Speech by

Hon. Margaret Keech

MEMBER FOR ALBERT

Hansard Tuesday, 10 February 2009

ADOPTION BILL

Hon. MM KEECH (Albert—ALP) (Minister for Child Safety and Minister for Women) (12.04 pm): I move—

That the bill be now read a second time.

It is with great pleasure that I rise today to introduce into the House a bill which comprehensively reforms and modernises Queensland's 40-year-old adoption laws. In July last year, Premier Anna Bligh and I publicly announced that our government would overhaul Queensland's adoption laws by bringing to a conclusion the reform process which has been ongoing since 2001.

The new Adoption Bill, which reflects contemporary community standards, is now ready for parliament's consideration. The Bligh government has taken this issue out of the too-hard basket and is delivering fair laws to those people affected by adoption. In recognising that adoption is a very complex and sensitive matter, I ensured that there was extensive consultation with the community in developing the reforms. Queenslanders clearly told me that the current adoption laws are not fair. We have listened and the government is responding with significant reform. No longer will Queensland have the most restrictive adoption laws in the country.

There are several major areas of reform which I wish to bring to the attention of honourable members. For the first time, adoption laws in Queensland will provide for open adoption practice which will allow a child's birth and adoptive families to know each other from the time of the adoption or to choose to have a closed adoption arrangement. Currently Queensland is the only Australian jurisdiction where adoption orders are made administratively. The bill proposes that adoption orders be made by the court. Eligibility to lodge expressions of interest to adopt will be extended from married couples to de facto couples who have been in a relationship for at least two years.

The bill's objective is to ensure that all children who require adoption, whether locally or through intercountry adoption programs administered by the Australian government, receive the best possible care. It will also enshrine that the child's wellbeing and best interests, both through childhood and into adulthood, are paramount in all of my department's deliberations. These reforms are in line with the Bligh government's vision for a fairer Queensland.

In July last year, the government expanded the scope for reform to include the law which governs the right for people to access information about others associated with their adoption if it occurred before June 1991. Current laws restrict adopted people and birth parents who were involved in an adoption prior to 1991 accessing information if one of them objected to the release of the information. Currently more than 1,100 people adopted before June 1991 cannot know their own family history because of objections lodged by their birth parents. There are also more than 1,600 birth parents who currently cannot know the name their child has grown up with or the names of the adoptive parents who have raised them because of objections lodged by the children who were adopted.

Many people have shared their stories with me, telling me that not knowing these facts can lead to a great deal of pain and suffering. The consultation was also clear that some people do not want their information released and are worried about unwelcome intrusion into their lives. As a result of this

feedback the Bligh government is reforming the law to ensure equal access to identifying information by all birth parents and adopted persons regardless of when the adoption took place. Importantly, we will be maintaining the right for people to state their preference for no contact which, for these pre-1991 adoptions, will be legally enforceable. The adoption reforms balance people's right to information about their own personal history, yet maintain the rights of others to privacy.

People familiar with adoption practices will know this information as identifying information and it can include your name before you were adopted; your birth parent's name at the date he or she consented to the adoption; the date of birth of your birth mother when you were born; or your adopted child's name after their adoption; and the names of the couple who became your child's adoptive parents. Since 1991 Queensland's adoption law has provided adopted people and birth parents with a right to access such identifying information about their birth parents or child who was adopted once the adopted person turns 18 years of age. However, in the case of adoptions which occurred prior to adoption records being opened up in June 1991, a birth parent or adopted person can prevent information which identifies them being provided to other people associated with the same adoption. The objection remains in force until it is revoked—even after the death of the person who lodged it.

This makes Queensland the most restrictive regime of all Australian jurisdictions, because it is the only state which allows one person to indefinitely block another person's access to identifying adoption information for adoptions which occurred before 1 June 1991. Having access to this information is very important to many adopted people and birth parents. More than 16,000 people have obtained identifying adoption information since this right was introduced in 1991.

The government has examined the best way to give adopted people and birth parents equal access to information about their birth history and their children who were adopted. I released the *Balancing Privacy and Access: Adoption Consultation Paper*, which asked people to consider whether the current adoption laws about identifying information appropriately balance and protect the rights and interests of all parties to adoptions in Queensland. The consultation paper sought feedback from people with experience of adoption generally, and from those affected by adoption laws in Queensland in particular.

As was expected, submissions were received from people who strongly support identifying adoption information being made available to all adopted people and birth parents, and from other people whose opposition to this was equally intense. In most instances, people understood the sensitivity associated with balancing access to information and respecting people's privacy, and they expressed a genuine desire for future laws to be responsive to the interests of all parties. The majority of people who responded supported adopted people's and birth parents' right to access identifying information and also supported people's right not to be contacted by another party to an adoption, if this is not their wish.

The feedback received indicated there is more support for the law to be changed to enable parties to all adoptions to receive identifying information than there is for the law to remain as it is. A majority of people told us they considered the current laws to be unfair. In fact, 65 per cent of 321 respondents believed the current Adoption of Children Act 1964 does not achieve a fair balance between the interests of adopted people and birth parents who would like to obtain identifying information and those who want to maintain their privacy and do not wish to be contacted. The feedback also indicated the new laws must address the significant concerns held by people who wish to maintain their privacy.

When I set out down the path of reform, I knew it would be difficult to strike a fair balance. In considering reports of the trauma associated with some birth mothers' past experiences—their fear that they will be judged harshly if the facts of an adoption become known and the ongoing negative consequences reported by some people who have been denied access to identifying information—I was determined that the government address these matters sensitively and with great care, respect and compassion. Stakeholders supporting change told me in emotional meetings that the final pieces of their life puzzle were missing. They pleaded to be given their identity. Meetings with privacy protection groups were equally as compelling.

I would like to acknowledge the hundreds of people who met with me and my staff, with members of parliament or with my department and contributed significantly to consultation on this bill. I particularly acknowledge the courage of people who shared their most personal experiences and life stories. All made what must have been very difficult decisions to share their own private details of their adoption experiences in a bid to effect change or to retain the status quo. They shared their heartfelt sorrow, grief for the absence of adopted relatives, fear of reliving the past, hunger for personal information that has been so long denied and the impact this has had, as well as the great joy of successful reunions. For me it has been a most humbling experience to meet with so many affected by Queensland adoption laws and to read their moving submissions to the consultation paper.

The Bligh government has carefully and sensitively weighed up these matters to develop a way forward that is fair to all parties. The bill gives adopted people and birth parents equal access to identifying information, whether the adoption occurred before or after 1 June 1991, while continuing to respect the

wishes of those people who do not wish to be contacted. This is achieved by removing the right for people to lodge an objection to prevent another person from receiving identifying information about them.

Existing information objections are twofold, covering a person's objection to the release of identifying information as well as their objection to being contacted. These will be transitioned so they become only objections to being contacted. Existing contact objections will remain in place. In addition, people will be able to lodge a statement setting out their wishes about being contacted—including their wish not to be contacted—and to specify arrangements which suit their individual circumstances. This signals a clear end to the restrictive regime contained in the current adoption laws and marks the introduction of new legislation which strikes a fairer balance between the interests of those people who wish to access identifying information and those who do not wish to be contacted.

While the consultation demonstrated a level of concern about whether contact objections would be effective in protecting a person's privacy and ensuring they do not experience unwanted contact, there is extensive evidence from Queensland, other Australian states and international experiences that contact objections are an effective mechanism to protect against unwanted contact and intrusion into people's lives. 'Contact only' objections have operated successfully in Queensland since June 1991 and, as at 30 June 2008, there were 247 current objections to contact only. No breaches of 'contact only' objections have been reported to the department in the past 10 years and only one breach has ever been prosecuted. New South Wales and Western Australia report similarly high compliance with contact objections. International research comparing the social impact opening adoption records had in some American states, Great Britain and Australia from 1953 to 2007 has found similar high levels of compliance with contact objections.

Research shows that, although people were fearful their privacy would not be respected, the reality of opening access to adoption records is that few, or no, breaches of contact objections are committed, and the birth parents' and adopted adults' fears that their privacy will be invaded and their family disrupted actually do not eventuate. To safeguard the privacy of those who have previously lodged objections, and of those who in the future express a wish for no contact, the bill only permits identifying information about them to be released to another person if the person has participated in an interview—which may be in person or by telephone—with an officer of the department and if they have signed a document acknowledging the other person does not want to be contacted and it would be an offence to do so. These mechanisms mean the department can help people to understand individuals' reasons for not wanting contact.

In addition, the court will be able to make an order preventing the release of someone's identifying information to another person if doing so would pose an unacceptable risk of harm. It will also continue to be an offence carrying a maximum penalty of 100 penalty units, which is $10,000, or imprisonment for two years, for a person who knows another person has lodged an objection to contact—or registered their preference for no contact—to contact or attempt to contact the person either directly or through another person.

As I acknowledged earlier, releasing identifying information to another party to an adoption, as well as supporting people to ensure they can clearly express the type and level of contact they might seek with another party, must be handled sensitively and with great care. To this end, I am pleased to announce plans to establish a dedicated postadoption support service for Queensland. This service will be independent from the department and funded specifically to support people who are affected by adoption orders made in Queensland. Local adoptions will be prioritised. In view of the time, I seek leave to have the remainder of my speech incorporated in *Hansard*.

Leave granted.

It will provide a range of services including: A free telephone helpline; face-to-face individual counselling; support for people preparing a contact statement; support for those prevented from making contact because another party has expressed a preference for no contact; mediation services and reunion support; community awareness raising to ensure adoption is better understood in the community; and developing resources and providing training to assist counsellors, psychologists, psychiatrists and other helping professionals increase their adoption expertise.

Open adoption

As mentioned earlier, the Bill will provide for the practice of open adoption.

This will allow the opportunity for a child's birth and adoptive families to know each other from the time of the child's adoption, if they agree, and to decide on the extent of information exchange and/or contact that will occur.

However, the parties to an adoption can still choose to have a closed adoption arrangement if they want to, until the child turns 18.

Research supports open adoption as a healthier option for children, as it enables them to more readily feel comfortable about their birth and adoption. This can help promote a positive self image as they grow up. It can also remove anxieties people may have about the impact access to identifying information and possible contact may have when the child turns 18.

The Department of Child Safety, through Adoption Services Queensland, will help birth parents and adoptive parents who wish to use open adoption, to come to an agreement about the type of open adoption arrangement they would like to have for their child.

Most open adoption arrangements are expected to begin cautiously. For example, a child's adoptive and birth families might start by exchanging correspondence a few times a year through the Department's Mailbox program. The arrangements can evolve as the child grows and the parties become more comfortable with the contact arrangements.

The arrangement will be documented in an adoption plan setting out how the parties propose to communicate and, if they agree to in-person contact, how and when the contact will happen.

Importantly, an adoption plan will not be legally binding or interfere with the right of the adoptive parent to make decisions for their adopted child.

The wide-ranging reform is consistent with the direction of the Department's One Chance at Childhood initiative—aimed at providing stability for children in care in their crucial early years and avoiding the danger of children 'drifting' between parents and numerous foster care placements.

The focus on open adoption will make adoption a more viable option for securing permanent care in a loving family environment for at-risk children and so enhance the effectiveness of the One Chance at Childhood initiative.

My Department's first priority will always be to support birth families keep their children living safely with them in the first instance and to work with families, where possible, to strengthen and reunite them once it is safe to do so.

However, it is a sad fact that there are times when reunification for a child in care is not safe or possible and never will be. In these cases, children and young people need stability and permanency. Adoption is included in the suite of options to provide this.

Research recognises children need stability in their living arrangements and relationships to reach their physical, emotional, social and intellectual potential. Experiencing secure attachments is central to supporting children's positive mental health and psychological adjustment.

Importantly, when adoption is considered to be in the best interests of a child in care, priority will be given to that child's carer as the prospective adoptive parent, in recognition of the stability and bond that may have already formed.

While the introduction of open adoption will assist in facilitating adoption when it is the best option for a particular child in care, it is likely to be the case for only a small number of children in care. To place this in context, in England adoption has long been the preferred permanent option for children in long-term care, yet just 4 per cent of almost 60,000 children in government care were adopted as at 31 March 2008.

Orders made by the court

Another significant area of reform is the requirement for adoption orders to be made by a court.

Adoption orders in Queensland are currently made by the Director-General of the Department of Child Safety. Queensland is the only Australian jurisdiction in which adoption orders are made administratively.

Adoption has important legal consequences because it permanently changes a child's legal identity and legal relationship with his or her birth family. In recognition of this significant and serious change to a child's life, it is therefore appropriate and necessary for the adoption of a child to be decided by a court and the Bill provides for this and brings Queensland into line with every other Australian jurisdiction.

My Department, through Adoption Services Queensland, manages an Expression of Interest Register, which contains the names of couples interested in becoming adoptive parents either through a local adoption or an intercountry adoption.

Currently, the Expression of Interest Register is periodically opened for limited periods, when it is necessary to increase the number of prospective parents required to meet the anticipated need to find adoptive placements for children.

The current objective is to identify the best possible prospective adoptive families to meet the needs of the small number of children who require adoptive parents.

I have listened to many people, particularly in the inter-country adoption community, who have struggled with the uncertainty of when applications can be made and the rush and anxiety that accompanies the opening of the register.

This rush to lodge expressions of interest when the register is open, can lead couples to do so even though they may not be fully ready to commit to adoption at that time.

To overcome this, the Bill provides that the Register will generally remain open so people interested in adoption are able to lodge an expression of interest at any time. This will create greater certainty for couples interested in adoption, because they will be able to lodge an expression of interest at the time they are ready, willing and able to actively proceed through the adoption process.

Other mechanisms are being introduced to increase the efficiency of the register, including: no longer allowing people to postpone an expression of interest if they are not ready to proceed; and ensuring they regularly review their decision to continue pursuing adoption by requiring renewal of expressions of interest every two years if they have not moved through to assessment.

Eligibility expanded

Another important and contemporary reform introduced by the Bligh Government is that eligibility to lodge expressions of interest will no longer be limited to married couples. Instead, eligibility will be opened up to de facto couples who have been in a committed relationship for at least two years.

There are also important changes relating to consent before an adoption can be made.

Currently, a father is only required to consent to his child's adoption if he is married to the child's mother, either at the time the child was conceived or at the time of adoption.

The Bill will require a child's mother, father and any legal guardian to give informed and voluntary consent before a child can be placed for adoption, regardless of marital status.

The Bill will also require the Department to give a man thought to be a child's father information about how he can determine paternity, consent to the child's adoption or seek a Family Court order in relation to his parenting the child, if he wishes to do so.

Finally Mr Speaker, Queensland is fortunate to have a number of voluntary adoption stakeholder groups offering care and support to people affected by adoption.

On behalf of the Bligh Government I thank those volunteers, both current and past, who have been committed to helping others and have made personal sacrifices to keep these groups going. I am sure they will welcome the news that a dedicated post adoption support service will be established in Queensland as they have been advocating for this for many years.

I hope these voluntary groups will continue to play a valuable part in the adoption community. I am confident they will continue to work closely with Adoption Services Queensland and will complement the statewide post adoption service.

Finally, in line with the Bligh Government's vision for a fairer Queensland, I am proud this Bill is a very progressive piece of new legislation which will bring Queensland's adoption practice in line with international best practice.

I commend the Adoption Bill 2009 to the House.