



NSW Legislative Council Hansard

Adoption Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 25 October 2006.

Second Reading

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [5.18 p.m.]: 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.

This Bill proposes a number of miscellaneous amendments to the *Adoption Act 2000*.

The Bill seeks to enhance the functioning of the Adoption legislation following on from extensive consultations held with the sector before the introduction of the Adoption Regulation 2003. These amendments are seen as operational amendments that do not alter matters of significant policy. The amendments are being made independently of the statutory review of the Act.

To this end the Bill proposes that new criteria are inserted after section 67 (1) (c) of the Act. These are to provide for the circumstances when a child has been in the care of authorised carers, has established a stable relationship with those carers and the interests and welfare of the child will be promoted by adoption by those carers.

At present the wording of the section only allows the Court to dispense with the consent of the parent or guardian of the child to the adoption where there is serious cause for concern of the welfare of the child.

In circumstances where a child has been in the long-term care of authorised carers, that criteria cannot be met as there will not be any serious concern for the child's current welfare.

The judiciary has expressed concern about its ability to dispense with parental consent to the adoption in those circumstances where such a dispensation may be necessary to enhance the child's sense of belonging and permanence in the carer's family but there is no concern about the child's current welfare as distinct from the child's welfare at the beginning of the placement.

Statistics show that in the past parental consent was dispensed with in 60 per cent of adoptions where the child was under the parental responsibility of the Minister. Most of these children were in long-term care. This would suggest that the dispensation provisions as they currently stand may well be a barrier for the majority of children to be adopted ... even if adoption is the most appropriate outcome for their long-term stability and care.

The amendment will allow the Court to make a "consent dispense" order where the authorised carers make an adoption application and the child has been in a long-term stable relationship with those carers. This will only happen where adoption by those carers will promote the child's interests and welfare.

It is also proposed to amend the Act to make it quite clear that the provisions set out in sections 134 (1) (a) to (c) relating to the distribution of certain original documents held in Departmental files override any provision of the State Records Act. The State Records Act prohibits the release of original records.

Section 134 (1) (a) to (c) of the Act provides that an adopted person may access certain adoption information including original documents. These documents may be intensely significant pieces of information such as an original birth certificate, letter from a birth parent, baby book or original photographs.

The State Records Act 1998 prohibits the release of original records that have been archived by the Department of Community Services even when those records are the subject of an Act enacted after the State Records Act.

Officers from the Department of Community Services and officers from State Records have worked diligently towards finding a way to provide original personal documents to adopted persons. These records are often significant personal mementoes. They may be the only link an adopted person has with a birth parent.

To overcome the inconsistency between the two Acts section 134 is proposed to be amended to explicitly state that the provision of original documents to adopted children does not contravene the State Records Act.

Consequently original records can be released to an adopted person from archived files.

Copies of any original documents removed from a file will be made and retained on the archived file in accordance with section 75 of the State Records Act 1998. This provision will be sufficient for record keeping purposes and, provided the documents are certified, will be admissible in evidence in legal proceedings as if they were the original document.

The bill also seeks to amend section 46 (2) of the Act. The amendment seeks to make it a requirement that in those cases when an Aboriginal or Torres Strait Islander child is placed with non-Aboriginal or Torres Strait Islander parents the adoption plan must include the ways in which a child is to be assisted to develop a healthy and positive cultural identity. The adoption plan is also to indicate the way in which links to the child's heritage will be fostered.

Aboriginal groups and other stakeholders believe it is critical to both the child and the birth parents that these aspects be included in the adoption plan and that there should be no discretion about this. The amendment proposed will enshrine this principle in the legislation.

It is already mandatory in those cases where an Aboriginal or Torres Strait Islander child is placed with adoptive parents who are not Aboriginal or Torres Strait Islanders that the adoption goes before the Supreme Court for a preliminary hearing. The amendment proposes that it will be at this time that agreement is reached as to the way the child's cultural heritage will be protected and reinforced. This amendment is not about when an Aboriginal child can be adopted by non-Aboriginal people but rather, once that decision is made, to require recognition of the child's Aboriginal culture.

The bill also proposes an amendment to section 24 (2) (a) in relation to adult adoptions. The amendment relates to applications from adults requesting adoption. It seeks to clarify that the parent-child relationship between the adult adoptee and the proposed adoptive parents must have existed entirely during the adoptee's childhood commencing no later than when the adoptee was 13 years of age. This provides that the adoptee has been brought up, maintained and educated by the proposed adoptive parents for a continuous period of at least five years before the adoptee became an adult.

The reason for this proposed amendment is an important one which goes to the very heart of what adoption law is about. Adoption law is about the child and securing a stable, long-term, close relationship between that child and the adoptive parents. Adult adoptions can occur but only as a recognition of this relationship.

Where the purpose of the application does not appear to be about the need to enhance this parent-child relationship but concerns some other purpose connected with migration or succession or other non-relationship status issue then the Adoption Act should not be made to accommodate such requirements.

We want to be quite clear about our adoption laws. Adult adoptions are not for the purpose of circumventing some other laws of this country. They exist only to legitimise bona fide relationships, which are important and significant to both the adoptee and the prospective adoptive parents. For this reason we want the legislation to be very clear that there must have been a relationship while the adoptee was a child, it must have been of reasonable length and it must have been continuous for at least five years before the application was made.

In the unlikely event that there is a situation where the five-year criteria is not met but the court is satisfied that exceptional circumstances exist to justify making an adoption order, then an allowance has been included to provide for these circumstances.

The bill proposes to amend section 79 of the Act to give the Director-General the power to issue an administrative order and seek a warrant to enforce the order. This is specifically designed for a child or young person under the parental responsibility of the Director-General.

The Director-General has parental responsibility of a child once all the consents for an adoption have been either given or dispensed with. The difficulties which justify the introduction of this section occur when a pre-adoptive placement has been terminated by the Director-General and the prospective adoptive parents have failed to relinquish the care responsibility for the child.

The proposed amendment will give the Director-General the power to regain care responsibility of the child who is under his parental responsibility. Previously this power was contained under the Children (Care and Protection) Act 1987 in a way that also applied to adoptions. However this was lost when the care legislation was created as stand-alone care legislation. The former position is therefore to be restored in connection with the Adoption Act 2000.

A further amendment to the Act seeks to clarify the powers which the Department of Community Services and the police have in pursuing investigations under the Act or regulations. The amendments include powers to apply for search warrants to enable the entry, search and inspection of premises.

Finally, the bill proposes some minor amendments to assist in the smooth functioning of the legislation. These include the amendment of Chapter 4 and the Act generally to change the language of "guardian, guardianship, care, custody, and foster parent" to the more current terminology "parental responsibility, residence, care responsibility and authorised carer".

The amendments also provide that accreditation standards do not have to be prescribed by regulation but rather can be published in the Gazette from time to time, in the same way as selection criteria for prospective adoptive parents is published.

The amendments proposed in this bill will be of significance to those children in long-term relationships seeking to be adopted to those Aboriginal and Torres Strait Islander children whose connection with their cultural heritage will be safeguarded by the amendments, those adults seeking adoption into families they have been with for a period of more than five years and for those seeking access to their original records.

The New South Wales Government believes these amendments will modernise the language of the Act and clarify the powers available to the Director-General in investigations and in the regaining of care responsibility.

These are important amendments to a significant Act.

I commend the bill to the House.