



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

## **Members present:**

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

## **Staff present:**

Ms L Pretty (Inquiry Secretary)  
Ms A Beem (Assistant Committee Secretary)

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

### **TRANSCRIPT OF PROCEEDINGS**

**WEDNESDAY, 22 JULY 2020**

**Brisbane**

## WEDNESDAY, 22 JULY 2020

---

### **The committee met at 10.00 am.**

**CHAIR:** Good morning. I now declare this public briefing 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 lands right across Queensland on which we are meeting today. A special welcome goes to Aunty Ivy Trevallion in the Torres Strait.

Today's proceedings are being conducted using videoconferencing facilities, so I ask all of our participants and anyone watching the live broadcast to please bear with us if we encounter any technical difficulties. I ask everyone to turn their mobile phones off and place their microphones on mute unless they are speaking.

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

The purpose of today's briefing is to assist the committee with its inquiry into the Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Bill 2020. I am going to get better at pronouncing that, Aunty Ivy, as we go on. On 16 July 2020, Cynthia Lui, the member for Cook, introduced the bill to the Legislative Assembly. Ms Lui agreed that the House treat the bill as a government bill. This briefing 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 you will be provided with a copy of the transcript. The briefing is being recorded and broadcast live on the parliament's website.

**CHENG, Mr Tony, Director, Legal Policy, Strategic Policy and Legislation, Department of Aboriginal and Torres Strait Islander Partnerships**

**KIDD, Mr Jason, Executive Director, Strategic Policy and Legislation, Department of Aboriginal and Torres Strait Islander Partnerships**

**PARTON, Ms Kathy, Deputy Director-General, Policy and Corporate Services, Department of Aboriginal and Torres Strait Islander Partnerships**

**TREBALLION, Aunty Ivy, Chair, Kupai Omasker Working Party (via videoconference)**

**CHAIR:** I now welcome representatives from the Department of Aboriginal and Torres Strait Islander Partnerships and Aunty Ivy, Chair of the Kupai Omasker Working Party. Aunty Ivy is one of the eminent persons providing advice. I invite you to make a brief opening statement, after which committee members will have some questions for you. Thank you very much for the submission we received last night. We are all doing a lot of reading. Some very good material has already been provided to us.

**Ms Parton:** Thank you to the committee for this opportunity to provide a briefing.

**CHAIR:** For anyone watching the public briefing, I point out that we have lost audio. Please stand by while the issue is addressed.

**Proceedings suspended from 10.04 am to 10.14 am.**

**CHAIR:** Our apologies to everyone. We had a technical issue with the audio. We had just done the introductions and welcomed everyone here. Kathy Parton was about to start her opening statement so I will hand back to Kathy.

**Ms Parton:** Thank you to the committee for having the department here to provide this briefing. I would like to acknowledge the traditional owners of the lands where we are meeting today and right across Queensland, particularly in Torres Strait. I pay my respects to elders past, present and emerging, and in particular our Torres Strait elders and children, which is the reason we are here today.

Public Briefing—Inquiry into the Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Bill 2020

Torres Strait Islander people have always practised and continue to practise child rearing that involves sharing the responsibility of raising children across family groups and with trusted family and friends. This bill relates to Torres Strait Islander traditional child-rearing practice which involves the permanent giving of a child by their birth parents to receiving parents, or cultural parents, who are usually within the extended family. The approaches and traditions that underpin the practice can vary across the different regions and islands in the Torres Strait. Information on Torres Strait Islander traditional child-rearing practice is considered sacred and private. Details of the arrangements are generally kept confidential and the decision to inform the child is at the discretion of each family. A child may not become aware of the practice until later in their life.

There is a long history that goes along with this. While there are many differences between Torres Strait Islander traditional child-rearing practice and adoption, before 1985 Torres Strait Islander families could seek legal recognition through the Queensland Adoption of Children Act 1964. In 1985 there were changes to official policy that meant that traditional child-rearing practice was determined to then be outside the scope of the adoption act. This meant that cultural parents met with obstacles when they were attempting to exercise their parental rights and obligations and that children raised in accordance with a cultural practice then had a legal identity that did not reflect their lived experience.

Elders in the communities, both past and present—and I acknowledge Aunty Ivy Trevallion here—have worked tirelessly in the pursuit of legal recognition of Torres Strait Islander child-rearing practice. In particular, the Kupai Omasker Working Party has lobbied the Queensland government for over 30 years for legal recognition of the cultural practice. Since 1985 there has been extensive consideration of options by successive Queensland governments, aiming to resolve the problems that the lack of legal recognition causes for Torres Strait Islander people. Two comprehensive consultations were conducted in the Torres Strait and in mainland Queensland: in 1993 and again in 2011-12. In addition, both the Family Law Council and the Law Reform Commission have recommended that the Queensland government legally recognise the cultural practice. This bill presents a timely opportunity for the government to resolve the longstanding issues for Torres Strait Islander people.

In terms of the key policy drivers for the bill, on 15 November 2017 the government announced that a re-elected government would introduce new laws that recognised Torres Strait families' continued use of traditional Torres Strait Islander child-rearing practice. Legally recognising Torres Strait Islander traditional child-rearing practice is also an important step forward in the Queensland government's journey to a reframed relationship with First Nation people, and it acknowledges the strength that exists within Torres Strait Islander culture.

Legal recognition promotes the rights of Torres Strait Islander peoples to enjoy, maintain, control, protect and develop their kinship ties under the Human Rights Act 2019. The development of legislation to legally recognise the Torres Strait Islander traditional child-rearing practice is a further step to embed the importance of culture, family, connection and self-determination for Torres Strait Islander children and their families' lore and to recognise and acknowledge this in Queensland law. Queensland's legislation is evolving to better recognise the importance of culture, family, connection and self-determination for Aboriginal and Torres Strait Islander people.

The preamble to the Queensland Constitution was amended in 2010 to honour Aboriginal and Torres Strait Islander peoples as the first Australians and pays tribute to their unique values and ancient and enduring culture. The preamble of the Human Rights Act states—

Although human rights belong to all individuals, human rights have a special importance for the Aboriginal peoples and Torres Strait Islander peoples of Queensland, as Australia's first people, with their distinctive and diverse spiritual, material and economic relationship with the lands, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition and Ailan Kastom.

Ailan kastom is the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular community or group of Torres Strait Islanders and includes any customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships in the Torres Strait.

In terms of the key policy intentions, the bill aims to provide practical outcomes for the Torres Strait Islander community by: bridging the gap between traditional law and western law for parents and children from extended Torres Strait Islander families by establishing a legislative framework to recognise the cultural practice, not to determine whether the cultural practice should or should not have occurred; and by providing for a process to make an application for legal recognition that, if granted, will result in the permanent transfer of parentage from the birth parents to the cultural parents and, by doing this, resolve longstanding issues faced by Torres Strait Islanders whose legal identity does not reflect their cultural identity and lived experience.

Public Briefing—Inquiry into the Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Bill 2020

The current lack of legal recognition of Torres Strait Islander traditional child-rearing practice has created a number of legal and practical problems for Torres Strait Islander children and their families.

**CHAIR:** We have temporarily lost sound again. Please stand by while this problem is rectified.

**Proceedings suspended from 10.21 am to 10.27 am.**

**CHAIR:** My apologies to anyone watching the live broadcast. We lost audio again. There is some electrical work being done. Hopefully we will have resolved this issue for the final time. I will hand back over to DATSIP.

**Ms Parton:** As I was saying, the current lack of legal recognition of the Torres Strait traditional child-rearing practice has created a number of legal and practical problems for Torres Strait Islander children and families. A child's birth certificate retains the name of the birth parents. This creates multiple practical implications for the child and their cultural family such as the ability to enrol in school; get a tax file number; open a bank account; obtain other legal identification, for example a driver's licence or passport; provide consent for the child in relation to guardianship, medical and other purposes; and the ability to access some government services, payments and other entitlements. There is also the need to disclose a confidential cultural practice repeatedly, having to retell and explain to authorities—for example, with school enrolment—why a child's birth certificate does not match their family lived or cultural identity. There is uncertainty about a child's cultural parents being able to provide parental consent for medical treatment and other decision-making. Children also experience barriers in accessing inheritance when cultural parents pass away without a will because Queensland's laws do not recognise traditional child-rearing practice. Adults who are raised under the cultural practice may register their name change, but this does not change their legal parentage.

In terms of stakeholder consultation in developing this bill, DATSIP has engaged three persons: Ms Trevallion, who we have with us today; Mr Charles Passi; and the Hon. Alastair Nicholson, who supported the department and the Department of Child Safety, Youth and Women, to undertake consultation in the Torres Strait community and with other stakeholders in November and December 2018. More than 350 Queenslanders participated in more than 30 meetings across the state, including communities, small groups and individual meetings held in the Torres Strait and across mainland Queensland at that time, including Thursday Island, Mer Island, Badu Island, Cairns, Bamaga, Townsville, Mackay, Goodna, Caboolture, Brisbane CBD and Carindale. Legal and government federal and state sectors were also invited to provide input and written submissions to this consultation process.

The feedback from these community consultations highlighted that legal recognition through the transfer of parentage is desired to legally reflect an individual's cultural identity and lived experience so they can be given the same rights and safeguards as other Queenslanders; that any process for legal recognition must be affordable, accessible, culturally appropriate and confidential; and that Torres Strait Islander culture is about community and not one individual person. If the community is strong, then the child will be supported. An administrative model for legal recognition was developed based on this consultation feedback.

Based on the key features of the administrative model, an exposure draft of the bill was developed in collaboration with the Department of Child Safety, Youth and Women and in consultation with the Department of Justice and Attorney-General. DATSIP then facilitated a series of conversations with the eminent persons to test elements of the proposed legislative framework to help guide further development of the bill. We also held a consultation workshop to discuss the exposure draft of the bill with the Kupai Omasker Working Party, with the eminent persons and with Judge Josephine Willis in February of this year. The outcome of the workshop was general support for the administrative model, the exposure draft of the bill and the proposed application process.

The draft bill was then updated to reflect feedback received, in particular the name of the bill; the preamble; the main principle; the prescribed content for applications, including statements from the parties; and the key safeguards. The recommendation for the name of this bill reflects consultation with the Kupai Omasker Working Party. Key organisations were also consulted on the draft bill, including Queensland Aboriginal and Torres Strait Islander Legal Service, the Queensland Human Rights Commission, the Queensland Family and Child Commission, QCAT, the Office of the Public Advocate, the Office of the Public Guardian, the Public Trustee, the Office of the Information Commissioner, the Queensland Law Society, the Bar Association of Queensland, Legal Aid Queensland and relevant heads of the judiciary. Feedback from these consultations was incorporated into the version of the bill that was introduced 16 July. I will now hand over to my colleague Jason Kidd to give you an overview of the bill.

**Mr Kidd:** I would also like to acknowledge the traditional owners of the land on which we meet and around the state, and I pay my respects to elders past, present and emerging. In particular I pay my respect to Aunty Ivy, who has been with us on this journey all the way through.

In terms of an overview of the bill, the purpose of the bill is to recognise ailan kustom child-rearing practices and to establish a process for making applications for, and decisions about, the legal recognition of those cultural practices. The main principle of the act is that it is to be administered according to the wellbeing and best interests of the person who is the subject of the application of the cultural recognition order. In deciding what is for the wellbeing and best interests of the person the bill sets out a number of other principles that the commissioner must have regard to in the decision-making process, for example: the need to ensure the appropriate recognition and preservation of ailan kustom in general and of ailan kustom child-rearing practice in particular; the need to perform the powers and functions under this act having regard to the sensitivity and cultural practices associated with ailan kustom; the legal and cultural benefits for the child if a cultural recognition order is made; recognition of the birth parents' assessment of the suitability of the cultural parents; that decisions must be made in a fair, timely and consistent manner; and any other matter that is directly related to the child's wellbeing and best interests.

I will go to the key steps in the process. The bill provides for a process whereby parties make an application to the commissioner for a cultural recognition order. The first stage is around eligibility and there is some preliminary eligibility criteria. They include: that one or both of the birth parents and one or both of the cultural parents are of Torres Strait Islander descent; that the child's birth was registered in Queensland; and that the cultural practice has occurred. The bill also allows for an application to be made where one or both of the birth or cultural parents have deceased.

In terms of the application itself, for a child the application is made by the birth and cultural parents, and for an adult the application is made by the adult in question. The application includes statements from the birth parents and the cultural parents, and in the case of an adult a statement from the adult. If applicable, it can include an informed consent statement from another carer who has some legal responsibilities in the situation and statements from persons with knowledge and understanding of the cultural practice. The bill refers to them as informed persons and they are nominated by each family group and they can attest to the fact that the practice has occurred in accordance with ailan kustom.

The commissioner then considers the application and must be satisfied that the following requirements have been met: that there has been full, free and informed consent to legal recognition; that the making of the order is, as I said, for the wellbeing and best interests of the child and in accordance with those other principles I outlined; that the transfer of parentage occurred in accordance with ailan kustom; that each applicant was entitled to apply in line with the eligibility criteria I outlined; and that the requirements in relation to the application process are met and the relevant statements are included.

The next step in the application, once the commissioner has considered all the information, is for a notice of intention. Before deciding not to make a cultural recognition order, if that were to be the case, the commissioner would have to give the applicants an opportunity to respond to that notice and they could provide further information to inform the decision-making process. Assuming that the decision is in favour of the application, the commissioner can make a decision for a cultural recognition order and the effect of that order is to transfer the person's parentage.

There is a right of review built into the process, so an internal review. The minister can appoint a review officer if any of the applicants ask for a review of the commissioner's decision, and that can either confirm or revoke the commissioner's decision. There is the capacity built into the bill as well for recognition of a judicial review process on matters of procedural fairness and matters of law. Following the decision, the commissioner notifies the registrar of births, deaths and marriages as soon as practicable and the registrar will register the transfer of parentage and issue a new record for the child, and the original birth record is then closed.

That is the main process. Kathy has referred to the name of the bill. We went through an extensive process of making sure that was accepted by the community and reflected the languages of the community. In particular, it reflects the eastern island language and top western island language groups and translates as 'for our children's children'.

In terms of wellbeing and best interests, that is the fundamental principle of the legislation, as I mentioned, so I will not go into any further detail on that. The process is an opt-in framework so it is not mandatory. If the applicants wish to have that cultural practice recognised, this provides an opportunity for that to occur.

Public Briefing—Inquiry into the Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Bill 2020

Before submitting an application, all applicants would have the opportunity to seek funded independent legal advice. There will be a program office established to support the process and the applicants as they go through. They will be given the opportunity to seek legal advice prior to submitting their application, and that will be funded.

There is a process in the bill for dispensation of the consent. Obviously, it is a consent based process at its heart, but there is provision in the bill where applicants cannot locate the relevant parent after making all reasonable inquiries or there would be an unacceptable risk of harm—for example, to the birth mother—if the consent was obtained from all parties. The bill provides an avenue for an applicant to make an application to the Childrens Court therefore to dispense with a person's consent requirement.

There is also built into the bill provision for where an applicant may be assessed as having impaired capacity by QCAT. The bill provides that a decision-maker must ensure that an adult with impaired capacity is given all support and access to information necessary to participate to the greatest extent possible in the process.

In terms of suitability of the cultural parents, a decision to legally recognise or not the cultural practice will not change what has occurred under the cultural practice for many generations. It is worth noting that the practice will continue. This is about whether it gets legal recognition. There is obviously a cultural practice of assessment of suitability by the birth parents in terms of the cultural parents, who will often be part of the extended family network for the birth parents. The bill also, as I mentioned, builds in the process of getting a statement from an informed person—so a senior family member from both family groups who can attest to the nature of the cultural practice. There is the discretion to seek a criminal history of the receiving parents. For the cultural parents, they will consent to that process as part of the application, and the commissioner can seek a report from the Police Commissioner.

In terms of child safety matters, the legislation exists within the broader frame of all legislation in Queensland. Any of the parties involved, including the commissioner and members of the program office, can make appropriate referrals to the department of child safety if that was seen as needed.

In terms of the effect of the cultural recognition order, I think I have gone into that. Essentially, it will provide for the new birth certificate but it also has implications obviously in terms of dispositions of property under wills. Essentially, it will take effect as if the order were a final adoption order made under the Adoption Act.

There is a process for discharge of orders, and that applies through the Childrens Court. That can be in the case of these situations: there might have been false or misleading documentation provided; somebody has acted fraudulently or used undue influence in the process; there was not full, free and informed consent to the application; or for any other improper basis. I have talked about the birth certificate so I will not go into further detail on that.

In terms of the role of the commissioner, as I mentioned the commissioner will be supported by a program office. The commissioner appointment themselves will be for an appropriately qualified senior Torres Strait Islander person with an understanding of the cultural practice. That was obviously seen as critical by stakeholders and that will be a three-year appointment by the Governor in Council. The proposed functions of the commissioner are: to independently consider and decide the applications made under the bill; to manage the effective and efficient operations of the commission's office; to promote broader community awareness and understanding of the practice; to provide advice around the recognition order to the registrar of births, deaths and marriages; and to report to the minister on matters in relation to the administration of the legislation.

There is provision in the bill for managing and addressing conflicts of interest. There are confidentiality requirements. We made the point earlier that the practice is generally considered to be confidential and sacred within the family group. The bill, whilst trying to give recognition to the practice, puts in a range of measures to ensure that the commissioner and other staff and officers who are involved are not able to share any of that confidential information any further than what is needed for the purpose of the decision-making process.

In terms of implementation activities, DATSIP will be responsible for supporting the implementation. In anticipation of the bill passing, there is some preplanning in process now. There will be a full-time commissioner role, as I mentioned. The office will be there to support the commissioner in their role. There will be a two-year review. This is obviously fairly unique legislation so we have built into the process a mechanism for review after two years to enable any amendments that need to occur and to give us a good sense of the uptake and processes in place.

Chair, that is the presentation I have in terms of the overview of the bill and some key elements of it.

**CHAIR:** I thank the department and both of you here today for bearing with us during our audio challenges to inform us on the background of the bill. I will start with a question for Aunty Ivy in the Torres Strait and express on behalf of the committee how humbled we are to walk with you on this journey that you have been fighting about for decades. This is obviously culturally sacred to Torres Strait Islanders. For the benefit of the committee, it might be worthwhile if you could reflect on where you have been to where we are today and how long this custom has existed for.

I have to acknowledge the work you have done with Mr Charles Passi and the Hon. Alastair Nicholson as the eminent panel of the Kupai Omasker Working Party. We heard there was extensive consultation, with 350-odd people attending the 30 meetings. Has there been any variation of practice amongst the five broader Torres Strait Islander groups? Can you talk to some of the history and what you have found on the journey so far?

**Ms Trevallion:** Personally, historically, I can trace mine back to well before my ancestors that have practised this practice, and has been since time immemorial on the other extreme. In the journey over the last 30-plus years, one of the difficulties that we have had has been around understanding the concepts around transferring of the children. Bear in mind, it is sometimes a very personal thing for people of non-Indigenous background. It is also around the issue of how we see children, and it brings up the idea of ownership and not ownership. These were the issues that we struggled with for the last 30-plus years. I think we have come to the stage where we have moved and we can now understand that this practice belongs to a certain group of people. We also understand that it does question our individual values and beliefs on children and our own personal cultural practice.

In the consultations we have had, since 1993, nothing has changed. Even to the present, the young people are still practising that custom. The sad thing is that these children that we give to one another with love cause a lot of heartache to families because the education department requires birth certificates before you can enrol a child. Even if a dentist was to pull out a tooth, they need the consent of the biological parents, whom these children do not know. That really tests the values that we place on our cultural practice. It becomes even more important that we lobby for the legal recognition so that it eases the pain and treats us extra nicely in the process. I think we have come to the stage now that I am praying and hoping—and everybody else is, too—that it will go through. I am hoping that in your consultations as you go into the communities you will meet families that have children who have been transferred under our present system, or you will get to meet people who are part of the cultural practice who have been transferred in that way. Have I answered all your questions?

**CHAIR:** I think you have. I do not know whether the department can talk to variations in customs in the main island groups. Did you find any differences or variations, or did you find anyone opposing where this bill was heading? Was there any opposition?

**Mr Kidd:** No, we got strong support. As we went around the state we basically found that there was not really a Torres Strait family group that was not involved with or impacted by this practice and the way the current law does not recognise it. We received strong support for that. At that stage obviously we did not have the detail of the process, but there was strong support from the community in terms of recognition. Our job then was to go away and work with the key stakeholders to develop a model. The key feedback was around making sure it was a timely, cost-effective and efficient sort of process so it is not too intrusive for the families involved. There were a range of options considered to give effect to that desire, and this model is an administrative decision-maker which was seen as the most accessible form. That was probably one of the key messages we received: whatever process is set up, it needs to be accessible to community members or as an opt-in system so people can choose to not use it.

In terms of variations across the island groups, Aunty Ivy is probably best to speak to that. There are some variations across the island groups and within families as to how the practice occurs. This model is about not interfering in how and whether the practice should or should not have occurred; it is about whether that gets legally recognised so there is not that desire or need to interrogate an individual family arrangement or community arrangement. Generally speaking, it is a relatively consistent practice for the Torres Strait communities, both on the mainland and in the island groups.

**CHAIR:** Paul Ban's paper, which was provided to us, looks at the history of this custom. I do not know whether you or Aunty Ivy can talk to that. Many years ago, or generations ago, it was considered greedy if you had too many children and you would pass them on to other families to build communities. Can anyone talk to that? That was a paper that was provided to us. It seems to provide some historical understanding. Aunty Ivy?

**Ms Trevallion:** In our custom, particularly with women, if we marry out we have to replace ourselves back in the family. So the eldest child usually is the one that we place with the family. Another one is that if you have a child out of wedlock the family would raise the child for you. Women in particular are not subjected to any sort of domestic violence or jealousy of any sort. The woman can then walk her life knowing that this child is safe with the family group who would look after it.

I want to rewind a little bit. The eastern islanders practise mainly through the blood lines, so you have to be related to that person or family for them to give you a child. With the western islands, you can transfer the child. The other thing to note is that sometimes it is very difficult for people to talk about it because of the emotional attachment that they have with the issue itself and the attachment to the child.

**CHAIR:** Thank you very much. That does give us some good understanding. It is helpful for the committee to understand that history. I think you have answered that well. It gives us a good foundation to understand. I will hand over to members to ask questions. I will start with the member for Lytton, who has helped us this morning with the audio challenges.

**Ms PEASE:** It is lovely to meet you, Aunty Ivy, and thank you for your passion in taking us all on this journey with you and for sharing this really important cultural practice with us. I want to pick up on something to get a better understanding, so I apologise for my ignorance. You mentioned that when you marry your position in the family would have to be taken up by someone else. Therefore, would that mean that your firstborn would go back to your traditional family?

**Ms Trevallion:** Yes, you would have to replace yourself back in the family. Within our custom—I will use a couple of language words—you took your 'bag', which is your jaw and your head, to the family that you are going to marry into, so you are going for good. That is who you belong to, but when you have a child you put it back in the family.

**Ms PEASE:** You would grow up your whole life knowing that that was going to be your journey?

**Ms Trevallion:** Yes. It is a bit scary.

**Ms PEASE:** I can imagine that emotional attachment to your firstborn, knowing it was going to go to your mother.

**Ms Trevallion:** Hmm.

**Ms PEASE:** Is it traditionally women who would be part of the cultural adoption, or is it both sexes? Does it involve male and female children?

**Ms Trevallion:** Male and female, and husband and wife or the couple will make the decision. Sometimes if it is a relative, even by just touching your belly that is a sign they want that baby; the baby is theirs.

**Ms PEASE:** How do parents feel about that? Are you comfortable with that?

**Ms Trevallion:** I think it is a journey that individuals carry in that part of their life. I am a recipient of those kinds of children. Looking at and listening to some of the conversations of women, I think they tend to not discuss those issues at a personal level. If you come down to the really nitty-gritty part, you will start to hear the emotions that are attached to severing the ties with that child even though the child does grow up within the family. One of the ladies told me it was better for them not to talk about it because they had given the child away.

These sorts of things happen in all different ways. For example, one lady had a child and they were going back to the island. The man said to his wife, 'Go down and grab the child, take the baby, before the boat hits the sand.' The woman went out into the sea, took the baby before the boat landed on the sand. The way in which it happens differs with every given situation. Then when they do want to know, the children will always come back to know what is the story behind it all, and the reasons are always really good reasons as to why these children have been transferred in that way.

**Ms PEASE:** I guess that goes further. It is not always necessarily going to happen; it is a matter of choice. For example, you do not necessarily have to give up your firstborn to go back to your family; it is just if it is appropriate? When you marry and leave the family, you do not automatically have to replace yourself?

**Ms Trevallion:** If you intermarry then your husband will have a lot to say about how you practise the custom, whereas if you marry an island person, how you live would be totally different. It would be understood that that could happen along the way.

**Ms PEASE:** I am sorry about my ignorance.



**Ms Trevallion:** If you are married to a non-Indigenous person, the non-Indigenous person will say, 'No way. I'm not going to give up my child.' As a partner in that relationship you have to follow your partner's desire, but that does not stop families from doing that. Sometimes they do that even though it is an interracial relationship.

**Ms PEASE:** I am just reading what the bill says about being able to find out who your birth parents are. I know that the confidentiality issue is really important, and I completely understand that. You mentioned then that a child is able to talk about it to find out who their birth parents are. At what point would that likely happen or does it ever happen?

**Ms Trevallion:** In our discussions over the years, one of the things that we discussed was around health issues. Because there are all sorts of health problems that are emerging, the children will need access to who their biological parents are as we need to find that information out. That is one. The other one is that, when these children are old enough to be able to accept and manage that information, they can choose to go back and find out the reasoning behind why the biological parents made that decision—and usually they will find it. They will go back to the birth mother for the birth mother to tell them her story of why she agreed to give the child away.

**Ms PEASE:** Is it a common practice? Does it happen often?

**Ms Trevallion:** Yes. Even the younger generation practises it. I can be a grandmother to a lot of nieces and nephews who have been transferred in that way. It is still happening on the outer islands, and even on Thursday Island and the mainland.

**Mr HUNT:** Thank you all for your time today. I am interested in the application process. I get where we are going in that this is about recognising that cultural practice in law. I understand that there has been a lot of consultation around the process. Aunty Ivy, you have heard the application process. We have statements from parties, statements from community and a whole legal body set up with a commissioner, a program office, legal advice and assistance. It seems to be a fairly onerous sort of administration system to get recognition. Are you happy with where we have landed on this, or would you like to see a simpler way of recognising it in law?

**Ms Trevallion:** After 30 years of trying to work out how we are going to do it and to marry the practice with what we have given to us on a platter, which is the western law, we would have to design our cultural practice so that it fits in with the administrative practice of today, the legal practice of today. We cannot write down what we do because it is so complicated, but if we are to use the law as is then we need to find a meeting ground that our parents can use to get a proper birth certificate for their children; or, secondly, they do not need to break the law to register their children. These are very important issues, because our families do go down that track as a form of survival and break every law. Later on down the track, it will create all sorts of massive problems for our children's children. We need something very simple in place that our families can use. Remember, we are illiterate. We do not understand the law very well and we speak a number of languages. It is better to have something very simple that we can use for our families and that they can use for their children.

**Mr HUNT:** Absolutely. I am trying to unpack where my concerns lie. How complex might this become? I will get the directors to unpack the actual process. How does it work in practicality? For example, who appoints the commissioner? Where is the commissioner's office? How do islanders get access to the office? In terms of these statements that need to be provided, how extensive do they need to be? Who takes the statements? Is legal advice and assistance provided on the island personally? What is the process? It seems to be fairly complex.

**Ms Parton:** We are attempting to make the process as culturally responsive as possible and as simple and accessible as possible as well. In terms of the location of the commissioner, while we are still working through implementation, our current planning is that the commissioner would likely be based in Cairns with an office in the Torres Strait as well. The commissioner's support office would be based in one of those two locations. The function of the office within DATSIP is to provide that cultural accessibility and cultural support. The DATSIP officers would provide the parties with that kind of support in terms of being able to get the statements together and to make the application in a way that suits them but is also able to be used by the commissioner to then make a judgement or assessment of the practice. We anticipate that there will be a presence for the office both in the Torres Strait and within Far North Queensland.

**Mr HUNT:** An office specifically for this process?

**Ms Parton:** DATSIP already has an office on Thursday Island.

**Mr HUNT:** This will be added to their role?

**Ms Parton:** That is a possibility. As I said, we are still working through the implementation challenges but, yes, that is certainly a definite possibility.

**Mr HUNT:** Is there any modelling to show how many applications would come in and what you are expecting in terms of workload?

**Ms Parton:** Yes, we did some work on that. This might also answer your previous queries. In terms of consultation, there was an estimate that approximately one in four Torres Strait Islander children are involved in the child-rearing practice. The Queensland Government Statistician's Office estimated that more than 1,000 babies born each year in Queensland are likely to be identified as Torres Strait Islander or both Aboriginal and Torres Strait Islander. It is difficult to make these estimates, because it is something that currently does not exist so we would need to test. We estimated approximately 250 newborns annually. Of those, if around 30 per cent may apply for legal recognition then that would mean the demand for applications would be approximately 75 resulting from new births each year. There are also applications from people who have been through the practice and who may seek retrospective recognition of their status. If we look from 1985 onwards, we estimated around 2,300 total applications may come forward from people. We are allowing for up to 215 applications to be made annually in the first two years of the scheme.

**Mr HUNT:** You will review that after two years?

**Ms Parton:** That is right. Given that it is a completely new piece of legislation and a new process, we would review it after two years in terms of both the volume of applications coming forward and having a look at the legislation and the processes we are using to see if there are any ways that could be improved.

**Mr O'ROURKE:** I would like to thank Aunty Ivy. That discussion was really informative. I do appreciate it. I have no questions.

**Mr BERKMAN:** Thanks, everyone, for being here. I really do appreciate it. We obviously have a lot to learn about this practice and what it means to communities. Thank you, Aunty Ivy, for everything you have shared so far. We have heard quite a bit and have read in the department's briefing about the practical consequences of these practices not being recognised in Queensland law. Having listened to the member for Cook introduce the bill and what you have told us today, Aunty Ivy, it is obvious that there are very real personal and emotional consequences for individuals and whole communities. We obviously will go to the regions and speak with as many people as we can in the Torres Strait. It would be helpful from my perspective if you could give us a sense of what the personal consequences of this bill might be—the sensitivities around it and how we as a committee might deal with that.

**Ms Trevallion:** I work with children. I am talking in confidence. I am a clinical counsellor with children—

**CHAIR:** Aunty Ivy, if you want to speak in confidence, we are in a public hearing. I just remind you of that.

**Ms Trevallion:** I can say that there are a number of young people who come forward who are children who have been taken in this way. They want to finish high school. They want to get their senior certificate. They are coming into their senior years. That causes undue stress for them because they are finishing off their high school years and they want to go off to do their careers. This is a group of young people who are, in this day and age, looking for some sort of stability in their life. There are families that would like to enrol their children but cannot enrol their children because they would have to disclose to their children at a very early age that they are not their own children. A lot of the time, the parents spend a lot of time hiding the birth certificates. That causes all sorts of stress to these parents. There are residential colleges that have the children attending school. The parents gave them the birth certificates in confidence but they cannot disclose, so they play hide-and-seek with the kids.

As a society, we need to do something that will not only benefit the children but also ease the stress level of these people who have these children. We need to make sure that we do not cause them any more harm. These places would have to be culturally safe to be able to manage that information with their children. We are in the position that we can provide stability of some sort for these children and their families. We need to make those decisions. If they are difficult decisions, it really tests us as individuals as to which path we are going to take. Does that make sense?

**Mr BERKMAN:** It does. It seems quite clear from your answer, and the beginning of your answer especially, that, while we might hold public hearings in the Torres Strait, it will be very important for us to make sure there is time for private hearings as well so that any community member is able to share their stories in confidence to help us understand what this legislation means for them.

**Ms Trevallion:** Absolutely.

**CHAIR:** The committee has resolved to make time for private appearances of people in all of our hearings. That will be published soon. We could perhaps benefit greatly from hearing from you in private, Auntie Ivy, if that is possible. We will contact you to do that for a private meeting. We might have a number of questions about our travels coming up and about how best to address a number of those. The department officers mentioned some statistics about the numbers of applicants. Can we get those as additional information? That would be most beneficial for the committee.

**Mr McARDLE:** I have a couple of initial questions to the departmental officers. What was the cost of the consultation?

**Mr Kidd:** We were allocated \$1 million for the whole process of consultation, the staffing, the legal team and to otherwise develop the bill. That is from go to whoa over a couple of years. I do not have with me the precise breakdown of the cost of just the consultation process, but we could find that.

**Mr McARDLE:** Would you find that? Thank you very much. Could I go to the costs associated with the commissioner. I know it is a Governor in Council appointment. Do you have any figures as to what the cost will be over the two years prior to the review, including costs associated with staff that may deal with applications and other processes involved in a matter being filed and then heard? I am asking for the cost of the commissioner, how many staff are involved and what their costs are going to be, in a budget sense anyway?

**Ms Parton:** I do not have that information in front of me, but we will take it on notice and provide it to the committee. It is part of our implementation planning. It is a fairly small number of staff.

**Mr McARDLE:** When you made your opening statement you made the comment that Torres Strait Islanders are spread right across Queensland, not just in the Torres Strait. They are in Brisbane, Townsville, Mackay et cetera. This particular commissioner will be based in Cairns with an arm of the office in the Torres Strait. For couples living in Brisbane, Mackay or Townsville, will there be a method whereby they can file in a registry in that location or will they have to file up in Cairns to have their matters started?

**Ms Parton:** Certainly we will be working through that as we work through the implementation, but DATSIP does have offices in a large number of locations across Queensland, particularly where there are large populations of Aboriginal and Torres Strait Islander people. We will work through a way of providing accessibility where all the key population centres are.

**Mr McARDLE:** Will a hearing, if it gets to that, before a commissioner be conducted in the location of the applicant or will it have to be by another method?

**Mr Kidd:** In many cases the matter will be able to be decided on the papers in terms of the application process, and that was part of that issue we were discussing earlier about balancing the accessibility and simplicity of the system. Certainly we will have a budget that will allow for the relevant travel, the support staff to travel, as well as, as Kathy mentioned, having our regional staff available to support people. In a general sense we would hope that people could apply from where they are and have that process go through on the papers.

**Mr McARDLE:** Are you able to take on notice what that budget might be for travel et cetera for people in relation to living outside of Cairns?

**Mr Kidd:** Yes, we will provide further information in the budget analysis.

**Mr McARDLE:** I am assuming these hearings will be in camera? It will not be public hearings?

**Mr Kidd:** Yes, and often not even requiring a hearing.

**Mr McARDLE:** As I understand the greens, unless all parties consent an application cannot be made unless a party cannot be located. Then an order is being sought for that person not to be involved in the application. Is that right?

**Mr Kidd:** Generally it is a consent based system, but it does allow for dispensation of consent in certain cases, for example, where after all reasonable efforts one of the parents cannot be located or where there is an unreasonable risk of harm to one of the applicants if the person was notified of the process.

**Mr McARDLE:** The process that you have outlined here today has certain similarities to the Family Court. It is not identical, obviously. One of the things that worries the public is that once we set in process a legal chain, that legal chain, by its own metamorphosis, grows and grows. I am concerned that certainly we are starting today with a process that appears to be succinct, though still

a bit complicated. With judicial reviews and internal review officers as well, how do we guard against this becoming another Family Law Act, which commenced with a half-inch thin paper and is now a book about four feet wide?

**Mr Kidd:** I suppose as a general response to that—and it is a good question—we have worked really hard in the development of the bill to try to find the right balance. One of the key principles informing that was that this is about legally recognising a transfer of parentage and all of the associated outcomes that come from that, for example, property rights and so forth under wills. It is a significant legal recognition that is happening. We explored everything from court based options through to this model, and we were happy that we were able to put together a model that had an administrative decision-making process at its heart that would be fairly streamlined through that application process. There was the need to build in, in terms of principles of natural justice, appropriate reviews of some of the key decisions. Again, we tried to make that at its heart an internal review process with review officers who are appointed to keep that close to the process and as simple as possible, but we did need to, under the principles of law, allow for judicial review on matters of law. We anticipate that those sorts of processes would be very rare. The two-year review mark will again give us a good opportunity to assess how that has played out in practice and if there is a need for any adjustment.

**Mr McARDLE:** Aunty Ivy, I heard your response to the member for Nicklin's question about the simplicity of this process. I do share his concern, but I also understand what you are saying is a necessity based upon where your people are at this point in time. Could you explain to me how in a community this is arrived at? How is it derived that the biological parents agree that the cultural parents will now become mum and dad? What is the process within the community to get to that point? Is there a process at all or is it simply acknowledged that this is what will happen by way of parentage and cultural heritage?

**Ms Trevallion:** Before you transfer a child you have to talk to your parents first or your elders or the members of your family, and if they agree to that then the child is transferred—unless you are married with a husband, so a couple can make that decision. If you are a single mother you have to discuss that with your parents. If you are a married couple you can discuss it by yourself, but there is always an elder or your parents—either parents—who will be part of the discussion.

**Mr McARDLE:** I am not saying it is a simple procedure—it is a very important step—but the steps themselves are fairly succinct, are they not? There is an acknowledgement that this is a cultural existing issue and this is what you do to achieve the outcome.

**Ms Trevallion:** It is actually quite long-winded, because we are talking about a cultural practice that has its own laws in place and has its own social protocols in place and it also has community at large as to how that decision will be made. That will be discussed not only by the individual and her family as a nuclear family group; the extended family will also be part of that discussion.

**Mr McARDLE:** This procedure here now being proposed will not do away with the cultural discussion that has to take place, will it?

**Ms Trevallion:** The cultural discussion has to take place before we come to use your system.

**Mr McARDLE:** Correct. Therefore, you then have to go through a procedure of some sort to endorse what you have agreed to already.

**Ms Trevallion:** The authenticity of the practice will have to be endorsed. You need to have the elders in that discussion to say, 'Yes, this is a cultural practice. It has been culturally arrived at.'

**Mr McARDLE:** Will those elders need to explain to the commissioner in some form how that was arrived at so that they can inform the commissioner that they are satisfied with that process as well?

**Ms Trevallion:** Is that what you want to be included in the process?

**Mr McARDLE:** No, I am asking whether you see that the commissioner will have to be satisfied that the process was undertaken properly.

**Ms Trevallion:** We will have to make sure that the commissioner is satisfied with what we provided him with. If I come to apply then I will have to have the cultural parents and their senior person with them and biological parents with a senior person to be present so that they too witness that this is a process that is culturally appropriate and recommended to the commissioner.

**Mr McARDLE:** You made the comment that 'we can't write what we do now because it is so complicated'.

**Ms Trevallion:** That is true.

**Mr McARDLE:** I accept that. How then do you see the best way to explain to the commissioner what has taken place because it is so complicated? I am trying to get down to the nitty-gritty point.

**Ms Trevallion:** In that bill that we proposed we said that that person would have to be from Torres Strait Islander lineage. As a community person, I would expect this person to come with or at least have advisers or some information of the cultural practice. If you come with no knowledge at all I would be questioning whether you are a suitable person for that job, because you are going to make an important decision over a child and a family. Either you are well aware of the cultural practice and you can explain legally that this is a cultural practice because you know and understand the cultural practice, or if you cannot then you should not be in that position.

**Mr McARDLE:** Thank you, Aunty Ivy. My last question is to the department. In terms of the process outlined by Aunty Ivy and the word 'complicated', how will that be captured by the person who provides a statement with knowledge of the cultural history in the circumstances before the commission?

**Ms Parton:** The purpose of the process is not to question the cultural practice; it is for the commissioner to be assured that the cultural practice has occurred in an appropriate way. Clause 11 of the bill states that the commissioner would be a Torres Strait Islander who is appropriately qualified to take on that role, so they would have a background in how that practice occurs in community. The purpose of the office supporting the applicants is, I guess, to document their statements so that the statements can be made to the commissioner in a way that will help satisfy the commissioner around those criteria. Did you have anything to add?

**Mr Kidd:** Only that there is the mechanism of the informed person nominated by each family group to attest to the nature of the cultural practice.

**CHAIR:** Aunty Ivy, I do not like what-ifs, but what if a child does apply and talks to his birth parents and both parties do not agree? What is the next step if both parties do not agree: one agrees—the child agrees—but one might not?

**Ms Trevallion:** We have discussed the possibility of that happening. We would have to ask them to go back and sort that out themselves before they come back. It will be better that way.

**Mr HUNT:** A lot of those questions were answered, but can you unpack the discretion around seeking the criminal history? Whose discretion is that? Why would they do that? What consent do they need to do that and how can they use that? What are they looking for? Could you unpack that section for me?

**Ms Parton:** Certainly. The criminal history check is there as a safeguard. The commissioner has the option of requesting a criminal history check as part of the process. The commissioner might do that, say, if they have concerns that are raised in the papers that are submitted. We will be working into the procedural documents, when we develop those up for the commissioner, some more information about those circumstances. The applicants give permission for criminal history as part of the application process, so that is up-front.

**Mr HUNT:** Do they have to tick that box?

**Mr Kidd:** Yes. They will need to consent to the fact that there can be a criminal history check process. It is discretionary.

**Mr HUNT:** If the commissioner decides that that process goes through, they would need a reason to do that? That would not be standard?

**Ms Parton:** That is right, yes.

**Mr HUNT:** If the person seeking the application is worried about that or will not tick that or consent to it, the application stops there; is that right?

**Ms Parton:** That is right, yes, if they do not give their consent. It is part of the application process.

**Mr HUNT:** I think I can cover some detail later.

**CHAIR:** We will suspend the public briefing. I thank the department. Aunty Ivy, I ask you and the members of the committee who are online to stay online for a private briefing. I thank the department staff for your contribution today. It is the first step for us as the committee. We look forward to working with you as we progress through the consultation process, sitting down with the communities and hearing from people. We appreciate your time today.

**Proceedings suspended from 11.30 am to 11.55 am.**

**COSTELLO, Mr Sean, Principal Lawyer, Queensland Human Rights Commission**

**McDOUGALL, Mr Scott, Commissioner, Queensland Human Rights Commission**

**CHAIR:** Welcome. I ask you to make a brief opening statement before we move to questions.

**Mr McDougall:** Good morning, Chair and committee. I would like to start by acknowledging the traditional owners not just of this country but also of the Torres Strait, and pay my respects to their elders past, present and emerging, and in particular to Aunty Ivy Trevallion and also the other elders in the Torres Strait who have worked so tirelessly for decades to get to where they are at now with this bill. Some 30 years ago I was a law clerk at Injinoo Community Council on the tip of Cape York and this issue was an issue then, in 1990. It is great to see it finally being resolved hopefully through this bill.

It is somewhat unusual for the commission to be involved in the consideration of a bill at this briefing stage, I have to say. We received the bill in its current form just last week, so we are still working through it. To the extent that we are not able to give complete answers, I will take questions on notice or perhaps address them in our submission that we make.

The compatibility statement notes that several rights are engaged in the bill, including recognition and equality before the law, freedom of expression, noninterference with the protection of families and children, taking part in public life, property rights, privacy and reputation, cultural rights and the right to a fair hearing. The bill limits these rights, including by formally recognising, altering, creating and dissolving family relationships, including relationships between a child and their birth parents and between a child and their cultural parents. The government seeks to justify these limitations on the basis that key provisions of the bill seek to uphold the cultural rights of Torres Strait Islander peoples, which are now protected in Queensland under section 28 of the Human Rights Act, including by providing the child the benefit of formal legal recognition of their traditional child-rearing practice which currently occurs but without that legal recognition. The bill is also consistent with article 38 of the United Nations Declaration on the Rights of Indigenous Peoples, which declares —

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

The explanatory notes provide a brief outline of the consultations that have occurred with the Torres Strait Islander communities. I note the evidence earlier that there were major consultations in 1993 and in 2011 and 2012. I understand that the committee may be travelling to the Torres Strait to receive evidence, so I certainly would encourage that to hear firsthand from those who stand to benefit from the new laws.

Subject to our final submission and any submissions that might be made by the Torres Strait Islanders, my preliminary view is that the bill enshrines important legal recognition of island custom and, whilst limiting various rights, contains sufficient safeguards to be considered compatible with human rights.

**CHAIR:** I might take you back 30 years to your position in the cape. What were some of the obstructions or structural barriers you saw then? How do you think this bill will address some of those barriers going forward?

**Mr McDougall:** Whilst I was there I was working with the council to help them draft by-laws under the Community Services Act. The focus of my work was not this issue, but certainly from time to time people came to the office and raised concerns. They were primarily around the birth certificate issue and occasionally around inheritance issues, people being involved in car accidents and having personal injury claims, compensation and so forth. It was a real issue then. I was unaware of the background until this morning and the history from 1965 to 1985. It makes sense to me now that between 1985 and when I was there this started to manifest.

**CHAIR:** I know it is early days from the Human Rights Commission's point of view, but do you think the proposed bill adequately protects the rights of Torres Strait Islander people? Do you have a view on that at this stage?

**Mr McDougall:** We will deal with this in our submission in more detail. Overall, as I mentioned, there are certainly a number of rights that are engaged by the bill. The bill does have a number of protective measures built into it. For example, there is the requirement that only a court can dispense with consent. I think that is an important safeguard. There are a number of other safeguards built into the bill. I think it is fairly well balanced.

One issue that did come out of the evidence this morning—and a couple of members drew this out—was the simplicity and access to the process by people. I know from the experience of the commission itself, in the low number of complaints that we receive from Indigenous people across Queensland, that a requirement that a written application be made in and of itself is going to be an obstacle. Adding the cultural overlay, the sensitivities and emotional issues that Aunty Ivy spoke so eloquently of represent a significant potential barrier.

I understand from the evidence of the department this morning that the intention is that it will be DATSIP that provides assistance to people to make those applications. I would have a question about that. From a privacy point of view, I think that raises issues. From a pragmatic point of view, I think it is going to be highly dependent on the levels of trust between the community and DATSIP officers that they would actually go through with that. A better approach might be to give the commissioner not just the power but also the responsibility of assisting applicants to complete the application and not necessarily requiring that it be in writing.

That is a similar provision to what is now contained in the Human Rights Act where the commission has a duty to assist people who are otherwise unable to make a complaint. I think a similar provision could be inserted to assist Indigenous people. For example, to respond to that at the commission we have created a new process now of recording conversations by audio and using that conversation as a technical complaint, provided that an email is received confirming in writing that the complainant is happy with the recording.

**CHAIR:** This is historic. We have never had cultural tradition incorporated in law. I do not know whether you can talk to that point. I believe this is a first for the nation of incorporating traditional language. How important is that going forward?

**Mr McDougall:** I might give Sean a turn to talk about cultural rights recognition, but it certainly is historic. Although the right to self-determination is not protected as such as an enforceable right under the Human Rights Act, recognition and giving legal recognition to this longstanding cultural practice is certainly a strengthening of the right to self-determination of Torres Strait Islander peoples. It is historic. The people who worked so hard for 30 years to get to this point should be congratulated.

**Mr Costello:** I cannot comment specifically on whether this is the first legislation that has adopted cultural rights in the country, but I would observe that Queensland is now one of three jurisdictions in Australia that has explicit recognition of cultural rights in a human rights piece of legislation—the charter in Victoria and the ACT Human Rights Act. In preparing for today, I was having a look at how often the United Nations Declaration on the Rights of Indigenous Peoples, which, as Scott says, informs how those cultural rights are protected for Indigenous peoples, had been cited by, for example, the Scrutiny of Acts and Regulations Committee in Victoria. I found only one reference, which was regarding a bill that had been introduced into that parliament regarding a pathway to treaty process. That gives you an indication how often the UN declaration has been used through a process like this in Victoria. As I said, I could identify only one recent example of that.

The declaration is cited from time to time by the Joint Committee on Human Rights of the Australian parliament. As you suggested, Chair, I cannot recall a piece of Commonwealth legislation that adopts this sort of cultural practice into law.

**CHAIR:** It is indeed historic.

**Ms PEASE:** Are there any potential human rights issues around the child being taken because of a cultural decision? I know there probably is not. I am just trying to understand if there might be.

**Mr McDougall:** The rights of the child are central under a number of conventions and in the Human Rights Act. The bill does recognise that and it is reflected in the criteria that the commissioner has to use in making a decision. The rights of children are absolutely engaged by this bill. The question is whether the limitations on the rights of children can be reasonably justified. Again reflecting the safeguards that are built into the bill, overall it would appear to be compatible and justifiable.

**Ms PEASE:** The department talked about the fact that, because of the confidentiality of the issues, information would not be available under a right to information process. Are there any potential human rights conflicts with regard to that? What rights would a child have to be able to access the information about their biological parents?

**Mr McDougall:** Sean might want to elaborate on my response. As I understand it, the child would be able to access the information under the process when they turn 18. That mirrors the process under the Adoption Act. That applies to all adopted children, as I understand it. I did notice in Aunty Ivy Trevallion's evidence that she referred to a practice of telling children at the appropriate time. The beauty of the bill is that it does respect traditional custom by letting it take care of itself. No doubt that will occur. To the extent that a child is aggrieved and not being told by their cultural parents who their birth parents are, if that is the case, then that is potentially problematic, but they will be able to address that when they turn 18.

**Mr Costello:** The only thing I might add by way of background is that freedom of expression under the Human Rights Act includes the right to receive information. This is often the foundation for the legislation you talked about such as the Right to Information Act. Obviously that right to receive

information is being limited by the bill, as Scott said. As Scott has spoken of and as the department has spoken of today, they are seeking to justify that limitation on the basis that that is respecting the cultural rights and the way in which the practice is undertaken at the moment.

**Mr HUNT:** You would have concluded by the questioning in the last session that I share your concerns around the administration of this in terms of application forms and departments and the reluctance of people to deal with government. I was interested to hear your comments about verbal complaints being able to be made. As we move through this process, I hope we can make improvements in that regard. We could possibly have a commissioner travelling between the islands and have a day of accepting verbal evidence, making it hard for them and not the communities. I am interested in your comments around that.

Does the commission have any issues with the requirement for people to consent to a criminal history check? Given that the presence of a criminal history does not prevent one becoming a parent, do you have any issues around the human rights of a person having to consent to that in order to engage in this cultural practice? I assume it would not be a requirement of the cultural practice and the community itself would determine the suitability or otherwise of the parents involved.

**Mr McDougall:** Again, I think it would be interesting to hear from Torres Strait Islanders themselves on that issue and how big a concern that is to them. On the face of the bill, it would seem to be a safeguard to protect the rights of children. Taking the bill as a whole, I think that is a proportionate requirement in light of the potential risks to children.

Another aspect of that criminal history requirement is the procedural fairness provided to an applicant to respond to their criminal history. Criminal histories will routinely refer to offences that may seem very alarming, but when you dig down into what actually occurred it may not be so alarming. Giving applicants an opportunity to respond to anything adverse in a criminal history is an important part of the bill that is built in.

**Mr HUNT:** In practical terms, how might this operate if a criminal history check is obtained, the commissioner has concerns about the parent and the application is rejected? I assume the community would still go ahead with that cultural adoption. Is there a mechanism for the commissioner to inform the community that is going to make that decision ultimately culturally of their concerns or is that a private matter and they would say, 'The application is denied, but we cannot tell you why'?

**Mr McDougall:** That is an interesting question. It is not something I had thought about when I read the bill. Sean, do you have any views on how that might work?

**Mr Costello:** It might be more a question for the department. I recall this morning they talked about the fact that any of the public servants involved in this process would be subject to their usual obligations in regard to child safety. It might be that one of those obligations might be engaged, depending on the nature of the concerns the commissioner has.

**Mr HUNT:** I might explore that more with the department.

**CHAIR:** Member for Rockhampton, do you have a question?

**Mr O'ROURKE:** No, thank you. Thank you very much for being in attendance today.

**CHAIR:** I think I have enough information to start with. We look forward to receiving your submission. Human rights is obviously a vital point. After we receive the submission from the Human Rights Commission we might have further questions for you. I thank you both for your attendance and for your patience today. As you have both identified, this step is historic in a cultural sense. We look forward to working with you going forward with this bill. I declare the public briefing closed.

**The committee adjourned at 12.14 pm.**