoption proceedings. The current wording of section 180 of the Act, if strictly interpreted and applied, can lead to an absurd result of preventing birth parents or adopted children from being able to speak publicly about their adoption experience or even publishing their memoirs. The intent of the restriction on the publishing of names is to protect the identity of

parties while adoption proceedings are on foot, and the bill makes clear that the restrictions on the publication of names is to apply from the time a child is placed for adoption until an adoption order is made. However, once the court order for the adoption has been made, the amendments to section 180 of the Act will allow the publication of names of parties to an adoption where the person has given consent for such information to be released.

As to Aboriginal and Torres Strait participation in decision-making, another feature of the bill is to provide greater involvement of Aboriginal agencies in the placement of an Aboriginal child for adoption. It should be remembered that very few adoptions of Aboriginal children take place in New South Wales. Adoptions are not part of Aboriginal culture, which can be closely associated with practices of the stolen generation. For example, three Aboriginal children were adopted in 2003-04 and four Aboriginal children, including siblings, were adopted in 2005-06, including siblings. In the rare circumstances that an Aboriginal child is relinquished for adoption, the Act directs that the placement of the child must be in accordance with the Aboriginal child placement principles set out in sections 33 to 39 of the Act. Under these principles, the preferred option is to place the child with the birth parents' community. If that is not practicable, the next option is placement with members of another Aboriginal community and, finally, placement with non-Aboriginal adoptive parents.

Aboriginal groups have recommended that in applying the Aboriginal placement principles and in considering how the child's cultural heritage will be protected, greater weight should be given to consultation with Aboriginal community organisations. The Government has responded to the concerns of Aboriginal groups by ensuring that the bill strengthens the consultation requirements in the Act with the insertion of an additional requirement. This new requirement provides that a local, community-based and relevant Aboriginal community organisation is to be consulted on the placement of the Aboriginal child for adoption and the provisions in the adoption plan for the child are to assist the child in developing and maintaining positive links with his or her Aboriginal heritage and cultural identity. To ensure that children over 12 years and under 16 years provide effective consent to their own adoption, the bill will streamline the requirements so that they do not need to see both a counsellor and a psychologist. Rather, the functions of both professionals will be combined. Further, children are to be made fully aware of the implications of their decision. The same provisions will apply to young persons consenting to the adoption of their children in appropriate cases.

I now deal with changing an adopted child's name and clarification on conditions for ascertaining effective consent by children. Further miscellaneous amendments introduced by the bill are to remove the requirement that there must be special reasons relating to the best interests of the child before the court can approve a change of name for a child and to clarify the procedural requirements for ensuring consent by children over 12 years and under 16 years to their own adoption. Currently, section 101 (5) of the Act unnecessarily limits the consideration of the best interests of the child. This section requires adoptive parents to establish special reasons to change the name of a child who is more than one year old or a non-citizen child and that the special reasons are related to the best interests of the child. The requirement for special reasons will be removed so that the court can focus on the broad consideration of the best interests of the particular child. The decision whether to change a child's name at the time the adoption order is made will be based on consideration of whether the change is in the child's best interest, taking into account the requirements of section 8, which sets out the principles that are to govern the operation of the Act. In particular, section 8 (1) (e) states:

> The child's given name or names, identity, language and cultural and religious ties should, as far as possible, be identified and preserved.

The proposed change will not provide carte blanche to change the names of adopted children. Rather, it will refocus the attention of the court on the best interests of the individual child viewed through the prism of the principles set out in section 8 of the Act. Finally, I draw to the attention of the House that the bill will commence by proclamation. This will allow for the development of appropriate guidelines and regulations to support the new access to information scheme introduced by this bill. I commend the bill to the House.