HEALTH, COMMUNITIES, DISABILITY SERVICES AND DOMESTIC AND FAMILY VIOLENCE PREVENTION COMMITTEE

Members present:
Mr AD Harper MP (Chair)
Mr MF McArdle MP
Mr MC Berkman MP
Mr MA Hunt MP
Mr BL O'Rourke MP
Ms JE Pease MP

Staff present:
Mr R Hansen (Committee Secretary)
Ms L Pretty (Inquiry Secretary)
Ms A Beem (Assistant Committee Secretary)

PUBLIC HEARING—INQUIRY INTO THE MERIBA OMASKER KAZIW KAZIPA (TORRES STRAIT ISLANDER TRADITIONAL CHILD REARING PRACTICE) BILL 2020

TRANSCRIPT OF PROCEEDINGS

MONDAY, 10 AUGUST 2020

Brisbane

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The committee met at 10.21 am.

CHAIR: I now declare this public hearing of the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee open. I would like to start by acknowledging the traditional owners of the land on which we are meeting today. Today's proceedings are being conducted using videoconference facilities so I ask all of our participants and anyone watching the live broadcast to please bear with us if we encounter any technical issues. I ask everyone participating in today's proceedings to please turn mobile phones off or switch them to silent.

I am Aaron Harper, the chair of the committee and member for Thuringowa. The other members of the committee with me today are: Mark McArdle, the member for Caloundra and our deputy chair; Michael Berkman, the member for Maiwar; Marty Hunt, the member for Nicklin; Barry O'Rourke, the member for Rockhampton; and Joan Pease, the member for Lytton.

The purpose of today's hearing is to assist the committee with its inquiry into the Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Bill 2020. On 16 July 2020, Cynthia Lui, the member for Cook, introduced the bill into the Legislative Assembly. Ms Lui agreed that the House treat the bill as a government bill. This hearing is a formal proceeding of the parliament and is subject to the Legislative Assembly's standing rules and orders. Hansard will record the proceedings and witnesses will be provided with a copy of the transcript. The briefing is being recorded and broadcast live on the parliament's website.

Before I call the first witness, I would like to summarise the key themes from our previous hearings in Townsville, Cairns, Bamaga, Thursday Island and Saibai Island. Firstly, there was support for the bill and people welcomed the recognition of the law of Torres Strait Islander traditional lore. There was also great sadness and emotion drawn, with witnesses sharing stories with the committee about their families as well as frustration around the practical aspects of getting their children enrolled into school, getting a driver's licence or playing team sports without access to birth certificates in their family names.

Many held concerns about a child—whether still a child or as an adult—finding out about his or her birth or biological parents. This concern stemmed from the tradition of keeping this very sacred practice secret. Revealing the birth parents was considered very traumatic. People sought assurance that if they wanted the identity of the birth parents kept secret they could. Also, there was some great concern that there should be more than one commissioner or perhaps even a panel of elders to account for the differences in traditional practice across the various islands of the Torres Strait but also on the mainland. A lot of people called for more consultation, education and support on how the bill, if passed, will be implemented. This included how people would apply and, again, how their personal information could be kept secret.

RHOADES, Professor Helen, Private capacity (via videoconference)

CHAIR: I now welcome Professor Rhoades who is joining us via videoconference. I invite you to make a brief opening statement, after which committee members will have some questions for you.

Prof. Rhoades: Thank you for inviting me to appear before the committee today. Before I commence, I would also like to acknowledge the traditional owners of the land that I am videoconferencing from, the Kulin nation, and pay my respects to their elders and to any Aboriginal and Torres Strait Islander people who are participating in these hearings before you today. I would also like to acknowledge Aunty Ivy Trevallion and her work over many years to achieve recognition of this Torres Strait Islander traditional child-rearing practice.

I support the passage of the meriba omasker traditional child-rearing practice bill. My reasons for doing so, as I mentioned in my submission, are informed by the work of the Family Law Council which I chaired from 2010 to 2016. For any members of the committee who may not be familiar with it, the Family Law Council is a policy advisory body which provides advice and recommendations to the federal Attorney-General about the working of the Family Law Act and other legislation relating to family law.

My submission draws particularly on three Family Law Council reports that have engaged with the issues raised by the present bill. They are: the 2004 report on the recognition of traditional Aboriginal and Torres Strait Islander child-rearing practices, which was before my time on the council; the 2012 report titled *Improving the family law system for Aboriginal and Torres Strait Islander clients*; and a 2013 report on parentage law. A common theme across those three reports is a continuing concern that, in accordance with article 2 of the United Nations Convention on the Rights of the Child, the laws governing parentage in Australia should, but currently do not, apply consistently to all children irrespective of the way in which their family was formed. You can see that particularly if you look at the parentage report from 2013.

In particular, the council's work identified the law's failure to recognise Torres Strait Islander traditional child-rearing practices and the experience of disadvantage to Torres Strait Islander children associated with that gap. This situation contrasts with the recognition by both federal and state parentage laws of other forms of family formation, such as adoption and authorised surrogacy arrangements. In those situations, the law provides for a transfer of legal parentage from the birth parents to the adoptive or intended parents so that the child has a secure legal relationship with the parents who are raising them. To date, parentage laws have not extended that transfer of legal parentage approach to Torres Strait Islander children who are given and received according to island custom child-rearing practices.

The Family Law Council's reports note a number of disadvantages, some of which are concerns that you have come across in the previous public hearings. They are things such as obstacles for cultural parents in obtaining a passport for the child, uncertainties around authorising medical treatment, enrolling children in school, ineligibility for some social security benefits such as family tax benefit A and barriers to inheritance. In 2012, the Family Law Council noted that the Queensland government at that time was examining the issue of Torres Strait Islander child-rearing practices and expressed the hope that legal recognition would be achieved through that process.

In the meantime, council has at different times suggested other possible reforms to try to support Torres Strait Islander cultural parents and children, including broadening the Family Law Act's definition of 'parent' to include Torres Strait Islander cultural parents, investing the Family Court with power to transfer legal parentage where there is evidence of a traditional adoption. Those proposals, however, which reflect council's role as an advisory body on Commonwealth law, limited solutions to the difficulties experienced by Torres Strait Islander children. Broadening the definition of 'parent' in the Family Law Act would only have effect for the purposes of family law matters and child support. Given that the Family Court is established under chapter 3 of the Commonwealth Constitution, any transfer of parentage to islander parents using that process would necessarily involve an exercise of judicial power with all the formalities and expense that family law proceedings entail.

Therefore, I believe the present bill is the appropriate and right response to the concerns identified by the Family Law Council and many others. It will provide Torres Strait Islander families with a relatively informal administrative process that is specialist, sensitive and respectful of their culture. It will be relatively simple and inexpensive by comparison with court proceedings, with applicants able to receive funded independent legal assistance. Decisions will be made by a commissioner who understands island custom and is sensitive to Torres Strait Islander cultural practices. A cultural recognition order will provide children with the security of a birth certificate, granting them the same legal status that formally adopted children now enjoy and a legal relationship with their parents that is congruent with their lived experience.

CHAIR: Thank you, Professor Rhoades. I apologise that we are running a few minutes behind. I note that your submission is written in your personal capacity as a former chair of the Family Law Council 2010-16. In your submission, paragraph 4, you state—

> Subsequently, in its 2013 *Parentage and the Family Law Act* report, the Council identified the ongoing need for legal recognition of Torres Strait Islander children who are given and received according to Ailan Kastom child rearing practice and recommended that the Australian Government 'pass separate legislation to enable the family courts to transfer parental status to Torres Strait Islander receiving parents' (Recommendation 18).That recommendation was not implemented.

Can you explain to the committee the reasons cited by the then Australian government for not implementing that council's recommendation? Secondly, if the bill is passed in Queensland and becomes law, how will it work in practice in the absence of federal legislation recognising island custom child-rearing practices?

Prof. Rhoades: I am not aware of any particular reason that has been given by the federal government for not implementing that recommendation. I should say, however, that that report and that recommendation were coupled with a larger, if you like, recommendation that there be a Commonwealth status of children act that would cover the field of parentage law to address issues of

inconsistencies across federal and state laws. That is a very large undertaking and arguably would require referrals of power from the states. That is quite a significant legislative event and that probably goes some way towards explaining why it has not occurred.

How would this legislation fit with federal legislation? In terms of the Family Law Act it would automatically mean that cultural parents who have received a cultural order, and where the child has a birth certificate that recognises that, would be regarded as legal parents under the Family Law Act. That would have a very positive flow-on effect. It would have effects for both Commonwealth laws, such as being able to obtain a passport and child support, as well as for state law in Queensland.

Of course, I understand that this bill does not have extra territorial effect so it will not benefit cultural parents who live outside Queensland. I see this legislation and the way that it has structured the process—which I think of as quite a sensitive and relatively informal process for achieving a transfer of parentage—as an excellent template for other states to then pick up and apply so that Torres Strait Islander families who live outside Queensland will also benefit.

CHAIR: We are running a very tight ship this morning so if there are no other questions from members, Professor Rhoades, I thank you very much for your contribution, for your submission and for sharing your experiences through your comments here today. We will move to the next witnesses.

Prof. Rhoades: Thank you.

BAN, Mr Paul, Private capacity (via videoconference)

NICHOLSON, Hon. Alastair AO RFD QC, Private capacity (via videoconference)

CHAIR: I welcome the Hon. Alastair Nicholson and Paul Ban. Thank you very much for your submissions. From reading those, in our committee travels we see great comparisons with the sensitivities that you both wrote about island custom in terms of child-rearing practices in the Torres Strait. I acknowledge just how welcoming they were, and also how sensitive and emotive this issue is to Torres Strait Islanders. Mr Nicholson, would you like to make an opening statement and then Mr Ban, and then we can move to questions?

Mr Nicholson: Certainly. By way of opening statement, I would like to stress that the impetus for this bill did not come from anywhere other than the Torres Strait Islanders themselves. I think that is very important, because I have noticed some discussions about white man's law in effect codifying systems unnecessarily. Right from the very beginning—and I know Paul Ban will say the same—the impetus came from the islanders themselves.

I mentioned in my submission that I was first approached by Uncle Steve Mam back in 1993. He was really desperate to try to get some progress to assist the islander children in relation to the problems that nonrecognition involved. He came and made a submission to a judges' conference of ours, following which I visited the Torres Strait. I became very aware of the fact that there was a need to do something about it. Of course, the Family Court only has limited jurisdiction, but we did have jurisdiction to make what were called parenting orders in favour of the applicants. We proceeded to set up a program to do that.

Our involvement, again, was very much not imposed upon them but was at their request. As I mentioned in my submission, we dealt with hundreds of cases, all of which were by consent. There were no difficulties that arose in any way. We did develop a practice of having two elders sit with me or whichever judge happened to be sitting. They were there in a sense symbolically, but not just symbolically because they were an assurance to us that this was a genuine application.

I should perhaps mention—and I did not bring this out in my submission—that we had a Torres Strait Islander lady, Mrs Josephine Akee, who actually worked for the court as a family consultant at that time. She was present at every one of these applications. She would be involved in the preparatory work with the couples concerned. I think it a very important aspect in any future activity that there should be islanders involved in the preparation of these applications. She would interview the people. She would herself ensure that all was in order. Also at the Family Court we had counsellors. She would have a counsellor with her and they would also be available. It provided a very good check of the system and the fact that it should work.

I will just go to one other matter. The issue of consultation has come up a few times in the submissions. Paul can speak about his consultations, which were in the early 1990s, which were preceded by him doing a thesis for his master's degree on the same subject. He encountered great enthusiasm for recognition of the practice. I was involved in the 2011-12 consultations. We had a similar result. We visited many of the islands in the same way. We had very careful consultation with many people. They were both public and private consultations, because often people would want to speak to us privately. Again, in the 2018 meetings the same process was followed and, effectively, the same result was achieved—that is, there was broad consensus and enthusiasm for the new legislation. I thought I would mention that as a background.

In fact, the impetus for the 2011-12 consultations came from Paul Ban and myself, with the approval of the working party, with Uncle Steve Mam visiting Desley Boyle who was then the responsible minister and local member in Cairns. It was that impetus from her that led to those consultations. That is all I want to say by way of opening. I am sorry if I have been too long, but I thought those were important points to make.

CHAIR: Those are very good points, thank you, sir. Paul Ban, would you like to make an opening statement?

Mr Ban: I would. My involvement started 10 years before Alastair, in 1983. That does not mean that I am going to take longer in my opening statement. I was working as a social worker in the then department of children's services in Cairns. I was in charge of the office. One of our areas was Cape York. I was going to the Torres Strait to talk about youth justice and child protection. I found that what the Torres Strait Islander people wanted to talk about was their customary adoption practice and that the legal recognition, which had been administratively recognised by the then department of Aboriginal and Islander affairs, was about to be stopped.

That really worried them in terms of legal security and in terms of birth certificates. They are the same issues that we have heard about now for the last 35 years. They asked me was there something I could do about it. I said, 'Look, my role was really to talk about other areas, I was told not to talk about that, it was too political, too controversial.' I just thought: why is this controversial and political? It is something that Islanders have had administratively recognised for decades, I would say, by the Queensland government. They just collected a pile of applications, stamped them all as approved—without knowing really what took place—and then applied them to the Adoption Act, which was really a square peg in a round hole, and Islanders got legal recognition. Rightly so it was stopped to look at what is going on with this practice and what is the best way to authorise it. That has been delayed until now, for all sorts of reasons. There have been many consultations with Islanders saying the same thing all the time about the practice—being asked about it, being asked to explain it, being asked to explain very personal issues about their own families and how they operate, why they do what they do—and then being told, 'Good, now we think we understand we will do something about that.'

I did a consultation in 1993 following a thesis I did that finished in 1990. Money was given to a Torres Strait Islander organisation that Steve Mam headed. He contracted me to travel throughout the Torres Strait and North Queensland. The findings from that consultation were written up. There was a ceremony in Brisbane where the report was wrapped in a banana leaf and handed over to the government minister at the time, Anne Warner, who said, 'Thank you. Now we've heard your voice, we will act on this.' That was in 1994. Here we are today. I am so relieved, excited, about being here because finally it looks like something is just about to happen.

CHAIR: Thank you very much. Can I recognise the work of both of you, extensive over the decades, leading up to this, and particularly acknowledge the work of the Kupai Omasker Working Party and all of those people, some of whom have passed—Mr Steve Mam, as you have mentioned—who contributed. As a committee we have had the great privilege and are quite humbled to work alongside not just the member for Cook, Cynthia Lui, who introduced the bill, but also Ms Ivy Trevallion who travelled with us, has joined us on videoconference and was part of our committee process on Thursday Island before we went to Saibai. It is a deeply emotive and sensitive issue. Mr Nicholson, one thing Judge Willis said in Cairns—and she spoke very highly of you and your interactions in this space—is do not overcomplicate this. The bond is already there, it is traditional, it is sacred, do not overcomplicate it with interpretations of Western law. This is about providing a legal framework to something that has already occurred. If you have read all the submissions, you will know that there were some arguments presented against the bill. Some submitters to the committee opposed the bill on the grounds of what they see as an erosion of rights and protections that children receive through mainstream Australian adoption processes, which is completely separate. Would you care to respond to those arguments? Are you satisfied that the bill incorporates sufficient protections and safeguards to protect the rights of children?

Mr Nicholson: Yes, I am. I would have to say that I have had a lot to do with issues relating to children from my experience on the bench. It seems to me that this is a genuine and good attempt to bring about a suitable solution. I thought there were some very sensible suggestions in the submission of the Aboriginal and Torres Strait Islander Legal Service and the Griffith University submission by Dr Loban, Zoe Rathus and Kate van Doore in particular. I think the Human Rights Commission submission raised some quite interesting issues too. Rather than spend the time today discussing those, what I was going to ask is would it be of assistance if I were to deliver a short written submission or comment about those submissions?

CHAIR: We would appreciate that, Mr Nicholson. Thank you very much.

Mr Nicholson: Good. Thank you.

CHAIR: Mr Ban, if there are no other comments we will move to questions

Mr Ban: I just want to comment on not overcomplicating the approval process. The problem up to 1985 was that it was too simplified because no-one understood what Islanders were doing and why it did not fit the Adoption Act. I think there has to be some balance—and there has been now—from something that was just a rubber stamp effectively to social workers wanting to investigate, find out what people did in the Torres Strait community and why, was it in the best interests of the child from a Western perspective, individualising the child to now where it has moved back to recognising a custom has always existed and not just saying, 'Well, we don't know what you are doing. We will just let it go,' but saying, 'The Island people know what they are doing. Let them decide.' It has taken a long time to get to that position, but it is exciting that it has.

CHAIR: Thank you, Mr Ban. I will open up to questions.

Mr BERKMAN: Thank you both for taking the time to be with us today and for all of that work over many years that the chair has already referred to. The bill aims to set up a process that operates in parallel to customary adoption practices, but it inevitably to some extent intrudes upon and is in some ways inconsistent with the sorts of privacy and the secrecy that those practices entail. Given what you have read in the submissions of others and your own views, is there any way that this process could be simplified? We have had some submissions—and, sorry, you would not have seen this yet because it is one from the Torres Shire Council that was published very late—proposing that it could simply be done through an application, a tick-a-box process in the register of births, deaths and marriages to ensure that the necessary documentation was available. That is maybe the very far end of the spectrum. Can you suggest to the committee any way that the scheme proposed in the bill could be simplified?

Mr Nicholson: I was involved in a lot of the discussions in relation to the bill and I think we were also aware of the requirements of the government in relation to the best interests of the child being protected. There is a bit of a balancing act, I think, in all of that. Of course, there is nothing to stop anyone just proceeding and not making an application. It is not compulsory to make it at all. I think there should be some checks and balances. I think the bill certainly aims at doing that. As I said, there were some things in some of the other submissions that I thought were quite sensible and might be improvements. Beyond that, if it is going to be given the imprimatur that is going to enable the children to carry out these various activities, again it really gets back to you people as much as lawyers. Do you feel as parliamentarians that you could do it in that very simple way? There is no doubt it has been done that way. It was done in Queensland that way up until 1985. That is really what they are suggesting should happen again. I do not think there would be much protection involved in that. Where you need protections are where there are some people who will take advantage of children in certain circumstances. Children need the degree of protection that this bill offers.

Mr Ban: There are always issues about practice on the margins. I saw that great transcript from Townsville. The detail that you received in Townsville is the sort of information that Alastair and I heard when we did our consultations—almost the same way things were expressed. There are always issues raised, not by the Islanders but by those outside, about practice that is a little dodgy, on the edges. Child protection services are involved if children are not being cared for. Some adoptions, I am calling it adoptions now, I will call it cultural practice, historically have been dissolved by the families and children have returned, but that is all done within the communities. That was done on the islands. Anthropologists have recorded that in the sixties—it was Jeremy Beckett at that time. There have always been ways that the Torres Strait Island community has been able to manage their own issues that they have had for time immemorial, as they say.

We have been trying to work out how to let them do what they have always been doing and just give it legal recognition—as in Canada, they say in the constitution, you have this custom that exists, that is good and we recognise it because it is in the constitution—or do we start tinkering with what it is they are doing. It has taken 35 years for non-Islanders to try to work out what are Islanders doing, how this works, not quite understanding, then letting it go and then putting it on the backburner. There is that balance, as Alastair was saying, with how simple do you make it versus how engaged do you get with it. What the bill has come up with is a Torres Strait Islander way of tackling it—with a commissioner, or maybe even more than one commissioner, and good legal advice if that is needed. I think there needs to be some safeguards now, but do not go overboard because we will get lost like we did for the last 30 years.

Mr BERKMAN: I very much look forward to reading your response to those specific suggestions in the submissions. Thank you for offering to do that.

Mr McARDLE: Mr Ban, you made a comment about the best interests of the child. Mr Nicholson, you said the same thing. I am trying to work out what that relates to. It relates to the application itself, does not it? It does not relate to the cultural adoption process that occurred beforehand, it is purely to the application before the commissioner, as I read that section. If I am wrong please let me know. What would be the considerations in relation to that phrase in regard the application before the commissioner?

Mr Ban: Are you asking me or Alastair?

Mr McARDLE: Either. I am trying to work out where it fits.

Mr Ban: Maybe start with Alastair and then I will go if that is okay.

Mr Nicholson: I think it gets back to what you are trying to do. For example, I notice there is a lot of discussion about the seeking of criminal records and whether that is necessary and whether that is an intrusion. That is obviously a measure aimed at the protection of children. I could just give

perhaps an anecdote about how we went about that. When the Family Court originally decided to introduce this system I had not considered the issue of criminal records at all and several of my judges pointed out to me that we had an obligation under that act to ensure that the best interests of the child were protected and we would hardly be discharging it if, for example, it was used as a cover for a paedophile to get hold of a child in that way. Somewhat reluctantly therefore we decided that we ought to seek criminal histories. They were obviously kept private and they rarely needed any comment. Unfortunately, as you would all know, there is a long history of prosecutions for comparatively petty offences and perhaps more serious offences by Indigenous people than would be the situation with the rest of the community. There were quite a number of cases where criminal histories did show up what appeared to be something serious, but none of them were of a sexual nature or affecting children. Our approach generally was that it was only that sort of case that would have required us to query whether the application should be approved. There are safeguards like that that I think are important.

Mr McARDLE: Mr Nicholson, does that not raise the question that you are then querying the cultural adoption process undertaken in the community itself?

Mr Nicholson: No.

Mr McARDLE: If they have come to a conclusion that they want that to occur and it has occurred, they are going to the court for recognition of a process under our system of law whereas under theirs they have done it already. That is why I am trying to work out phrase 6. Where are we looking at that phrase applying? Is it the application for confirmation of the process that they have concluded or are we going back to looking at the process itself by looking at criminal history and the issue of paedophilia, which of course is an abhorrent situation? That is why I am concerned about that term. As you would know, as would anybody in this room, that has been the subject of many decisions in the Family Court and sections of the Family Court as well. Clarity around that would help me a great deal.

Mr Nicholson: Yes, I follow that point. The approach we were taking was this. If you have a best interests of the child provision you have to at least be satisfied that the procedure that has taken place is okay. Arguably, you could get rid of the criminal provision on the basis of the point that you have made. You could say, 'Okay, providing that the elders approve the process, there is no need for it.'

We are talking about now what goes before the commissioner, who has to decide the issue. I think the commissioner is in much the same position as the judge would be. If I were the commissioner, I would still like to be satisfied that there was nothing in the background that involved danger to the child. I am not querying the custom; I would be querying whether the individual people involved had some problems with it.

Mr McARDLE: I accept that, but is not the registration merely to change the birth certificate? Registration occurs through a court to enable a change to the birth certificate. I understand what you are saying in relation to maybe you can question whether the person is an appropriate person to make an application. That has an impact to a point, but it does not impact upon the cultural adoption itself; that is done and dusted. What then are we looking at in relation to that phrase 'the best interests of the child' in relation to the joint commissioner, who then must turn his or her mind to it to come to a conclusion?

Mr Ban: I want to make a comment on 'the best interests of the child' as a term because I have worked in child protection for half my working life and in the family law system for the other half and they both use that terminology. It is a contextual term depending on what you are talking about. You cannot isolate the child from their family and from their community and even more so in collectivist societies. It is a term that was developed in the west; I think it came out of western ideas of social work. The Islanders would say it is like if you have a brick wall. You take a brick out and set it aside and you look at it and understand it. That is the best interests of the brick, or that child, but you have to see it in the context of the wall and what the wall is doing. That is a metaphor that Islanders would use, and that has come up many times in conversations.

I am just broadening that notion of 'the best interests of the child' to say it is within the context of what is going on between the families and what is the function of the practice in the community. It is difficult to individualise, and it is difficult to individualise in Western society—I find that when I do family law work—to look at the child as separate to everything else that is going on in that child's life and who that child interacts with. I do not know if that is an answer. I am sorry. It is a difficult concept once you start teasing out where it has come from and who it is being applied to and how it is being applied.

Mr McARDLE: I suppose my concern is once we put it in law it then develops its own life. That is just the way our system works. It could have dire consequences or it could have negative consequences going forward. That is my concern.

CHAIR: We are almost out of time. You might want to take these two questions on notice. I would deeply appreciate your views on this. When we travelled north we heard suggestions of amending the Births, Deaths and Marriages Registration Act to potentially include a box that could be ticked when a baby is born to answer the question, 'Does this person identify with a Torres Strait Islander child-rearing practice?' Could that be a possible approach secondary to the application process for the two lots of receiving and giving parents? I would like to get your views on that.

Finally, we heard whether it was mainland or throughout the NPA, the cape and the Torres Strait Islands themselves suggestions of having the name changed to include western, eastern and all the island groups to expand upon the current bill. Do we get representatives to work with the commissioner from those different groups because there are slight variations in child-rearing practices in the eastern, western and central islands, or do we establish an advisory type panel to assist the commissioner in that particular view? It is a bit complex, but if you read the transcript from Saibai Island from Friday you will see the last point made is that there is one Torres Strait; there is one Torres Strait culture. Whether you are mainland, eastern, western, do not overcomplicate it. Perhaps that answers my question. I just want to get your views on whether an advisory panel to the commissioner is required. I note in the bill that they can have discretion to seek information from people throughout the Torres Strait community. I want to get your views on those two particular things. In the interests of time I think it is probably best to take those on notice, if that is okay. Do you have something to say, Mr Ban?

Mr Ban: I was looking to see if Alastair was going first. The commonality of the practice is far greater than the differences. There are variations. It is the commonality. In terms of that statement you made at the end about there being one Torres Strait, they united when a border was going to be put right through the middle of the Torres Strait at 10 degrees south, and half were to go to New Guinea and the other half to Australia. They united as a group. They have had times when they have been threatened and then they unite. There is always squabbling around the edges, just like with neighbours. In terms of this practice, the eastern islands have one that is different to the western. That would be the only minor difference that I have seen in my 40 years of being involved.

In terms of getting advice, which is what you were saying before, yes, they would definitely have to do that. I found most islanders have connections. They might say, 'My grandmother was an eastern islander and my father came from the western islands and my mother came from the central islands.' There is such an interconnection now, they are not discretely connected to their islands.

CHAIR: Thank you very much, Mr Ban and Mr Nicholson. Are you happy to take that question on notice with regard to births, deaths and marriages?

Mr Nicholson: Certainly, yes.

CHAIR: On behalf of the committee I thank you both very much for your time and for your contributions today. I again acknowledge the great work you have both done in this space. It is significant. It is historical. Thank you for joining us today.

Mr Ban: It is great work you are doing, too. What is happening is fantastic.

CHAIR: We will move to our next witnesses.

MOORE, Mr Peter Capomolla, President, Adoptee Rights Australia Inc. (via videoconference)

WHITE, Ms Sharyn, Secretary, Adoptee Rights Australia Inc. (via videoconference)

CHAIR: Good morning. We are running a couple of minutes late and I apologise for that. I welcome witnesses from Adoptee Rights Australia. Would you like to make an opening statement?

Mr Moore: Yaama. I acknowledge the traditional owners of the land on which we gather today and I pay respects to elders past, present and emerging. I appear before you today in an honoured and humbled role representing traumatised adoptee members of Adoptee Rights Australia Inc. and our thousands of Facebook adoptee followers and supporters. I am a Kamilaroi man descended from arguably the oldest continuous culture on earth. I speak to you today not to interfere with the cultural practices of the Torres Strait Islander peoples. The request to be included in the Queensland adoption legislation opens that to scrutiny.

I am here to speak from the experiences of an adopted person with legislated identity loss and family separation under Australian adoption laws. I will say it how it is, how I see it through adoptee's eyes. My adopted name is Peter John Moore. This name brings me trauma every time I am forced to use it, which is daily. I live in a world of identity loss. This is a world difficult to explain to someone who has never lost their identity. Identity is the most important element of human life. Identity, or self-awareness, is what we wake with every day. Who we are is integral to how we perceive ourselves and our self-worth.

To steal someone's identity is a breach of our human rights under the United Nations Convention on the Rights of the Child articles 7 and 8. I come to this committee having great respect for all cultures and all Indigenous people. I come to this committee conflicted between the cultural traditions of Indigenous Torres Strait peoples and Indigenous Aboriginal peoples and cultural traditions of European Australians. I am not an expert on Torres Strait Islander cultural traditions nor my own Kamilaroi cultural traditions. I am an expert on adoption.

With the shock discovery of my own adoption just three years ago at the age of 59 via an Ancestry DNA test, I came to the realisation that I was a child commodity traded into servitude for life to my adoptive parents. I was a replacement child for a childless couple. I was a male child to carry on the adoptive family's surname. It was my duty to be grateful for the loss of my mother, my father, my grandparents, my siblings, my aunts and uncles, my cousins, my family history and cultures. I am anything but grateful; I am resentful. No child should be grateful for a safe and loving home. It is an expectation, an obligation, of any child in their care.

From what I read, as triggering as it may be to me, Torres Strait Islander peoples clearly state that their cultural practice of adoption is commoditisation of the child into servitude, the trading of one life for another, the passing of ownership of the child to an adult for life for the benefit of another, to carry on the family name, strengthen family ties, ease the burden on a young mother, give an infertile relative the chance to raise a child or provide comfort and care to an ageing family member. There is no best interests of the child stated. How does this then fit into adoption legislation where children were removed for their protection? There is honesty in that they do not try to whitewash this with lies, as we see in the adoption legislation, as somehow saving the child. Adoption is never about saving the child. Let's be honest here.

When you speak of adoption, I wish you would replace the word 'adoption' with 'child abuse, loss, identity theft, lifelong trauma, depression, anxiety, PTSD and suicide'. I dare you to try this when you are reading submissions because this is how I read the word 'adoption'. If you want an insight into my reality, then do this. I am saddened as a late discovery adoptee to know that, culturally, Torres Strait Islanders traditionally hide the fact of adoption from adoptees. This is not honesty but deception. I cry for these adoptees. I mourn their loss as only a fellow adoptee can. No-one has ever been able to provide me with a logical 'best interests of the child' case where adoption is necessary and there is no alternative. Identity lies of the past have far-reaching consequences for today's generation just as identity lies of today will have far-reaching consequences for future generations.

CHAIR: Thank you, Peter, for sharing your own personal story. I understand this is deeply sensitive and we appreciate you sharing that today and we know how difficult that must be. We have just finished travelling through Townsville, Cairns, Bamaga, Thursday Island and Saibai, and we had a lot of emotion drawn out about this customary practice. To contextualise it, we heard that they have been fighting for this for decades and this practice is sacred to Torres Strait Islanders' culture. They are fighting for legal recognition to finally happen within some context. I understand where you are coming from—from mainstream, by the sounds of it, adoption; being adopted out. You have shared

some of your story versus traditional island custom. I sought this advice earlier today from some people who appeared before us. They depart from each other—recognising traditional island custom versus Australian mainstream adoption. Can you or Sharyn give any views on that?

Mr Moore: As I said in my statement, I do not want to interfere with cultural practice. From what I am reading, they are asking for recognition for birth certificates and suchlike. What they actually have is what we are after. We just want our original birth certificates. I can understand from a legal point of view why they want to have some recognition, but it seems to me it is the same story that we get from our adoptive parents and pro-adoptionists that they want to own us. That piece of paper, the fabricated birth certificate—I will never get over the fact that I have two birth certificates. I have a fabricated one that says I am born to adoptive parents. That is totally false. It is a lie. It is a total deception. It deceived me for 59 years. I relied on that document. When my adopted parents showed me my birth certificate when I asked to see it, any thoughts I had that I was adopted were swept away by that document because how could that document be false? As I know now, it is. Is building a life and identity on a false document really in the best interests of the child? I am not saying they should not have their cultural practices, but I am just questioning why they would want to come into white man's law and legislate it. Surely white man's law should be changed to accommodate their practice, but not impose our practice on them.

I have not been able to talk to Torres Strait Islander peoples directly. I have tried to, but in the short space of time we have had, that has not been possible. I think that puts this to a wider argument that maybe this discussion needs to happen. I understand their cultural practices and their feelings, but it mirrors a lot of things I see in European cultural practice, as far as it coming from an adopter's point of view rather than the child's point of view. I do not know how many children or adults are in those situations who do not know they are adopted. We have that same problem here. How many more are there like me who do not know that? Is there not an obligation for governments to disclose that in a safe environment rather than finding out by DNA tests. One adoptee I know found out as her partner left her in a divorce and his parting words were, 'By the way, you're adopted,'—a final stab in the back. That is not the way you are supposed to find out. The government has caused our messes and our issues. The government should be responsible for not repairing it, but exposing it to us and coming clean.

Mr HUNT: Peter, thanks for sharing today. Certainly in our hearings we have heard a lot of trauma from people. Mostly that trauma has related to the manner in which people found out about their adopted status and specifically around birth certificates being required for entry into high school or junior rugby league or what have you. The comments were around the community taking back that power to decide when and how that disclosure is made. Does Adoptee Rights Australia have any advice on best practice in terms of how, given that adoptions will occur, that revelation is made or if it is made?

Mr Moore: I will let Sharyn have her say.

Ms White: I want to say that the way Peter and I found out are polar opposites, and yet we still have the same trauma. Basically you find out that you have been living a lie from the time that you can remember. I was always told—it was always open to me—that I was an adopted person. It is my earliest memory, but I felt it before that. I had lived my life based on a lie. That is what happened. I knew I was living a lie, whereas Peter was not verbally aware that he was living a lie. The trauma happens anyway. It is not in the best interests of anybody, child or adult, to have that information withheld from them and also to actually live it, either way—having your life based on a lie. In this day and age, we can find everything out through DNA.

CHAIR: Thank you very much for your time. I am sorry, we have limited time. We will move to our next witnesses. I thank you both for your time and for sharing today.

LOBAN, Dr Heron, School of Humanities, Languages and Social Science, Griffith University

RATHUS, Ms Zoe AM, Griffith Law School, Griffith University

van DOORE, Dr Kathryn (Kate), Griffith Law School, Griffith University

CHAIR: Thank you all for your presence here today and also for your submission. I will let you get straight into an opening statement before we move to questions.

Dr Loban: I would firstly like to acknowledge the traditional custodians of the land on which we meet today and elders past, present and emerging. Firstly, we would like to commend the working group that was involved in the preparation of the bill and also that we support the bill. We have prepared our written submission in accordance with our cultural and legal expertise. As identified in the submission, I am a Torres Strait Islander person, born on Thursday Island many years ago now.

Our main concern is that there seem to be some unnecessarily intrusive provisions in the bill. Whilst we understand there needs to be enough information for the commissioner to make a decision that needs to be in accordance with island custom. We understand that there is the need for the collection of information because it is a legal recognition process, but we did have concerns about what the parameters are at the moment in the bill, which we have referred to in our submission.

We have raised a few different concerns and we are happy to answer further questions about those and also about the construction of some of the provisions. We have today received some responses from the department which resolve some of those in part. We are concerned that the process may act as an exclusory system which has been alluded to by some other speakers today and what happens to those members of our community that do not access the legislation. That makes the construction of legislation all the more important so it does not become a white elephant, if you like.

There are a couple of other points to emphasise very quickly. Our child-rearing practice has existed since time immemorial and it occurs in a cultural context. It is very different, as alluded to by previous speakers, from Western adoptions, and I think that really needs to be emphasised. Our identity as Torres Strait Islander people sits within that cultural frame and not within Western constructions of what adoption is.

The final point, which is in response directly to the DATSIP response to our submission, is about variances that seem to be in place in terms of non-adult applicants and that the Adoption Act allows for non-adult parents to apply or to be part of the process, but for some reason our legislation—I say 'our legislation' as a Torres Strait Islander people—our bill does not allow non-adults to participate, albeit that we can participate in accordance with island custom and that that should be reflected in the act going forward. I am not quite too sure whether Zoe or Kate wanted to add any additional points.

Ms Rathus: I am happy to wait for questions now.

CHAIR: Thank you very much, Dr Loban. Can I say from your 2018 paper that you co-wrote, Eddie Mabo, possibly the best known Torres Strait Islander, was himself traditionally adopted.

Dr Loban: Most certainly.

CHAIR: How common is the practice?

Dr Loban: We did allude to statistics in terms of that, but in my own family it is very common. I have grown up since birth knowing that we have adoptions, who is adopted and some information about that and, of course, being taught the rules around adoptions within my family. I still continue to abide by those. It is very common. I have cousins, nieces and nephews, aunts, uncles, people across all generations who have been adopted within my own family. From my point of view, it is very, very normal and just part of who we are and how our families are made up.

CHAIR: We heard everywhere, but particularly in the Torres Strait, just how sensitive it is to talk about it. We heard from one particular elder up there that when a male starts to maybe have facial hair it is the uncle who customarily takes that child to go and talk about where his place is in the family and that he was adopted or an aunt for a girl when they reach their teenage years. We heard of the trauma of finding out once they saw the birth certificate—the biological parents are mentioned on the back—because they have only ever known their parents. Do you think there should be more education around maybe talking with children a little earlier rather than getting them to go

through this trauma later in their teenage years as they apply for things like TAFE, for a driver's licence or their learner's licence and things like that? Is there a role here culturally for Torres Strait Islanders to start talking about this a little earlier and educate their children before they face that trauma?

Dr Loban: Yes, most definitely. Technology has complicated the practice. People my age and older have grown up with being told within your family environment and it sits and stays within that family environment. Now with the disruption of technology, it is most definitely something that we as a community, as Torres Strait Islander people, need to think deeply, strongly and perhaps succinctly about—that is, how we might manage these kinds of disruptions that continue to impact on our practice. There is no easy answer and it will not happen quickly, but I acknowledge that that has created complications that were not there when someone my age was growing up and the rules could be enforced much more readily and easily.

CHAIR: You did ask about other carers. I tried to explore that in some of the hearings. It was a bit difficult. I think it aligns more with the death of a parent, and then the aunt through kin would take that child if there was the death of a receiving parent. I think that kind of answered the question. I know you wanted to explore the 'other carers' side of things, but I do not know if you can comment any further on that. Is that where you landed in terms of other carers?

Dr Loban: When I read the bill I was reading it as a Torres Strait Islander person. I was trying to think of this other person, and I could not think of the other person. I asked within my family group, 'Who is this other person?' and I was not getting any other person. I perhaps might defer to my colleague Zoe, who is a family law expert, who had some ideas about who this other person might be—not from a Torres Strait islander perspective but from a family law perspective—because I could not find this other person from an island custom point of view. That is not to say it does not exist, because I know the island custom that I know. There may be other customs that sit outside of my own community, but perhaps Zoe could address that.

Ms Rathus: Having listened to the Hon. Alastair Nicholson have the difficult task this morning of answering your questions about 'What do we mean by the best interests of the child?' in the context of this legislation and watching three people whom I admire—Helen, Paul and Alastair—you start to understand the complexity that we have all been grappling with of the overlay of Western law on traditional and cultural practice. It is difficult.

The three of us have discussed the bill. Obviously, we have been working on this for a while. We have written an article that we submitted in 2018, so we have talked a lot. At first I thought that I understood who the other carer must be, because I thought this must be where the department of child safety has been involved or where there is a Family Court order. In fact, when we talked about it together it would seem that, if those circumstances do apply and there is perhaps a foster-parent, then the guardianship would reside with the director of child safety. If you have a Family Court order in place then it is not a traditional adoption anymore. That was really what we came to.

If there is this other person then I understood why Heron could not work out who it was, but as a family lawyer I have gone, 'Oh, it must be this person and this person.' You understand that, with the insertion of anyone else into the process, it will no longer then be a cultural adoption. It will be something else. If that child has already ended up in someone else's care to the extent that they might fall within the bill, actually it would not be a cultural adoption. Obviously this is not my culture—this is Heron's culture—but I understood suddenly that with my lawyer thinking I had fallen over a cliff and I just had not seen it.

We would argue that, on bringing together our legal and cultural knowledge, we cannot understand who the other carer might be. I suppose that perhaps in light of similar concerns that I think everyone has been expressing this morning, and from reading some of the transcripts and other submissions, the attempt here always is to find a Western way of describing a cultural practice. Perhaps there is a benefit in having that someone named in cases, because truth is always stranger than whatever we can imagine. Perhaps a situation could arise and it covers it. There is an argument to say that if there is another person involved in that kind of inserted position then it is not a cultural adoption and this act will not apply in any event.

CHAIR: I will open it up to questions.

Mr BERKMAN: Thank you so much for your submission and for being here. The rushed time frames are a bit unfortunate. I know you have only received the department's response this morning.

Ms Rathus: While sitting there trying to listen.

Mr BERKMAN: We have just been digesting it on the spot today. You have said that it has maybe shed some light on and resolved some of the concerns you had. Which of those issues have been addressed and which remain? I do not think now is probably the time.

Dr Loban: We would certainly be happy to provide a further written submission which responds to that. We are also quite interested in the Torres Strait council's submission as well—which we have not had the benefit of looking at—because obviously they are very representative of the community up there. We would be very interested to see and respond to or capture some of that, if that was a possibility.

CHAIR: They have made some very interesting suggestions too.

Mr BERKMAN: I am sure it would be really valuable for the committee. Noting that that will happen, I did want to drill down a little bit more into the issues around non-adult parents. Obviously, I flagged that already. The bill does not deal with it in any meaningful way. There is no introduction of any concept of Gillick competence or others that we might be familiar with in the legal context. What do you think some appropriate provisions for dealing with non-adult parents might look like?

Dr Loban: Could I perhaps defer to my revolving door of sidekicks here? Kate is an adoption law expert.

Dr van Doore: I am really happy to deal with that. We do have concerns about non-adult birth parent applicants. When speaking with Heron we discussed how community deals with non-adult birth parents sometimes. This is often a mechanism that is utilised, as it has been previously in Western societies. We were concerned not that this is a form of adoption, but our Western adoption law does countenance this and provides an avenue for non-adult birth parents, and that is sort of a Gillick competency. It is that a qualified person gets to assess whether that non-adult is capable of making such a decision and giving consent, and that is not allowed for in this.

Even the department's response, just that ensuring applicants involved are adults, is an important safeguard of the bill. We think it is quite contradictory to the cultural practice, because if the community deems that a non-adult birth parent is capable of sanctioning or being involved in this cultural practice and making that decision for the child, and this bill is simply an act of recognition of that cultural practice, then to deny a non-adult parent as an applicant does not recognise the cultural practice that is taking place. When we were speaking with Heron, Heron said that the community is involved. The parents are often involved, and I think some of the submissions allude to that as well. We are concerned about the discriminatory nature of that; that is, it may exclude a proportion of children being registered—having this process recognised formally—and then we result in the situation that we are currently in of no recognition. Those are our concerns.

CHAIR: What we heard up in the communities themselves is that family would come together to support and be receiving parents in instances where the baby will then be provided to uncles or aunts or whomever to be raised. It is an interesting Western view of what has been happening for generations.

Dr van Doore: Absolutely.

Mr BERKMAN: Would you suggest that provisions analogous to what exists in the Adoption Act would be appropriate, or something different?

Dr van Doore: We discussed this also. The Adoption Act provides for that qualified person. We felt that perhaps this discretion could sit with the commissioner. The commissioner may be able to determine whether that person is capable of consent rather than imposing another procedure into the mix. That is what we would propose—with community consultation, of course.

Mr McARDLE: I may put this badly. I am having difficulty understanding the intent of the bill given the wording if it is a bill that acknowledges cultural adoption. One matter I put to Mr Nicholson and Mr Ban was the issue of the rights of the child. The other issue I have relates to criminal history checks. We have cultural adoption already done in the community. It does not matter what we say here, it is already accepted. The application is to acknowledge that cultural adoption and supposedly not to question cultural adoption. What purpose does the criminal history check serve if there is no impact on the cultural adoption back in the community? What is the intent? I do not understand that.

Dr Loban: From our research and in our written submission we recommend that a criminal history check is not part of the process.

Dr van Doore: We would concur with your view that the cultural practice has already taken place and this is a recognition of that. The community has determined that the cultural parents—which is what they are called in the bill—are to be the parents. The criminal history check, we felt, was an overly intrusive aspect of the bill.

Mr McARDLE: Does it not open up the question of the role of the commissioner? Does that person not move from a commissioner into a judge role, in that that person must turn their mind to that on every application and not just when they want to? I would have thought that would be a

process to go through. I think one of the people said there would not be a situation where you would not call for a criminal history check, just as you would in the Family Law Court. You would subpoena the criminal records of the applicants. That just seems to twist the whole bill, in my mind, into what it should not be, and that is the white population actually saying that cultural adoption should or should not be recognised. It is not up to us to do that if we accept the premise of the bill. It has been done. This should be a process to allow that to be acknowledged to allow the mischief—that is, the birth certificate—to be corrected to deal with the issues of the child. Am I way off here?

Dr Loban: No, we are certainly in agreement with you that the process should be as simple and unobtrusive as possible. Those provisions that create intrusions—for example, a criminal history check and the like—we certainly think could be simplified.

Mr McARDLE: The analogy I draw is if you go back to 1975, the Family Law Act was about this thick. If you go to it now there are thousands of pages. The white man traditionally does tend to add and add and add to it, and that further takes the principle of the bill away from the intent of the bill, and they are different things in the final analysis.

Dr van Doore: One of our concerns about the bill has been that there does seem to be more of an intrusion into what is happening in the cultural practice such that the commissioner could be making a determination on the best interests of the child. If the purpose of the bill is to recognise the cultural practice, then the determination has already been made culturally and this is just a legal recognition of that. What you are saying with regard to criminal history checks really plays into what is the role of the commissioner. Is it a determinative process? Are they looking to determine what the best interests of the child are? Actually, that has already happened back here. Everyone has already determined that cultural child-rearing practice is in the best interests of the child generally.

Mr McARDLE: The commissioner can say yes or no; therefore, they must turn their mind not just in relation to the application per se but what is the background of the application. That is where I see the commissioner's mind leading them to—looking at the historical facts surrounding the application. Otherwise, I do not see any sense in those particular provisions.

Dr van Doore: Our submission clearly articulates a number of points that we have felt are a little intrusive in that respect.

Ms Rathus: Part of the reason the bill sits with the discomfort that you are talking about is—as eloquently described by Paul Ban and Alastair Nicholson who have been involved for all these years and obviously in the evidence of many Torres Strait Islanders—that what has happened is that there this a constant eye to what a white Western set of lawmakers might accept. Some of these provisions that sit in there are gifts from the Torres Strait Islander community to Western society to say, 'Maybe there are some lines that you will not cross and so we will put that in there.' I think that they are ultimate protections. I think that you are quite correct in what you say, but I guess that when you have been trying to get a law through for 30 years you want to include things that will get it over the line. That very deeply held view that all societies have of the importance of protecting children from harm you see in here around the criminal history checks, some of these questions around consent and some of these other issues.

The difficulty in practice might be that if they came out of the bill, which might make it a closer reflection of cultural practice—and you would know better than I do—whether it would get through our parliament and what the whole of the Queensland community might say. We have probably sat a bit on the fence here if I remember exactly what we have said. We have not said abandon them completely. We have understood that they might play a role. But, yes, in the end the difficulty is that a commissioner might decide to say, 'No, that does not mean that the cultural adoption has not happened.' The cultural adoption has still happened but maybe the legal recognition of that adoption will not happen. Is that a form of child protection? It probably is not because it makes the life of that child more difficult. Yes, these are difficult matters.

I will say—and Heron raised this—that I think that there is a real concern here, and I do not quite know how to address it, that we do not create two sets of adoptees in the Torres Strait: those who have had legal recognition and those who have not. I can see that playing out. Of course, there are some of the family law matters that Alastair Nicholson and other judges who went to the Torres Strait dealt with. I think there is a very famous judgement up there of Gary Watts nearly going crazy about these things not being sorted out. Where there is a dispute, there are places to resolve those areas of dispute. We know that where there is a dispute those things can be dealt with, but it is difficult.

There is a real worry about what happens to people who choose not to go through this process. The DATSIP response to us is, 'Well, that is not something that can be legislated.' I am not sure that the legislation cannot say that people who have not chosen to go through this process cannot be said

to not be culturally adopted. It must not be that the only people who could challenge in succession law, family law or other areas of law must have gone through this process, because that will actually be very damaging. Of course, for all the reasons everyone in the room knows, there will be Torres Strait Islanders who will not come anywhere near this.

CHAIR: The traditional practice will continue. I will stop using the words 'cultural adoption' based on what we heard from the Torres Strait Island Regional Council. This is traditional island custom practice. Those receiving parents will teach their children culture. I know the deputy chair did not get to that particular one. I suggest we take on board what the Torres Strait Island Regional Council suggested. This is about island custom and child-rearing practices—nothing to do with the cultural aspect. That is a different pathway again that those children will learn in their own environments through the receiving parents. I thank all representatives from Griffith University for their time today.

GREENWOOD, Ms Kate, Barrister, Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd

CHAIR: I welcome Kate Greenwood from the Aboriginal and Torres Strait Islander Legal Service. Thank her for being here. Would you like to make an opening statement before we go to questions?

Ms Greenwood: Yes, I would. From the point of view of ATSILS, to date a lack of recognition has led to a considerable and unnecessary level of inequity and disadvantage visited upon those whose family arrangements arise from traditional adoption. That disadvantage is widespread throughout the community. A little earlier, members of the committee asked if there is some sense of how big these numbers are. These traditional child-rearing practices are very widespread through the community. From the work that we have been doing in terms of getting driver's licences for year 11 and year 12 students, I think my colleague estimated about 30 per cent of the children there fall into this category. We estimate that it is a much bigger number within the adult population. Almost every single legal issue has this underpinning it. The present legal solutions are very limited, costly and difficult.

The legal issues that follow a child from the very beginning in terms of their parents' ability to get them access to medical services, to enrol them in school, to get them a passport, to get them a visa, for them to then later on in life put their parent into a nursing home, to be able to succeed on intestate or be able to access funeral insurance for their parent, go the whole way through. Presently, our biggest source of solutions has been in Family Court parenting orders, but they only last for so long. It really impacts from cradle to grave for those who have been raised under traditional child-rearing practices. Essentially, in answer to the committee's question, that is how widespread and important we see this as. We are very supportive of a solution being brought forward. We support the bill. We have raised a few particular issues, but at the end of the day none of those are real show stoppers. If they cannot be accommodated, we would much rather see the bill proceed and then turn around and make submissions on how to improve it later.

CHAIR: I understand there will be a review two years after. There is some room there to move. The Aboriginal and Torres Strait Islander Legal Service has some practical examples of issues faced by Torres Strait Islanders with regard to birth certificates. I know that the representatives from Griffith University have just finished, but perhaps they will take a question on notice as well around the Births, Deaths and Marriages Act that I gave to Alastair Nicholson earlier. I would like your view and that of Griffith University around amending that act to identify someone as a part of a traditional custom island practice for Torres Strait Islanders. Is there an easier way of applying, with both parents consenting of course? I am interested in those views as that was raised by the council as well.

Ms Greenwood: Yes, we will take that on notice and come back with a written response. Our director of family law I believe is Zooming in on this, but we are both in a physical and virtual space. It would be easier to do that.

CHAIR: We would appreciate your views.

Mr HUNT: I acknowledge your comments around possible improvements to the bill; however, it is important to get it through and then deal with that later. We certainly got that from the communities we went to. When I sought to get comment on improvements in the procedures et cetera, the comments were generally, 'Let us get it through and make improvements later.' Having said that, we do not want a system either that people are reluctant to take part in. I go back to the criminal history material that was discussed before. We ran out of time for the question, so I put it to you: do you think that could be simplified to specific offences? We do not want a child put in harm of a convicted paedophile, for example, if there could be specific offences detailed. When a Torres Strait Islander reads that and they have to tick a box saying 'criminal history check' they would automatically in their mind feel as though they were excluded, but if there were specific offences that they knew they had not been a part of it might encourage them. Are there any suggestions around that area that might be improved or amended?

Ms Greenwood: Yes. We share the concern because if the police check is seen as too big a hurdle by the receiving parents then they may not bother, in which case it continues on as a traditional adoption. Basically, you then have a child who will have to fight for recognition of their status later down the track. We do not follow quite the pure recognition approach that Griffith University has, but agree in the sense that it fails to recognise that the traditional rules themselves go into a deep dive in the best interests of the child and the capability of the parents who are receiving and whether they are suitable to be caring for that child, and a dozen other considerations that come into those very complex rules. There needs to be a little bit of recognition of the fact that considerable thought has already gone into how this child can be best and safely raised within culture.

I am personally concerned. I represent ATSILS on various consultation committees that have looked at the difficulties of the blue card system being administered appropriately and with proper understanding of conditions in Indigenous communities. The blue card system started with a small number of offences for which it was clear that paedophiles were out. It has grown bigger and bigger to the point that when talking about a 40-year-old who had a fairly wild 20s, has settled down, raised a family and is a responsible community member but for whom relatively low-level offending in their 20s now blocks him or her from getting a blue card. In one sense, it is almost the thin edge of the wedge, but in another sense, if the commissioner in the sense is doing a second best interests of the child check, it may be that it is better to leave that with the commissioner—that is, part of the commissioner's view of whether it is in the best interests of the child.

CHAIR: I think that was answered by Judge Willis in Cairns, as you might recall. Those minor offences in their early teens is at the discretion of the commissioner in the current bill.

Mr HUNT: My concern really was with the broad criminal history that the person is ticking that they would remove themselves from the process at that point. I note your comments around the blue cards. The blue card commissioner has some discretion around that as well. I think that relates to community confidence in placing their child in the temporary care of somebody, such as a football coach, whereas we are talking about parenting here. You do not need a criminal history check to be a parent. I just wonder whether we could simplify that criminal history term to include a couple of very concerning offences that we would all agree on. As you said, the community itself makes a determination about the suitability of the parents. I just worry about that broad definition discouraging people from the process altogether.

Ms Greenwood: We share your concern about that.

Mr McARDLE: I have a very quick comment. My concern is your comment about leaving the best interests of the child with the commissioner to a certain extent. Are we not actually showing disrespect to the cultural process that has taken place beforehand? Are we not simply saying to them, 'Well, actually, you're not good enough to make that determination. We are going to take that role off you and we are going to reassess what has taken place in the community.'? If I have misunderstood you, I apologise, but I am just concerned about that duality of roles moving forward. If we accept that they have done it, why are we doing it again? Why are we looking at the best interests of the child? I am not having a go at you, I am just concerned we are having parallel applications running here and here we have Western law suddenly becoming more important, and that seems to fly in the face of the bill. I certainly accept that maybe a quid pro quo is to be struck, but we have to be very careful that we do not insult Torres Strait Islanders, and seriously insult them because we are questioning their integrity by putting this role with the commissioner as opposed to the community.

Ms Greenwood: That is a completely valid observation. When we were preparing our first round of submissions to DATSIP, later it gets reflected in our other submission, we took a long hard look at the set-up in the north western territories of Canada and in particular looked at how they looked at the best interests of the child. In the north western territories there are very similar practices to what exist in the Torres Strait. They have the pure recognition model which Griffith University has been looking at.

CHAIR: A very short question from the member for Maiwar. We are just about out of time.

Mr BERKMAN: I will keep it very quick. We had some discussion with QIFVLS in Cairns I think it was and also outside the hearing with Annabelle from ATSILS in Bamaga about the kinds of practical supports that will be available for applicants under the framework. QIFVLS had some views about the importance of that being independent legal advice and they have mentioned that in their submission. Obviously we are not so much talking about any potential court based processes after the application, it is much more about helping applicants step through the process itself. Do you have a view on who would be best positioned to deliver that because I note here that in DATSIP's response to the QIFVLS submission they have simply said that legal and interpreter support will be made available to ensure all parties understand the long-term implications of the process. In your view who should be providing that kind of support and, given the possibility of review processes and litigation after the fact, is it important that that is independent legal advice?

CHAIR: Perhaps that is best taken on notice. We are over time.

Ms Greenwood: Yes.

CHAIR: There is significant drafting in the bill around education of communities and I take the member for Maiwar's point we are completely out of time. Can I ask that that be taken on notice. Any questions taken on notice today are due back to the committee by 17 August. That would be

appreciated. I thank Kate Greenwood from Aboriginal and Torres Strait Islander Legal Service for being here today and also note the CEO, Shane Duffy, for his submission. Thank you for your contribution. I now declare this public hearing closed.

The committee adjourned at 12.04 pm.