

## Adoption Amendment (Institute of Open Adoption Studies) Bill 2016

### Second Reading

Mr SCOT MacDONALD ( 11:52 ): I move:

That this bill be now read a second time.

I seek leave to incorporate my speech in Hansard.

Leave granted.

I am very pleased to bring before the House the Adoption Amendment (Institute of Open Adoption Studies) Bill 2016.

This bill delivers on the New South Wales Government's commitment to lead the way in developing evidence-based research on achieving permanency and security for children in out-of-home care through open adoption.

The New South Wales Government devoted \$2.85 million over three years to the Institute of Open Adoption Studies to improve our evidence base and practice for open adoption.

On 16 March 2016, the Premier and the Minister for Family and Community Services announced that, following a competitive tender, the University of Sydney's Faculty of Education and Social Work, in partnership with Barnardos, would establish and run the Institute of Open Adoption Studies. This is the first independent, government-funded adoption research body of its kind in Australia.

The institute's strategic priority is to provide an evidence base for open adoption, in support of the best interests of children in out-of-home care in New South Wales.

The bill before the Parliament provides the foundation for the institute to access qualitative and quantitative data from past, present and future adoption and permanent care applications and orders so it can undertake its research functions.

As members of the House would be aware, the New South Wales Government is committed to helping more vulnerable children in out-of-home care into permanent and loving families. As was noted by the Hon. Brad Hazzard, Minister for Community Services in the other House, when he introduced this bill, New South Wales has the highest number of children adopted from out-of-home care in Australia. The facts are:

In 2014-15 there were 87 open adoptions from out-of-home care in New South Wales;

New South Wales outperforms every other State in the country when it comes to open adoption whether it be from out-of-home care, local or international adoption;

In 2013-14 New South Wales completed in total 141 open adoptions, and of these 82 were from out-of-home care;

The total number of adoptions from Victoria in 2013-14 was 48. In the same year, Queensland completed 34 adoptions and Tasmania completed 12 adoptions. Adoptions from out-of-home care in these States are far less common than in New South Wales.

Making open adoption for children quicker and easier is a key part of the New South Wales Government's Safe Home for Life child protection reform package. Open adoption is very different from what happened in the past. Open adoption promotes a child's need to know where they came from, to know their birth family, and to maintain links and contact with them. International research and learning from past practice has helped us understand the importance for children of having a strong sense of identity and knowledge of where they come from.

Around 20,000 children and young people are in out-of-home care in New South Wales. While we acknowledge that open adoption is not a viable approach for all these children, it is in a substantial number of cases the best option, and it is important that we consider this option when children cannot be reunited with their families. Whilst we move forward to increase adoption rates, we must acknowledge past practice of forced adoption and the impact it has had on children and families.

We must also acknowledge that for Aboriginal children adoption is not the priority. This Government continues to be committed to working with Aboriginal children and families to promote their identity and culture. We understand and respect that for the Aboriginal community open adoption of Aboriginal children is generally the least preferred placement type.

The institute has the challenge and responsibility to pursue much-needed research into open adoption and its impact on children, birth families, adoptive applicants and those working in this essential field. At the heart of the institute's endeavours is our society's shared duty to provide a greater number of children with a safe and loving home for life. The institute will lead the way in research by building the knowledge base for open adoption, providing a focus for expertise and increased understanding of open adoption.

A key goal of the institute will be the development of new knowledge through research and expertise to inform practice and influence cultural change within the child protection sector around permanency planning and adoption. The institute will also:

research children's experiences of adoption;

develop resources, training and education programs to help the sector; and

provide expert reports to support decision-making around permanency planning. The Institute will take us to a new place of understanding.

It will allow us to reality test the learning from adoption assumptions of the past and inform our approaches to determining what we must really mean by "the best interests" of these children. By building an evidence base on out-of-home care and local adoption, the institute will support a growing sector to make decisions that are in the best interests of the child. It will also inform how we as a government develop adoption policy and practice.

I turn now to explaining the bill in more detail.

A number of legislative changes are needed to establish the institute as a research leader in the sector.

#### Disclosure of information for research purposes

Information is the key to sound decision-making, policy development, and producing world-leading research and statistics. The institute will require access to adoption and out-of-home care information and data for it to be a leading academic institute for evidence-based research in open adoption.

The proposals in this bill help simplify a complex legal landscape. There are presently a number of legislative impediments on research organisations accessing adoption information. The current regulatory controls on the disclosure of information prevent the institute from being able to access adoption and out-of-home care information, even in circumstances where the information has been de-identified.

The bill allows the Department of Family and Community Services to enter into arrangements with the institute as a prescribed research organisation for the purposes of permitting the disclosure of adoption and out-of-home care information held by the department or an accredited adoption service provider, the Children's Guardian or a designated out-of-home care agency.

The type of information that the institute will be able to access includes available adoption applications as well as adoption and care orders from the last 50 years. This is the most significant repository of adoption information available in New South Wales and none of it is held in any aggregated database.

Access to this quality data will help to create an improved evidence base for research, enabling a better informed analysis and a deeper understanding of establishing permanency and a safe home for life for children and young people in out-of-home care.

The legislative amendments proposed by this bill are pivotal for the institute to undertake research on the impact of past and current adoption and out-of-home care practices in New South Wales.

#### Safeguards to protect personal information

While facilitating access to the best adoption and out-of-home care information in New South Wales for research purposes, safeguards to protect personal information are also a central feature of the bill. Given the sensitivities around information sharing issues, the bill puts in place a suite of safeguards to protect personal information. The safeguards provided by the bill to maintain individuals' privacy include that:

The institute will be subject to the privacy protection provisions of the New South Wales Privacy and Personal Information Protection Act 1998 and the New South Wales Health Records and Information Privacy Act 2002. This includes safeguards to protect against loss, unauthorised access and use, modification, disclosure and misuse of information.

Information disclosed to the Institute must be treated as confidential and steps must be taken to de-identify the information. The institute cannot publicly release any information that identifies people involved with an adoption of a child or young person in out-of-home care.

Regulations may also be made to provide further guidance on data security and the criteria for release of information.

In addition to the safeguards to protect personal information provided by the bill, the institute will operate within the processes and procedures of a university and, as such, will be subject to stringent ethics approval arrangements. The institute will be required to obtain ethics approval from a university ethics committee for each research proposal to ensure it is a legitimate investigation that protects the welfare, safety and dignity of research participants. Any perceived or actual bias in research proposals will be managed through this independent process.

Expert reports and advice to support decision making around permanency planning

Another key feature of the bill is that it will enable organisations such as the institute to provide expert reports to the court to support decision-making around permanency planning.

One of the most significant arenas where a decision is made about a child's right to belong in a family is in a court of law. Yet in some of these decisions, the courts have spoken about their frustration in not having before them adequate, reliable or robust objective expert evidence on which to determine whether adoption is the best option for the child.

Under section 91 of the Adoption Act 2000, the court can request an expert report to help with its decision on whether adoption is in the best interests of a child. At present, only a designated agency or approved assessor can provide this type of report. This has meant the courts have not had before them expertise from a leading research body on adoption.

The bill overcomes this limitation by allowing a suitably qualified person employed or nominated by a research organisation, such as the institute, to offer an expert report in relation to individual matters.

Clarifying terminology of carer's approved to adopt a child

Last but not least, the bill makes a minor, but relevant, change to the explanatory note to part 6 of the Adoption Act 2000. The current reference to "temporary care" in the Adoption Act is not aligned to language used in the Children and Young Persons (Care and Protection) Act 1998. The change in terminology to "authorised carer" will ensure that people approved to adopt are consistently classified, which in turn will help to improve the quality of adoption data and reduce time and cost associated with accessing it.

Consultation on the bill

Prior to launching the institute, the Department of Family and Community Services undertook extensive consultation on the role and function of the institute.

I am pleased to advise the House there is broad support for the institute. Adoption service providers and advocacy groups recognise the benefits of an institute that can efficiently access a broad range of adoption information for use in its applied research functions.

I also note that both the Office of the Information Commissioner and the Office of the Privacy Commissioner have been consulted and support the bill.

The Government trusts and hopes this bill will receive the full support of all members of Parliament. As the University of Sydney Chancellor, Belinda Hutchinson, said:

The institute has the promise and responsibility of delivering research with the impact to enable lasting positive change. We want the Institute to be one of the leading academic institutions in the world for evidenced-based research in this area'.

This bill provides the foundations for the institute to be the leader in the development of best practice in open adoption in Australia.

I commend this bill to the House.