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Senator Rachel Siewert
Chair
The Senate Standing Committee on Community Affairs
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Dear Senator Siewart

Thank you for your letter about adoption vetoes which Ms Joslene Mazel, the now Chief Executive of the Department for Communities and Social Inclusion has forwarded to me for a response.

You have requested information about how the decision was made to introduce the adoption veto provisions in South Australia and about how in practice the Department determines what constitutes information that may enable a person who has placed an adoption veto to be traced.

The veto provisions were introduced as part of the *Adoption Act 1988* coming into force on 17 August 1989 and apply to adoptions completed before that date. It does not apply to adoptions completed after that date. This Act was known as the "Open Adoption Act" because it enabled parties to new adoptions to have access without restriction to the file information once the child turned 18 years of age and it enabled parties to past adoptions to discover each other's identities.

However, because most previous adoptions had been conducted in secret and parties were told that their identities, including the child's, would never be revealed to one another, the South Australian Parliament introduced the concept of the veto system. This allowed parties who wished to preserve their privacy to place a restriction on the release of information that may identify them to any other party and on any information that may allow them to be traced.

At about this time open adoption legislation was introduced in all other jurisdictions and included similar veto provisions.

In more recent times, other States and Territories have amended their adoption legislation to remove the capacity of parties to restrict the release of information about them to the other parties, and have replaced this provision with a provision for "contact vetoes".

In the Second Reading Speech (copy enclosed) given on 8 September 1988 by the then Minister of Community Welfare, the Hon Susan Lenahan, the Minister refers to

the findings of the Select Committee that addressed the Adoption Bill referred to it by Parliament in 1987. This Committee conducted a public consultation during 1987/1988 during which very many submissions from those involved in or interested in adoption were received. Public meetings were also held during the consultation. The most controversial part of the public process was the consideration of enabling access to identifying information in past adoption files.

The Minister's speech indicates that the Committee heard evidence from the Department of Social Welfare in New Zealand in relation to that country's adoption veto system as well as gathering evidence from the other Australian jurisdictions. The speech also indicates that the Committee sought to introduce a veto system that was more flexible than that of New Zealand, thus leading to a 5 year renewal system for vetoes in South Australia.

In relation to your query about determining what information may enable a person to be traced, if a veto has been placed by one of the parties to an adoption, then any application for information contained in that file will be processed for release of the adoption information, but nothing that may directly or indirectly identify the veto holder will be released. Therefore, the application is accepted and not refused, but the released information will not contain identifying information of the veto holder. (However, if an adoptive parent has placed a veto but the adopted person has not, the adoptive parent's veto cannot prevent the birth parent from receiving the adopted person's identifying information).

In practice, determining what information to remove to maintain the veto is open to some discretion depending on the circumstances of the file. It is clear that the vetoing party's name cannot be released, so this is removed from the released information as this could allow the person to be traced. Other information may be withheld depending on the circumstances. For example, if the birth father of the child had an unusual occupation in the late 1950s and it is known that there was only a small number of such people in those days in the area where the birth father lived, then it is clear that this information would tend to identify the birth father and enable him to be traced, therefore it is removed. However, if the father was described as having a more common occupation, then release of this information may not so readily identify him and may be released.

Similarly, if the birth mother had a veto in place and the names of her employer and school and other such information were released, this may enable the birth mother to be traced. This is in the context of the adopted person being provided with as much information as possible about the circumstances of their adoption, including ethnicity and relevant health information, even though a veto is in place.

In practice, careful social work intervention can involve the exchange of non-identifying information (such as letters) between parties to an adoption through the Department acting as intermediary while a veto remains in place. This sometimes leads to parties feeling comfortable enough about the other party to remove the veto and allow direct communication and contact between them.

For approximately the last 5 years, only about 1 to 2 per cent of the applications for adoption information each year have encountered a veto by the other party. At 30 June 2011, 439 adoption information vetoes were in place in South Australia.

In South Australia there has been very minimal lobbying for either the removal of the veto system or a strengthening of the veto system. On the whole the current veto provisions, along with careful Social Work assistance for those parties affected by them, have provided good outcomes for parties to adoptions in this State. In most cases the best possible balance is achieved of allowing access to information to those who seek it and respecting the right to privacy for parties who wish to maintain it.

I trust this information is helpful to you and your Committee and I look forward to seeing your report in February next year.

Yours sincerely

Dana Shen
A/EXECUTIVE DIRECTOR
Families SA

23/ 12/2011

Adoption Bill, 1988

Second Reading Speech
Hon S. M. Lenahan
Minister of Community Welfare

SECOND READING SPEECH
LENEHAN 8/9/88

be attested by my colleague the Minister of Transport who has that area under his responsibility. As the nature of information technology changes, so one has to keep the role of the GCC under review. That is taking place. At this stage no need is seen for a formal review as proposed by the Auditor-General, but certainly there will have to be a further intensive examination and a response will be made to the Auditor-General on that point.

Finally, regarding the justification of computing projects referred to again, it is true that there is some movement towards justifying computing system development on the basis of its overall benefits and not just because of cost savings, but it is difficult to balance out. Often one goes into this process being told that certain savings in staff will result but they do not seem to materialise. However, on the other hand, there is no question that the benefits, in terms of efficiency of the service, processing and so on, which are felt by the public and the users of the Government services, can be seen readily.

Regarding the use of information technology by Government, a national survey in 1987 showed that on a relative basis as to the size of our public sector we were one of the lowest users of information technology. A number of our computer based systems have been highly acclaimed. I do not know whether the member for Mitcham is aware that the Lands Department's land ownership and tenure system is regarded as a world leader in its area. Devised and developed within our public sector, that system is a high level computer based system. The Engineering and Water Supply Department's revenue system has also been successful. The Totalizator Agency Board's computer system is regarded as the best system for TAB in the country. Again, it is a national leader. It has been reviewed and the system that has been devised here has been picked up in other States. However, the member for Mitcham would not be aware of that and one must put that into the balance. The Marine and Harbors Department's shipping information system, again, is a successful in-house devised computer based system.

So, our overall record is very good indeed. Certainly, this is a difficult area that is highly complex and I do not profess to understand such technical areas, but we have experts who do so. Such systems must be kept under review, because technology changes rapidly indeed. I commend to the member for Mitcham not just the criticisms but also, as the Auditor-General himself points out in his report, the many good things which are happening and which should be seen in the overall picture. My colleague the Minister of State Development and Technology has commented on those on a number of occasions and no doubt he will do so in future.

SOCIAL SECURITY OFFICE

Mr DUIGAN: Will the Minister of Community Welfare make strong, urgent and immediate representations to her Federal colleague the Minister for Social Security to ensure that the Adelaide regional office of his department is not closed? I have received numerous requests from organisations based in the city on behalf of people who receive their pension from the Adelaide regional office. These include letters from the Adelaide Volunteer Service, the South Australian Council of Social Services, the Compulsive Neurosis Support Group, and the North Adelaide Women's Shelter. In its letter, the last named organisation says that it services over 500 people a year and that a large percentage of the women using its services get their supporting parent's benefit from that office and that they find the easy access to the office one of its most significant elements. Apart from those organisations, the Australian Public Service Association and a number of individuals who receive pensions from that office have written to me saying that they would be extremely disadvantaged if they could not get their benefits from and use the services of the Adelaide regional office.

The Hon. S.M. LENEHAN: I thank the member for Adelaide for his question. I know that he is concerned about this matter. To give him a direct answer: yes, I will certainly make strong and urgent representations to my Federal colleague the Minister for Social Security on this matter. I, too, have been approached and I am aware of a number of organisations that are vitally concerned about this proposed closure. I am also informed that the office has about 6 000 counter inquiries each fortnight and that about 3 000 clients are registered with it. I am also aware that some of these clients are not just from the immediate Adelaide area but come from as far away as the Adelaide Hills and Kangaroo Island, and they would be expected to use services provided by the offices at Parkside and Torrensville. This would not be convenient to those people as well as to the others.

I am concerned that there would be no Department of Social Security office in the central business district and that the number of transient people who use this centre would therefore be disadvantaged. I believe that access between the Department of Social Security and the Commonwealth Employment Service in the city should be maintained rather than split. The Department of Social Security, as recently as April, highlighted to the House of Representatives Standing Committee its aim of ensuring that all its offices should be well located with easy access to public transport, readily accessible to people with disabilities and, where possible, be colocated with Commonwealth Employment Service offices. A move away from the city by the Department of Social Security office would seem to me to run counter to this objective and I am therefore delighted to tell the honourable member that I will take up this matter urgently and seriously with my Federal counterpart.

PUBLIC WORKS STANDING COMMITTEE

The Hon. D.J. HOPGOOD (Deputy Premier): By leave, I move:

That pursuant to section 18 of the Public Works Standing Committee Act 1927, the members of this House appointed to that committee have leave to sit on that committee during the sittings of the House today.

Motion carried.

SITTINGS AND BUSINESS

The Hon. D.J. HOPGOOD (Deputy Premier): I move:

That the House at its rising adjourn until Tuesday 4 October at 2 p.m.

Motion carried.

ADOPTION BILL

The Hon. S.M. LENEHAN (Minister of Community Welfare) obtained leave and introduced a Bill for an Act to provide for the adoption of children; to repeal the Adoption of Children Act 1967; to amend the Children's Protection

and Young Offenders Act 1979; and for other purposes. Read a first time.

The Hon. S.M. LENEHAN: I move:

That this Bill be now read a second time.

Adoption is an issue that has touched the lives of thousands of South Australians. There would be few people in our State who do not know someone who has been adopted, who has adopted a child, or who has relinquished a child for adoption. In fact, in the past three years since the Government undertook the first major review of adoption legislation in South Australia in 20 years, the experiences, both positive and negative, of many of these people have been brought to the attention of the public.

What was once a taboo subject has become an area of greater enlightenment in the 1980s, and it is this enlightenment which has highlighted the need for change to legislation that was largely developed amidst a set of social values, beliefs and conditions that are now more than 20 years old. Adoption is about the needs of children to have a secure, loving and nurturing environment in which to grow up, and a family in which they belong for a lifetime. It has achieved this for most of the thousands of children who have been adopted in this State. But adoption can be a highly emotive and sensitive issue which is also about grief and loss, biological and social parent/child relationships and a human need to find one's identity and heritage within both the biological and social contexts. To deal with a range of human needs, emotions and relationships, adoption legislation and practice need to be flexible, responsive and up to date.

Members will recall that in October 1987 a new Adoption Bill was introduced in another place. In the event, the Bill was referred to a select committee, which reported in April of this year. Perhaps, the most sensitive aspect of the proposed changes in the original Bill was the provision for adopted people and birth parents to have access to information about each other upon the adopted persons reaching the age of 18 years. Other areas of particular concern to members of the select committee included provision for single people to adopt children in special circumstances, and for *de facto* marriage relationships to be considered equally with lawful marriage in determining a couple's eligibility to adopt a child. The legislation before members today reflects the deliberations of the select committee. Where the committee's recommendations are not reflected in this Bill, it is because they are more appropriately included in the regulations or in the practice of the department, and not because they have been overlooked.

GENERAL PRINCIPLES

The Bill retains as its primary consideration the best interests of the child and the development of a modern adoption service that keeps pace with changing social attitudes and circumstances. Subject to this, the interests of all parties in the adoption process have been addressed, and the legislation incorporates changes which affect all groups. Before I address the specific changes inherent in this legislation I will briefly state the principles under which the Government believes a modern adoption service should operate.

1. Children are best cared for in a permanent family environment. Wherever possible, children are entitled to be cared for by their natural parents, with services to assist and support them when necessary. (Although the diminishing number of babies becoming available for adoption presents difficulties for couples wishing to adopt, it is in part a reflection of a society that is better enabling children to grow up in the families into which they are born.)

2. Where natural parents are unable or unwilling to provide this care, or where they choose not to do so, the community has a responsibility to provide a range of alternatives for the care of children. Adoption is one of these alternatives.

3. In all matters relating to the placement of a child outside the care of the child's own parents, the best interests of the child should be paramount. Adoption, therefore, is a service for children, with the aim of finding families who can provide the care and nurturing each individual child needs. Adoption is not a service for couples who are seeking children for their families. It follows then that services for infertile couples, including information and counselling, lie outside the ambit of an adoption service.

4. Categories of children available for adoption have changed. The so-called 'traditional' adoption of healthy newborn Caucasian babies now represents less than 10 per cent of adoptions. The basis for categorising children differently should only be that their needs differ in some way, and that their needs can best be met through the development of discrete categories. (For example, children with special needs are separately categorised, so that specialised recruitment of parents can take place).

5. Since adoption placements intimately and permanently affect the lives of the children and families concerned, they should be arranged and followed up only by properly trained people, with adequate resources made available to them.

6. Adoption is only one of a range of options for the care of children outside their families of origin. Adoption practices should respond to current social attitudes and practices for the care of children, and should ensure before an adoption is finalised that this is the best option available in each individual case for the best interests of the child. Each application for adoption, then, should be assessed on the basis of the interests of each child concerned.

7. The range of adoptive parents should reflect the diversity of families in our society. Selection should include professional assessment and counselling. It should also include methods of education and self-selection, so that parents can make more informed decisions about whether or not to adopt. Final decisions should be based on a professional assessment, and in the interests of the child.

8. It is incumbent upon those who arrange adoptions to ensure the availability of adequate counselling services about all aspects of adoption.

9. A modern adoption service should reflect current social attitudes about the equal rights of individuals to access to information, including information about birth parents and circumstances of adoption. It should recognise that secrecy in adoption is not always in the best interests of the child.

10. The provision of care for children is the responsibility of families and the community. Adoption agencies should make use of the resources of both, and involve both in the development of policies, services and resources.

11. As one option in a range of alternative services for the care of children, adoption services should develop and maintain strong links with other forms of alternative child care, so that the best option can be sought for each child referred.

12. Given that the needs of children in Australian society do not differ markedly from State to State, and given the mobility of the Australian population, States should strive for national uniformity in policy, practice and legislation about adoption wherever possible. Such uniformity is close to occurring for inter-country adoptions.

13. The policies of a modern adoption service should be in line with equal opportunity and anti-discrimination policies and legislation in South Australia. Children's interests

are served by their being raised in an environment of equal opportunity and anti-discrimination.

14. The same principles which apply to a modern adoption service should also apply to other alternatives for the permanent care of children.

This Bill repeals the Adoption of Children Act 1967, although a number of provisions of that Act will be retained. The Government is repealing the Act because of the magnitude of the changes, and to highlight the importance of these changes to the public and professional practitioners. Essential issues only are contained in the legislation, and administrative issues will appear later in the regulations.

I thank all those who have been involved in the lengthy but important process of reviewing our adoption legislation and, in particular, my predecessor the Hon. John Cornwall. This Bill is the result of considerable consultation and research, and I believe it has achieved a good balance between the indisputable rights of adopted people and birth parents to information about their origins or the children they placed and the need to protect the privacy of individuals who may not wish their present lives to be disrupted by their past. More importantly, however, the Bill sets the scene for far more positive and open adoption practices into the future, allowing the flexibility in legislation to deal with the variety of circumstances and need in which children find themselves, hence allowing our community to better care for the children for whom we have responsibility.

The explanation covers a number of issues, including: openness in future adoptions; openness in past adoptions; information about or for adopted minors; adoption of Aboriginal children and stepchildren; consent for adoption; limited consent; eligibility to adopt; single parent adoption; marriage and *de facto* relationships; overseas adoptions; appeal provisions; and adoption terminology. Because of its length, I seek leave to have the remainder of the explanation inserted in *Hansard* without my reading it.

Leave granted.

Remainder of Explanation

OPENNESS IN FUTURE ADOPTIONS

A major thrust of this Bill, in both provision and spirit, is towards more openness in the whole of the adoption process. The Bill promotes the notion that adoption no longer needs to be an entirely secret process, that children can and do understand the concept of adoption, and that birth parents do not just forget about their children when they place them for adoption. Subject then to the need to protect the interests of the child, and to normal confidentially practices, the Bill allows for greater degrees of openness to be negotiated in future adoptions.

Past secrecy in adoption practices has been largely the result of the stigma attached to the illegitimacy of children, and the felt need to protect them from this. As well, there has been a stigma attached to infertility, but as medical science has made us more aware of the variety of causes of this condition, and of its relatively common occurrence (approximately 1 in 7 couples in Australia are infertile), couples have been able to seek support from each other and to openly discuss the grief and pain they feel. Social attitudes to single parenthood have also changed, such that more and more mothers who have relinquished children for adoption in conditions of shame and secrecy are now able to talk about their experiences. Mothers now relinquishing children do so in an environment of greater choice, and with the expectation that they will continue legitimately to care about the well-being of their children.

Hence this Bill provides that, for all adoptions arranged after the proclamation of the new Act, the adopted child will, upon reaching the age of 18 years, have access to his or her original birth certificate and to identifying information about his or her birth parents that was available to the Director-General of Community Welfare at the time of the adoption. Similarly, birth parents will be able to find out the adoptive identity of children they placed when those children reach 18.

However, the Bill further allows that for all children who are adopted, greater degrees of openness will be possible during the child's minor years when all parties agree. Some adoptions recently arranged in South Australia have involved the exchange of information between adoptive and relinquishing parents, or their meeting on a first names basis. While ongoing contact between birth parents and adopted children does occur now in other States and other parts of the world, this is not common yet in South Australia (it has occurred where the child is adopted at an older age and is fully aware of who his or her parents are), and neither is there any intention to subject any parties in the adoption process to any more openness than they are prepared to agree to.

The select committee recommended that the degree of openness in an adoption be negotiated, through an intermediary, at the time of placement or shortly thereafter, that it must have the full agreement of both adoptive and relinquishing parents, must be recorded in writing, and lodged with the Director-General. Further, the committee recommended that willingness to participate in an open adoption not be used as a criterion for the selection of adoptive parents.

The Bill specifically provides for information exchange when all parties agree. Let me assure members, however, that with the exception that adoptive parents are now and will continue to be required to make a commitment to tell their children that they are adopted, any further degree of openness will be by negotiation, through the department as an intermediary, and there will be no pressure on the adoptive parents to comply with the wishes of other parties. Selection of adoptive parents will not be determined by the couple's willingness to disclose or exchange information. The Government recognises that, if a child's interests are to be truly served, adoptive parents need to be free to exercise their parental rights and responsibilities to raise their children without unnecessary disruption.

Having said this, the kinds of openness that will be possible will include:

1. Retaining the child's original birth certificate unchanged, and simply endorsed with the names of adoptive parents. This will overcome the present anomaly that when a step-parent adopts a child whose father has died, the original father's name is removed from the child's birth certificate, even though the child can remember full well who is his or her father was.

2. Exchange of identifying information about the child and/or parents at the time of placement or at a future date when all parties are in agreement.

3. Exchange of non identifying information at the time of placement or at a future date, where parties are willing to provide that information.

4. Exchange of information between adoptive and birth parents regarding the progress of the child, with possible exchange of gifts at significant times.

5. In some cases, the birth parents having access to the child. However, I stress again that this would only be when all parties agree and such action is considered to be in the interests of the child.

These moves represent a considerable step forward for our existing but very outdated legislation, but will in fact bring our new legislation into line with emerging practice and enable the department to better serve the interests of the children who are its primary concern.

OPENNESS IN PAST ADOPTIONS

Sections 27 and 41 of the Bill relate to the conditions under which parties to an adoption may receive information about their origins or the children they relinquished. They have been developed in response to overwhelming numbers of submissions from adopted people, birth parents and adoptive parents regarding the importance to an adoptee of knowing about his or her origins, as well as the recognition that many birth parents still have strong feelings about their children long after the adoption has taken place. There are very few adoptive parents left who would harshly say, 'She gave the child up—she no longer has any rights,' or who would feel threatened by their children's need to search for their origins. In fact the evidence from the UK, Canada, New Zealand and Victoria, where access to information has been allowed, suggests that adoptive parents have nothing to fear. The major impact of receiving information about one's origins or about one's child placed for adoption is usually a satisfied yearning to know and some psychological healing.

However, the select committee also saw the need to protect the privacy of the small numbers of people who had not expected that information would be released about them, and who would not wish it to be released, for whatever reason. The Bill now allows persons adopted before the commencement of the Bill and their birth parents the right to protection of their privacy by placing a veto on the release of information about themselves. It allows them to direct:

1. that no identifying information or birth certificate be released about themselves, or
2. that no current identifying information be released, and/or
3. that no assistance be given to the other party by the department to make contact with them.

Such directions will be received by the Director-General in a manner approved by the Director-General, will be valid for five years, and may be revoked or renewed at any time. Further, it is my intention to move that the implementation of sections 27 and 41 of the Bill, relating to access to information, be delayed for a period of six months to allow sufficient time for publicity to be given to these provisions and veto directions to be lodged with the department if desired.

The select committee heard evidence from the Department of Social Welfare in New Zealand that a veto system exists in that country. The system proposed here is a more flexible extension of that system, which allows for the circumstance in which an adopted person or birth parent may not wish to make contact, but may be happy to have past or current identifying information released about themselves. The evidence from both the New Zealand and Victorian experience suggests that very few birth parents and adopted people do not want identifying information released, and that those who do not want contact with the other party are often happy to provide some information about themselves instead. Hence, there is a clear need for a flexible system which will allow for compromises where the adopted person or birth parent is willing.

The Bill further provides that, in the absence of a specific direction referred to previously, adult adoptees will be entitled to identifying information about their natural parents and, with the authorisation of the Director-General, a copy of the original birth certificate. Natural parents will be entitled to identifying information about the adopted adult. Both parties may seek the assistance of the Director-General to find the other, and both must attend an interview at which the implications of their search for information will be explained and their expectations explored, prior to the release of such information. Whilst this 'interview' is in no way intended to be therapeutic counselling, it is important that adoptees and birth parents have a realistic understanding of their rights to information, and of the kinds of responses they might expect if contacting the other party. This will help to avoid the disappointment experienced by some adoptees, for example, with 'fairy tale' expectations about their birth parents.

The Bill also enables a birth parent to obtain, with the authorisation of the Director-General, a copy of the original birth certificate of the child at any time, as it serves no identifying purpose and contains only information of which that parent is aware anyway, but is an important record of the birth for the parent. At present, relinquishing parents can only have a copy of their children's birth certificates if they have been issued prior to the adoption. Many relinquishing parents have said that their lack of access to this important document serves as further denial that they ever bore a child, and therefore hinders the resolution of their grief. Any birth certificate issued in these circumstances will, of course, need to be suitably endorsed 'for information purposes only', so that it cannot be used for fraudulent purposes.

INFORMATION ABOUT/FOR ADOPTED MINORS

Whilst the Government supports the notion of openness in adoption practices, and believes that children can and do deal quite positively with the knowledge of their adoption, it is important that the interests of the child, and the rights of adoptive parents to parent the child without undue interference need to be protected. The Bill therefore provides, as did the last Bill, and as is the current practice, conditions under which adopted minors can gain identifying and non-identifying information about their natural parents, and allows the Director-General discretion to release information contrary to these conditions only if such a release can be demonstrated to be necessary for the welfare of the child.

Information of any kind will only be released to adopted minors with the consent of their adoptive parents, and of their birth parents in the case of identifying information. Exceptions to this provision would be rare, but may occur in the case of the death of adoptive parents, or the irretrievable breakdown of an adoption, where the Director-General determines that having further information would be in the interests of the child.

Similarly, information will not be released to a birth parent of an adopted minor without the consent of adoptive parents, and of the child if 12 years and over. The Director-General would only have discretion in this situation if the disclosure of information is deemed to be in the interests of the child. Such a circumstance is difficult to imagine, as even quite serious medical information about a birth parent could be passed from birth to adoptive parents through the department without the need to provide identifying information about the child to the birth parent.

I would reiterate, here, however, that almost 50 per cent of the public comment received by the Government has come from adoptive parents, the vast majority of whom are supportive of their children's search for their origins.

ADOPTION OF ABORIGINAL CHILDREN

The provisions of the Bill for the adoption of Aboriginal children have been extended to include the nationally accepted Aboriginal Placement Principles, as well as a def-

nition of Aboriginal. These principles, already adhered to in the practice of the department, acknowledge the importance for Aboriginal children of growing up as a part of an Aboriginal community, with an awareness of their own identity and culture. The Aboriginal placement principle states that an order for the adoption of an Aboriginal child will not be made except in favour of a member of the child's Aboriginal community who has the correct relationship with the child in accordance with Aboriginal customary law, or if no such person seeks to adopt or care for the child, some other Aboriginal person.

Adoption is not consistent with Aboriginal customary law and culture, which requires that children be raised by people who have the correct relationship with them in their extended families, or within the wider Aboriginal community. Hence, when the permanent legal status of an Aboriginal child needs to be established outside of Aboriginal customary law, guardianship is seen as the preferred option—although adoption will remain a final option if it clearly meets a child's individual and special circumstances. Even so, with the Bill's emphasis on openness, the court would need to ensure that the child's identity as an Aboriginal person would not be lost as a consequence of adoption.

The select committee heard evidence from Aboriginal agencies, groups and communities regarding the injustices caused by some past adoptions of Aboriginal children into white families. In many cases free and informed consent was not given for these adoptions. Whilst the 1987 Bill addressed these issues in its provisions, it is also reasonable to spell out the principles behind these provisions, as a means of reassurance to Aboriginal people of the Government's commitment regarding the long-term care of their children.

ADOPTION OF STEP-CHILDREN

The circumstances in which the Children's Court will grant adoption orders in favour of step-parents are also restricted by this Bill, but are unchanged from the 1987 Bill. The restrictions are based on recommendations of the Family Law Council, arising out of extensive work, that adoption is not always the most appropriate means for securing the permanent legal status of these children, particularly when they have ongoing relationships with the relinquishing parent or his or her extended family. Sometimes such adoptions are used as points of negotiation in divorce settlements and maintenance disputes, which is entirely inappropriate and not a child-focussed use of the adoption process.

With this State's reference of powers to the Commonwealth in relation to the guardianship and custody of children, effective from 1 April of this year, families wishing to secure the legal status of their step-children or relatives will now all be referred to the Family Court, and an adoption order will only be granted if the court first determines that guardianship is not in the best interests of the child.

CONSENT FOR ADOPTION

The provisions of the Bill for the giving of consent for the adoption of a child has been reworded to clarify the intention, but is essentially the same as in the 1987 Bill. Members of the Australian Relinquishing Mothers Society have given evidence that in many cases they were not fully informed of the implications of their consent, or were required to give consent when they were not able emotionally to consider all of the options available to them. Hence, the Bill now provides that a mother cannot give consent until at least three days after she has been counselled, and at least 14 days have elapsed since the birth of the child. The court may decide to accept a consent prior to 14 days if it first determines that there are special circumstances warranting it and it determines that the mother of the child is able to exercise rational judgment, but in any event consent may not be given before five days after the birth of the child.

It is intended that the regulations will provide that the person who witnesses the signing of consent is not the same person who counsels the parent and that the witness must be satisfied that the parent understands the implications of signing consent and the process for revoking.

As in existing legislation, children 12 years of age and over must consent to be adopted, and may under the new provisions revoke their consent at any time prior to the adoption. In fact the magistrate will now be required to ensure that the child does not wish to revoke his or her consent prior to granting the adoption order.

The period during which a parent may revoke an adoption consent has been reduced from 30 to 25 days, so as not to unduly prolong the time before the child is placed with new parents, but in special circumstances can be extended for a further 14 days. This will mean that the average time before a newborn baby placed for adoption reaches the new adoptive home will be 39 days, compared with the current 35.

LIMITED CONSENT

The Bill also allows for a greater range of limited consent to be given—that is, where the relinquishing parent can nominate who will adopt the child. At present limited consent may only be given where the child is to be adopted by a relative of the parent. This Bill allows birth parents to nominate a guardian, step-parent or foster parent of the child to adopt him or her. In practice this occurs now and is clearly desirable.

No child, for example, who has been well settled in a foster family for five years should be moved to a new family because the parents give consent for adoption if the foster family is willing to continue their care or adopt the child themselves.

In addition to the ability to give limited consent, it is intended that birth parents will have much more involvement in the selection of couples on the prospective adopters register, through a process of examining non-identifying documented profiles of applicants.

ELIGIBILITY TO ADOPT

The selection of the right family to provide a child with permanent, secure and loving care is an onerous task, not to be undertaken lightly. I have already reminded honourable members that adoption is a service for children who need families, and not for families who, for whatever unfortunate circumstances, are seeking children. Adoption criteria, then, need to be based on the ability of couples and individuals to meet the needs of children, and not first and foremost on a perceived need to be 'fair' to couples unable to have children and who may have waited for a long time on a list.

However, the Government does concede that, there being no evidence that infertile couples make better or worse parents than fertile couples, preference may be given to infertile couples for the adoption of the small numbers of locally born babies becoming available for adoption. This also helps to reduce the already large number of assessments that departmental staff must carry out, and keeps the already lengthy waiting time down slightly. Whilst long waiting times are in the main an inconvenience to prospective adoptive parents, they also mean that adopted children tend to have parents who are older than those of other children, which may not be highly desirable.

The current waiting time for a healthy, locally born child is in the range of eight to ten years, but is really unpredict-

able, because of the diminishing numbers of children placed (32 in the year to 30 June), and because of the numbers of couples achieving pregnancies through improving reproductive technology.

Most of the criteria for the selection of adoptive parents are presently contained in the regulations rather than the Act, and few changes are anticipated. Changes include a revision of the age requirements, such that there may no longer be an age gap of more than 40 years between parents and the first child placed for adoption; a requirement that adoption applicants attend mandatory pre-application and pre-approval information sessions; and factors which need to be considered in the qualitative assessment of applicants. Health and residency requirements will not be changed, although physical disability will not in itself disqualify any person's application, and a person's medical condition will only be taken into consideration if it will affect his or her ability to raise the child to adulthood.

SINGLE PARENT ADOPTION

Current legislation allows single people to adopt, where special circumstances exist for specific children. This most commonly means that children with disabilities or special needs are able to find families that are most suited to their needs, and provides the department with some flexibility to place children who might not otherwise be accepted into a family. This Bill makes exactly the same provisions for single applicants as does the present legislation—that is, they may be granted an adoption order only if the court is satisfied that special circumstances exist. The spirit and statement of the Bill is that all adoption orders will be made in the best interests of the child, and whilst many children may best be cared for in a two parent family, and indeed that may be the expectation of the parent relinquishing a child, there are already numbers of single adoptive parents in South Australia who are clearly providing the best possible home for the children in their care.

The select committee heard evidence from two such parents—women caring for children with physical and intellectual disabilities of a quite severe nature. I understand committee members were impressed with the commitment of these parents to their children, which has often been at great financial and emotional expense to themselves. The children in their care are clearly experiencing warm and nurturing family life, and their interests have been far better served than if they had been left to live in institutions. Indeed one of the women gave evidence that she did not think she could have provided the same level of care for her disabled children if she had had a husband, as her time and loyalties would have been divided. One of the women was a widow with a grown family of her own, while the other had never married, and both impressed as capable, committed and caring parents.

I would stress again, however, that the Bill's provision for single parent adoption represents no change from the current provision, and has been widely misunderstood. The department's Special Needs Unit is responsible for finding families for children with special needs, and operates quite differently from other adoption programs. The needs of specific children are carefully matched with what applicants can provide, and an approval to adopt is only given for a specific child. Hence there is no waiting list. Applicants are also given intensive training in the care of a child with disabilities, and more intensive follow-up and support is available.

MARRIAGE AND *DE FACTO* RELATIONSHIPS

Current legislation requires that couples have been married for a period of five years before they can apply to adopt a child. This Bill has the same requirement, but has extended the definition of marriage to include a man and a woman who have lived in a stable domestic relationship for a period of five years. We live in a society today that increasingly equates *de facto* relationships with lawful marriage, in aspects of social, economic and legal significance. Provided that all couples applying to adopt children can demonstrate the quality and commitment of relationship required, it makes sense not to exclude couples, and hence opportunities for children, on the basis of a piece of paper alone. With changing attitudes to marriage in our society it is no longer valid to assert that couples who are not lawfully married are not as committed to one another as couples who are. Indeed commitment might better be measured in the length and quality of a relationship, and in a couple's preparedness to undertake the permanent care of a child.

The select committee considered this matter carefully, and whilst their recommendation was not unanimous (the only matter on which it was not), the majority recommendation was to retain the definition of marriage used in this Bill, and to allow men and women living in stable domestic relationships for at least five years to adopt children, provided of course that they meet all the other requirements as well.

OVERSEAS ADOPTIONS

Approximately 90 children come to South Australia each year from overseas countries for the purpose of adoption by South Australian couples. Although most of these children have been legitimately available for adoption in their country of origin in the past, concerns have been expressed by Australian authorities that some couples 'go shopping' for children, and that some exploitation of birth parents and children has occurred. Two years ago the Social Welfare Ministers of each State, together with the Ministers of Immigration, Local Government and Ethnic Affairs implemented national guidelines relating to the practice of intercountry adoption in Australia. These guidelines have ensured that all children coming to Australia for adoption have the same rights to a professional and ethical service as do Australian born children, and that couples who do not meet the requirements as prospective adoptive parents are unable to bring a child into the country.

The criteria for adoptive parents contained in this Bill, and those proposed in the regulations, are the same as those set out in the national guidelines on intercountry adoption, and the Bill will not hinder their effective operation.

The Bill does, however, provide for adoption orders made overseas to be recognised in Australia, under conditions laid down in the national guidelines. These include some assurance that the overseas adoption order was a *bona fide* one, that the couple had lived in that overseas country for more than one year, and that the adoption order does not represent a denial of natural justice. This section of the original Bill has been amended, however, since last October, in accordance with the recommendation of the select committee to ensure that adoption orders recognised under previous South Australian adoption legislation continue to be so recognised.

APPEAL PROVISIONS

The Bill contemplates the regulations enabling (as they currently do) applicants to an adoption who have been refused appeal to an Adoption Board. The board is to be constituted from the Adoption Panel. No changes have been made to the 1987 Bill provision, which enables the regulations to add to the board's powers the option to refer matters back to the Director-General for further assessment before making a final decision. This will simply enhance the depth and breadth of the decision-making power of the board.

ADOPTION TERMINOLOGY

The select committee had recommended that the term 'birth parent' be used throughout the legislation instead of the term 'natural parent', after comments from adoptive parents who consider the former term implies they are 'unnatural parents'. 'Natural Parent' is a term in current use, most importantly in the Family Relationships Act. The term 'birth parent', apart from having no accepted legal definition, can only refer to the mother of the child.

Clauses 1 and 2 are formal. Clause 3 repeals the Adoption of Children Act, 1967. Clause 4 is an interpretation provision. Attention is drawn to the following definitions:

'the Court' means the Children's Court of South Australia constituted of a judge or a magistrate and two justices (at least one of the three being a woman and at least one a man.

'marriage relationship' means the relationship between two persons cohabiting as husband and wife or *de facto* husband and wife.

Marriage according to Aboriginal tradition is recognised for the purposes of the measure under subclause (3).

Clauses 5 and 6 relate to the South Australian Adoption Panel. Clause 5 establishes the panel. The following members will be appointed to the panel by the Minister:

(a) a clinical psychologist;
(b) a specialist in gynaecology;
(c) a specialist in paediatrics;
(d) a specialist in psychiatry;
(e) a legal practitioner;
(f) a social worker;
(g) a nominee of the Director-General;
(h) two persons with special interest in the adoption of children.

Clause 6 sets out the functions of the panel, namely:

(a) to make recommendations to the Minister generally on matters relating to the adoption of children;
(b) to keep under review the criteria in accordance with which the Director-General determines who are eligible to be approved as fit and proper persons to adopt children and to recommend to the Minister any changes to those criteria that the panel considers desirable;
(c) to recommend to the Minister procedures for evaluation of, and research into, adoption;
(d) to make recommendations to the Minister on matters referred by the Minister to the panel for advice; and
(e) to undertake such other functions as may be assigned to the panel by regulation.

Before making any recommendation to the Minister to change the eligibility criteria for prospective adoptive parents, the panel must consult persons who have been approved as eligible to adopt and whose approval may be affected by the recommendation, organisations with a special interest in the adoption of children and any other persons who have, in the opinion of the panel, a proper interest in the matter.

Clause 7 provides that the welfare of the child is the paramount consideration in any proceedings under the measure. Clauses 8 to 14 are general provisions relating to the jurisdiction of the court to make adoption orders, the effect of adoption orders and the circumstances in which adoption orders will be made. Clause 8 gives the court power to make adoption orders. The power is exercisable only where the child is in the State and the applicants for the order are resident or domiciled in the State. Clause 9 provides that where an adoption order is made, the adopted child becomes in contemplation of law the child of the adoptive parents and ceases to be the child of any pa natural or adoptive parents. The clause provides that wh one of the natural or adoptive parents of a child dies the child is adopted by a person who cohabits in a mar relationship with the surviving parent, the adoption not exclude rights of inheritance from or through deceased parent.

Clause 10 requires the court to be satisfied, before maki an adoption order in favour of a person who is cohabiti with a natural or adoptive parent of the child in a marriage relationship or is a relative of the child, that adoption is clearly preferable to guardianship in the interests of the child. Clause 11 requires the court to be satisfied, before making an order for the adoption of an Aboriginal child, that adoption is clearly preferable to guardianship in the interests of the child. The clause also requires that the order be made in favour of a member of the child's Aboriginal community who has the correct relationship with the child in accordance with Aboriginal customary law or, if there is no such person seeking to adopt the child, some other Aboriginal person. An order may be made in favour of a person who is not an Aboriginal person only if the court is satisfied that there are special circumstances justifying the making of the order and that the child will retain his or her cultural identity with the Aboriginal people.

Clause 12 sets out criteria affecting prospective adoptive parents. Usually an adoption order will only be made in favour of two persons who have been married (lawfully or *de facto*) for at least five years or in favour of one person who has been married (lawfully or *de facto*) to a natural or adoptive parent of the child for at least five years. The court may make an adoption order in favour of persons who have been married for less than five years or one person who is not married if satisfied that there are special circumstances justifying the making of the order.

Clause 13 provides that an adoption order may be made in respect of a person between 18 and 20 years of age if an applicant has brought up, maintained and educated that person and there are special reasons for making the order. Clause 14 empowers the Supreme Court to discharge an adoption order that was obtained by fraud, duress or other improper means. Clauses 15 to 19 deal with consent to adoption. Clause 15 makes the consent of parents or guardians to an adoption a compulsory requirement. The clause provides that the mother of a child cannot consent to the adoption of the child until five days after giving birth to the child. If the mother purports to consent to the adoption of the child more than five but less than 14 days after the birth of the child, the consent will only be valid if the court recognises it to be valid on being satisfied that there were special circumstances justifying the giving of consent less than 14 days after the birth of the child and that the mother was able to exercise a rational judgment on the question of consent.

Consent of a parent or guardian may be general or may be limited to authorising the adoption by a relative or guardian of the child, a person who is cohabiting with a parent of the child in a marriage relationship or a person in whose care the child has been placed by the Director-General. Certain formalities are required for consent, including compulsory counselling three days before the giving of consent. Consent of a parent or guardian may be revoked within 25 days or, with the approval of the Director-General, 39 days. The consent of the father of a child born outside lawful marriage is not required unless his paternity is recognised under the Family Relationships Act 1975. A person who may be able to establish paternity must be given a reasonable opportunity to do so.

The clause also provides that consent of the parents or guardians of the child is not required if the application is supported by the Director-General, the Director-General certifies that the child entered Australia otherwise than in the charge of a parent or adult relative who proposed to care for the child while in Australia, the child has been in the care of the applicant for at least 12 months and the making of the order would be in the best interests of the child.

Clause 16 provides that an adoption order will not be made in relation to a child over 12 years of age unless the child has consented to the adoption and has had 25 days in which to reconsider that consent and the court is satisfied that the child's consent is genuine and that the child does not wish to revoke consent. The court must interview the child in private for that purpose. Certain formalities are required for consent, including compulsory counselling before the giving of consent.

Clause 17 provides that a consent to adoption given according to an interstate law will be regarded as sufficient for the purposes of the Act. Clause 18 sets out the circumstances in which the court may dispense with consent. The consent of a child over 12 years may be dispensed with if the child is intellectually incapable of giving consent. The consent of any other person may be dispensed with if—

(a) that person cannot, after reasonable enquiry, be found or identified;

(b) that person is in such a physical or mental condition as not to be capable of properly considering the question of consent;

(c) that person has abandoned, deserted or persistently neglected or ill-treated the child;

(d) that person has, for a period of not less than one year, failed, without reasonable excuse, to discharge the obligations of a parent or guardian of the child; or

(e) the court is satisfied that there are other circumstances by reason of which the consent may properly be dispensed with.

Clause 19 enables the court to make an order dispensing with or recognising the validity of a consent before an application for an adoption order has been made. Clauses 20 and 21 deal with the recognition of interstate and overseas adoption orders. Clause 20 provides for the recognition of adoption orders made under the law of the Commonwealth or of a State or Territory. Clause 21 provides for the recognition of overseas orders. The order must have been made in accordance with the law of the country and each applicant for the order must have been domiciled in that country or resident there for at least 12 months. The circumstances in which the order was made must, if they had existed in this State, have constituted a sufficient basis for making the order under the measure and there must have been no denial of natural justice or failure to observe the requirements of substantial justice.

The clause provides that where immediately before the commencement of this Act an adoption order made under the law of a country outside Australia was recognised as having the same effect as an adoption order made in this State, the order continues to be so recognised. Clauses 22 to 27 are general provisions relating to adoption orders.

Clause 22 requires the court before making an order to consider any report prepared by the Director-General on the circumstances of the child and suitability of the prospective adoptive parents and their capacity to care adequately for the child. A copy of the report will be given to the prospective adoptive parents unless the court orders otherwise. The court can also prevent disclosure of the report to any person in appropriate cases. The clause also empowers the court to require prospective adoptive parents to submit evidence of their good health.

Clause 23 empowers the court in making an adoption order to declare the name by which the child is to be known. The child's wishes are to be taken into account. If the child is over 12, the court will not change the child's name against his or her wish. Clause 24 provides that adoption proceedings will not be heard in open court and that records of the proceedings will not be open to inspection. Clause 25 constitutes the Director-General interim guardian of a child if each parent or guardian has consented to adoption of the child in general terms or arrangements for the transfer of guardianship from an interstate officer to the Director-General are complete.

Clause 26 enables the Minister to arrange with prospective adoptive parents to contribute to the support of a child who suffers some physical or mental disability or who otherwise requires special care. Clause 27 deals mainly with the disclosure of information by the Director-General. It requires the Director-General to disclose, to an adopted person who has attained the age of 18 years—

(a) the names, dates of birth and occupations of the person's natural parents and any other information that is in the Director-General's possession that relates to those parents but does not, in the opinion of the Director-General, enable them to be traced; and

(b) the names of any persons who are siblings of the adopted person and who were also adopted and who have attained the age of 18 years, the names of the adoptive parents of any such siblings and any other information that is in the Director-General's possession that relates to those siblings but does not, in the opinion of the Director-General, enable them to be traced.

The Director-General must also disclose, to a natural parent of an adopted person who has attained the age of 18 years, the name of the adopted person, the names of the adoptive parents and any other information that relates to the adopted person but does not, in the opinion of the Director-General, enable that person to be traced. The information must, on request, be disclosed to a relative of the adopted person, if the natural parents are dead. The information may be disclosed before the adopted person turns 18 if certain approvals are obtained: in the case of disclosure to an adopted person, the approval of the adoptive parents and the natural parent if that parent's name is to be disclosed; in the case of disclosure to a natural parent, the approval of the adoptive parents and the adopted person if he or she is at least 12.

A person who was adopted before the commencement of this Act or a natural parent of such a person may direct the Director-General not to disclose his or her name or any other information which, in the opinion of the Director-General, would enable the person to be traced. Such a person may also direct the Director-General not to arrange or assist any meeting between the adopted person and the natural parents. Directions remain in force for a period of five years and may be renewed at the end of such a period. If the disclosure of information is necessary in the interests of the welfare of an adopted person, the Director-General may disclose the information without the required approvals or contrary to any relevant direction.

Clauses 28 to 42 provide for various offences and deal with other miscellaneous matters. Clause 28 provides that an agreement providing payment for the consent of a parent or guardian to an adoption is illegal and void. The clause

makes it an offence to be party to such an agreement, the maximum penalty provided being a fine of $8 000 or imprisonment for two years. Clause 29 makes it an offence to conduct negotiations leading to an adoption order unless the negotiations are conducted by a person or organisation approved by the Director-General. The maximum penalty provided is a fine of $8 000 or imprisonment for two years. The Director-General is given power to withdraw approval under the clause in appropriate circumstances. Negotiations conducted, without fee, by a parent, guardian or relative of the child for adoption by a relative or a person who is cohabiting with a parent of the child in a marriage relationship are exempt from the clause.

Clause 30 makes it an offence to take or entice a child away from a person who is entitled to custody of the child under an adoption order. The maximum penalty provided is a fine of $8 000 or imprisonment for one year. Clause 31 makes it an offence to publish in the news media information that may identify a child the subject of adoption proceedings or the parent or guardian of such a child or any party to such proceedings. The maximum penalty provided is a fine of $15 000. The court or the Director-General may, however, authorise such publication. Clause 32 makes it an offence to advertise in the news media a desire to adopt a child or to have a child placed with adoptive parents or guardians. The maximum penalty provided is a fine of $5 000.

Clause 33 makes it an offence to make a false or misleading statement in connection with a proposed adoption. The maximum penalty provided is a fine of $4 000 or imprisonment for one year. Clause 34 makes it an offence to falsely represent oneself to be a person whose consent to an adoption is required. The maximum penalty provided is a fine of $4 000 or imprisonment for one year. Clause 35 makes it an offence to present a consent document in relation to an adoption knowing that is it forged or obtained by fraud, duress or other improper means. The maximum penalty provided is a fine of $4 000 or imprisonment for one year. Clause 36 makes it an offence for a person who is, or has been, engaged in duties related to the administration of the Act to disclose confidential information obtained in the course of those duties. The maximum penalty provided is a fine of $8 000.

Clause 37 provides that offences under the measure not punishable by imprisonment are summary offences and that offences punishable by imprisonment are minor indictable offences. The clause also provides that a prosecution for an offence against the measure can only be commenced with the consent of the Minister. Clause 38 provides that in proceedings under the measure, where there is no certain evidence of age of a person, a court may act on its own estimate of age. Clause 39 entitles the Director-General to intervene in any proceedings under the measure. It also empowers the court to order that any person who has a proper interest in proceedings under the measure be joined as a party to the proceedings. Clause 40 empowers the court in proceedings under the measure to make orders as to costs, subject to the regulations. Clause 41 deals with entries in the register of births relating to children who are subsequently adopted.

The Principal Registrar of Births, Deaths and Marriages will normally cancel any relevant entry and make a fresh entry giving the date and place of birth of the child and the names of the persons who are in contemplation of law the parents of the child following the adoption. The court may, on the application of the adoptive parents or the Director-General, order that the entry is not to be cancelled but rather that a note of the names of the adopted parents is to be added to the entry. If either or both of the natural parents are alive, before such an order is made the court must be satisfied that the information relating to the natural parents of the child contained in the entry is known to the child or that the natural parents of the child approve of the child having access to that information.

Access to the information contained in a cancelled entry or in an entry relating to a person adopted before the commencement of the measure may only be allowed (except in certain circumstances) on the authorisation of the Director-General. The Director-General cannot give such an authorisation to a person adopted before the commencement of the measure if the natural parent has directed the Director-General not to do so. The circumstances in which access may be allowed without the authorisation of the Director-General are where access is given to a person who was adopted after the commencement of the measure and who has attained at least 18 years of age or to a natural parent of a person adopted after the commencement of the measure.

Clause 42 gives the Governor regulation making powers. In particular, the regulations may prescribe or make provisions for the criteria on which the eligibility of persons for approval by the Director-General as fit and proper persons to adopt children will be determined and for the keeping of registers of persons so approved and may prescribe or make provisions for the review of decisions of the Director-General relating to those persons and for constituting adoption boards to hear and determine those reviews.

Mr S.J. BAKER secured the adjournment of the debate.

APPROPRIATION BILL

Adjourned debate on motion to note grievances:
(Continued from 7 September. Page 687.)

Mr ROBERTSON (Bright): In joining this debate I wish to endorse points that have been made by previous speakers, most notably my colleague the member for Fisher. I wish to turn to some of the specific allocations which are relevant to my own electorate. I welcome particularly the attention given to the new Hallett Cove kindergarten on Zwerner Drive, Hallett Cove, which is due for commencement in October this year, with completion somewhere between February and April 1989. Total funds committed for that project are $300 000.

In the context that it takes more than one to tango, I would like to take this opportunity to pass on credit to the CSO workers who have staffed the mobile kindergarten under fairly difficult conditions whilst the new kindy is being built. I also express appreciation to Bill Wheatland and his parishioners at the Baptist Church for allowing the mobile kindy to use their building as a venue. I also note the work being done currently and in the past by the parent committee of that kindergarten. I pass on my admiration of them and the job that they have done.

I also welcome the allocation of funding for the Brighton High School extensions, which will involve 24 additional classrooms, including a music complex, language laboratory, commerce suite, art room, science complex and computer rooms. The total to be expended in the coming year will be $4.04 million out of a total of $6.7 million. That will provide yet another excellent school facility on the south-western part of the Adelaide Plains, one which will be used by many of the people in my electorate.