



# ***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  
Ms JE Pease MP

**Staff present:**

Ms L Pretty (Inquiry Secretary)

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

### **TRANSCRIPT OF PROCEEDINGS**

**MONDAY, 3 AUGUST 2020**

**Townsville**

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### **The committee met at 4.40 pm.**

**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 meet today, the Bindal and Wulgurukaba people, and recognise their continuing connection to land, water and community, and I pay our respects to elders past, present and emerging. I would like to thank Brenton Creed, who is going to do a welcome to country, and then Father Elimo Tapim for an opening prayer. Brenton, would you like to start with your welcome to country please?

*Mr Brenton Creed then gave a welcome to country—*

**CHAIR:** Thank you, Brenton. I now invite Mr Elimo Tapim to come and do an opening prayer.

*Father Elimo Tapim then prayed—*

**CHAIR:** Thank you, Sir. Ladies and gentlemen, I am Aaron Harper, the chair of the committee and member for Thuringowa. Other members of the committee joining us today are Mark McArdle, our deputy chair and member for Caloundra; Michael Berkman, member for Maiwar; and Joan Pease, member for Lytton. The committee is a committee of the Queensland parliament and, as such, represents the parliament. 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 the member for Cook, Cynthia Lui, introduced the bill into the Legislative Assembly. Ms Lui agreed that the House treat the bill as a government bill.

For generations island custom child rearing has been practised by the Torres Strait Islander people of Queensland where the responsibility for raising children is shared with family and close friends. This tradition is deeply connected to Torres Strait island culture and involves the giving of a child by its birth parents to cultural or receiving parents who assume responsibility for the child. For many years Torres Strait Islanders have sought legal recognition of this practice to connect Torres Strait Islander people's cultural identity and lived experience with their legal identity.

The government has proposed a framework that will formally recognise Torres Strait Islander island custom. Today we are in Townsville to hear the views of the Torres Strait Islander community that live here. Please take this opportunity to share with us your thoughts and experiences about traditional child-rearing practice and, importantly, the proposal to recognise this in law. I ask that everyone respect the rights of others to hold and express their particular view. When speaking, please take care when referring to ongoing matters or naming children. This hearing is being recorded by Hansard and speakers will be provided with a copy of the transcript. Please also note that you might be filmed or photographed and images may appear on the parliament's website or social media pages. Please advise us if this is an issue.

### **AKEE, Mrs Angelina, Private capacity**

### **AKEE, Mr Leo, Private capacity**

### **TAPIM, Uncle Francis, Private capacity**

**CHAIR:** I welcome Mr Francis Tapim, a respected local elder and Torres Strait Islander. We will then open the floor to anyone who would like to speak publicly to the committee. Mr Tapim, we would like to invite you to share with us an opening statement at the table. I believe we can have Mr Leo Akee with you at the table and Mrs Angie Akee at the table as well.

Welcome and thank you. I thank you for joining us today. This is truly historic. The evidence you will give today in sharing your thoughts and experiences will help us table our report on this bill introduced into the parliament, but we can only do that by hearing and listening to you and your experiences. From the people I have spoken to outside, it is truly historic because we have never taken traditional cultural Islander language and placed it into a legislative framework, so we are now taking lore into law. It is something that I know has been fought for for years—for many decades—to get legal recognition of children. Mr Tapim, I might ask you to start because you have certainly significant experience in this field. I invite you to make an opening statement.

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

**Mr F Tapim:** Thank you, Mr Chair and committee. Committee members, welcome to Townsville on behalf of the Torres Strait Islander community. I hope this meeting goes the way that we think as Torres Strait Islanders for our traditional adoptions. Traditional adoptions started here in Townsville and Brisbane. They did not start in the Torres Strait, although the Torres Strait was living the cultural practices there. When our children came to the mainland, that was when the problem started. One was when they went to high school. Primary school was okay. They did not have to produce a birth certificate. When they went to high school they had to produce a birth certificate, and that is when the problem started. The adopted child then started asking questions such as, 'Why is my name different from my birth certificate?' That is where we started from in Townsville and Brisbane.

We had numerous meetings right around Australia about kupai omasker. We were on a working party of kupai omasker about 30 years ago. Uncle Steve Mam—he has gone now—was brought on to establish a working group for us to take it further to where it is now today. Today I am so happy to see the fulfilment of the hard work that we all put in to get this far. Every Torres Strait Islander back home and on the mainland and around the country—state or territory—has been affected by traditional adoption in some way or another, so it is very important to us that this bill goes through with the support of all members.

What I would like to see is: because there are two languages I want to see two commissioners. Because I am a Meriam man from the eastern islands, I am only qualified to talk about Meriam adoption; I am not qualified to talk about western island adoption. You need to have two commissioners that can understand the adoption system of both language groups.

Everybody in this room here has in some way been affected by it, and that is why you see people here today. They have come to listen to what has to be said and to make sure that the committee hears what we all have to say. If you do not understand the words, please ring us up, let us know and we will explain a bit more. I know the language is very hard for you to pronounce, but try your best and see if we can help in any way and we will be sure to give that assistance if we can.

There are other points in the bill that I fully well agree with. That is the thing that we are fighting for—kupai omasker—from the very beginning. I just want to see this bill be passed and, like I said, the committee members to assist in passing the bill for us. I will step back now and let Mrs Akee or Leo say what they want to say. Thank you.

**CHAIR:** Thank you, Mr Tapim.

**Mrs A Akee:** Thanks very much for that. My name is Angelina Akee. I am an Aboriginal and Torres Strait Islander descendant. I have been in Townsville all my life and my mother is from the Torres Strait, from Erub. I just want to say that I have been actively involved in the Aboriginal and Torres Strait Islander childcare agency in this community when we first started back in the eighties. The reason we started it was based on the same thing that we are talking about today—foster care for our children, adoption. Back in those days we had no legal standing in terms of our people, both Aboriginal and Torres Strait Islander people, fostering or adopting children.

I have been, along with Mr Tapim, around for a number of years and it was about 30 years ago when we met with Uncle Steve Mam in Brisbane and started the discussions around traditional adoption. I have also been involved with the national secretariat of mainland Torres Strait Islanders and this has been an issue at every one of our conferences, which were funded back in the days by ATSIC through the office of Torres Strait Islander affairs in Canberra. We have been around and the main topic has always come up on our agenda—that is, traditional adoption. I must acknowledge Father Tapim, because he was part of those discussions from an elder's perspective at our national forum, and anybody else who may have been attending those national conferences that we had to address traditional adoption as well as other issues to do with mainland Torres Strait Islanders.

In today's society our lifestyle has changed. When I went through the discussion points, I noticed from a cultural perspective in terms of child-rearing practices now down on the mainland and in the Torres Strait we have a lot of intermarriages—Torres Strait Islanders married to Aboriginal people, white people married to Torres Strait Islanders—and it causes a bit of a conflict when there may be a dispute about adoption. I certainly hope that the legislation that is going to be finalised is taken into consideration. In terms of the biological and the adoptive parents needing to come together for some sort of consensus, I firmly believe that there has to be a form of some sort of mediation between the Torres Strait Islander and the non-Torres Strait Islander spouse or partner with regard to giving up their rights to adoption because today we still have issues around adoption.

One of the things that I would really like to raise is: when a child is adopted out, do they inherit their parents' tradition, customs and land and sea and all this sort of stuff? That has been a big question with regard to children who have been adopted out and they do not have rights. I think it is

something that needs to be very clear in terms of traditional adoption. My understanding is that once you are traditionally adopted out you take on the adopted parents' name and you take on whatever happens in that family. I know there have been quite a few disputes with regard to having access and not being recognised as a Torres Strait Islander, because we do have a lot of Aboriginal children who have been adopted by Torres Strait Islanders as well. I would like to make sure that it is very clear in the legislation what rights these children have.

Given all of the issues we have around children and our youth such as crime rates at the moment, there is no sense of belonging. When I say 'no sense of belonging', they do not know their cultural rights in terms of native title and inheriting their lands and all of that sort of thing. Like I said, after all of the years that Mr Tapim and I have been involved in running national forums for mainland Torres Strait Islanders, I certainly hope that there is going to be a lot more consultation done with mainland Torres Strait Islanders, because over the years it has always been the case that whatever happens in the Torres Strait is it. However, there are more Torres Strait Islanders living on the mainland of Australia than there are in the Torres Strait and we need to make sure that any consultation includes people on the mainland—from the east to the west, the north and the south. We have people standing up there and saying that they are speaking for and on behalf of Torres Strait Islanders. You cannot talk for people who have not given their consent for you to talk for them, especially around issues like we are talking about here now such as traditional adoption.

I also want to raise the issue that cultural parents means their cultural practices as current have been verified by persons with knowledge and understanding of the cultural practices specific to the family's community. It comes back down to the fact that a lot of our mainland Torres Strait Islanders live on Aboriginal land. They also acknowledge our traditional owners, never mind where they are in this country. Mainland Torres Strait Islanders have made a large contribution to society, especially in Townsville through the railways and canefields and stuff like that. The generations of those histories are handed down to children. What do we do now, once we become legislated and we have the rights for traditional adoption? What happens to the children or men and women who have been adopted out? They are some of the questions that people are actually asking. Do they go through a process now of being under law or is it going to be recognised as lore in terms of these young people and young adults and adults who have gone through that process in past years?

Like I said, I have been around for a number of years and I have been supportive of the traditional adoptions through Mr Tapim, Uncle Steve Mam, Belzah Lowah and McRose. They have always given reports and we have always supported through those conferences the issues around traditional adoption, but children have rights and I think those rights need to be adhered to right up until they turn 18. If there are issues or fallbacks that may occur with these children then I certainly hope that their guidance is going to be through the elders that can determine, I suppose, any issues that may arise through their traditional adoption. Thanks very much for that.

**CHAIR:** Thank you very much, Mrs Akee. I do believe the explanatory notes talk about retrospective adoption being considered. I think the department did provide us advice that they expected a significant amount to go through that process if the bill is passed. That should take care of some of the things that you raised. Thank you very much for your contribution. We might move to Leo.

**Mr Akee:** Thank you very much for having us here today. I must say that I was quite pleased from our initial meeting with you the other day. I was very impressed. I would also like to acknowledge my heavenly Father for giving us this opportunity by sending Jesus Christ, because without his intercession on my behalf with the Father I would not be here today, so I am really grateful for that. I am also grateful for our parliamentarian, Cynthia, for introducing the bill to parliament. Since 23 August 1957, when our elders first had their meeting at Masig on Yorke Island, it has been quite a long number of years. You heard my brother Francis say that it has been 30 years since the initial discussions on kupai omasker. I just want to encourage the panel that we do not want to wait another 30 years, because our children and grandkids and great-grandkids have been born in the new millennium and since 1957 we have been waiting. We have been offered autonomy, we have been offered greater autonomy, we have been offered a new deal—so much so that we in 1988 cried for independence, purely because we were quite unhappy with what was happening at both the federal and the state level as to where we were going as a nation of people. Here at this time, please ensure that the people in parliament can understand that it has been quite a long wait and we want to see some form of genuineness and trust from the Queensland government to ensure that we as a nation of people have our voices heard.

I want to thank Francis, Uncle Steven and Mrs A for the work they have given in the lead-up to enable us to be here to discuss kupai omasker. I want to thank my family sitting behind me for coming today and for the opportunity to hear the panel on what they have to offer us. In saying that, like Mrs A

was saying, our fathers also contributed to the economy of Queensland. They made the sacrifices to enable us to be here—to pave the way for our employment, pave the way for us to stay on the mainland—and now we want to see some results from all their hard work. Thank you for hearing us, and I hope that you can also hear us and take that to parliament. Thank you.

**CHAIR:** Thank you very much, Mr Akee. Before I move to a question, I think it would be remiss of us not to recognise the work of the Kupai Omasker Working Party and the significant years of work in getting this to where we are now, which will be on the parliament floor bringing lore into law with recognition of child-rearing practices in the Torres Strait. I will place on record that you all came and saw me as the local MP and I found that very informative. Thank you for bringing the material, too, because I shared it with fellow members of the committee to do some pre reading before we had the opportunity to meet you. I found that invaluable the other day, so thank you so much. I apologise if I do not get all the pronunciation correct but I am doing my best. Thank you for your patience.

Mr Tapim, you touched on the differences in culture and language amongst the Torres Strait island communities—the eastern and the western—and how they might differ with child-rearing practices in adoption. Some are blood line; some are through marriage. Can you unpack for the committee how they might differ in the different island groups to help us better understand?

**Mr F Tapim:** I can only talk on eastern island, Mer. In Mer culture it is through the blood line. When we say 'blood line', if I am the brother, Mrs A is the sister and Leo is the child and Mrs A as my sibling has no children, we agree—brother and sister agree—to adopt Leo. That is what we mean by through blood line, because we are related through blood. We are siblings. We are first cousins. Cousins are recorded in that with siblings. I do not know what the western islands adoption is. The western islands can expand that themselves. That is why I said you need to have two commissioners to identify which it is.

**CHAIR:** I think it is very poignant that we identify there are two different languages and two different child-rearing practices. I do not know if anyone in the room can represent western islands, but we might be able to ask them to come up after you have concluded just to better inform the committee. I think that will be important. Thank you for that. I might open up to questions from the committee. Would anyone else like to finish off on that point?

**Mr Akee:** I would like to say, with respect to lore, it would be for protocol purposes that the white man's law fits into our lore rather than the other way around.

**CHAIR:** Yes, good point.

**Mr Akee:** Otherwise we are just going to lose the context of our practices.

**CHAIR:** Excellent point. Thank you very much.

**Mr F Tapim:** By the same token, do not lose the intent of being cultural; otherwise, it would go to too much of a law instead of lore. The intent has to be traditional adoption.

**Ms PEASE:** Thank you very much for coming in and thank you for your dedication and keeping along with such an important process. It is to be admired. I am sorry it has taken so long to get to this point. You talked about how many of the Torres Strait Islanders leave the islands and come to the mainland. Does the cultural practice continue on the mainland in exactly the same way?

**Mr F Tapim:** Yes, they do. It does not matter. Wherever you are, you are a Torres Strait Islander. If you are in Western Australia, you do the same thing as Torres Strait Islanders. Whether you are a Meriam or you are a Kaiwalagal, it does not matter; you are still a Torres Strait Islander of that particular area.

**Ms PEASE:** Mrs Akee, did you want to say something to that?

**Mrs A Akee:** Just reflecting back, when the Torres Strait Islanders came down for work they looked after one another. They brought their families down—I am talking about the men—to work the canefields and the railways, so their contribution is highly regarded as making their contribution to Townsville and throughout the state.

I just want to also add that before colonisation the British did not want to recognise Aboriginal and Torres Strait Islanders so what they did was make us wards of the state. That came out of your own records. It is something to look into because that 'wards of the state' took me back a bit too when I read it, thinking, 'Well if the British people did not want us, it is our country—our land—and yet they made us wards of the state.' Unbelievable.

**Mr BERKMAN:** Thank you so much. I really appreciate everyone being here today, especially what we have already heard so far from you three folks. It is a really important point that you made, Mr Akee, about prioritising lore in this kind of combination of the two. One of the things that has been

raised in some submissions is a concern that these processes might be too burdensome—that in the application for recognition of cultural adoption there is lots of paperwork involved and there needs to be some good mechanisms in place for somebody to actually help plot a course, to help work through all of that stuff. Some of the submissions suggested that could be the commissioner, and I am fascinated at the idea that we need two commissioners to accommodate the different practices, but I will talk about a commissioner just for simplicity's sake. Some suggested a commissioner might help with the application process. Some suggested it might be DATSIP and officers of the department that provided that assistance. Other submitters have said that it needs to be independent legal advice from ATSILS or one of the other legal services. Do you have a view on which of those bodies or who else might be the best placed organisation or people to give assistance when people are making applications?

**Mr Akee:** I think what should happen is that once the commissioners have been appointed and the aspects of the act or the policies have been developed the commissioners should be then responsible to get a group of people together—people like myself who have worked in government, and high up in government, and are quite able to write documentation. Like I was saying before, if law is going to be integrated into our lore we need to ensure that the context is not lost in white man's vocabulary. Certainly we can still write the document, but it will suit our purposes so we do not lose the true meaning of it.

**Mrs A Akee:** I firmly believe that there has to be a period of time for both the parents to finally make up their minds whether they want to go down that track. If you are talking about law, you are talking about the legal service. The legal service has only one office, and that office is in Brisbane. Everything seems to be in Brisbane instead of up here in the regions, where we need it most. When you talk about DATSIP, you have to make sure you have Torres Strait Islanders employed in DATSIP. We know that some of the offices do.

It is not just about filling out a form; it is about ensuring they understand the white man's English in terms of filling out those forms and making sure they are filling them out properly. When we have anything in this community in regards to compensation claims or anything like that, we have to sit down and really explain what is on the application before the people sign off on it. I firmly believe that there needs to be an office of mainland Torres Strait Islanders in key regions—Cairns, Townsville, Rockhampton, Mackay or wherever—and Brisbane. Like I said, for people to get access to services they have to go through Aboriginal and Torres Strait Islander services, and people in those services do not fully understand either.

I would like to see something like an office of Torres Strait Islanders set up in the regions so that people can feel free to come along. They have their office and they can talk about it. In terms of legal, yes, some funding needs to be set aside for them to have legal rights to a solicitor to interpret the legalities around traditional adoption or adopting in terms of handing their children over. At the moment, a lot of our young girls are having babies and automatically giving them to their grandparents, mums or a family member without taking on that responsibility. They think they can go back in five or six months and take the child back because they want money. Here we are talking about a legal avenue for people to traditionally adopt their children out. Like I said, if you want to set it up properly you have to support us setting up a mainland Torres Strait Islander organisation so that Torres Strait Islanders can come and feel free to sit down with somebody in the office who can help them. Language is a problem for a lot of our people as well—especially elders, who do not understand the jargon in terms of the legal aspects of the application. You really do need someone who can interpret that.

**Mr BERKMAN:** Do you think that kind of legal assistance, like Mr Akee said, could be provided through the commissioner or commissioners, or do you think separate legal bodies are better placed to provide it?

**Mrs A Akee:** It could be both, but I would prefer it to be in the community before it goes up to the commission. Then the commission has the right to discuss it or have further discussions around the application.

**Mr Akee:** It would be great to have a separate body attached to the commission. There are birth certificates or forms that have to be updated—not so much to ask for details but in terms of a tick box that says, 'Have you been traditionally adopted?' and perhaps a section that refers to the commission for further details. You would not be keeping the records in a normal register. It would be just like when you apply for a blue card. You have a commission that oversees the blue cards.

**Mr F Tapim:** When you look around the country, there are Torres Strait Islander people everywhere. They are all Queenslanders because they left the islands and came to live here in Queensland. Then they went from here to other states and territories but they are all Queenslanders.

The majority are Torres Strait Islanders are living on the mainland as opposed to back on our lands. The majority of us here live on the mainland. Whatever happens, we want two commissioners to be established here on the mainland. When people come down from the islands—they come here for education and a different lifestyle—it becomes our problem on the mainland. We have to try and find places for them to stay, try and get them a good education and housing—the whole lot.

I support what Mrs A was saying about an office for Torres Strait Islander affairs. That is probably one of the best things that could happen here for Queenslanders—to show the other states that Queensland has got its act together for Torres Strait Islanders. If this legislation is going to go through, I am confident that countrymen from all the other states and territories would want to come back to Queensland to be part of traditional adoptions. What is going to happen there? That is where an office of Torres Strait Islander affairs in Queensland would come in handy, with the commissioners sitting in a Torres Strait island office to determine and deliberate on our issues.

**Mr BERKMAN:** Mrs Akee, you spoke about how there might be some second-guessing of a decision, particularly by young mothers with babies who go off to adoptive parents. One of the submissions raised a similar issue and some concerns that what the bill proposes would only allow an application for recognition to be made where both of the birth parents are adults. The submission said that it would be preferable if there was some kind of formalisation of that arrangement that could be made before a person reached the age of majority. For example, if a young mother has a baby at 15, there is this three-year window where still there is no formal recognition. Do you have any thoughts about what should be done with children born to younger parents?

**Mrs A Akee:** When you look at young children having babies, they need a bit more time before they give up their rights. They go through a nurturing period with the mothers or the grandparents or the aunts. The young mum herself will identify whether she can cope or cannot cope. That is a decision she has to make—along with the father of the child—as to whether they are giving up their rights to traditionally adopt that child out to an aunty, a cousin or whomever in the family line.

I also want to touch on birth certificates. From an Aboriginal perspective as well, we want birth certificates to identify their birthplace—the country they come from. A lot of our people today have to go in to TI but they may come from an outer island. It is the same with an Aboriginal community. They go into Townsville Hospital, Rockhampton or wherever, but they do not actually identify on the birth certificate their birthplace. That is something that needs to be looked as well in terms of identifying where children originally come from.

**Mr McARDLE:** I apologise for my ignorance up-front. I hope you can help me. You made a comment, Mr Tapim, about two commissioners. Only one is proposed in the bill. When we had a hearing in Brisbane we were advised that that commissioner would be based in Cairns and would have an office in the Torres Strait. What happens if you have an application from two sets of parents based in Brisbane? How is that dealt with? I think Mrs Akee mentioned that there should be a series of registries available down the eastern seaboard. Do you see the commissioners having to travel throughout Queensland to assist in relation to an application? More importantly, should there be more than one commissioner—one based in, say, Townsville and one in Brisbane? How do we deal with that issue?

**Mr F Tapim:** I said earlier that it started here on the mainland—the kupai omasker. If you are going to establish it in Cairns, we are down here and we cannot get anything from there because people are looking up to the straits, not looking down to the mainland. If you have it central somewhere, you get two. The two need to get together. If they get an application from a western islander, they need to sit down and talk about the western island application to verify whether it is through the particular western island adoption process or not. It is similar to an eastern island.

That comes back to the photograph that I gave to the chair. He has explained that he presented that photograph to you all. I was sitting on a bench with the chief justice of the Family Court, Alastair Nicholson. I was a member of the kupai omasker. I was on Meriam land, an eastern island. When we sat on a bench on those different islands, we had a local elder on a particular island sitting on the bench with me. The chief justice asked him if that was the true adoption process of the western islanders. He said yes; he agreed. He asked me. I said, 'Well, he is from this community and he is a westerner; he knows the western islands.' I went along with him and we said yes. We both agreed. Then the chief justice put the stamp on it and that was it. That is what I am saying about the two commissioners. Somehow we have to find a way for those commissioners to travel down the east coast, to make sure that if there is an application in Brisbane they can sit down and have a discussion about a particular family's application and then make a determination, yes or no. It is no good placing it up in Cairns; it needs to be right across the board so they can go in and out, even up to the straits. They need to travel.

**Mr Akee:** I would like to think that if you had two commissioners one would be based in Brisbane and one would be, rather than in Cairns, based in Townsville to cover Far North Queensland, from Mackay upwards to the Torres Strait. That would be the best way to look at it.

**Mr McARDLE:** One thing that is important to understand is that the application can only be made where all parties consent. You cannot have a contested hearing in these circumstances. Mrs Akee, you mentioned a cooling-off period. You wanted people to wait a little while after making an application before finally determining that they want to go ahead with the application; is that right?

**Mrs A Akee:** Yes, I did mention that. Like I said before, I was a founding member of and have been involved in AICCA for many years. I find the same process. When you foster a child it comes back down to the department, where they just pick up a child, take it off their parents and then place it. There needs to be a consensus—a time when both the biological and the adoptive parents come together and they look at ways to make sure that, in the best interests of the child, through education and right up until that child turns 18, they are going to be committed to doing things.

Today in our society, a lot of our kids do not fully understand what is going on in their lives. That is why we have such a high rate of youth going into youth detention centres and ending up at the big house. You feel sorry for them. They live in overcrowded houses. The whole structure of social gatherings and living standards has to be taken into consideration when you are going to be traditionally adopting. It is the way of the culture, how people live. It is an open door, so when families come into the household—you might have two or three families living in one household.

I am the chair of a housing organisation. We had a lady who came in one day and said that there were three lots of family living in a house. I asked, 'How many children are there?' There were about 12 children between them. That is not acceptable. This has been an issue around overcrowding in housing. When you have overcrowding you have all sorts of problems: alcohol, drugs, sexual abuse, physical abuse and all that sort of stuff. That is what I am talking about. Before they make the final decision, there has to be that mediation to make sure of the roles and responsibilities of the adoptive parents and the biological parents once they give the child up.

**Mr McARDLE:** One of the concerns I have—and Mr Berkman raised this—is that we are imposing a white man's system in regard to getting an application through on a culture that has been successfully undertaking this for 60,000-odd years. My concern is that once a white man puts law into place, over time the law just grows and grows and places more obligations on the parties and also more obligations on the courts. Mr Tapim, you made the comment that the former chief justice—and I recall seeing this on the news many years ago—had a panel of three. There were two cultural elders advising him then and there as to what was right and what was not right.

Simplicity, to me, would mean that that should be occurring here, as opposed to documents being filed and then being looked at by a third party. It takes up the point that you make: the differences in how you see family and how I see family. Unless we understand, by having somebody there on the bench at the time saying, 'Yes, that is right,' we could miss something. I get concerned that once the white man intervenes things get complicated very quickly. I would like to see a simplistic approach to this with a positive outcome. Do you have any comments you would like to make?

**Mr F Tapim:** We have done this for 60,000-odd years. All we needed was somebody to put that stamp on it and say, 'This is traditional adoption. We recognise this as traditional adoption.' That is all we want. What the process is going to be is—like you said, the two commissioners determining what is best for that particular child from that particular community or from that group of islands.

**Mr McARDLE:** Mrs Akee, do you have any comment on that?

**Mrs A Akee:** I want to raise the issue around how government works, I suppose, in terms of any new legislation that comes into play. I think one of the most important things is that, at the end of the day, it is the bureaucrats who take control. It is about educating them. It is not just about them sitting in Brisbane being educated; they need to go up to the islands, from east to west, so that they can see for themselves. We get a lot of phone calls from people who do not even know where the Torres Strait is, let alone wanting to sit down and make a decision about whether they are going to get the grant or not. That is the sort of thing that I would like to see. Whatever process is put in place, they must go to the Torres Strait. Then they must consult with mainland Torres Strait Islanders. In that way, they will have a fair idea when we are talking about custom, tradition, lore and the lifestyle Torres Strait Islanders live.

**Mr McARDLE:** Mr Tapim, you referred to the chief justice and the panel. You said he had somebody next to him to say, 'Yes, that is right.' Would you prefer that process, as opposed to the elder providing the evidence and the filing of a document? That is, the commissioner can turn to this person and say, 'Is this right?' and they say yes or no. Would that be a better way to do it, do you think?



**Mr F Tapim:** Yes, I think so, because the commissioner would be a Torres Strait Islander. The commissioner is more or less like a judge. That commissioner will have the powers to say yes or no and to sign the document. That is what I am saying. If we have two commissioners from two different island groups, both understanding where that traditional adoption comes from—which island—they can make that decision and put the stamp on it without talking to any third party, any bureaucrats or anything.

**CHAIR:** I thank our first three members for coming up and providing us with important information. We thank you for your contributions. If we have any supplementary questions, we will come to you and ask.

**ANU, Mr Ezra, Private capacity**

**BERO, Mr William, Private capacity**

**TAPIM, Mr Elimo, Private capacity**

**CHAIR:** Gentlemen, thank you very much for joining us.

**Mr Anu:** My name is Ezra Anu. I am from Saibai Island. I am from the crocodile and cassowary clan group. From a western island perspective in regards to island adoption, we hold the family circle as very important. In non-Indigenous family circles there is a mother, a father and two or three children. With our family it extends out to uncles, aunties and grandparents.

For our community, the waku, the mat that we play on and sit on, is regarded as an analogy of family and community. The strands are woven together which holds our family together. Our relationship with each other and other clan groups is very important and vital. This legislation will legitimise that lore in regards to our recognition of island adoption. I am a product of that. That means that we adopt inside of our totems.

My experience and what has been passed down to me is that one of my aunties was adopted to Erub, to Mr Joseph Lui Senior. My grandfather and Mr Lui were missionaries. That adoption was to build that relationship with other islands. So we have that connection to Erub, to the Lui family. With Saibai Island, our relationship is that we adopt inside of our totem, like Koedal, or crocodile. I have been adopted inside my totem. There is at times adoption outside of the totem. All in all, it is about building that relationship, as I explained about the mat—to make it stronger.

I know there are going to be legal implications. We need to think this through. I guess that is why you are here, putting your feelers out. What I would like to see with this legislation is that birth certificate should not have the name of the biological parents on it. That is my perspective. That would be good, because we know that when a child grows up he or she does not want to see that.

I myself had to change my name through deed poll to legitimise my name. When my adoptive parents died and it came to the estate, they died intestate. Apparently one of the parents had left a will which legitimised how we could divide the property. Because of island adoption, it made things difficult in dividing the estate. It makes it difficult when kids go to school and need proof of identity and when get a passport to travel. That is when you find out these things which are held very sacred. You are not to know of your biological parents. That is very sacred. With this legislation hopefully we can get past that. Sometimes a child is given to the grandparents to raise. It is about continuity of culture—where the culture is passed on to the child. The child becomes one of your siblings, so to speak, but is really your child. The idea behind that is to continue on and to make sure the culture lives on. There are some other practices for why adoption is in place. I cannot think of anything else.

**CHAIR:** Thank you so much for sharing your own personal experience. We know that this is often sacred and not spoken of in Islander culture. It is very important that you have been able to share your own lived experience. You did say that you had changed your name by deed poll. I just want to confirm that your suggestion was that the birth certificate should not have the biological parents' names on it but the cultural or adoptive parents' names on it.

**Mr Anu:** When people decide when they are going to adopt, it is through mutual consent before the child is even born. The parents sit down and they discuss it. They sit on that same island mat and they talk about, 'I want a boy child'—a 'boy child' meaning that the name of your family can continue. If you have only female children, a boy child is very important for that family. That child will be adopted to continue that name. The decision is made before the child is born. Once a child is born, it leaves the mother. The biological mother relinquishes all responsibility for that child. You bear the child and then you forget it. From then on it is sacred and you can never speak of that child.

We talk of commissioners and people sitting together to make decisions. Before they even get to that, people need to decide back here and it has to be through mutual consent, because families have adopted children and then they see the child growing up and say, 'I want that child back.' There have been instances where that has happened. We do not want that. Once you give the child away, that is it. It does not belong to you anymore, and that needs to be embedded in legislation. Whether we have a cooling-off period or not, I think once you decide at the very outset that you are going to forgo your child to another family that should be it—no ifs or buts, and you sign off there and then. I presume you are going to open up a can of worms there.

**CHAIR:** The way I read the explanatory notes is that the commissioner, or commissioners suggested by Mr Tapim, would meet in private with the two consenting parents—the cultural parents and the biological parents—very similar to Mr Tapim's earlier example of the chief justice bringing the

two parents together. I read that article. Everyone else left the room and it was very much a private conversation before the process of the application was made. That is because you have provided that to me. I think that was back in 1970 something. Thank you for that. Thank you for sharing that and for your contribution today. We will move to Elimo Tapim. Would you like to make a contribution, Sir?

**Mr E Tapim:** Just call me Elimo. We will leave ‘father’ to the ministry. I would like to introduce myself again. I am Elimo Tapim. I am from one of the little islands out from Murray called Dauar. My tribe comes from there—the Dauareb tribe. My totem is turtle—the green turtle—frigatebird and mackerel. That is on my dad’s totem. My mum’s totem is snake, Torres Strait pigeon and whale or dolphin. In talking about traditional adoption, I agree with what Mr Anu said. Before I continue on, you mentioned an application. Can you explain that a bit more?

**CHAIR:** In the explanatory notes it says that people who want to apply for legal recognition of adoption would put an application to the commissioner to consider, bringing the consenting parents—the biological parents and adoptive parents—together. That is the way I interpret the explanatory notes to the bill. They will make an application in writing or to see the commissioner to discuss legal recognition of the child.

**Mr E Tapim:** May I ask again how come we have to put in an application for that? Traditional adoption is normal. There is nothing attached to it. We do not make an application; we just make a verbal agreement. It is like what Francis here from the eastern Torres Strait said. We just make a verbal agreement. That is traditional adoption. Traditional adoption is adopting a child through blood line, not from anywhere or any place. Traditional adoption is through blood line.

Young people today must educate themselves to know their family tree so that when they want to adopt their children they have to adopt children through blood line. They know their family tree and where they come from. You cannot adopt children because they are a nice baby or are a fair skinned baby. No.

When we talk about traditional adoption, it has to be blood line. A perfect example is Mr Mabo. He won the case because he was traditionally adopted. His biological mother was his adopted father’s sister. That is why he won the case. If he was not adopted through blood line, he would not have won the case. It was because of that blood line.

Let traditional adoption be there as it has been practised. In one of the interviews with the QCs, Mr Mabo said our laws and systems were in place before white man came here. It is up to them. It is unique. I like to stress to everyone that we must practise, we must educate ourselves about what we are doing if we are Torres Strait Islanders. We can only identify ourselves by practising our culture properly, not by half. If you have it there, it is going to be like this all the time. I will never change. My culture is like that. I like to practise it. It is not only for me; every Torres Strait person has to practise that. We have to educate ourselves as to how we are going to do it.

I have kids. I adopted two. They had trouble with their parents, so the kids came over to my place. It was a girl. I said to her, ‘I can’t tell you to stay here because your adopted dad and your biological mother are brother and sister. When I do that, they are going to become enemies.’ It is not only that, but also adopting kids to inherit. There are many, many things involved. Like Mr Anu said, the family name is for up to when they leave home. People adopt children to inherit their land. People adopt children because they have nothing; they have no child. That is what the process is all about. Traditional adoptions have to be from a blood line. Adopted children anywhere—that is not it.

If a lady intermarries—so say a boy from Torres Strait married an Aboriginal girl—they cannot adopt children from his wife’s family. That is not traditional adoption, or if a Torres Strait Islander girl is married to a white fellow. I do not know what your boys did, but if a woman is married to a Torres Strait Islander and one day they adopt children, they cannot adopt them from the wife who comes from another area, another country. Traditional adoption is adoption through the blood line. That is it—no more, no less.

**CHAIR:** Mr William Bero, welcome.

**Mr Bero:** Hi everyone. I did not expect to be here. I grew up in Townsville. I have been back home on Murray Island and I have just come back. I have been back down south for two years now. Francis invited me to come along so I thought I would come along. I did not expect to be here to have a word with you guys. It is important that we understand words, especially for us Torres Strait Islanders and Aboriginal people. It is important we understand the legal terms in the English word.

There are a few things that I would like to bring up here. As dad has said, the key word is ‘cultural’. There are two different things here: cultural and traditional. If you have a look in Black’s dictionary, Butterworth dictionary and Webster’s English dictionary, they are huge books. Traditional

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means someone that has given away his land, and we know that has happened. Mr McArdle, you hit it on the nose when you said that once you put in a law it builds and builds and you cannot control it, so we have to be very careful about what we do.

As I said, there is cultural and there is traditional. There are two different things here. It is in the state's interest that we call it traditional, but in our interests, because it is cultural, it is in us forever—from our ancestors right through until now. In Meriam lingo we say 'ngay-boro', which is the absolute blood line through the fathers, and the adoption of that child comes straight in line because the adoption is—for example, my surname is Bero. My name connects me to the land. That is why traditional is a word that we have to be careful of, because I will lose my family's land.

The adoption has to be cultural because cultural still connects us to the land. In the case of dad's land, I know where the boundaries are—not quite right, but I know roughly where they are because it is the same blood line. I can walk on Dauan proudly because mum and them grew up on Dauan as well. That is where they grew up. For myself, in my family village on Mer we are Komet tribe, which is the largest tribe on Mer, on Murray Island. That is what I would like to mention to you guys. 'Ngay-boro' is the blood line that links the whole family to that land.

There are a couple of other things as well. Is anybody from the Legislative Council? That is another thing that is of concern. Through my research—I have a fight with SPER at the moment because they suspended my licence. In digging up the history, I found that in 1917 there was a referendum to abolish the upper house, which was the Legislative Council. In 1922 the Theodore government, a Labor government, abolished it. We have not had a proper government in Queensland for 98 years, from 1922 to 2020. How do we pass this bill to carry it into law?

**CHAIR:** Through this process. After the abolition of the Legislative Council it became portfolio committees. When a bill hits the House in the parliament, in the legislative chamber, the committees are then asked to go out and consult broadly and widely with the communities to take it back for debate. The role of council was to go out and do that.

**Mr Bero:** There is another thing as well. As Mrs Akee was saying earlier, we have to ensure that this is right. Grassroots people—for example, dad is sitting in here as well to negotiate the nuts and bolts of this. Without our input, the people's input, it would just be bureaucrats doing it and it will not work. It will just be a bill that we will keep stumbling over. That is about all I have to say to you guys.

I would like to express that again. Ngay-boro is that blood line that is from the grandfather to son and then to the grandson. It is that complete line. It encompasses everybody and it is connected to the land. That is what we have to understand. There are two words here: traditional and cultural. We are cultural people but we are given the title of traditional. It is not our title. We are Torres Strait Islanders. We are nobody else. We will never change for anybody else. We are Torres Strait Islanders and our culture is unique to us. How we share what we have learned from our ancestors all the way to now—we continue to carry that same culture. That is where we have to be careful that tradition is one that strengthens us.

**CHAIR:** Thank you very much.

**Mr E Tapim:** Like I say, we must educate ourselves. We say that we are Torres Strait Islanders. We have culture. We are different in culture. We have eastern group culture and also western group culture. They are culturally not different but similar.

As William just mentioned about 'ngay-boro', it is a male or a son because they are the ones that will carry on that name, the surname. You cannot call girls 'ngay-boro' because they will one day get married and they will have a different surname. 'Ngay-boro' is the male child who will maintain that surname and it will pass, like William said, from generation to generation.

That also comes down to the traditional adoption by name. I named my great-grandchild after my great-great-great-grandfather—'Koit' in our language. We call them coral trout. I named my great-grandson that name. People know this family traditionally. When they hear the name, they know he is from that family. This is part of the traditional adoption to maintain the name, to maintain the land—not only the land but also the sea. We also name our people the name of the reef alongside Murray. That is all I have to say.

**CHAIR:** Thank you very much. Mr Bero, just for your information—and it is good that you know the parliamentary history very well—in the drafting of this bill consultation meetings occurred in November-December 2018 with over 350 Queenslanders in over 30 locations including Thursday Island, Badu Island, Mer Island, Bamaga, Cairns, Townsville, Mackay, Caboolture, Goodna, Brisbane city, Carindale and other locations. A lot of work has gone in prior to the drafting of the bill and now it

is up to us to hear those final contributions as we table our report with recommendations going forward. Just to reassure you, a lot of work has happened, and that goes back to the Kupai Omasker Working Party. They put so much time and effort into this particular bill. We have copies of the explanatory notes here if you would like to read that. Are there any questions from any members? With that, I thank you very much for your contributions. I think I can safely say on behalf of the committee that we are already richer for listening to the explanation of culture and tradition. It has just been so informative. We are only starting our journey. We will end up in the cape in the communities of Thursday Island and Saibai.

**Unidentified Speaker:** Just with regard to retrospectivity and those who have been adopted, what happens there? Those are now adolescents and adults.

**CHAIR:** The way I read the explanatory notes, people now can come forward if they want to have legal recognition and, from my understanding of the explanatory notes, it is retrospective. The department of Aboriginal and Torres Strait Islander affairs provided advice in the first hearing. They expect quite a number of people to come forward. If they choose to go down that pathway, of course that is by consent of both the cultural and the biological parents

**Unidentified Speaker:** Those commissioners, will they be Torres Strait Islanders or someone informed in the culture?

**CHAIR:** The commissioners in the draft bill have to be Torres Strait Islanders.

**Unidentified Speaker:** Thank you.

**CHAIR:** I thank all three gentleman for their contribution.

**AKEE, Ms Helen, Private capacity**

**PHINEASA, Mr Rick, Private capacity**

**TAPIM, Mrs Daphne, Private capacity**

**Mr Phineasa:** My name is Rick Phineasa. Mum was from Murray Island—from Mer Island. This is our Meriam Komet tribe. Dad is from Mabuiag, which is the Wagedagam tribe. This is very interesting so thank you, everyone. I am so happy to be here. Thanks especially to the elders who have spoken before me and the participants in this exciting time. In these unprecedented times I think it is excellent, and it is a wonderful opportunity that the lore, as we have spoken of, is being captured or merged with the law. I think Uncle Leo hit it on the head when he said that we cannot lose the integrity of that.

This is a quite personal thing for me [REDACTED]

[REDACTED] because culturally, with the pendulum swinging into contemporary times, because we are living in a contemporary setting for us Torres Strait Islanders living down here in Townsville, it will be interesting. The commissioners, to keep the integrity, have a crucial job. In the future to come possibly brothers and sisters from Aboriginal land will take this concept as well because it is practised in other places like in the NT and those parts, Arnhem Land and other various parts around Australia. It will be interesting to see how this develops into the future.

The thing I have with this is the contemporary aspects of it. I know Uncle Ezra mentioned, which was a great point, that traditionally you cannot tell the child who the parents are. We find in the contemporary setting that it has to be revealed for their health and wellbeing. There is a balance that needs to be struck. [REDACTED]

I think it is great that this has been put forward because this is literally closing the gap of understanding— [REDACTED]

There should be some transparency from law and lore to see how the framework merges. If there are any amendments moving forward, that amendment should be clearly defined, captured and can be referred to the evolution of such acts and legislative requirements. It will be really interesting to see.

The commissioners are going to be crucial to have the jobs, especially in the straits. I notice you are travelling to the straits. You are doing Bamaga and you are doing the west, but there is no east. It will be good to see the east. I am glad that elders from the eastern islands have spoken, because some reasons are culturally similar but some are different as to why that happens. For example, if my brother was not able to have a child with his partner and I have a cousin who has another child, the brothers and sisters adopted their children to them so it fills in the gap for them so they have children. There are various reasons for that—some for traditional and then, depending how the pendulum swings, in the contemporary. Basically that is why the commissioners will really need to be on point; otherwise, if they take a law approach with a sharp instrument it might be perceived as blunt in the lore view. That is my point.

**CHAIR:** That was very well articulated. Thank you, Rick. We have been assured by DATSIP representatives that eastern island people will be coming over to Thursday Island. There has been a lot of groundwork and preparation. We would love to spend two weeks up in the strait. We are restricted to a couple of days, but we will try to get as many people as possible to come. Thank you very much. Just to confirm, do you want the naming of the children you just spoke about redacted from your contribution?

**Mr Phineasa:** Did I mention names?

**Ms PEASE:** No, you did not mention names but [REDACTED]

**Mr Phineasa:** Good point. Yes.

**Ms PEASE:** We might need to redact that, because this is a public hearing.

**Mr Phineasa:** Sure.

**CHAIR:** We will do that.

**Mr Phineasa:** Thank you.

**Mrs Tapim:** Thank you for the meeting this afternoon. First of all, we have four provinces in the Torres Strait. If we are talking about reps or how we are going to get this all together and how we are going to work together with the bill, I suggest that we get reps from the provinces. On the mainland it could be Cairns or Townsville because there is a high percentage of Torres Strait Islanders up in the far north, not down in Brisbane. Brisbane has all the money, yes. The commissioner could be in Brisbane but also have a floater. They could be reps from the four provinces. This is where you will get the information.

Around community consultation, there are more in Townsville who would be able to be here today. I just found out about this two days ago. It could be accessed in a lot of media. Our elders do not have access to emails; it is by word of mouth. A lot of the young ones are on Facebook. They can let their parents or their aunties know by word of mouth. If you want community involvement or consultation, it has to get out there a lot faster.

Is there a choice with this bill? Because we have practised this for thousands of years, is there a choice for the adoptive parents and the biological parents to not put that in and practise it like we have been practising it for centuries? That is one question. In relation to the definition of the words 'traditional' and 'cultural', I see a lot of policy that speaks of 'traditional'. To me, traditional is given to us or learned, like Christmas and Easter. When I saw this I said, 'We are talking about cultural adoption here.' Cultural is not born and bred. With this reform, that is our culture, our blood. That is about it so far. Can I come back?

**CHAIR:** Absolutely. I will just provide you with some more information. We are able to meet with the Aboriginal and Torres Strait Islander Corporation for Women tomorrow morning. Are you going to be there?

**Mrs Tapim:** Of course I am.

**CHAIR:** Thank you. Ms Helen Akee?

**Ms H Akee:** Hi, everyone and also my elders in the room—Uncle Leo, Aunty Mary, Brother Francis and all my other brothers and sisters who are here. I went through this document that I received from the chair today. I have just gone through the first part of it. I want to start with the commissioner. Because our region is eastern, western and central, I really feel that there should be three commissioners. The eastern also needs to incorporate the western and they have different cultural protocols. I really feel that the commissioner position should be extended. We have only one commissioner in here. It also states that the commissioner position 'may' be reappointed. That should state 'must' be reappointed after three years. I would be interested in looking at the interpretation act once the legislation comes out.

Previous speakers mentioned mutual consent. There needs to be mutual consent from both parties. In part 4, division 1, clause 32(3) talks about the cultural parents only. We have cases where there is a cultural parent and a non-Indigenous parent. That needs to be sorted out; otherwise, you will get into a lot of hot water, especially if you have claiming rights whether it is the father or the mother. I just feel that that needs to be brought out a bit more. I have worked for both Commonwealth and state governments and I have just finished a stint at the city council.

**CHAIR:** Can you just confirm what you were referencing?

**Ms H Akee:** Part 4, division 1. Clause 32(3) talks about birth parents and cultural parents. The birth parent might be Torres Strait Islander but the partner might be non-Indigenous. When I was working for Main Roads and Transport, I came across a case in regards to licensing—because you have to provide your birth certificate and documentation for licences or whatever—where the parent was non-Indigenous. In another case both parents were Indigenous or both Torres Strait Islanders but the name on the birth certificate was biological. It caused a lot of dramas. All these things need to be thrashed out. I am interested to see what is in the interpretation act after this is finalised, especially taking into consideration 'cultural' and 'traditional'. That should be in the interpretation act.

**Mr McARDLE:** Helen, you refer to the Acts Interpretation Act. What is your concern and how can that act help solve it, do you think?

**Ms H Akee:** If a case goes to court through the Family Court, there needs to be a stipulation in the interpretation act. The whole thing needs to be looked at, especially the wording. One brother here referred to 'cultural' and 'traditional'. What is the interpretation of the meaning of some of this Townsville

stuff? A lot of our people do not understand a lot of government speak. People like me and a few others are a little bit more knowledgeable. When we try to work this out, we have to go back to the interpretation act to get to why this was written. I am studying law at the moment in Victoria. I only just found out about the interpretation act, even though I have been working in government for that long. I never had the opportunity to look in the interpretation act, but now I know. Things like this need to be interpreted. One brother mentioned in terms of interpretation that your speaking is different to ours. I really feel that this commissioner's office should be somewhere in Cairns and that there should be representation from eastern, western and central. If there is one commissioner from Townsville, Brisbane or wherever, it needs to be made up of eastern, western and central. I know that with this legislation there is only one person there.

**CHAIR:** Thank you very much for that.

**Mr Phineasa:** That was a good point about the three-year period or an allotted time to get the adoptive parents and the biological parents to think about it. That is important because the point of adoption could be made beforehand or after. It is important that the mother—young ones are having kids now and I do not know the education around that—has a clear understanding of the time frames, because they would miss that. If the parent was a single person, the point of the adoption is important as well in regard to those time frames, whether it is three years, five years or whatever. It think three years is quite reasonable. That is important. As to the point of adoption, agreement in the family could be made beforehand or it could be made after. In my case it was after.

**Ms PEASE:** Rick, I want to elaborate on what you were saying about the time frame. Does that happen currently with cultural adoption? Does it ever happen that birth parents decide that a cultural adoption is going to take place and then they change their minds after the adoption has taken place? Is that even an option under the cultural adoption process?

**Mr Phineasa:** It will be interesting to see what everyone else says at the end of your journey. I think you had four points there and it was hard for me to follow. Can you say that again?

**Ms PEASE:** In regards to the discussion around providing time—a cooling-off period for example—either before the baby is born or after in your case, there is a period of time after the adoption initially takes place that the birth parents could change their mind and not want to put the child up for adoption. That is what you have sort of suggested might be a good option. Does that happen now in your cultural adoption process?

**Mr Phineasa:** I think generally speaking, no. Once the discussion has been made, that is it; it is made. I think if there were some cases where they have gone back on their promise, it would be an exception to the rule. I would say it would not be a common practice. The elders could correct me if I am wrong, but I think when that happens it is sealed and you cannot go back on that.

**Mrs Tapim:** I would like to add to Mr Phineasa there. I have been part of cultural adoption, so the answer to your question—and this is, again, my opinion—is there is no cooling-off period. That defeats the purpose of cultural adoption and our protocols and our practices.

**Ms PEASE:** And that is fine. It has just been raised a couple of times. That is why I was asking the question, to understand if it happens now.

**Mrs Tapim:** Yes. As biological parents and adoptive parents—and this is white man law, too—under the adoption law in Queensland or right across Australia—correct me if I am wrong; I am not a lawyer—you have up to five years to take that child back. That is under the Australian adoption laws, and I was privilege to that information from the Cairns office 18½ years ago but I am not sure if it has been changed or amended, so you might want to find that out please. In our cultural adoption laws, definitely no. You take on that responsibility when you take the baby. You take on everything, and there is no coming back.

**Ms PEASE:** Thank you.

**Mr McARDLE:** I want to clarify what you have just said. At the end of a cultural adoption process the adoption takes place, but up until that point can a person say, 'I've changed my mind,' before the final adoption process occurs? Can the biological parents say, 'No, I'm going to stop it'? Can that happen before the determination is reached?



**Mrs Tapim:** That is a discussion between the two parties and does not take a commissioner or anybody else. That is a conversation between the biological parents and the adoptive parents, and that has happened on occasions throughout my life. There have only been a couple, so it is not very often that it does happen.

**Mr Phineasa:** Yes, it is rare.

**Mrs Tapim:** Yes, but that is through a lot of talks. Again, it goes against our practices and our protocols. If we are going to go down that road, it does not change.

**Mr McARDLE:** So once you start, you cannot pull back?

**Mrs Tapim:** That is right.

**Mr McARDLE:** Okay. Thank you.

**CHAIR:** I thank all three of you. Elimo, did you want to say something?

**Mr E Tapim:** If parents are having a child and they change their minds, we have said that before. 'Ngay-boro' is the male child. That family can change their mind if they realise it is a male because that family wants a male child to inherit the name and the land. They can change their minds. In Murray Island we have three types of adoption. One we call (traditional language). Another one is ataruk. Another one is gobar. We have three types of adoption.

(Traditional language) is the one where if the woman is pregnant, whatever it is is mine, whether it is going to be a boy or a girl. That is (traditional language). There will be no changing there. Ataruk, which is another adoption, means if the child is born the adoptive parents want a girl or a boy. If it is a boy they are going to adopt him. If their wish is a girl, that is another one. Gobar ataruk means that the child is going to be there with their family, but the family that wishes to adopt that child are going to—how can I explain it? They will do everything, like, if they have money. Even if that family has a lot of kids, the other couple will just choose one or love one—only one—and that is what you call gobar. They only give him money or whatever, only for a certain child in that family. You still can be part of that family, without changing. That is Murray Island adoption. We have (traditional language), ataruk and gobar.

**CHAIR:** Thank you very much, Mr Tapim. Leo, you said the other day you could assist us with the language. I mean no disrespect in trying to understand that, but we do want to get a really good clarity, if you like, of those three different types of adoption. Would you be able to assist, Leo, in perhaps interpreting what Elimo has just said in writing, because I know Hansard has had some trouble trying to understand the language? I mean no disrespect; it is just going to provide far more clarity for us if we could get what you have just said in writing. Is that possible, Leo?

**Mr Akee:** Yes, that would be fine.

**CHAIR:** Thank you so much. Thank you, Sir. That was excellent.

**Mr Akee:** I just wanted to add something in support of Rick and what he was talking about there, [REDACTED]. There has to be something included in the act once it is drawn up about kupai omasker and it has to cover that period. [REDACTED]

[REDACTED] We have to ensure that our children do not fall into the western adoption system. It is the responsibility of the state to ensure that, as I was saying there, every aspect of kupai omasker is covered to ensure that its integrity and its cultural protocol is maintained and not changed. That is why it is important to ensure that the law works under our lore, to ensure we do not lose that integrity.

The other thing I wanted to mention is that the old social security system became an issue for us in the early days, and I think it is still in Centrelink as well. When they recorded names of our people, they recorded them as they would pronounce the name. There was a young girl I ran into on Horn Island many years ago and she heard my name. She said 'Akee'. I said, 'We might be related.' I said to her, 'How do you spell your name?' She said, 'A-H-K-E-E.' I said, 'I'm A-K-E-E, so we're probably not related.' Then she said, 'My grandfather used to spell his name A-K-E-E,' and it was only because social security when they sent the letters out they put the 'H' in as they pronounced it, and so that became an issue as well for our people. It was an issue because when they went to get the birth records, because social security recorded it wrong, their birth certificate did not match what social security had written on their records, so there was an issue.

The other thing is that we want to ensure that meriba kupai kaziw kazipa is separate to the western adoption system, not form part of it. That is what we are saying. Once the adoption process occurs, government has to recognise that. That is our system of adoption and it does not form as part of the western adoption system. Thank you.

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**CHAIR:** Thank you very much. You have raised some very good points, particularly when someone passes away in the family to keep that cultural passing down of the children with kin, if you like.

**Mr Akee:** With kin, yes, because I think as Daphne—and she can correct me there—mentioned about the cooling-off period, you can understand that we have grown up in the cultural system as we know it, but we have grandchildren and children born in the new millennia who have not been accustomed to that. That is why she is saying that our young girls grow up in various situations. They might have a kid when they are 15 or 16, so they cannot make a firm decision as to what they want to do. Because they are too young to look after the child, they have to—not have to but they will—hand it over to the grandparents to look after until such time as they are in a position to look after the kids themselves.

**CHAIR:** Thank you, Leo. Stay there, please, because I am going to need your assistance with submission No. 4 from Mavis Bani. I am going to hand you this and let you read it while Mr Passi makes a contribution and then perhaps, Leo, you might be able to provide some help for us. I will just hand it to you.

### **PASSI, Mr Genus, Private capacity**

**Mr Passi:** My name is Genus Passi. I am conscious of the time, so I will not speak too long. The reason for me coming up here this evening was just to make a couple of comments. I want to acknowledge the elders in the room and their contribution tonight. I think it is invaluable what they contribute. As a young leader growing up in this community, a Torres Strait Islander man, it is great to hear some of the knowledge that they pass down to us, the younger generation of emerging leaders.

I would like to make comment on a few things, one being the commissioner's role within the bill. I want to acknowledge the process that has been gone through to get to this point. You mentioned that there have been hundreds of people who have been consulted in the community, both from the Torres Strait and from the mainland. I want to acknowledge that.

It was raised earlier in the piece, when we spoke about what the commissioner's role was. It is important that we remember that, because traditional adoption for Torres Strait Islander people has been going on for many generations—Father Tapim might have mentioned this—it is not about us asking the commissioner for approval for traditional adoption; it is within the culture. We actually are just wanting the commissioner to rubber-stamp it to say, 'We acknowledge that in the mainstream law.' We are not asking for approval for traditional adoption. I just wanted to make that clear.

When selecting a commissioner to fulfil this role—there have been a lot of suggestions made tonight about one, two, three, four or however many commissioners—I am really interested to know how this process is going to happen. How do you measure cultural knowledge? This commissioner has to be equipped with cultural knowledge to understand all of these concepts that people have spoken about tonight. How do they take that into consideration, understanding the different island clusters—respecting that and moving that forward into mainstream Australia with this bill?

The other thing I want to mention, again around the commissioner's role—and this is my personal opinion; I am not sure how many other people share this—is that it is really important that there is a representation from every island cluster that has an opportunity to contribute, whether it is one commissioner or two or three commissioners. It is important that there is a representation—whether it is a committee, a framework or whatever that might look like—so that every Torres Strait Islander person from the Torres Strait has an opportunity to contribute. So many times in my experience—and I am only a young fella at late 40s—a lot of contributions from people get missed. This is because for Torres Strait Islander people English is their second or third language. As you know, tonight Uncle E was talking in language. Some of those languages I do not even understand. We have to take into consideration that English is the second or third language.

I have written down here a note about the consultation process. I want to acknowledge the comment of the deputy chair earlier for all of us as a community to take into consideration. For us, traditional adoption is quite simple. We do not want to complicate that by adding and adding. I think the deputy chair made a valid point when he mentioned that. Again, with English being the second or third language, we do not want to overcomplicate things. We know traditional adoption as this process and I think we need to stick to that process. Again, this is only my opinion. I want to acknowledge the contribution the elders have made tonight. I think the more simple we keep it, the better we understand it as a process. I will come back to the comment that Uncle Leo made: it is about how we make mainstream law fit into the lore we have been living by through all these generations to as we know it today. Thank you.

**CHAIR:** Thank you very much. You raised some very good points about getting all of those island groups and making sure that there is representation. I am starting to think along the lines of an advisory group to commissioners. Is that something that you might perceive as beneficial—having representatives from each of those different island groups advising the commissioners or having a role in making recommendations about who should be the commissioner?

**Mr Passi:** Yes. In my experience—again, only being a youngster—I think we have had many advisory committees over time. What is important is that the right people are chosen for those roles.

**CHAIR:** That might be recognition from those imminent people on the Kupai Omasker Working Party who can make recommendations. They have decades of experience. Obviously it will be up to the government of the day to work with the department.

**Mr Passi:** Yes. When I look around the room tonight, this is a really small representation of the Torres Strait Islander community in Townsville. These are the main heads of our community, but we do not speak for everybody. There is a Torres Strait Islander community out there that have their own opinions. When I talk about making sure we pick the right people, it is about people who have Townsville

influence in those island group clusters. As we spoke about earlier today, Uncle is well respected within that western cluster. There are other people out there who did not attend tonight. It is about coming back to the drawing board on how we can be more inclusive of the people who do not usually do the talking.

**CHAIR:** From my learnings already, we know that many of those small island groups elect their own elders to lead the community and provide that leadership. That is an excellent segue into what I am going to ask Leo. Today there has been talk of having different commissioners to represent the two or three groups. The submission that I have provided to Mr Akee calls to add additional names in cultural language to ‘meriba omasker kaziw kazipa’ with—is it the eastern reference you have there?

**Mr Akee:** This is the western.

**CHAIR:** Western, forgive me.

**Mr Akee:** It is western island. What the lady is referring to is: because you have top western and near western that speak predominantly—around, I think, Badu and Saibai—one dialect, on Mabuiag Island in particular they speak another dialect. She is correct in the sense that there is Kala Lagaw Ya and Kalaw Kawaw Ya. What she is saying is that, with the name that is referenced for the meriba omasker kaziw kazipa, you should add kaziw kazika as well. I do not know if that is going to create any difficulties because that is giving you two western dialects there.

**CHAIR:** Thank you for clarifying that. I found that interesting to read after our conversation the other day. What it is telling me is that other island groups want their language and dialects considered to be included. Mind you, that is the only one that I have had so far that talks to that. We are getting more submissions, so I guess if we get more of that we will need to consider that going forward as a committee. I am sorry; I just wanted to keep on track with that. Mr Bero, please come back to the table to provide some additional information.

**Mr Bero:** Just to summarise what the boys were saying—my big brother here and nephew—and what everybody has been saying in addressing all of this to the commissioner. In our culture, the last word stays with the elders. The elders have the yes and no. In choosing whether it be a commissioner or an advisory committee—whatever we set up in these discussions—it has to go back to the elders in regard to signing that child away in that traditional adoption or cultural adoption. It has to be the elders.

A lawyer came to Murray Island and asked the question, ‘What is considered an elder?’ The elders on Murray Island sat down and had a think about it for quite a while. The answer was: an elder must be 60 years of age and above because they have life experience, they have the knowledge and everything that they have experienced throughout their life is translated and passed on to the younger generation. Not only do you need an elder; it also has to be tribal to that person, because that elder would know that family. That is eastern, western, top western and central. You have to make sure that the elders are from those specific regions to address that particular child. A different tribe or an elder from a different community should not make the decision about that child. It has to come from that community itself and their elders. Their elders decide. That is the important part: the elders say the final yes or no.

**CHAIR:** Thank you very much, Mr Bero. We will now close the public meeting. If anyone wants to meet with the committee in private, we will offer that. Is there any indication from people who might want to come forward and have a private conversation? Okay. I ask those people to please stay. We will close the public hearing and move to a private hearing.

I thank all of you for your contributions here today. It has certainly informed the committee going forward. The information we are learning is invaluable. We look forward to seeing you again in the near future. I declare the public hearing closed.

**The committee adjourned at 7.11 pm.**