



18 August 2020

From:

Mr Napau Pedro Stephen
Chairperson
Torres Strait Regional Authority

To:

Rob Hansen Committee Secretary
Health, Communities, Disability Services and Domestic and Family Violence Prevention
Committee, Queensland Parliament

MERIBA OMASKER KAZIW KAZIPA (TORRES STRAIT ISLANDER TRADITIONAL CHILD REARING PRACTICE) BILL 2020

Dear Mr Hansen (Rob):

Thank you for giving the Torres Strait Regional Authority (TSRA) the opportunity to add their support for the Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Bill 2020 (the Bill).

This Bill recognises our region's Ailan Kastom child rearing practices, and addresses the many and complex difficulties faced by those who are (or raised by) 'cultural parents'. Its passing will provide stability, security and legal recognition for Torres Strait Islander peoples and communities. The need for the changes supported by the Bill has been identified by our people and bodies such as the Family Court of Australia for a number of decades. The time has come for this long-standing child rearing cultural practice to be recognised and included within Queensland law.

There is widespread support for this Bill across Torres Strait communities. Community elders such as members of the Kupai Omasker 'Working Party' have long been involved in formal consultations to seek legal recognition of our customary adoption practices. This includes:

- extensive consultations held in the Torres Strait Islands in the early 1990s and again in 2011-12
- a Queensland government Inquiry into surrogacy and adoption reform over 2008-9.
- a high-level conference in 2016 (involving the Working Party, academic 'experts', Queensland government ministers and officials, and Alistair Nichols) which examined possible approaches for this new legislation
- more recent consultations in 2018-19 (involving interested community members, legal professionals and local officials) conducted in across the Torres Strait, as well as in Cairns

and Brisbane, again aimed at progressing the legislation and to ensure there was an ongoing desire for legal recognition of the traditional practice.



Despite extending over three decades, each of these consultations and inquiries commonly:

- reported that traditional adoption remains widespread despite its lack of legal recognition, and community members still want and need legal recognition
- noted that Torres Strait people reject implications by uninformed observers, that the giving of children to extended family (according to their custom) is not in their best interests of the child

The TSRA's position

Despite these lengthy and ongoing consultations, the TSRA noted this issue has been significantly delayed. There is an urgent need to address the disadvantages for parties involved in these traditional child rearing practices. This includes time consuming and costly 'workarounds' faced by both the giving and receiving parents, and/or the child involved. Problems and difficulties include:

- lack of 'right' documentation for situations such as school enrolments and when applying for drivers' licenses, passports, and Medicare cards.
- inheritance and other entitlements going to only 'legally recognised' descendants
- receiving parents not being able to give permission for medical treatment or access child support
- grown up 'adopted children' being unable to make arrangements for their ageing parents (eg: enduring powers of attorney and advanced health directives)

While the TSRA noted concerns raised by others – for example, this Bill creates a separate set of 'adoption rules' within the state of Queensland – it needs to be pointed out concerns stem from lack of recognition that our the principles and values underpinning our traditional child rearing arrangements are very different to 'western reasons and practices' of adoption. Torres Strait Islander child rearing practices are cultural and any legislative framework must value, recognise and respect this, as covered in Queensland Human Rights Act 2019, which includes enshrining Torres Strait cultural practice into Queensland law.

The TSRA is keen to ensure the Bill is:

- a) progressed and implemented in a culturally appropriate manner; and
- b) accompanied with adequate resourcing and funding.

a) Progressing and implementing the Bill in a culturally appropriate manner.

This includes:

- Ensuring that the Bill is inclusive – in its title, body, definitions, and explanations – of the diversity of languages and practices across the Torres Strait Islands. Our traditional child rearing practices have been in place for thousands of years, and it is important the Bill acknowledges and includes the varying languages and practices across our region
- Enabling understanding, buy-in and uptake of Bill. It is important that the region's distinct languages are included not just within the Bill itself, but also into ongoing awareness raising materials and consultations regarding the Bill's progress and implementation (including enabling 'feedback' to and from our community members to be delivered and received in their first language)



- As part of their fundamental rights – as recognised in Queensland and International law – it is important that Torres Strait Islander voices continue to be heard in this matter. Consultation with our communities (including face-to-face visits where possible), needs to be ongoing so that our people remain informed of and are able to contribute to, the progress of the Bill. This also needs to be extended through its implementation phase, as well as any follow-up reviews (the first of which is planned for two-years after the Bill is enacted).

b) Provision of adequate resources, support and funding:

- The new laws must be understood and available to our community members. Educations sessions, awareness campaigns and accessible materials (in a range of Torres Strait languages) will be needed to support this.
- The office of the independent Commissioner(s), as well as legal and other relevant specialist/support services need to be adequately funded and appropriately staffed (employing people with community connections, cultural understandings, and the 'right skills'). This includes:
 - interpreters/translators to ensure both the birth and 'cultural parents' understand the legal processes, implications and orders coming from the Court;
 - assistance for applicants to produce what could be onerous levels of documentation required for making and progressing an application
 - access to Legal Aid for applicants (who would otherwise not be able to engage in the process)
 - funded legal services (including Legal Aid providers) to be located within the region
 - ensuring all services are adequately resourced and have the experience to provide culturally appropriate assistance and advice on cultural adoptions

Other than these qualifications, the TSRA is confident the safeguards built into the Bill are adequate and the processes to obtain a Cultural Order will ensure the best interests of both adults and children within our community will be considered and met.

In closing we urge the committee to prioritise Torres Strait Islander peoples' voices on this important matter, and recommend that the Bill is progressed without further unnecessary delay.

If you would like to discuss any of the above matters, I can be contacted on [REDACTED] or by email at [REDACTED]

Yours sincerely,

Napau Pedro Stephen AM
Chairperson