ADOPTION AMENDMENT BILL 2011

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Brian Ellis) in the chair; Hon Robyn McSweeney (Minister for Child Protection) in charge of the bill.

Clause 11: Section 20 amended —

Committee was interrupted after the clause had been partly considered.

Hon ALISON XAMON: Notwithstanding what I consider the minister's quite strange and actually quite offensive outburst suggesting that anyone who has a concern with relative adoption is somehow anti-child or anti-family, I make the point that it was a recommendation of the review committee that the reintroduction of relative adoption not be considered as part of the adoption review.

In the example that the minister gave before question time, I am curious to know why the minister believes that a parenting order is not able to be applied in the circumstance she described. It seems to me that was the whole reason why we introduced the special guardianship provisions. I also point out the quite serious concerns of people about the rights of children and about families to make sure that family history cannot be distorted in the way that relative adoption has the potential to cause.

Hon ROBYN McSWEENEY: I did not say that at all. I had not got around to Family Court orders. There are different Family Court orders that can deal with this, but in the example I gave of a relative adoption I said that a terminally ill birth mother might want her sister to adopt her baby and they might be the only two people in that family. There might not be anyone else in that family. The terminally ill mother may not have a partner; her sister may be her only living relative and a court may very well decide that a different order would be acceptable. It is up to the court to decide. However, if it is the birth mother's wish that her sister adopt that baby, then the court may allow it. Under our law now, the courts cannot look at that. I am saying this would probably be for a very small number of cases. As I pointed out, there have been very few relative adoptions. The opportunity for relative adoption was taken out by the Labor government in 2003; they are allowed in every other state in Australia. The Liberal–National government is putting relative adoption back into the legislation.

Hon HELEN BULLOCK: I think that it was a sensible decision by this government to reintroduce relative adoption. We heard that the definition of relative adoption is a service for children in want of a family. Basically, this legislation thinks along the lines of the best interests of children. Adopting a sibling's child might distort a family's relationship, but if we compare that with what is in the best interests of children that is a minor thing. On the other hand, the thinking that a sibling's child should stay in the extended family is much better than staying with somebody they do not know. For that reason, I fully support the reintroduction of relative adoption.

Hon ROBYN McSWEENEY: I thank Hon Helen Bullock for her contribution, and I also thank the Labor Party for its support of the bill.

Hon KATE DOUST: I know there was a time when relative adoptions were a lot more frequent than in the last, say, 20-odd years, and the minister referred to one example in which we would expect people to step in and provide support for a child. What other examples are there? A case that comes to mind is perhaps a young woman of 16 years of age who falls pregnant. Would a relative be able to step in and seek to adopt that child? What circumstances are envisaged for relative adoption? The Labor Party supports this bill, but I am looking at other scenarios where this may apply.

Hon ROBYN McSWEENEY: It would be up to the courts to decide that. Having said that, in my humble bush lawyer's opinion it would be very odd for the courts to allow that. If the birth mother wanted her mother to adopt the baby, I think the court would look at a different option. I surmise that more than likely it would look at a guardianship order or the other Family Court orders that are available.

I have another example here of a child who is now 16 years old and lives with his grandparents in long-term care. He has had only his grandparents. He has had no contact with his birth mother and father throughout his childhood. They are not interested in him, have never, ever seen him and cannot be found. Therefore, he wishes to be adopted by his grandparents. Clearly, he knows that they are his grandparents, but he wants that stability. He has asked for that and they are accepting of that. That is one example that I can think of. It is really a window of opportunity to allow the courts to see what is in the best interests of the child; that could be a relative adoption or a guardian order from the Family Court.

Clause put and passed.

Clauses 12 to 23 put and passed.

Clause 24: Section 37 amended —

Hon ALISON XAMON: I really want to make a comment more than anything. I think it has been noted previously that it is really important that people who are considering relative or step-parent adoptions are given specific and tailored information regarding other legal avenues that may be available to —

Hon Liz Behjat: Your microphone is not turned on.

Hon ALISON XAMON: I am sorry; I cannot do anything about that.

I would hope that advice is given regarding how extremely difficult it could be to discharge an adoption should circumstances change, because I am aware that, particularly in the case of step-parent adoptions, if things go awry and a step-parent subsequently breaks up with the other parent, contact is potentially severed between the step-parent and the adopted child. Effectively, the adopted child would not only have their legal relationship with their biological parent severed, but also become estranged from their adoptive parent.

Clause put and passed.

Clauses 25 and 26 put and passed.

Clause 27: Section 40 amended —

Hon ALISON XAMON: Clause 27 amends section 40 of the act to provide that an applicant must provide evidence that he or she —

(e) has not been convicted of a Class 1 or Class 2 offence; and

(fa) does not have a pending charge in respect of a Class 1 or Class 2 offence;

Why does proposed section 39 refer only to class 1, but proposed section 40 includes both class 1 and 2? I wonder whether there should be consistency. What is the benefit of not prohibiting people who have committed class 2 offences from applying to adopt a child, but then requiring evidence that they have not committed such an offence?

Hon ROBYN McSWEENEY: Under section 40 of the act, the current criminal record checking criteria require an applicant to provide information to the assessor about whether he or she has been found guilty in the last five years of an offence punishable by imprisonment or at any time an offence punishable by life imprisonment or imprisonment for 20 years or more. This bill amends that section, as recommended by the legislative review. These criteria will be updated to refer to a more modern framework of offences relevant to those who have certain roles with children as set out in the Working with Children (Criminal Record Checking) Act 2004—for example, offences that would be looked at for foster carers who are required to undergo working with children checks. Clause 26 amends section 39 of the act and relates to a working with children check for a class 1 offence. It is automatic. People who have committed class 1 offences cannot adopt because they are sexual penetration offences. Section 40 is being updated to be in more modern language. Those amended sections will not conflict with each other.

Hon Alison Xamon: Doesn't it?

Hon ROBYN McSWEENEY: No. Why is it 1 and 2?

Hon Alison Xamon: That is what I am asking.

Hon ROBYN McSWEENEY: Under proposed section 39, a person who committed a class 1 offence is automatically barred from adopting a child. Under proposed section 40, the matter would still go before the adoption applications committee, but it would be very unlikely to be approved. The legislation allows the application to go to the committee in the first place. Class 1 offences certainly mean the applicant is automatically barred from adopting a child, but for those offences in class 2 —

Hon Alison Xamon: A couple are not as necessarily serious as class 1 offences, which are very serious.

Hon ROBYN McSWEENEY: That is certainly right, but some would not cause us to automatically bar someone from adopting a child.

Hon Alison Xamon: That is why there is the difference.

Hon ROBYN McSWEENEY: The difference is that one is automatic. An application from someone who had committed a class 2 offence would be allowed to go through to the assessor, but it would be unlikely that they would get through.

Clause put and passed.

Clauses 28 to 35 put and passed.

Clause 36: Section 52 amended —

Hon SUE ELLERY: I explain to the chamber that there are two amendments to this clause in my name. These amendments seek to delete the requirement that the CEO must not place a child unless the prospective adoptive parent satisfies the age differential set out in section 52(3) of the act. The government proposes to remove half of the existing age restriction—that is, related to the older parent. If I can take this opportunity to explain both amendments, the first amendment standing in my name proposes to delete paragraph 52(1)(a)(iii). If the first amendment is not successful, there is no point in proceeding to the second one. These provisions set out the age restrictions for the difference in age between the child and both prospective parents. The bill before us seeks to remove half that age restriction so that one parent must be no more than 45 years older than the first child and no more 50 years older than the second and subsequent children. I take the opportunity to walk members through what the current act states so that everybody understands what we are dealing with. Section 52 of the current act, "Restrictions on placement", states —

> (1) The CEO is not to place a child with a view to the child's adoption unless —

Then it sets out a series of criteria that the CEO must satisfy him or herself about. The CEO is not to place a child for adoption unless —

> (a) the prospective adoptive parent —
>
> (i) is named in a register under —

An earlier section of the act —

> ; and
>
> (ii) meets, as far as is practicable, the wishes expressed under section 45(a)(i); and

Those particular wishes are the wishes of the person who is giving consent to the child's adoption. The CEO has to meet, as far as practicable, the wishes of that person. Paragraph (iii) states —

> satisfies the age differential requirement set out in subsection (3); and

Subsection (3) of section 52 states —

> For the purposes of subsection (1)(a)(iii) the age differential requirement is that the prospective adoptive parent …

Firstly, with respect to the first child of a couple, the younger parent must be no more than 45 years older than the child; and, secondly, the older parent must be no more than 50 years older than the child. The bill before us seeks to remove that second provision. With respect to the second child or subsequent children of a couple, there is a requirement that the younger prospective adoptive parent be no more than 50 years older than the child and the older prospective parent be no more than 55 years older than the child . That is the provision that the bill seeks to remove. For a single person adopting their first child, that section of the act states that the prospective adoptive parent must be no more than 45 years older than the child and in the case of a single person adopting their second child or subsequent children, they must be no more than 50 years older than the child.

In addition to the local birth parent's right to veto, in local Western Australian adoptions the birth parent has the right to veto whoever the prospective adoptive parent is regardless of whether they meet all the criteria, irrespective of the fact that many overseas agencies have their own age restrictions in place. The criterion is set out earlier in the act at section 40, which I will turn to now. Section 40, "Assessment of applicants for adoptive parenthood", states that when the CEO receives an application, the CEO is to appoint somebody to assess the application and prepare an assessment report. For the purposes of that assessment report, each applicant is to provide information as to their suitability, including evidence that the applicant —

> (a) is, and continues to be, a person to whom section 39(1) applies;

Section 39 relates to citizenship and the fact that they are over 18. Most importantly, the provision I am relying on is subsection (b), which states that the person needs to provide evidence to satisfy the assessor that they are —

> physically and mentally able to care for and support a child until the child attains 18 years of age;

That provision is already in section 40 of the act. We would add "the local birth parent has the power of veto". Section 40 states that adoptive parents must be physically and mentally able to care for the child until the child reaches 18. Many overseas agencies have their own age restrictions in place. Even though section 52 says that in addition to meeting those criteria of being physically and mentally able to care for the child until the child is 18, we draw a line in the sand at the age of 45, not 44 or 46, and say that there can be no more than 45 years' difference between the child and the younger of the prospective adoptive parents.

The reason we are moving the amendment is that we say it imposes an additional and artificial barrier to adoption. Most interestingly, given the debate we have just had about relative adoptions, WA is the only jurisdiction that I have been able to find in Australia that applies such an age restriction. When I flagged during the second reading debate that I would move such an amendment, I think the minister said that it would be dangerous if we were to proceed and be successful with our amendment. The law in New South Wales says that a person needs to be over 21. In Victoria, there is no reference to age anywhere. In Queensland, it is adults. In South Australia and Tasmania, there is no reference to an age restriction. In the Northern Territory, I could find no reference to an age restriction.

When we were talking about relative adoptions during the debate a matter of minutes ago, the minister made the point three times that no other state in Australia precludes, for example, relative adoptions. I make the counter point that I could find no other state in Australia that imposes the age restrictions that WA proposes to continue half thereof. We say that section 40 is a very important and very high test. It is a cover-all. It says that a person must be able to demonstrate to the assessor that they are physically and mentally able to care for that child until the child turns 18. In providing that evidence, all sorts of factors will be taken into account, including age, because there are certain consequences of age—as I rapidly gallop towards 50 —

Hon Kate Doust: Very quickly.

Hon SUE ELLERY: Yes, very quickly. There are certain consequences that occur. I do not mean to be flippant about the debate at all.

Hon Alison Xamon: You don't look it.

Hon SUE ELLERY: Thank you. I will take that interjection and I hope *Hansard* got that.

The point I am making is that when we are using such a broad catch-all phrase that the prospective adoptive parent must be able to provide evidence and the assessor has to accept that evidence as being reasonable that they are physically and mentally able to care for that child until the child is 18, inevitably age and the consequences of age must be taken into account in that catch-all. Why do we then need to draw another arbitrary line in the sand whenever a unilateral line is drawn—in this case, an age limit on the younger parent? There is always greyness on the margins of that line. It does not matter where we draw the line, as somebody who is 44 years and 364 days older than the child will meet the criteria and somebody who is 44 years and 365 days will not. It is a very arbitrary line. In that case, the margin is 45 years. In this case, the government is proposing that we remove the age restriction on the older parent but maintain an age restriction on the younger parent. In this case, the difference in the ages between the parents is 45 years, when, arguably, a healthy, happy, safe 46-year-old might be able to offer that child a far safer, mentally and physically sound family relationship than an unsafe, unhappy, unhealthy 42-year-old, or a 25-year-old for that matter. If it is the case that that healthy, happy, physically and mentally able 46-year-old meets all the other tests but is just 12 months on the wrong side of that arbitrary line, is that a reasonable reason to reject the proposition that they are able to adopt a particular child? Adoption is a serious commitment, and it is absolutely right and proper for very serious laws to be in place about how it is done, about the assessment of people's suitability to take a child into their lives, and about cutting off any relationship between that child and the state. Once the child is adopted, the child is the responsibility of that family and there is nobody looking into that adoptive family's lifestyle; not like with foster care when people look over what is going on for that child. Once the child is adopted, that is a legal relationship. It is important that we have stringent laws in place and it is important that they are rigorously enforced. But given that this piece of legislation already gives the power of veto to the adoptive parent and already says that that adoptive parent must be physically and mentally able to care for that child until they are 18 years old, do we need to put in place an arbitrary line in the sand that achieves no more or less than that line about being able to be mentally and physically able to care for the child? Do we really need that arbitrary line in the sand? We say no. I move —

Page 21, after line 20 — To insert —

(a) delete paragraph (a)(iii);

Hon ROBYN McSWEENEY: When Hon Sue Ellery was minister in 2007–08, there was a review of the Adoption Act. I inherited that review and I looked at the recommendations. As the member knows, the Liberal–National government has accepted most of those recommendations. I thought it was eminently sensible to have an age criterion. I am just going to read from 15 submissions received in that review on why they thought that that age criterion should remain. The submissions state —

- The desires of older parents can conflict with the needs of the child. The focus should be on the child's needs, rather than the older parents' "wants".

- People may be younger in their approach to life these days, but they are still approaching the "senior years of life" and starting to slow down around the age of 45–50 years.

To keep the age criterion of placing a baby with a 45-year-old, by the time that child is 20 years of age, the parent is 65 years of age—so a lot older. I know women are having babies older these days—up to 45 years of age—but I think it is eminently sensible to keep that 45-year age gap there, because it is in line with the natural progression of our cycle, if members like to put it that way.

The submissions continue —

- Caring for children is physically and mentally hard work. It is not in a child's best interests to remove age barriers. People adopting at age 50 are going to be a burden on their children later in life.
- The current age restrictions are reasonable, especially because they relate to the age difference between parent and child and do not prevent people from adopting. Older persons just need to consider adopting an older child.
- People adopted by older parents can feel a disconnection with them and live with the fear of returning home from school to find them dead.

When I read that I thought: "Oh, that was a bit over the top." But it could actually happen. I am 54 years old—I will be 55 next year—and if I had a nine or 10-year-old and they see the other younger mums at the school, they would know that I am older than the other mums. That does not necessarily mean that they do not like it, but it means that they could be scared that the person they love could die a lot earlier than other mothers. That was a consideration from the review; that was not something I had thought of. The submissions continue —

- Adoption is rightly treated as a service for the child, not a service for infertile people. Given that there are many more people wanting to adopt than children available for adoption, the "best" parents should be chosen to be adoptive parents. The "best" parents include those who are statistically likely to be available to the child throughout childhood and well into adulthood. …
- It is hard to understand how having older parents could be in the best interests of an adopted child as this child has already suffered … Why choose older parents for that child? The average age for first-time parents is 29. Statistically very few women give birth at 40-45 years of age and almost none after 45 years of age.

I am quoting from the review. The submissions continue —

- The following problems may arise when choosing older adoptive parents:
    - Older people tend to have health problems which require support and assistance. If a person adopts at 55 years, when the child is 20 and trying to establish independence, they may be called upon to be a carer to their parents.

I give out carers' awards every year, and those children are just absolutely amazing. Other children their age are playing on the sports field and playing with their mates after school, and these children are carers. I am not saying that is all due to age; that could be for disability as well. The submissions continue —

- Children of older adoptive parents are more likely to be only children. Therefore when their adoptive parents die, many will be left with no family. If they were adopted from overseas, they will be unlikely to find their birth family and may become "orphans" at a young age.
- Possible differences between the age of the adopted child's parents and those of the child's peers.
- When this child has his or her own family (eg at 29) and requires assistance, the focus may be more on obtaining assistance for elderly parents.
- The chance of the adopted child's offspring having grandparents is almost zero.
- Adopted people report grief and a "generation gap" between them and older parents, despite loving them.

I could go on and on, but I am not going to; if we continue on in this, I will read out some more. But given that this was widely consulted on, people made submissions in writing, and the Liberal–National government thought it was eminently sensible to remove the older age and keep the 45-year age gap, and even though there are all those other criteria that Hon Sue Ellery mentioned, which I take on board, they certainly do not make me want to dismiss the age restrictions or make me want to agree to Hon Sue Ellery's amendment. I would much rather have the 45-year age gap between the youngest child, and the 45 years is there as a safeguard.

Hon SUE ELLERY: I just want to refer to the same report that the minister just referred to; I am intimately familiar with it and I referred to it in my contribution to the second reading debate. At page 42, under "Eligibility, Assessment & Placement Criteria", the section headed "Conclusions" states —

> There are two ways of dealing with the age limits in the adoption process. A policy position can be assumed that younger parents are more desirable for an adopted child and an arbitrary limit on age can be imposed through legislative restrictions, as is currently the case. Alternatively, each case can be assessed on its merits, considering the person's age and its implications for their health, longevity and capacity to care for the child. The AAC is already required to consider longevity as an important factor to be considered when assessing a person's suitability, as is the case in some other jurisdictions such as Victoria and the A.C.T.

The minister is correct; the review recommended that the age restriction should remain in place, and when it comes to a couple, the age restriction at placement should apply only in respect to the youngest applicant. I accept that that is what the review recommended, but the point I am making is that the review clearly canvassed that there are actually two policy approaches to take. The committee fell on the side of one—I acknowledge that; I have never said otherwise—but the point I am making is that the committee did not dismiss out of hand the alternative. It basically said that, alternatively, each case can be judged on its merits, and in fact longevity is one of the factors already taken into account. So, having revisited the issue in 2012, the Labor Party has considered that alternative approach. It is not a radical approach; it is applied throughout the rest of Australia and it is one that was canvassed by the report. We think it has merits.

Hon ALISON XAMON: I thank Hon Sue Ellery for bringing on this proposed amendment, because it is an important element within the bill and is worthy of discussion. I think that certainly we can agree that there has been a relaxation within this bill of the age restrictions, and that is absolutely welcomed. But I understand that the debate around age restrictions is always going to be very controversial.

One of the points that I want to make is that when my office was consulting around this bill, one of the concerns that was raised by people who work in the adoption field is that if we remove the age restrictions, it might raise the hopes of applicants unrealistically. They thought that it would be more honest if the criteria were defined in the legislation so that people would be under no misconception that they would be able to adopt a child who was more than 45 years younger than they were. They certainly were concerned about the level of disappointment and distress that could emerge if a person were to go through the adoption process, only to discover that their age was always going to be a prohibiting factor. There is also a lot of cost involved, of course, for people who are making an application. But, having said that, I have given a lot of consideration to this matter, and the Greens (WA) will be supporting the amendment as proposed by the Australian Labor Party, notwithstanding that this is an area that is fraught.

If prospective parents know at the forefront of this process that their age will be a consideration, and that that may be a source of disappointment, they can work around that. I would be very concerned if a 46-year-old who was very competent and who would make an amazingly loving and wonderful parent was denied the opportunity to become a parent because of what is an arbitrary age factor. We need to remember that adoption may be the last chance for people who have spent many years going through the emotionally draining process of trying to conceive a child, often with medical assistance. A lot of these people have gone through unsuccessful IVF processes. There is also a tendency for many people to not begin to try for a child until later in life. When this is combined with the length of time the adoption process may take, it may mean that by the time people start looking seriously at adoption, they are extending the age limits even further. I can understand, therefore, why people who want to create a family of their own and raise children would see these provisions as discriminatory and devastating.

Life does not bring any guarantees. I am aware that longevity of life will always be an issue when we are talking about bringing children into the world. But people who have children in their twenties may also lose their lives—they may be hit by a bus, they may get cancer or they may choose to take their own life. Therefore, age is only one factor that needs to be taken into account. However, it needs to be transparent. It needs to be up-front. If age is to be a factor that may ultimately prohibit a person from being a parent, the person needs to know that well and truly before they spend the money and go through the process. So that is really important. We now also have increased life expectancy. I have seen people who are 65 who are far healthier than people who are in their twenties. Therefore, age is only one issue that needs to be looked at. So, after having given a lot of consideration to this proposed amendment, the Greens will support it.

Hon WENDY DUNCAN: The Nationals have also considered this amendment, and we have also sought advice from the Adoption Research and Counselling Service about its opinion on this amendment. We have similar sentiments to those that Hon Alison Xamon raised at the beginning of her comments. I think it is good for people

to know in advance whether they are in the running for adoption. However, the comment that this may well be the last chance for parenthood is actually missing the point. We are talking here about what is best for the child. It might be heartbreaking for people to miss out on adoption from the age point of view. If there was a shortage of adoptive parents, perhaps there would be some argument for this amendment. But there is not a shortage of adoptive parents.

The other thing is that having had my fourth child when I was pushing 40, I can tell the house that I would find having my first child at 45 very challenging. I love my children dearly. But we do feel the age difference as we get older, and I am feeling that particularly now that my youngest child is well into his teens.

Another point which I think is relevant, and which was raised by the minister, is that often adopted children are the only child; they do not have siblings. If the adopted child is also in a family with older parents, those older parents will be moving in the circles of their peers, who may not necessarily have children of the age of the adopted child. The socialisation of a child with other children is important. Obviously, the child will get that at school. But certainly it is very important that the child has siblings and has social relationships with children his or her own age. Therefore, the Nationals will not be supporting the amendment.

Hon ROBYN McSWEENEY: I thank Hon Wendy Duncan, who has made some eminently sensible points. We will not be supporting the amendment, for the reasons that I have outlined. But, further to that, relinquishing parents in sending countries always have a preference for younger parents, in contrast with the growing trend for older applicants. That was contained within the committee review as well. I would be concerned, as was the committee, that this could create unrealistic expectations in an older cohort of parents and might falsely encourage them to apply. As Hon Wendy Duncan has said, we could justify this if there were plenty of children available for adoption; but there are not. I think that the changes that we have made to the age criteria are a very sensible measure. Therefore, we will not be supporting Hon Sue Ellery's amendment.

Hon NICK GOIRAN: I would like to make a short contribution to the debate on this amendment. Like other members, I have spent some time considering this matter; in fact, long before Hon Sue Ellery brought it to the attention of the house. At the time I looked at this matter, I made notes that said that the changes that are proposed seem moderate and fair. In fairness, the amendment that has been moved by the Leader of the Opposition is not grossly unreasonable. I say that because we need to recognise that in the 2007 review, submissions were made in counter directions, so not only have there been other jurisdictions around the nation that have taken a particular approach, but obviously some people took the time to articulate those thoughts and include them in the 2007 submissions.

Having said that, the point is that there were submissions in counter directions. As the minister outlined, there are those who have, in fact, advocated for tighter age restrictions. I know Hon Sue Ellery will say, "Yes, but that's why I said that there are two different policy positions," and yes, she did say that, so we have to make some decision in relation to those two positions. When I consider this, I ask myself a few questions. I note that the honourable member who moved the amendment has been a member in this place since 2001, and that this particular legislation is not new. As I understand it, there was some discussion around it in 2003, and the honourable member was, of course, a member of that government. I am one of those people who holds the view that, even if one is on the back bench of government, one can still have a voice and an opinion, and express it in the chamber. To the best of my knowledge, the honourable member elected not to do that in 2003; but, of course, this is 2012, so one can have a different view of things nine years later.

As has already been indicated, the member was the minister responsible for the conduct of the review in 2007. To the best of my knowledge, these views were not expressed then, so this is something that has just come up in 2012. Is it a policy position that is passionately held by the Labor Party, or is it an opportunity to just take a contrary view to the minister in question? These are the types of questions that I ask myself —

Hon Sue Ellery: If that was the case, we'd oppose the bill.

Hon NICK GOIRAN: These are the types of questions I ask myself.

Hon Sue Ellery: They're stupid questions.

Hon NICK GOIRAN: I will take the interjection from Hon Sue Ellery that if that were the case, the opposition would just oppose the bill; I do not think it would, because she was minister with conduct of the review that said that the upper age limit for the elder of the two parents should be removed. In the time we have talked about this bill, she has never argued that there should be a contrary position to that; she has never indicated that there were two different policy positions to that, so I think —

Hon Sue Ellery: The two different policy positions are in the review.

Hon NICK GOIRAN: Yes, in relation to the younger of the two parents, so I think if —

Hon Sue Ellery: No, in relation to the whole age restriction question. Read page 42 of the review.

Hon NICK GOIRAN: I think if the member is going to make interjections, it is important that she make them in a coherent way.

Hon Sue Ellery: You're questioning my motivation, which is actually against standing orders.

Hon NICK GOIRAN: Take a point of order.

Hon Sue Ellery: You should learn how to speak.

The DEPUTY CHAIR (Hon Brian Ellis): Order! Hon Nick Goiran has the call.

Hon NICK GOIRAN: At the end of the day, contrary to what Hon Sue Ellery says, I am not making allegations about people's motivations; I am expressing the fact that when I consider this matter, I consider a range of things, some of which I have already mentioned.

It is a fair and reasonable point that, if we were to agree to this amendment, we would be creating false hope. I know there has been a lot of discussion around the notion of discrimination, but I suggest to members that, on the issue of discrimination, we discriminate anyway. Hon Sue Ellery, in her contribution in support of this amendment, indicated that we would have to look at factors; and, in fact, these things will be looked at—things like longevity. In other words, it is okay to discriminate in relation to longevity; it is just not okay to discriminate in relation to age.

Hon Sue Ellery: Did I actually use the word "discrimination" at all?

Hon NICK GOIRAN: Those are the types of discussions that have been taking place this afternoon. We have to be careful to not give people false hope for their prospects of success in an adoption application. As I said, I do not think that the amendment is grossly unreasonable, and I think that people should take some comfort—as I mentioned at an earlier stage of the proceedings on this bill—in the fact that there is provision for a review, and there will be a review; I believe it is five years. Maybe this is another one of those areas or topics that people can take a dispassionate look at in five years' time. I take on board the comments made by Hon Wendy Duncan about the quantum of applications. It is not as if an overwhelming number of these things happen; I think there were four local adoptions last year, so I do not know that we are creating a great injustice in Western Australia. In fact, I think we are just taking a solid step forward; a good, conservative step forward. I concur with comments made by the Leader of the National Party that we primarily need to take into account what is in the best interests of the child. It is not about individuals or about what is selfishly best for me—what would suit me best as a prospective applicant; it is about what is in the best interests of the child. I do not think it is unreasonable to suggest that 45 years should be the upper limit for the younger of the two parents. I actually think we have taken a big step forward by completely removing the age limit for the elder of the two parents. If we are concerned about issues of longevity and so forth, it applies to the second parent as well, so we have to be careful about this; why should the child, at the end of the day, be left with only one parent? I do not think anyone is suggesting that that is the case, but these are the types of factors we have to consider when looking at these particular amendments.

I say to Hon Sue Ellery that I regret that on this occasion I will not be supporting her amendment; but, as I say, who knows? Maybe in five years' time I might, like her, hold a different view and we can look forward to that discussion at that time.

Hon ALISON XAMON: Children are raised by one parent all the time, whether because that decision has been made, or because a parent has died, so I do not think we should dwell too much on that. Life throws some curly situations at us sometimes, and there is never going to be a guarantee that, even with the criteria applied by the legislation, everything will go according to plan. We had a discussion on a previous clause about a situation in which, for example, there is a grandchild who actually wants to be adopted by grandparents. I am certainly influenced, in that example, by the fact that it is the child who wants to initiate that sort of arrangement with the grandparents. Conceivably however, we have a situation here in which there is an age gap of maybe 46 years or more, yet I do not think in such a situation that anyone would question that the child was being adopted in an arrangement that was anything other than loving, supportive and desirable for all parties. If age is not a consideration in such cases because it is recognised that the situation is in everyone's best interests, my concern is that we are going to impose this age limitation in such scenarios. It is not the case that we are able to say that age does not matter when it is a grandparent adopting a child, but somehow it does in this situation. I am sympathetic to concerns around setting up false expectations, and I would be the first to say that, even if this amendment were to be successful, it would have to be made abundantly clear to people that age is going to be a consideration, as is health and, potentially, disability—a whole range of provisions would have to be taken into

account and would have to be absolutely at the forefront; but how disappointing it would be if people were to be excluded based on even one year.

I have another question for the minister; I thought about this as Hon Nick Goiran was talking about the review. I wonder whether any statistics are kept—I imagine there would be—of people who are currently excluded because of age, who would otherwise apply? I imagine that a lot of people do not even go through the process because they know from the outset that they are going to be excluded. With a review process, we will never have a way of determining how many people would otherwise consider adoption but do not even make an application because they may be one or two years out.

Sitting suspended from 6.00 to 7.30 pm

The DEPUTY CHAIR (Hon Brian Ellis): We are dealing with the Adoption Amendment Bill 2011 in committee. We are dealing with clause 36 and the amendment by Hon Sue Ellery.

Hon KATE DOUST: I listened to a number of the comments made prior to the dinner suspension about the age issue. I thought it was interesting that earlier in the day we had a discussion about extending the capacity for relatives to adopt. We also had a discussion about grandparents adopting grandchildren. Could the minister tell me whether there are any age restrictions on special guardianship orders?

Hon ROBYN McSWEENEY: I am very pleased that the member has asked me that question. The age criteria are not for known adoptions; they are only for unknown adoptions. Therefore, age does not apply for step-parents, relatives and guardians; but for adoptions of newborn babies, the age criterion of 45 applies in unknown adoptions.

Hon KATE DOUST: Can the minister explain to me why there would be a difference between unknown and known adoptions?

Hon ROBYN McSWEENEY: I think it is because a lot of children have to be placed with grandparents; they have to be placed with older people. There is nobody else who can care for them, so there are no age restrictions. It is in the best interests of the child to go with people who they know. Grandparents are older people. Both the member and I have had children—she has had three children; I have had four —

Hon Kate Doust: It is not a competition, minister.

Hon ROBYN McSWEENEY: I am just making the point that to have a newborn baby at the age of 45 is a lot different from what it is to have a newborn baby at 30—a point that Hon Wendy Duncan made. We are making a choice here. We are deciding to have an age restriction. I believe that we have taken the age restrictions to a compromise level, if the member would like to see it that way. Also, within that compromise level, it is very eminently sensible to have a 45-year age gap between a baby and the youngest person who is adopting. With adoptions by a step-parent or adoptions by a grandparent, there is not really any choice. The courts place the children in that situation. I believe there is a difference in that situation. Also, there is not a pre-existing bond or relationship between the adult and child in unknown adoptions, so there is already that bond, which is very important.

Hon KATE DOUST: Not necessarily, minister. The point I want to make is that, having listened to the debate earlier today and having heard that explanation from the minister, I think there is an inconsistency. The minister talked earlier today about how there is concern about placing a child in a home where the parents may be a certain age and the possibility of illness or some other event occurring that may cause difficulties. The minister is quite prepared to place them in a home with a grandparent or relative who may also be over a certain age. It is not always the case that the family has a direct connection to the child. I think that we have seen significant change in our community. We all acknowledge that people are having children at an older age. In this day and age when people are having children naturally at an older age, we tend to celebrate that. I have a couple of colleagues in this building who have been fortunate enough to have children at an older age. We have certainly celebrated that. Nobody has ever cast any aspersions or raised concerns about whether they will be here for the long term to enjoy their children grow into adulthood or whether they will be in their dotage. I think the legislation is setting different standards for different children, if we like. I think as people's views change, as our lifestyles change, and as our health gets better, there are different expectations. I am concerned that there are different arrangements for different groups of people. It lacks consistency. I do not know whether it will stand up in the long term.

Hon ROBYN McSWEENEY: I can only repeat what I said before. The 2007 review, which was conducted when the opposition was in government, did canvass widely. I think this has been a good and very worthwhile debate. However, on this side of the house, we will not be changing that age restriction. We have already changed it to the 45-year age gap. In known adoptions, the child is already in the placement of the person who

wants to adopt. It is up to courts to decide all these orders, whether it is adoption or guardianship orders; the best interests of the child is looked at. In this adoption legislation, this side of the house has made its statements that we will not be changing the age criteria. We think it is eminently sensible to have the age criteria.

Hon LINDA SAVAGE: I have come to this debate late; I was out of the chamber for the earlier part of it, so forgive me if I am repeating something that the minister has already answered. The first question I ask is how specifically the age of 45 was chosen. I ask that because I spent some years as a member of the Reproductive Technology Council, and we oversaw the Human Reproductive Technology Act 1991, which regulated and oversaw the in vitro clinics in this state. Obviously they are services that people use at many ages and stages, so it is not necessarily when they are older. But we had reason to consider, by way of providing advice and in forums, when it would be considered that someone was too old to use the services, because it was looking at the interests of the child. Interestingly, the balance of opinion was that it was around the early 50s. That was on the basis that up until that time women themselves could actually have a child naturally. In fact, menopause was described as on average occurring when women reached their early 50s. Just to clarify for me—as I said, the minister may have already done it—I would be interested to know specifically why 45, and not 42 or 48, was chosen.

Hon ROBYN McSWEENEY: Whether or not menopause occurs at 50 years of age, I would really hesitate to place a baby with a 50-year-old, because when they are 20, the parent is 70.

Several members interjected.

Hon ROBYN McSWEENEY: I would hesitate to place a baby with a 50-year-old. If it happens naturally, it is just part and parcel of the course of that family and that is fine, but when there are not many babies for adoption, women who give up their babies for adoption choose younger parents. I think 45 years of age came out of the previous Labor government's 2007 review and when I looked at it, I thought it was a very sensible age to have; therefore, I left it in the legislation. We have taken the upper age limit away—that in itself is quite a big step—and now we have the age of 45. We believe, as did the review, that that was the right age.

Hon SUE ELLERY: I just want to summarise the position we find ourselves in. No other state in Australia that I was able to establish—the minister can tell me otherwise—deems it dangerous to have this age restriction. "Dangerous" is the word that the minister used during the second reading speech.

Hon Robyn McSweeney: It is not in there though; it is not in the *Hansard*. So, did I use it?

Hon SUE ELLERY: The minister just has to trust me that that is the word that she used.

Hon Robyn McSweeney: Did I? Okay.

Hon SUE ELLERY: The other point I make is that we as a society say that if it happens naturally in the family, to paraphrase the point the minister just made, that it is just the roll of the dice in that family. I have not heard this minister or this government say that they actually think it is dangerous and unsafe to the child.

Hon Robyn McSweeney: Now you are putting words in my mouth.

Hon SUE ELLERY: No, I am not; the point I am making is that you have not said that.

Hon Robyn McSweeney: You are very wrong in what you're saying.

Hon SUE ELLERY: No; I am saying exactly what you have not said. I am saying we have not heard the minister say this. Equally, under the special guardianship order, if a child was placed with a foster parent, let us say at birth, at age two that child could be permanently placed under a special guardianship order with a foster parent, who could be absolutely any age. Even I, without children, know that two-year-olds are not the easiest little creatures in the world to deal with and —

Hon Robyn McSweeney: Fancy calling them creatures! How terrible that the opposition calls children creatures.

Hon Kate Doust: You are so pathetic.

Hon Robyn McSweeney: And that is just what you were then.

Hon SUE ELLERY: Perhaps we could have a sensible debate here. I am trying to summarise the arguments that have been put. According to the minister's contribution just a few minutes ago, the proposition is that a different standard is applied when children are in care and there is no other choice. When no-one else will have those children, irrespective of the age of the grandparent, the aunt, the cousin or whoever it is, we will say it is suitable and satisfactory to the state for those children to be placed in that way. The point that we have just been trying to make is that there is an inconsistency in the policy. We know what the numbers in the chamber are and the government will deal with this amendment accordingly, but there is an inconsistency in the policy: we say one

thing is suitable for known versus unknown adoptions; we say another thing is suitable for children in care who get an equally permanent placement—a special guardianship order is a permanent placement—but we say when it is that version of a permanent placement versus an adoption version of a permanent placement, a different standard applies. I do not think that the minister's argument stands up and we have made the point.

Hon ROBYN McSWEENEY: My argument does stand up and when we talk about children in care, it is the government's side of the house that has really taken responsibility for those children in care. We have placed a lot more money into children in care, and the Labor Party cannot ever crow about looking after children in care; it was an absolute disgrace. Now —

Several members interjected.

The DEPUTY CHAIR (Hon Brian Ellis): The minister has the call.

Hon ROBYN McSWEENEY: I think if we are going to be talking like this, it is also an absolute disgrace that this relates to the former Labor government's review of 2007, when Hon Sue Ellery was Minister for Child Protection. She never said anything then and now she stands up, changes her mind about age limits and expects me to agree to age limits that I will not —

Several members interjected.

The DEPUTY CHAIR: Order! I think both of you have had a fair go. I have let the debate go across the chamber, but I think we need to get back on track.

Hon ROBYN McSWEENEY: Thank you, Mr Deputy Chair. There is no inconsistency in my argument. There are very few babies to be placed in adoption and we need to be very, very careful who we place them with, as we are with our special guardianship orders. All the orders are looked at very carefully firstly by the department and then by the courts that they apply to, whether it is to foster or to adopt. The Leader of the Opposition has had her say and I have had mine and the government will not agree to the opposition's amendment.

Amendment put and a division taken with the following result —

Ayes (12)

Hon Matt Benson-Lidholm	Hon Sue Ellery	Hon Lynn MacLaren	Hon Giz Watson
Hon Robin Chapple	Hon Adele Farina	Hon Ljiljanna Ravlich	Hon Alison Xamon
Hon Kate Doust	Hon Jon Ford	Hon Linda Savage	Hon Ed Dermer *(Teller)*

Noes (17)

Hon Liz Behjat	Hon Phil Edman	Hon Col Holt	Hon Simon O'Brien
Hon Jim Chown	Hon Brian Ellis	Hon Robyn McSweeney	Hon Ken Baston *(Teller)*
Hon Peter Collier	Hon Donna Faragher	Hon Michael Mischin	
Hon Mia Davies	Hon Philip Gardiner	Hon Norman Moore	
Hon Wendy Duncan	Hon Nick Goiran	Hon Helen Morton	

Pairs

Hon Helen Bullock	Hon Max Trenorden
Hon Sally Talbot	Hon Alyssa Hayden
Hon Ken Travers	Hon Nigel Hallett

Amendment thus negatived.

The DEPUTY CHAIR (Hon Brian Ellis): Members, we have another amendment standing in the name of the Leader of the Opposition.

Hon SUE ELLERY: As I indicated, if the first amendment failed to pass, the second amendment needs to fall away as well.

Clause put and passed.

Clause 37 put and passed.

Clause 38: Sections 55A to 55C inserted —

Hon ALISON XAMON: These amendments to the Adoption Act relate to relative and carer adoptions and the placement of a child with a view to their adoption. I was very interested in how these intersected, in particular with the guardianship orders. Anecdotally, when I undertook consultation, I received feedback that there has not been a particularly good uptake of special guardianship provisions. I want to know whether the minister is able to provide any information about why that may be the case, if that is indeed the case.

Hon Robyn McSweeney: It isn't the case.

Hon ALISON XAMON: It is not the case. I am putting out there a position that was fed back to me by people who work in this area, so that was the sort of concern being raised. I think that the special guardianship orders are a really important reform. We debated that in this place and it received, as I recall, unanimous support. This obviously moves us in a different direction, which is why I want to get an idea of whether people are making applications for adoption because they feel that in some way the special guardianship orders were not meeting their needs or that somehow there are problems with the way special guardianship orders were being enacted. That is one reason I wanted to ask that.

I am aware, from the briefing, that issues of inheritance have been raised previously, but obviously these can be overcome if the person with parental responsibility makes a will. I want to make sure that we do not lose sight of the fact that when it is possible, reunification is always the best option for children. Obviously, going down this path is very final; it permanently severs the relationship between a child and its biological parent. Therefore, I am very keen to ensure that before these sorts of options are explored, every single other potential avenue to ensure reunification has been explored in the first instance. I hope that there are not problems with the special guardianship regime which may lead people to feel as though this is the only option available to them to achieve particular outcomes.

Hon ROBYN McSWEENEY: If reunification can be done and it is in the best interests of the child to reunify, of course that option is always taken if that is possible. But we are dealing with children who may have been very badly sexually abused. In child protection, there are a range of issues as to why a child cannot be reunited with their biological parents. When that cannot happen, these orders take place but reunification is very important if it can be done. I want to reassure the member that that option is looked at if it is possible. I say "if it is possible" because of all the variances in child protection, of which there are many, that bring a child into care.

Hon ALISON XAMON: I mentioned this in my contribution to the second reading debate, but I would like the opportunity to put it on the record again. I am aware that in other regimes, reunification provisions are enshrined within legislation and that at least a minimal level of attempt at reunification needs to have occurred before options such as adoption can even be considered. I understand that is not within the scope of what is being considered within this legislation, but I was very interested to look at best practice around the world where this is occurring.

First, I want to say that of course I agree that there are cases in which reunification is not possible. We know of profound cases of abuse in which we just would not want those children to go anywhere near their parents again. That goes without saying. But I also know of many instances in which parents temporarily, or for whatever reason, are unable to cope and that relationship is somehow severed. I just think that we really want to ensure that we have covered every single option before we permanently sever the legal relationship between a child and their parents.

One thing in particular that has come to my attention in my time in this place is the situation of dealing with parents with profound mental illness whose children have been taken away from them and are currently in care. I do not suggest that children in those instances did not need to be taken away; if there are immediate concerns for their welfare and safety, clearly we need to do that. I am concerned, though, that the very act of taking these children permanently away from these people who have the potential to recover, even if that takes several years, means that it may be too late because those children have been permanently adopted and that relationship permanently severed. If that is the case, we can imagine that really would be a breaking point for these parents; there is no point of recovery once they have lost their children for good.

I am aware that there is always a complexity with this. That is why, certainly, that where there are other jurisdictions that look at mandating attempts at reunification programs within legislation to be read simultaneously with potential adoption provisions and also reunification programs that are undertaken by departments that are independent of and separate to those same departments that are responsible for child protection, they provide a really important safeguard and framework. As I say, it is beyond the scope of what we are talking about in this bill, but I hope that we, as people who are responsible for making laws in this state, could strive towards these sorts of regimes in future because I think that that is a really important way forward.

Hon ROBYN McSWEENEY: I thank Hon Alison Xamon for her comments, but even she realised it was outside the scope of this bill. It was probably more relevant in special guardianships and I know that she spoke on that subject.

Hon Alison Xamon: I did.

Hon ROBYN McSWEENEY: It has been noted.

Clause put and passed.

Clause 39 put and passed.

Clause 40: Section 59 amended —

Hon ROBYN McSWEENEY: I move —

Page 25, lines 9 and 10 — To delete the lines and insert —

(b) a sibling of the birth parent —

(i) whether of the whole or half blood; or

(ii) whether the relationship is established by this Act or another written law.

Hon SUE ELLERY: I wonder whether we could have an explanation.

Hon ROBYN McSWEENEY: Yes; I was just about to do that.

We are introducing this amendment to clarify the definition of close relative to include adoptive siblings, which corrects an oversight. We had a few people phone to tell us it was an oversight and when I looked at it I could see that it certainly was an oversight. Prospective adoptive parents are responsible for filing an application to adopt in the court and are legislatively responsible for the notifications required under this section. Basically, it is the definition of "close relative", and as the member can see the amended clause will read —

(i) whether of the whole or half blood; or

(ii) whether the relationship is established by this Act or another written law.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 41 to 47 put and passed.

Clause 48: Section 81 amended —

Hon ALISON XAMON: This amendment obviously provides welcome changes because there is more openness. I was going to suggest that an argument could be made for extending these provisions even further to include grandparents and, perhaps, uncles and aunties of the adoptee. I wonder whether a further extension of these provisions was even considered; and, if so, the reason that the decision was made to not further extend them.

Hon ROBYN McSWEENEY: Once again, it was a recommendation of the committee in the 2007 review. I did not see any reason to change it and therefore we included siblings. My advice states that an adoptee's biological sibling needs to be identified separately in section 81(2), as he or she is unlikely to be a party to an adoption plan, and those plans are usually made between an adoptee's birth parent and the prospective adoptive parent. This goes only to adoptive siblings and it is a welcome change. As I said, because the recommendation was a part of the review, I did not see any need to bring in aunties and uncles. It was seen to be important for siblings; nonetheless, it is important for uncles and aunties, but I guess that we have to start somewhere and it seemed logical that siblings would want to know where their other siblings were.

Hon ALISON XAMON: That is fine; that answers my question. Obviously I agree that it is a welcome change, and a good one. I had wondered whether a policy decision had been made to not extend it further, but it sounds as though it simply was not considered because the amendment picks up on the review recommendations only. That answers my question.

Clause put and passed.

Clauses 49 to 71 put and passed.

Title put and passed.

Bill reported, with amendments.