Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [11.22 a.m.], on behalf of the Hon. Ian Macdonald: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

I am pleased to bring before the House the Adoption Amendment Bill 2008.

The legislation that I have introduced today seeks to update the Adoption Act 2000 (the Act) so as 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, Review of the Adoption Act 2000, tabled in Parliament in late 2006 following extensive public consultation, and further advice from a Ministerial Advisory Committee, comprising of experts in the area of child and family welfare law and practice.

The bill's objectives 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 so that there is 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;

To ease restrictions on changing the given name of an adopted child.

The bill also updates the objective 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 NSW Parliament.

The State Government is currently working with the Commonwealth and other States with regard to a consistent approach to surrogacy law and the issue of same-sex adoption will be considered as part of this discussion.

I now turn to the details of the bill.

Streamlining The Adoption Application ProcessStreamlining The Adoption Application Process

One of the key purposes 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. To this end, the bill amends section 87 and section 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 4 adoption service assessors 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 Intercountry Adoption.

Members of the House, as you may be aware, 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 DOCS priority, by making

provision in section 91 of the Act, so that the Supreme Court may request the Director General to, or DOCS 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.

Eligibility Criteria

In relation to the circumstance that must exist before the Supreme Court makes an adoption order in relation to step-parent, relative or foster carer adoptions, the bill introduces important changes to simplify the eligibility criteria so that there is a greater emphasis on the quality rather than the duration of the relationship.

To this end, the bill reduces the currently prescribed minimum length of the pre-existing child-parent relationship from five years to two years, for relative adoptions. 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 by a child over the aged 12 years will require a two years' relationship between the child and his or her proposed adoptive parent or parents, rather than the existing five-year requirement.

To ensure there is consistency across the Act as to length of 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. The period of two years is considered an adequate 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 being published in the *Government Gazette*. In making regulations with respect to eligibility and assessment criteria, it is this Government's policy that the criteria be less prescriptive and focus on factors that directly and unequivocally affect adoptive parenting capacity and for that reason the prohibition on accepting adoption applications from those pursuing fertility treatments will be removed, so as 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 adoption order. The continuation of the statutory care allowance for foster carers who adopt children will be done by way of regulations under section 201 of the Act, which is a provision which enables the Director General to provide financial assistance to adoptive parents.

*Access to Information****Access to Information***

I now 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 people's lives. To this end the bill preserves and ensures the continuation of the access entitlements applying to adoptions that have occurred in the past.

The bill also preserves the Department of Community Services' responsibility and obligations under the Act to maintain services relating to adoption information, such as:

administering the reunion and information registers;

authorising the release 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 practises for future adoptions. The bill seeks to establish equitable and open rights to access to 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.

Under the new scheme, after the adoption orders are made, adoptive parents will be automatically entitled to receive, their adopted child's original birth certificate and any 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. This will enable the adopted child to have an accurate picture of their identity from an early age.

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 and 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 the circumstances where the adoptive parents cannot be found, or if there are other sufficient reasons the Director General may dispense with the adoptive parents consent.

In balancing the need for equitable entitlements to information to birth parents while at the same time providing protections to an adopted child under 18 years age the bill gives birth parents an entitlement to information provided that the release of identifying information would not pose a risk to the safety, welfare or well being of the adopted child or adoptive parents. Under the new scheme, the Director General of DOCS will be responsible for making an assessment as to 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 regulations.

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.

Removing the restrictions on the publication of namesRemoving the restrictions on the publication of names

Another way the bill furthers open adoption practices, is to lift 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 publish their memoirs. To make clear that the intent of the restriction on the publishing of names is to protect the identity of parties while adoption proceedings are on foot, the bill makes clear that the restrictions on the publishing 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 their consent for such information to be released.

*Aboriginal and Torres Strait participation in decision making****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 is that very few adoptions of Aboriginal children take place in New South Wales. Adoptions are not part of Aboriginal culture and can be closely associated with practices of the stolen generation. For instance in 2004/05, three Aboriginal children were adopted and in 2005/06, Aboriginal children were adopted, 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 that the child is placed with the birth parents' community. If this 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.

This Government has responded to Aboriginal groups' concerns by ensuring that the bill strengthens the consultation requirements in the Act by including. An additional requirement has been inserted. 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 is be assisted in developing and maintaining positive links with their Aboriginal heritage and cultural identity.

In relation to ensuring that children over 12 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 psychologist, rather, the functions of both professionals are to be combined and that children are fully aware to the implications of their decision. The same provisions will apply to young persons consenting to the adoption of their children in an appropriate case.

Change of an adopted child's name and clarification on conditions for ascertaining effective consent by childrenChange of an adopted child's name and clarification on conditions for ascertaining effective consent by children

Further miscellaneous amendments introduced by the bill, are (1) 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 (2) to clarify the procedural requirements for ensuring consent by children over 12 and under 16 years to their own adoption is effective.

As it currently stands section 101 (5) of the Act unnecessarily limits the consideration of the best interests of the child. The section requires adoptive parents to establish that there are 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 as to whether to change a child's name at the time the adoption order is made will be based on a 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 which are to govern the operation of the Act.

In particular section 8(1) (e) which states that:

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. It will rather 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.

Commencement of the billCommencement of the bill

On the subject of commencement I wish to draw the House's attention 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.