



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

Members present:

Mr AD Harper MP (Chair)
Mr MF McArdle MP
Mr MC Berkman MP
Mr MA Hunt MP
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

TUESDAY, 4 AUGUST 2020

Cairns

TUESDAY, 4 AUGUST 2020

The committee met at 2.06 pm.

CHAIR: Good afternoon, everyone. It is fantastic to be in Cairns for this public hearing, which is significant to our Torres Strait Islander people. As the health committee, we are humbled to be doing this work. Before we start, I ask that mobile phones be switched off or placed on silent. 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 Gimuy-Walubarra Yidi people—and recognise their continuing connection to land, water and community. I pay our respect to elders past, present and emerging. I invite Jeanette and Henrietta to do a welcome to country.

Ms Singleton then gave a welcome to country—

CHAIR: Thank you very much, Jeanette.

Ms Marrie then gave a welcome to country—

CHAIR: Thank you very much, Henrietta. I understand Pastor Solomon ‘David’ Gela would like to have an opening prayer. I think given the significance of the work we are doing that is entirely appropriate.

Pastor Gela then prayed—

CHAIR: Thank you, Pastor David. I am Aaron Harper, the chair of the committee and the member for Thuringowa. The other members of the committee with me today are: Mark McArdle, the member for Caloundra and our deputy chair; Michael Berkman, the member for Maiwar; Marty Hunt, the member for Nicklin; and Joan Pease, the member for Lytton. We do not often have a Federal Court judge present, so I recognise Judge Josephine Willis. Thank you very much for your attendance today.

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 Ms Cynthia Lui, member for Cook, introduced the bill to the Legislative Assembly. Ms Lui agreed that the House treat the bill as a government bill.

For generations, ailan kastom, or 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 ailan kastom. I must also recognise the work of the Kupai Omasker Working Party, who have done significant work for over 30 years to bring this legislation to the parliament.

Today we are in Cairns. Thank you for having us here and thank you for your welcome to country and prayer. We would like to hear the views of the Cairns community and the surrounding district. 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 views.

The hearing is being recorded and transcribed by Hansard, and speakers will be provided with a copy of the transcript. There may be media present. If anyone has any issues with having photographs taken, please let me or the secretariat know.

We would like to start with our invited stakeholders. For others in the room—and we did this in Townsville last night—once the first panel is done, please feel free to come up if you would like to provide a contribution or share experiences in the public forum. If people want to meet in a private capacity, we can close the public forum once all speakers are done and then open a private hearing to speak one on one or whatever you are comfortable with. We are very flexible with the program.

DEWIS, Ms Wynetta, Chief Executive Officer, Queensland Indigenous Family Violence Legal Service

McGUINNESS, Dr Stacey, Private capacity

MELDRUM, Ms Genevieve, Private capacity

SCHWARTZ, Ms Thelma, Principal Legal Officer, Queensland Indigenous Family Violence Legal Service

WILLIS, Judge Josephine AM, Judge, Federal Circuit Court

CHAIR: Thank you all for being here today. I invite you to make an opening statement, and then we will move to some questions.

Judge Willis: Thank you very much, Mr Harper. It is a privilege for me to be here today. The barristers that I had in front of me this morning were highly amused to hear that I might be the one in the witness box and being asked lots of questions today. In fact, I half expected them to walk in and queue up to ask questions, so it is a relief that they are back working at a settlement.

I would like to start my opening address by acknowledging the traditional owners of the land on which we sit today and pay my respects to elders past and present. I pay my respects in particular today to the Torres Strait Islander elders and members of the Torres Strait Islander working party and the work of the three eminent persons—Aunty Ivy Trevallion, Uncle Charles Passi and the former chief justice Hon. Alastair Nicholson, who has been a colleague of mine for about 25 years.

I also want to acknowledge the enthusiastic lawyers in the Department of Aboriginal and Torres Strait Islander Partnerships. I have worked with them on this legislation. They are committed and they are incredibly respectful. Jason and Tony worked hard with their team to stay focused and remain focused on trying to encapsulate everything that was said to them by Torres Strait Islander people present at the meetings I was at, and it was extremely inclusive. I also wish to acknowledge the work of a very proud Torres Strait Islander lady, Josephine Akee AM, who I worked with in our court for over 20 years. She has always been dedicated to this court.

I have brought with me today two highly valued people who work in the Federal Circuit Court. One is Dr Stacey McGuinness. Stacey has worked with me on doing applications of this kind in our court and many other applications. Sitting behind me is our Indigenous liaison officer, Dennis Remedio. Likewise, Dennis has worked with me in our court on these types of applications.

As a judge doing family law, I have been involved in making parenting orders under the Family Law Act not only for separating Australians all around Australia but, relevantly, for Torres Strait Islander families who have participated in their cultural tradition of giving a child to another member of their family to raise. Those families have found themselves in the Federal Circuit Court, which does about 88 per cent to 90 per cent of the family law in Australia, because there has not been any other court anywhere that they can go to to get legal sanction or imprimatur for their giving and receiving of children. In those applications, the most our court could do, having heard from both sets of parents, and if we were satisfied with everything—in all my experience, we have never not been satisfied—was issue a parenting order under the Family Law Act. That is as much as we could do, and that would provide something rather than nothing in terms of them having some parental responsibility.

I have seen firsthand the practice and hearings with, as we call them, kupai omasker in Cairns when I have done them myself and when I was a barrister for 14½ years in Cairns. We travelled up to Thursday Island in the Torres Strait Islands to do those ceremonies. That was when the court had enough money to go travelling. These days it is all done electronically. We had reports prepared by people like Dr McGuinness to tell us all about the background of the family, and if any inquiries needed to be made they were made and we issued a parenting order. The most we could do was make an order in the best interests of the child.

Having been intimately involved in making these types of orders and in this process and having been involved in meetings and some of the drafting, I am very comforted with the proposals that you are all looking at in the proposed legislation. The legislation is unique. It is tailor-made to address the issues that have arisen for parents. This legislation is really just about parliament giving its sanction to two lots of parents to say, 'I'm giving you my child.' As I said in my submission, it is a gift of enormous love. Children are cherished—I have come to learn that through my work with the Torres Strait

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

Strait Islander community—and it is really just, ‘I’m giving you my child,’ and the cultural parent wants to have the same rights and responsibilities as any normal birth parent. That is what this legislation before you now is about.

It has just stepped through working out, really comprehensively though, what is needed for the commissioner to make the orders. It is a process that is accessible. We often hear the term ‘access to justice’. This is a really practical access to justice. There is an application to be completed by each of the parents and it is based on the best interests of the child. The commissioner will have the appropriate inquiries. If there are any issues they want to look at further, they can issue a subpoena if they need to. They can invite other persons to help them to give them advice. It is all about parents in a really practical way being able to go to school and say, ‘Yes, I’m the parent’; in medical situations, ‘Yes, I can authorise that’; ‘I can sign off as your parent on that passport’; ‘I can enrol you in kindergarten.’ They are just looking to have the same recognition that all parents have when they raise children. The things that we all take for granted have not been given to the cultural parents. It is not a daunting process. It is comprehensive. It involves some degree of privacy. Importantly, it does not involve going to court in the first instance, and often there is a lot of resistance amongst Aboriginal and Torres Strait Islanders—and probably everyone—about going to court. It is daunting. That means it is probably more likely to be accessed by the people who need it the most.

There is an opportunity here to be involved in legislation that has been very exciting and a privilege for me to be involved with. It is a really good thing. We have to remember that, for those of us used to talking about adoption, this is not an adoption as we know it. It is a giving and it has already happened. Before everybody comes to the commissioner, it has already happened. Whether the commissioner provides a cultural order or not, it will still happen because that is the tradition. We have always acknowledged—known—that the tradition goes on and all they are asking for is legal sanction of what has been happening since whenever time began for those parents who do the receiving. Especially in this modern world where you have to be demonstrating who you are all the time, this is enabling them to have their names on the birth certificate and to be known as parents. That is all it is. It might look like it is a whole lot more than that, but if we distil it down that is what it is all about. I thoroughly support the legislation. My friend and colleague Alastair Nicholson has put in a marvellous submission and I fully support his submission as well.

CHAIR: Thank you very much, Judge Willis. Wynetta or Thelma, I invite you to make an opening statement.

Ms Dewis: I would like to begin by acknowledging the traditional owners of the land we are meeting upon here. I thank Jeanette and Henrietta for the welcome to country today. I would also like to acknowledge the Aboriginal and Torres Strait Islander people and elders who are present here today.

I thank the committee for the opportunity to speak here today. As mentioned, my name is Wynetta Dewis. I have Torres Strait Islander heritage, with family connections from Boigu Island and Horn Island in the Torres Strait. I am a proud Torres Strait Islander woman and the CEO of QIFVLS, the Queensland Indigenous Family Violence Legal Service. We are an Aboriginal controlled organisation. We fully support the Torres Strait Islander traditional child-rearing practice bill 2020.

As we have heard, it is an historic piece of legislation for Queensland and it is a first in Australia. The bill establishes a framework to give legal effect to island custom child-rearing practice. As a Torres Strait Islander growing up and having firsthand experience of island adoption in my family and extended family, by introducing this bill it speaks to the heart, I believe, of Torres Strait Islander people in recognising and acknowledging their island custom and the importance of family and maintaining family connections.

This bill also seeks to recognise the human rights of Torres Strait Islander people by upholding their cultural rights. My hope is that this legislation is applied in future to other jurisdictions for those Torres Strait Islander people born outside of Queensland who were raised by customary parents to achieve similar recognition.

In closing, I would also like to acknowledge that today is National Aboriginal and Torres Strait Islander Children’s Day. In closing, I will quote the words of Muriel Bamblett—

Passing on our traditions from generation to generation over thousands of years is why Aboriginal and Torres Strait Islander cultures are some of the oldest on earth.

CHAIR: Thelma, did you want to make a statement?

Ms Schwartz: I would also like to acknowledge and thank Jeanette and Henrietta for the very warm welcome and for the opening prayer. I am the Principal Legal Officer of the Queensland Indigenous Family Violence Legal Service. I am an admitted legal practitioner, practising for 21 years
Cairns

come 12 August this year—so I am starting to show my age. I have practised extensively with Aboriginal and Torres Strait Islander people as a solicitor with the Aboriginal and Torres Strait Islander Legal Service. As well as being the Principal Legal Officer for QIFVLS, I have been with QIFVLS for five years. I spent 9½ years at the coalface as a criminal lawyer with ATSILS. Prior to that, I spent over 7½ years in commercial litigation practice both in the Northern Territory and here in Queensland.

I also have cultural connections to the Torres Strait. My surname is Germanic—that is, my father's name. It traces the history of our lineage from German Samoa through Queen Emma setting up the plantations in Rabaul. My mother's lineage, though, is in Sideia Island in Milne Bay. My mother's people are where our Torres Strait connection comes from. They were warriors. They were traders. They came through the islands—all the way through including into Polynesia and Fiji—and traded.

I understand cultural adoption because it is something very similar and close to my heart from my mother's culture. I have seen it in practice. Standing here right now before you is for me a very proud moment. It is about time the law has finally caught up with what is occurring in day-to-day practice. This gives recognition to people. These are basic things—the ability to get birth certificates, legally recognising parental rights and responsibility, and acknowledging that a child being raised in Torres Strait island custom way is loved, supported and nurtured. That is something that I urge you to consider, given that we live in a context where we see report after report in our wide media of children falling through the cracks in our child protection system—children who are not supported, loved, nurtured, given cultural identity or cultural connection to land lore. This is why we do it. This is why we believe. This is why it happens.

I note particularly the Torres Strait Islanders who have championed this. This has been, in effect, 35-plus years in the making, looking at the work that has gone on behind the scenes. I look at one of those famous Torres Strait Islanders—Eddie Mabo—and what he championed to bring about change and recognition. This is a very proud moment. I totally commend this bill to the parliament to introduce and effect this. It takes courage to effect change. I commend you for your courage to effect this.

CHAIR: Thank you, Thelma—very well spoken. As we all watched the member for Cook introduce this legislation, there was not a dry eye in the House. It was very significant for our nation. Never before have we had traditional cultural language incorporated into a bill. Now we have what is commonly known as western law incorporating lore, providing a legal framework for those children who have been traditionally and culturally handed over to other parents. We heard yesterday in Townsville that there are different practices between different island groups—eastern and western islands. Some hand over a child to a family through blood lines. We want to unpack that a little more. I know that you work around the NPA area, not so much in the cape itself or the islands, but maybe you could speak to the differences in culture between western and eastern islands to better inform the committee.

That does not take away from the importance of this moment in time. This is truly historic. We, as part of the health committee, are deeply humbled to have carriage of this. I think I can say that on behalf of all members here. Thank you so much. We are already richer for the engagement we have had with Auntie Ivy Trevallion, who appeared via Zoom from Thursday Island at our first public hearing in Brisbane. I think our hearing went for about four hours last night in Townsville. The Akee name is very well known down there.

We have been provided with some information, but my first question is: can you differentiate between the different cultural and traditional practices between the island groups? We are trying to bed that down. Is it through blood line or marriage? Can you give some practical examples? We know what the barriers are when children grow up and they need to get passports and licences and things that everyone else takes for granted as an everyday process. There is a saying: you do not know where you are going unless you know where you have been. This goes back millennia. This goes back thousands of years and generations. I am trying to understand the different aspects of the island groups. Can you break some of that down practically for us?

Ms Dewis: I grew up on the mainland. With respect, I think you have more people here who could speak to that a lot better. I would feel more comfortable in them speaking to that.

CHAIR: We have other people here who can talk to that—very good.

Ms Schwartz: I think even getting out and about. I see from your travel itinerary you are going to Saibai, which is one point out and about. There are other islands as well. I do not know whether your travel itinerary included further into those island groups because there are different cultural practices. When you are in community, as we find in our practice, people will come and people will

talk. It is the beginning of a conversation to understand. I certainly do feel more comfortable with the wealth of knowledge from the people here behind us who can speak to the committee and inform you of that, because there are variations between groups.

CHAIR: Could you talk to some of the practical barriers or structural barriers that you have seen in your work with people trying to access legal services and, as Judge Willis talked about in relation to a court of law, to overcome some of the legal barriers? What is your experience in your space?

Ms Dewis: What comes to mind first is the western law being so very different to Torres Strait Islander or Aboriginal people. It is about them understanding that and breaking that down. With our service model, we have solicitors who know the legal aspect and the processes of the western law. Then we have our support staff who are identified Torres Strait Islander people who can go out with the solicitor to help break down any of the barriers that they may have around understanding the law. That is primarily the biggest thing that I see—understanding the law and breaking it down.

Ms Schwartz: When you are looking at matters in the context of accessing legal services, we are very much one dimensional. You have parties. Who is a recognised party? Who is going to come through the door that we can actually take on as a client? Can we then take on someone who then also asserts, 'Hang on a minute, I also have cultural responsibilities. I would like to be involved.' Then that creates for us the management of the potential for conflicts, which is another westernised concept.

When you are dealing with broader concepts of family, what is common to both Aboriginal and Torres Strait Islander people is this wider definition of family and the connection to involvement in a child's life. That is quite alien. The delivery of western services and managing conflicts can be difficult when it comes to explaining that. Obviously we are a not-for-profit legal service provider for Aboriginal and Torres Strait Islander people. That can lead to frustration as to 'Where can I go for services if you have a conflict, even though I have a connection to this child?' I think that is one of the practical aspects that we see.

It is very rare that we will get an application through our service dealing with island custom adoptions. I was talking to my senior deputy principal legal officer today. I think we have only seen maybe two, and that is in the space of the five years that I have been there. That may be a reflection of the fact that the limit on our practice area is up to the Northern Peninsula Area. That is through our funding through the National Indigenous Australians Agency, the NIAA. We go up to the NPA. The NPA Bamaga is still considered mainland, but you still have a lot of people from the islands who come there to live and who intermarry. I have family in Bamaga and Seisia, but there are differences from the mainland. Then you have your island groupings. I think that is probably the limit on why we cannot speak to the engagement in the islands. We do not go up to the Torres Strait, unfortunately, and we do not go to Thursday Island, unfortunately.

CHAIR: Judge Willis, could I ask for your views? In Townsville we heard of the different island groups and different cultural and traditional child-rearing practices in the Torres Strait. One or two of the submissions, which are now available on the website, suggest more consultation amongst the island groups and additional commissioners. What we understand is that each island has its own structure of elected elders. In Townsville they felt that perhaps an advisory council or the groups could meet to provide information on who should be best appointed as commissioner and/or to have two commissioners, for the eastern and western groups. That was one of the comments made last night. What are your views on that?

Judge Willis: It is interesting. From the matters that have come into my court, there are slightly different practices. The overarching practice of giving a child happens. The legislation provides for the commissioner—I am trying to find the section. There is a section, from memory, that says the commissioner can get assistance from anybody. It also provides for the commissioner to be a Torres Strait Islander. My guess is that, if the commissioner felt that what was happening needed more explanation and was beyond the area of expertise, under the act there is a provision that says they can engage the assistance of another person. That is a bit like bringing in a single expert.

In court, I do not know engineering, I do not know heart surgery or autism and all those things, so we bring in a single expert on autism or whatever it is. That expert is not a witness of any of the parties—they are not supporting any of the parties particularly—but it is giving the judge, the court, and in this case the commissioner, the information that they need. We would often get information. For instance, Dr McGuinness would do a family report. Dr McGuinness would talk to both parties about, 'What tradition are you following? What is your history?' She would ask the other parents the same. It would explain it to us and sometimes we would say to the parents, 'Who do you want to tell us about Cairns

your history?’ and they would nominate their person. Then we would say to the other party, ‘Who do you want to tell us about your cultural practices?’ and they would nominate. Because people like Dr McGuinness are expert report writers, they can collate that information, put it in a report and give it to the judge hearing it. We have it all there and if we needed to ask questions of those people we could go to it.

Having said that, I am certainly not opposed to the idea of having more than one commissioner. Everyone might feel happier about that. That would be coming from both sides, eastern and western. The overarching practice—and Dr McGuinness would probably be able to help me here—is probably much the same where a family or two people or a person has decided to give a baby to another. Is that about right, Stacey?

Dr McGuinness: I spent quite a bit of time with Josephine Akee, whom you probably met yesterday in Townsville. A number of years ago we travelled to the Torres Strait. My responsibility was to interview the parents, both the giving and the receiving parents, about what arrangement they had come to in relation to the child. Each party would then invite what we call a verifier for me to speak to. That was a person nominated by them. Sometimes it was an elder in the community and sometimes it was another family member who had full knowledge of the agreement that had taken place and what had occurred. I not only interviewed the birth parents and the receiving parents but I also interviewed verifiers on both sides.

We held trials on many of the islands with Justice Moore. At those trials there would also be a community elder appointed by the community we were going into. That elder would sit on the bench with Justice Moore and I would actually give evidence, just as I would here in court, and provide a story and a report about what had taken place. The judge would have the opportunity to ask questions of me and then the elder would have the opportunity to ask any questions. Then they could seek any further information or clarification they required. We did not interview children because it was not appropriate to do so. Very much that was the comprehensive process that we undertook.

CHAIR: Thank you. Last night we heard about a biological parent who did not want to have anything to do with the child, who is now an adult, and the receiving parents have passed. Do you believe that maybe some special circumstances should be given to the commissioner where you have a delicate situation—perhaps both parents have passed—and how that person might make application? Do we need to include a clause around special circumstances involving the sensitivities of both the biological and the receiving parents?

Dr McGuinness: That is a difficult question for me because I generally work with children aged between nought and 18, so I could not speak to an adult situation. I am very aware that I am sitting here and there are members of the Torres Strait community behind me who have lived this experience, so I do not want to take anything away from them and their experience and what they could add to that. What I would say is that, many times when those matters come to court and they present in front of judges like Judge Willis, we are not necessarily seeing those cases when those agreements are made, as the judge indicated before. Sometimes we do not see those cases until a child might be eight or nine, so we are going back historically to talk about an arrangement—or perhaps when they are in their teens because all of a sudden there is a requirement for a birth certificate. There are a lot of heavy hearts at that point in time. Both the giving and the receiving parents can struggle in that circumstance, because they do not want to disrespect one another. It is a process then to try to go back and collect that information and find verifiers who are still able to give us their account of the story and what went on.

CHAIR: Thank you, Stacey. The lady behind you has her hand up.

Mrs Meldrum: My name is Genevieve Meldrum.

CHAIR: Do you want to come to the table?

Mrs Meldrum: No, I am right, thanks. Some of the elders are sitting behind me. I am actually presenting myself today as a community member who gave away a child through a traditional adoption because of certain reasons which you guys sitting around this table today do not even know about. There are different reasons sitting around here. The way that this table is set up is quite rude and disrespectful to the elders sitting here, because you are talking to one another but you are not talking to us.

CHAIR: We want the elders to come to the table now.

Mrs Meldrum: If we can do that, that is fine.

CHAIR: Absolutely.

Mrs Meldrum: We have to keep to social distancing, we understand. There are a lot of people here today as elders who are part of what this bill is all about.

CHAIR: We want to hear from the elders, absolutely.

Mrs Meldrum: This has never been heard before, before this table took place.

CHAIR: We might invite the elders up. Are there any other questions?

Mrs Meldrum: When we do talk, can you please talk a bit louder. There are a lot of deaf people sitting in this room.

CHAIR: Before any elder can take that seat right now, the member for Nicklin has a question.

Mr HUNT: I certainly have questions but I do not want to be disrespectful to the room at the same time, so perhaps we can adjust the hearing to accommodate that; I do not know. Certainly I have questions for the judge.

CHAIR: Let us move back and we can bring an elder to the table.

Mrs Meldrum: I am sorry, I was not sure whether this was part of the public hearing.

CHAIR: We want to hear from everyone today.

Mr HUNT: We just have to take turns.

CHAIR: Because Hansard is recording this, we need to bring people to the table. I will ask the panel if they have any questions for Thelma or Wynetta. Let us move on with some questions and as the seats go we will bring elders up. Whatever we can do to accommodate, we will do. Did you want to ask the judge a question?

Mr HUNT: I have lots of questions, but I have questions for the elders too.

CHAIR: This happened last night and we were able to accommodate everyone.

Mr HUNT: First of all, welcome everybody. I certainly welcome the elders in the room. I do not mean to be disrespectful if I am asking questions of the panel here. I certainly want to hear from you as well. It is just the order in which we have to do things to ensure that everything is recorded for the benefit of the parliament.

I will start with Judge Willis. You have extensive experience with family courts and this type of thing. You are probably far too young to remember what happened in 1985. On my reading of the submissions and the history of this, there seemed to be something that happened in 1985 that was a shifter in terms of recognition. Are you aware of the history of that? My other question is framed around the complexities of this. You made the comment that all they are asking for is legal sanction. That is a simple goal which seems to have become, over the past 30 years of negotiation, reports and inquiries et cetera, a very complex framework. My fear is that it becomes too complex for people to engage in. Could you comment on the history of it in terms of the framework around 1985 that worked, what has happened since and where we are now in the complexities of what we have come to?

Judge Willis: That is a huge question, but I will do my best. 1985 was before my admission. From looking at Alastair Nicholson's excellent report I know that, broadly, the movement has always been there to have this sanctioned and that it got very close to being put forth as legislation. I think that was around 1985. Another bill was passed and it was to happen with that bill. The other one went through and time ran out and this one got left behind. That is my understanding. Then it took a long time to get the interest, I think. The community has never stopped wanting it. Your government, as I understand it, was a government that made a promise that they would do it and so there was great excitement. Sadly along the way, some of the most respected elders are not here today; they have passed away.

It is simple, and one of the things that must not happen with this—it has sometimes made it difficult to get to this point—is for people to ask, 'What if?', 'What if?', 'What if?' In my experience, the what-ifs have not happened or they are what-ifs that nothing can be done about. We are human. You could get this legislation through by listening to the general experience. My experience of that experience is that there are generally no problems. It is a practice that is practised widely. The difficulties for the receiving parents are in the moments they walk into a hospital, a doctor's surgery or anywhere and are asked, 'Who are you?' It is like if you had my child and you wanted to go and have the tonsils out, have the grommets put in, have an operation done, enrol in kindergarten, school, university, get a passport—anything that you wanted to get for that child. You would be saying, 'Well, actually, Judge Willis gave me this and I am the one who has been acting.' In dealing with the department, police—anything—you are saying, 'That is my child—well, it is not really my child but it is a child I have been given'. There is sanctity in the giving.

As it has been explained to me, there is a time in that child's life when they will be told about that, but it might not be when you are at the doctor's trying to explain whose child you have there. That is a matter for the parties to agree upon and when the child is ready for it. It is difficult all around. Sometimes people will say at hospital, 'No, we will need the parents.' Of course the hospital will say that: 'We are not doing an operation. Where are the parents?' The parents have given the child away. They do not want to get the phone call to say, 'Will you this authorise the appendix to be removed?'

Mr HUNT: I can appreciate that that is all the reasons that we need it.

Judge Willis: Yes.

Mr HUNT: But I am talking more about the complexities of getting there and what we have come up with here. Even you made comments about the commissioner—that we may need more than one commissioner to understand it, that the person has to be of Torres Strait Islander descent to understand it but they might not understand other communities. Is there a way that one commissioner could oversee that and draw on expertise? Does that person have to be a Torres Strait Islander? Could that be a learned judge who has the ability to gather the sort of evidence that is required?

Judge Willis: The process has been to try and keep it accessible. Someone with a relevant history and of proper standing in the community would take on that role for Torres Strait Islanders. It is all about 'by Torres Strait Islanders for Torres Strait Islanders'. I totally support the idea of the commissioner and being able to do it through an administrative process. That is much simpler than going to court. People will do that. The complexities have just been in trying to square off everything that you need to square off including, as Mr Harper said, the death of someone. There is a provision about a death. Proposed section 32(4) says 'at least one birth parent is an applicant' or 'one cultural parent is an applicant'. We got that far. If you say, 'All four of the people who gave me away have since passed away,' that might be too complex for this. We could spend another 25 years coming up with answers to 'What if?', 'What if?', 'What if?'

CHAIR: We just had some examples last night in the Townsville forum. They asked those questions.

Judge Willis: Sometimes that energy moves it away from the mainstream: 'This is what everybody is doing. This is what we want.' In drafting it, there were things that came up. Sometimes we have to say, 'That will be a matter for someone's will,' or, 'If you split up and then this separates, you will have to go to the Family Court.'

Mr HUNT: Certainly Aunty Ivy commented that it is complex but it is a start.

Judge Willis: Yes, it totally is. The fear, I think, is that people will be put off by its complexity and say, 'Oh, we still can't do it.' Really, the complexities have been a big part. If I may say with respect, you are astute to see that the complexities could derail it. Basically, there is really good, solid legislation that people who have engaged in this cultural practice can avail themselves of.

Mr HUNT: And the review in two years may pick up some better ways of doing it.

Judge Willis: Exactly.

CHAIR: I think we need to make it as simple as possible and not overcomplicate it for everyone involved.

Judge Willis: Exactly, or you will drown in it, you will never get to the surface and you will not get it through.

CHAIR: Before we move to the next question, I want to reinforce what I said at the beginning: we want to hear from everyone. This is the public hearing. As soon as this panel is finished, we will invite people to the table to provide their experiences and the committee can ask questions. After that, we can also do a private hearing, as we have previously. I hope that makes everyone as comfortable as possible. We just need to use the microphones to record it for Hansard so that it can be in the parliament.

Mr BERKMAN: I am very much looking forward to hearing the lived experience of everyone in the room, but I am so grateful to have these panellists with legal experience help us out. Thank you so much for taking the time. My questions are in a similar vein to those of the member for Nicklin. I am interested in the point that was made in your submission as a community legal centre. I know that you have direct experience in terms of the resourcing and the assistance that people in community are likely to need to deal with this process that can probably seem fairly complex, I would imagine, for some folks. Judge Willis, you mentioned the work that liaison officers did in the Family Court proceedings. Is there perhaps a need for some equivalent function or supports for the commissioner Cairns

to do precisely that sort of work? The QIFVLS submission suggested more funding of legal centres to provide the necessary help getting through the hoops. Is that something that you think could be done within the commissioner's remit with additional resources and support, or should it definitely be independent of the commission?

Ms Schwartz: That is a very good question. Ordinarily, if you are expecting the commission to make a determination to exercise an administrative function that is going to impact both the birth parent and the culturally adoptive parent, I would expect that there be a separate and independent person that both the birth parent and the cultural parent can access for independent legal advice and legal assistance—separate from the commission. It is a tenet of our rule of law that to access justice everyone is entitled to competent legal advice and legal representation. It is my respectful submission that that should sit separately from the commission.

According to this bill, the commission is to perform an administrative function in relation to making a cultural recognition order. I do not believe that it is incumbent upon that commission to then be giving advice to one parent or the other incoming one about what is informed consent and whether there are issues of duress. Respectfully, those matters should be looked at with someone independent. When we look at the complexity of informed consent, particularly in a criminal law context, there is a plethora of case law around what informed consent and duress mean.

In terms of the functionality of this, which is consistent with our practice about getting the messaging out around domestic and family violence, family law and access to services, you have to be out there. It has to be something that is separate from, let's say, the department of child safety. I certainly would not expect the department of child safety to go into community saying, 'This is what we are meant to be doing.' The perceptions in community, with respect, are very negative in relation to that relationship. If you want people to engage, it should be separate. By the same token, I look at what happened with the Human Rights Commission when it came into effect this year. There was a big campaign of raising awareness and knowledge: 'This is what we do. What can we assist you with? How can we actually engage you to progress these complaints through this brand new mechanism? Who can we then triage you off to to get independent advice, or can we look at that?'

Mr BERKMAN: Thank you. That is a really helpful answer. We heard some suggestion from the department in the initial briefing that DATSIP perhaps conceded that it might provide that support role. You have raised what could potentially be concerns about departmental support providing that role. My background was in the community legal sector for five years before I got this gig, and I am very concerned about the potential for resources to be pulled from very important community legal functions. They are funded at the whim of the government of the day. If a scheme like this is dependent on those resources, I am really concerned that communities not find themselves in a position where that support is not available.

Ms Schwartz: I raised in QIFVLS's submission that when we saw the Human Rights Act take effect the next question was, 'Which CLC is going to be doing this work?' Then we rightfully put it back to the state, saying, 'We're not funded. No consideration was given to funding either the CLC or QIFVLS as a family violence prevention legal service to engage in this.' We are just expected to absorb it over and above what our individual service level agreements are with either the Commonwealth or the state. That is a disrespect, given what we already have to do. To make this a success, to make it accessible, you need to fund or provide a mechanism where people can get basic information and advice with a trigger saying, 'You might want to go and see this mob.'

Depending on where you locate the office for this commissioner, who is actually available? In the Torres Strait, Thursday Island is the only availability of the Aboriginal and Torres Strait Islander Legal Service, which has an office there. I understand that Legal Aid fly in. With respect, this type of discussion, when we are talking about giving advice around really culturally sensitive matters for people, requires face to face. It is not appropriate over the phone or on Skype. You need to engage. You need to hear. You need to be there and feel and experience. With respect, that is the preferred model in providing legal services to Aboriginal and Torres Strait Islander people. We come from a practice background across regional and rural Queensland where we have seen that.

Mr BERKMAN: What you have described sounds very much like what we were hearing from Dr McGuinness before about being in community and hearing directly from birth parents, from cultural parents and from what are effectively the equivalent of the informed people under this bill.

Ms Schwartz: I would respectfully suggest that elders play a very big, pivotal part in driving that discussion. I have noticed what has occurred today. I agree: where I come from, having my back to my elders shows disrespect and shame. If my mother were here, I would be in trouble for this. I am glad that she did not come, because she felt very ashamed and intimidated to even be here. You Cairns

need to think about those things. They might not seem like a really big thing but, for people who come from a cultural background, these are big, important matters. I am not telling you how to mind your business, but this is how you actually engage people, and you want people to access this piece of legislation.

CHAIR: I apologise. We are a bit limited with the Hansard recording. I would much rather have a big yarning circle—that is what we have done on Palm—but we are just limited on where the microphones can go. We mean no disrespect to anyone today. I will take responsibility for the way the room is set up. When we go to Thursday Island, Saibai and Bamaga, I want an open room—like we were able to do on Palm with a different bill.

Mr BERKMAN: Can Judge Willis be given a moment to respond on that resourcing question as well?

CHAIR: Yes.

Judge Willis: Yes. I agree with all the funding issues and so forth about normal matters in litigation. However, this is not a normal matter in litigation. Most of the parties that I deal with, if I have a matter like this before me tomorrow, will be self-represented. We have designed a form that is quite user-friendly. We have tried to keep all the lawyer language out of it. Really, what a person does when they come is just tell us their story: 'Five years ago I was 19. I had my third child. My older sister had no children'—or her child had passed away or something—'and we all agreed that we would give my second child to this person.' Then the person who receives the child writes, 'When I was 21, my sister and I spoke about me receiving this baby and it was decided by everybody that we would raise the child, and we have been growing that child up ever since.'

We get those forms. Our liaison officer would go and speak to them as soon as they lodged a form and just say, 'Right, have you got everything in here? Is this what you want to say? This is your time to tell your story.' If we needed to get any more information, I would swear them in and ask any other questions. We then would have someone like Dr McGuinness do a short report, having also sat with them and talked to them, saying, 'These are all the things. This is how it happened.' They each get to nominate a person who can confirm that this is how it happened. That is in the legislation. They will talk to that person or that person will also write it out.

I cannot emphasise enough that this is all agreed before it comes to you, whereas all of the matters that QIFVLS are doing are contested, so everybody wants legal representation; everybody wants to have a lawyer with them. This has been happening since time began without lawyers, without legal services. This is a giving of a child by consent and it will come to the commissioner when it happened four years ago, 10 years ago, six years ago or, as we have put, after 30 days. My understanding is that it is often arranged long before the child is born. With great respect to the funding issue—and I am a massive supporter of legal services and we would not get by in our court without them and all the pro bono work—I do not see this as being a drain on any legal service because it is a done deal.

Ms PEASE: It is from the heart.

Judge Willis: They are saying to you, 'Here, this is what we did.' As I say, it is difficult for me to imagine it. We have never had a case that we have not said, 'You have all done this?' and the answer has been 'yes' and we make sure. There is not to be any coercion or anything, but if someone somehow felt they were coerced then they can come back and make their case to discharge the order. Then you would end up with two people saying, 'No, the child should live with me,' and 'No, the child should live with me,' and that is not what the commissioner is about. It would be, 'Okay, you had better go under the Family Law Act and go and have your child dispute.' We have done those arguments too where years later someone has said, 'Actually, I didn't give you that child for keeps. I gave you that child only for a few years,' so they have a child dispute.

The commissioner is not going to sort that out. The commissioner is there to give the state's sanction to a traditional adoption that has already taken place. We have no contesting parties. The option is here under the legislation if someone wants to be heard. We have listed out who can come into the courtroom so there is privacy. It is all the parties, but if the commissioner says that there is someone else who wants to be heard he can invite that person in. The commissioner can seek other information. At most, I would have thought it would be good to have a liaison type person between the commissioner and the community to help them do what you are suggesting. They would say, 'This is what you have to fill out, and that is what you have to fill out.' You cannot really say anything wrong about this. It is not that you are going to be cross-examined. It is so difficult for me to imagine why we would have a contested. This gift is not contested.

CHAIR: It is already done.

Judge Willis: It is all by agreement. That is the whole point. Our courts welcome them. We do not have people who agree to things, but we have been able to satisfy ourselves: 'This is what has happened. You have had the child, and you have happily received it. Do you intend it to be for keeps?' 'Yes, we do.' 'And we do.' Then we are good. That is all you can do. If someone said, 'Someone's got a criminal history,' we would issue a subpoena and see if there was anything that worried us. So many people have criminal histories for something they did when they were 18 or 19—when they took a car for a spin or they were rude to a police officer. It does not affect their ability to raise a child. It would have to be something really serious and current and real. In that case, the commissioner can say no and then they can go to a higher court and say, 'I should have got that order,' and then they will be in the Childrens Court and off they go in there.

I would also make inquiries about the volume. The work that QIFVLS have to do is absolutely crushing. I know why the prospect of them trying to be involved in something else would be a nightmare. I would have maybe three of these a year. I do over 300 matters a year but we have three of these a year. When the legislation goes through I think it will be busy initially, but look at the Torres Strait Islander population and then look at how many applications are anticipated. I think in my discussions with somebody else along the way they thought there might be 30 or 40 a year. It is not hundreds and it is not thousands.

I again say that it is a family arrangement. It is like you giving your youngest, your eldest or whatever to your older brother or sister to raise for good reason. No-one is going to tell you that you cannot do that. You are not going to have to get lawyers—you are not going to have to get lawyered up—to say to a commissioner, 'Can you please look at our applications and issue a cultural order because we have all agreed to do this.' It is quite different, and that is why it is good legislation; it is nice legislation. There is nobody here who does not want it. If someone does not want to do a traditional adoption, they do not do it and the commissioner will not see them.

CHAIR: Thank you very much. I will reply to your two points before we go to the deputy chair. In Townsville, Francis Tapim provided the committee with an article from the 1970s, before the 1985 change to adoption. It said that this is incredibly private and incredibly sacred. It was the chief justice on the island with one elder and another elder, and everyone else was ushered out of the room except for the receiving parents and the biological parents, and the decision was made.

Judge Willis: Correct.

CHAIR: We need to keep this uncomplicated and private and respect that this has been happening for millennia. That is just taking your points about having elders involved. I think they would be of great significance and importance to the commissioner or commissioners, once appointed, going forward. I thank you very much for your comments.

Mr McARDLE: Thank you for being here today. I am looking forward to our conversation with the elders in the very near future. I also have a concern about the process within the bill—not the fact of the cultural adoption taking place within the community. That is the first step, then moving to the bill. We were in Townsville yesterday and one of the elders rolled his sleeve up and pointed to his skin and he said, 'Cultural adoption is in us. It is in us going back millennia. The law under the Family Law Act is a white man's law that you have to use because of the vacancy in the area.'

We were also told yesterday that they simply want what they have got in their community stamped. My concern is when you look at sections in the bill. You have an application. There are two statements by the biological parents, there are two statements by the culturally adopting parents, there is an informed person and there is maybe a person who is another carer in certain circumstances. It is a bit like the Family Law Act going forward—an application followed by affidavits. There is Dr McGuinness who will provide a report for you. Here there would have to be at least six or seven pieces of paper to complete.

I am not concerned about the outcome. I am concerned about the message we are sending to the Indigenous population that we are imposing white man's law or process on lore. We are making them, with respect, jump through our hoops to get to a position that they have never gone through in the process before. We have a commissioner who has the right to say no. When you look at the bill, that commissioner can provide rules as well. As you would appreciate, in 1975 the Family Law Act was about this thick. It was a lovely piece of paper, my sister tells me, but now it is enormous. I am concerned that the imposition by the white man on what is a traditional process could actually be a fearsome weapon against cultural adoption taking place, unless there is a significant education program put in place as well. My suspicion—and I hope I am wrong with this—is that if we say to the Torres Strait Islander people, 'Your lore can only happen if you comply with our law,' they do not want that. They want their lore to be part of the law.

The process worries me but more so the development of court rules and regulations worries me. I am not for one second having a crack at you or the Family Court system, but that is what really worries me. Unless we get this message across to the Indigenous population, we could find ourselves with people walking away because they do not want to submit themselves—when it is their determination, not our determination under the Family Law Act.

Judge Willis: I do not think it will happen, because the Torres Strait Islander community have been crying out to have their cultural practice sanctioned by the state parliament so that they can move through the community and be able to have a legal remedy to their cultural practice. They need to have a birth certificate. They need to be able to fill out and authorise things. They need to be able to fill out documents. They need to have something to give to all of the authorities and all of the bureaucracy that they are dealing with. The legislation is not interfering with lore. That will go on whether you pass this legislation or not, and it has gone on for years and a lifetime before the Queensland parliament. That is the first thing.

The second thing is for us to be able to do it properly. There is so much that flows from things like birth certificates. We are talking entitlements under wills. There has to be a measure of someone prepared to swear to the fact that this is what happened. That is our society; that is our community. There are different ways. If we have trouble with people having the forms or filling them out, as I said, I say, 'Come in. Take an oath. Sit down. Tell me all about it.' I think there is enough flexibility in here for the commissioner to be able to accept forms. They can make more inquiries if he or she wishes to. I cannot express enough how much this legislation and formality is the very thing that Torres Strait Islanders are seeking.

Mr McARDLE: I do not question for one second the outcome—absolutely no way. What I am concerned about is that, when you look at the bill, the process is quite westernised. I am concerned that the process could put Torres Strait people off. My rider to that is unless there is a massive education program. If we can do that—

Judge Willis: As to that part, I agree that there needs to be one. I think you will find that most members of the Torres Strait Islander community are watching this intently with their fingers crossed. I agree with you entirely that there needs to be proper distribution, liaison officers—whatever people you have to tell everybody, 'This is how you do it.' There needs to be a little bit of flexibility. If for some reason the forms cannot be done, they get told, 'It's all right. If you can come to X place, the commissioner will be there. He will listen to your story.' There has to be some process. I hear your concern about what it is, but I could not agree more that there needs to be something that comes with the legislation.

CHAIR: That is what the Townsville community said this morning.

Mr McARDLE: That needs to be done by the Torres Strait Islander population themselves, not us. We cannot do it because we are not accepted.

Judge Willis: Correct.

Mr McARDLE: The cultural adoption needs to be a disseminated process through the islands and indeed right throughout Queensland.

Judge Willis: They have to own it. They have had huge ownership, I think, of the process that I have been involved in with the elders, the working party and the eminent persons. They have owned this hugely. That is how it has to stay. I agree with you completely: it cannot just turn into something else. That is why it was very important to Torres Strait Islanders to have a Torres Strait Islander. We cannot go around pretending other people can do it. I agree with you about that, absolutely.

Mr McARDLE: This is my final question, Judge—and I apologise for hammering you in the witness box. Did you see anything within the bill that raises a slight red flag to you that we could be looking at as a committee to say, 'Wait on. That can be refined'? You have had many years on the bench and many years as a barrister as well. Are there things in here about which we should be saying, 'In two years time this must be looked at closely'? For example, appointing someone like Dr McGuinness is another overlay of western society which I think is problematic to a certain extent.

Judge Willis: We did not provide for that in here. I have been through section by section with a drafting team because I was at the big meeting in Brisbane that we had with all the eminent persons, except Alastair Nicholson could not make it that day. He is trying to set up a children's court in Cambodia. He had returned and he was very ill with a Cambodian virus. It was intended that we both be there. I was there. I listened to it all. I then went away and I had subsequent meetings going through looking at all the sections about which I gave my views to the department. I have been re-reading it. There were issues like that. I cannot see anything in here that still troubles me. There were

things that came up that we have dealt with—all the things about service, for instance. It sounds like a simple thing, but it is not enough to say that someone is not going to get served because there was domestic violence. They still have to be served. The things that I might have been troubled about or had a different view about—I have had a lot of discussions. I have not had a chance to re-read it completely, but I think I am happy with the whole thing.

Mr McARDLE: This is state based commissioner, or a state based tribunal if I can use that word. The Family Court has significant experience in child matters going back many, many years. Would you see it as being viable that there be liaison between the Family Court jurisdiction and the commissioner to establish a program as to how best to undertake these matters?

Judge Willis: That was part of the reason I was involved in the preliminary discussions, because I am with the Federal Circuit Court who do most of the family law now. The Family Court does the extreme, the most awful, the biggest, the most horrible work—which is now about 20 per cent of their work around Australia—and they run the Court of Appeal. That is why Alastair Nicholson invited me to be with him as a guest, because I was dealing with it all the time. This was different, but we had been dealing with it.

I feel that I have had a lot of input into that. I am always happy to look at more or look at it again or talk to you some more or do anything. If your legislation goes through, that will be far simpler and more immediate and provide things that our court cannot provide. We cannot change birth certificates. It is just so responsive. It is beautifully simple. It is driven by the people who want it. It is not a court process. That is the beauty of this. It just goes to—I do not mean ‘just’ but it goes to a commissioner in an administrative setting. They do not have to go to court. It has a lot going for it in its simplicity.

I would see this happening with the commissioner visiting the Torres Strait. On the day that he visits, you would have at least one liaison type person and all the paperwork would have been filed beforehand. If they needed more information, as I said, they could get people sworn in on that day: ‘Tell us a bit more about this. I didn’t quite understand that.’ That could all be done there. These are things that the Federal Circuit Court cannot do. It can be someone in the community of good standing dealing with people who have already done this and they are simply saying, ‘Can you sanction this because we are having trouble out here in the real world trying to deal with all the legalities? We have no legal standing.’ Everybody knows that is what they are after.

Ms PEASE: Thanks very much for coming and talking to us today. Many of my questions have been answered. What I would like to reiterate is that there has been much discussion about the possibility of the complications of going through the paperwork et cetera. You seem to have it down pat with your liaison officer and working very closely with the community to ensure that it is a relatively straightforward process.

One of the things that was raised in our hearings yesterday was about dealing with it in a contemporary way because society is changing. People do not necessarily understand the history of the practice itself, and they do not want to practise it. That came from within the Torres Strait Islander community in Townsville. Another issue that was raised was that quite often women’s voices are lost in this conversation. The decisions are made by others within the community. Have you ever had any experiences of that in your journey?

Judge Willis: Mostly I have seen women leading it. I have seen sisters. I have seen cousins. The women have been very much a part of it. I have seen what happens afterwards when there is a separation. I have seen when the traditional adoption happens and then, of the couple who did the receiving, the mother died and a stepmother came in and then they split up. They were each saying, ‘The child was given to me.’ That goes off under the Family Law Act. There is nothing for the commissioner to do. I might ask Dr McGuiness. I have not seen women not being really involved in it. I have seen the discussions that have happened, as I said, in pregnancy. Dr McGuiness, have you seen anything that has left the women out of it or that you have been troubled about?

Dr McGuiness: No, I have not. I do not want to talk on behalf of the room in terms of the process and people’s experiences. In terms of interviewing parties, generally there were women involved, whether it was grandmothers, aunties and both giving and receiving mothers. They had a voice in that process—that I have been involved in anyway.

CHAIR: There being no further questions for this panel, I thank Judge Willis, Wynetta Dewis and Thelma Schwartz for your time. It has been significantly important for the committee to hear from each of you. Thank you for your contributions today.

GELA, Pastor David, Private capacity

LUI, Mrs Angela, Private capacity

LUI, Mr Bel, Private capacity

MELDRUM, Mrs Genevieve, Private capacity

O'SHANE, Mrs Mary, Private capacity

TILLET, Mrs Ada, Private capacity

CHAIR: Welcome. I understand that Mrs Angela Lui and Mr Bel Lui are aunt and uncle of Cynthia Lui—a very proud aunt and uncle, as you should be; it was a very special moment in the parliament when the bill was introduced. Thank you for being here. We would like to hear your contributions, your experiences, what you think is important to this particular historic bill. I will pass it over to you to speak and we can ask questions.

Mrs Tillett: I am Ada Tillett, a Torres Strait Islander from St Pauls, Moa Island. I was traditionally adopted back in the fifties and sixties. Child-rearing practices were wonderful back then. I was raised when things were done properly and to the lore. As time went by, social security came in. I was raised in an Anglican mission. When social security came in, in the sixties, and then the education department, things became confused. There was confusion, especially on legal stuff like applying for child endowment as it was then. That was that.

Then I left Torres Strait to come to the mainland. I got married and came to Cairns. Things were still a problem here in Cairns with different families. Even my own families—sisters and aunties—were having problems getting certificates and signing powers of attorney. It was just so difficult back then and still is.

I want to support Judge Willis with the submission. I hope it goes through to legislation. We will be very disappointed if this bill does not go through. We hope the judge's legal submission goes through and is successful. We have been fighting it for too long. I have been seeing the problem from back in the sixties, then coming to the mainland. In the nineties, my aunties and I had little meetings with Child Safety, Family Services, Aboriginal and Islander Affairs. They did not bother to respect any of the lores or the missionaries. We have been struggling straight through. My only hope is that we get this thing through, please.

I support the judge in calling the name not 'adoption' because it sounds harsh. We call it 'traditional child-rearing practices'; it is much more nurturing. Thank you for listening.

CHAIR: Thank you so much, Ada. We hear you loud and clear. We will be reporting on our work on 28 August, so very soon. That report will go back to the parliament and then it is up to government then to move that. That is the process. Thank you so much. We hear you. Can I please ask Mrs Angela Lui to say some words?

Mrs Lui: I am very excited at this time to have such a bill passed. My [REDACTED] is from Badu Island and her eldest child—what I am trying to say is that when the consultation process comes around, it should be very carefully done and both parties agree as to what is going to happen. My [REDACTED] was forced to give birth to her eldest child on the beach. She had to give her child up to an aunty or an uncle—a big uncle—and then that child grew up to become my aunty, not my sister. I am the baby of the family. She was punished and sent to Palm Island.

There are two different lores that took place at that time. That was in 1945. What I know and from what I have got—I have a history book that is dated back to the 1900s that we keep in the family now. It is very brittle. Mum was of the island at that time. That book has the recorded deaths, births and marriages from the 1900s. My mother's firstborn was registered in that. It is very hard to come to terms with it. After Palm Island, with the other siblings that were born, it is hard to accept whether it was the lore at that time or whether it was law. The elder sister that became the eldest after that refused to accept our eldest sister as an aunty.

There is a lot of conflict in certain families. Different islands have different ways. As I understand it, back in the time there were two different types of lore. It was the authority of the lore of the people on the island—authority, but not traditional—or it could have been traditional and then gelled into the law. I am not too sure. There were traumatic effects after that—being punished and sent to Punishment Island in Palm Island, then getting married and having two more children. Then I came along.

I could not trace back who my [REDACTED] was because my [REDACTED] was too afraid to put my [REDACTED] forward because they were not married. Back in the lore at that time, as that traditional book shows, a lot of adults had come to the age of 20, at the latest 22, and they needed to be married before they could have their children. There were a lot of registers which showed that children were born but they were named illegitimate, which meant that their fathers' names were probably not recognised or, because they were not married, they were not allowed to be recognised.

My [REDACTED] scribbled out her biological father's name because she was ashamed. It took us a long time to accept. In front of people we respect the traditional adoption. Today I call her [REDACTED] or [REDACTED], but behind the scenes [REDACTED] is the eldest and I am the youngest. [REDACTED] opened the door and I closed the door. We have that special bond. Only certain people in the family will accept that, whereas others who do not are bound by that traditional lore and it is taboo. It is taboo to actually talk about 'That is not your mother; that is your mother over there.' Things like that are taboo.

Because there is no proper consultation around that process, a lot of people grow up not accepting it. When it comes to finding out who your real father is—I was born in 1964. My mother's husband at the time went missing in 1959. I only realised in the last 10 years that he was not my father. Because of that, I had trouble finding out who my dad was because my mother had already passed away. Due to his efforts to find me before he died, I actually found out who he was. My mother was afraid that if she put down my biological father's name the authorities would take me away, like they took her eldest daughter away. That part of the lore and the law was quite confusing for us back in that time. It had tremendous effects on the family as we grew older.

My mother became a displaced person after her husband went away. She worked her way back to Cairns. I became homeless. I grew up on the streets. I did not know who I belonged to. I went back to Badu in 1971. I went to Darnley Island for the Coming of the Light. Just in the last five to 10 years, knowing my mother's culture and getting to know my mother's people is how I learned where my heritage is today. Otherwise, I regarded myself as part of society. I grew up in Cairns. It was not until 1978 that my mother actually got an endowment or some money. She only used to get \$60 every six months. Having no home to go to, not knowing where your next meal is coming from and your mother becoming an alcoholic, life is very hard.

We need to do that process properly for our future young people. To give them that proper identity and that consultation, it gives them much more closure, I suppose, in their upbringing. I just wanted to share that because I had been through that experience, along with my mother. I am just learning the language today; I only know a little bit. I now acknowledge and respect that you do not sit in front of your elders with your back to them—or anybody, for that matter. You must always acknowledge and there are certain ways of doing things. I thank God today that Torres Strait Islander people have a very strong cultural background and it needs to be respected. Thank you.

CHAIR: Thank you so much, Angela, for sharing a deeply personal story and also the strength in the heritage and understanding where you have come from and where you are now. That is very special. This committee is already learning. We have already decided to open up our next meeting to a room—no more backs to people. I apologise for that. Your point on consultation is taken, of course. In the bill that we see and the explanatory notes behind, it is consent based. Both parents must agree for that application to happen. That is now in place. Thank you very much for sharing your story.

Mrs Lui: We cannot speak on anybody else's behalf. We can only speak on our own behalf. I do not have the right to speak for my elders and I must respect, because they are older than me. They have more knowledge than I have. I can only speak on what I learnt.

CHAIR: Thank you, Angela. We are richer for hearing all of this, of course. We are more informed along the way.

Mr Lui: My name is Bel Lui. I am from Darnley Island, Erub, in the eastern Torres Strait. I am related to Angela Lui. Talking about family links, I am from her mother-in-law's side. I looked at the legislation. It is a 90-page document. It took a lot of reading. The traditional adoption practice has been happening throughout Torres Strait. Sometimes the child does not know it is given, but it is a role that happens in the family. For instance, if the child has been brought up by grandparents and the grandparents pass on, it becomes the responsibility of the older siblings to take care of the child. It is a different issue from adoption. I think we need address that as well. We in Torres Strait are linked onto others, like PNG. People in Torres Strait have family in PNG. Lots of families have adopted people from other nationalities, so we need to address that as well. I think the legislation needs to have some sort of clause attached to it to accommodate these sorts of issues.

CHAIR: We have heard this before, but just to confirm, if a PNG person marries someone from Mer Island or Murray Island, they are different practices?

Mr Lui: Yes.

CHAIR: We have heard this before. Thank you. I think that is important.

Mr Lui: Yes, and it is happening. The nationals from PNG are moving to Torres Strait and taking up residence and claiming their connection to the Torres Strait islands. It creates lots of confusion. It happened in my family. My great-grandfather adopted also. He was one of the evangelists of the London Missionary Society. He worked throughout Torres Strait and he adopted people around the Torres Strait. We tried to make connections, to find out who you belong to, where you come from, trace the roots. It makes it difficult. That was just a couple of notes I have taken down here. Thank you.

CHAIR: Thank you very much, Bel. Mrs O'Shane, would you like to say something?

Mrs O'Shane: I was born on [REDACTED] in the Torres Strait and lived on Murray Island until I was seven years old and then we moved in to TI, got permanent to go back in to TI. I was six. The whole family came and we lived on TI and made TI our home. I grew up on TI. When I was growing up my [REDACTED] told me that I was culturally adopted to a family at [REDACTED]. This man was my godfather and I was sort of culturally adopted by him and his wife to be a sister for—he only had sons; he never had any daughters, so I was more like a sister to the boys. I respected what she said. I acknowledge them when I see both of them when I travel to [REDACTED] and I know they are my adoptive parent, but I stayed with my mother, my born mother.

Anyway, growing up I had two children. I was working at that time for the department of family affairs on TI and Mum said, 'I want the kids.' I said, 'But they are my children.' She said, 'We will look after them. We will grow them up.' I went back and I spoke to somebody at the court, the family section there—they do things for the children—and he explained to me so I went back and said, 'Mum, yes, you can have the kids.' One we did a paper to; the other one we just culturally adopted him. We lived in the one house. We all grew up together. They called me Mary, they called my mum 'Mum' and they called my dad 'Dad'. They went to school, went away and came back. They got their birth certificate. I was the mother on the birth certificate. They knew the father. They were told who their father was by my mother, which I agreed to. They had the right to know. Mum died. Dad died. They are all grown up now. They got family. They look after themselves. They still acknowledge me as their elder sister and that is all we are.

What I want to say to you people is: this cultural adoption, this issue been from way back in the Torres Strait. Our grandfather and grandmother did cultural adoption. It belongs to the Torres Strait people. It belongs to our people. It does not belong to you people sitting there. We do not want this thing going into the law. I do not want to see this one give our lore to you people to look after it for us. You take too many things away from us already. Now you going to take this one away because some people agree to do that, because some people cannot do what they should be doing for the kids. Another thing is: when you have come and talked to us, do you talk to people who have been adopted out also—people who are now grown up? There are plenty up in the Torres Strait. I do not want people to come and talk on behalf of those children or adults now—man and woman—and say that this is what they want because they do not want that; it is their grandparent and grandmother that wants that.

I worked in a school for 22 years, at St Augustine's College, with Indigenous kids. A lot came from Aurukun, Cape York and a lot from the Torres Strait. They want their birth certificate. I get on the phone and I ring them up. They want their birth certificate only to play sport. Now, a lot of them are culturally adopted so the mother says to me, 'We don't tell the kids who their parents are until they come to a certain age, before we tell them who they are, so you don't tell them.' I said, 'Yeah, I know that.' So I get the birth certificate just to show the fellas organising the sports at the school and make sure that birth certificate goes back to the parent. I speak to them about the tax file number, too. If a kid was given to a grandmother or a grandfather or aunty or uncle, they have legally adopted—culturally adopted. They have to apply for an order, or they know what their real mother is also. Then the real mother has to apply for the tax file number for them. Otherwise, they give me permission to apply for the tax file number for them, because they really need the tax file number when they are at high school too.

I go round and visit. I take my principal, the boarding master and a teacher and go round to the Torres Strait and visit. We go Saibai, Dauan, Boigu, Badu, Mabuig, Kubin, St Pauls, Darnley, Stephen, Murray, Yorke, Yam and Warraber—all those islands in the Strait and to Bamaga as well. We talk to those parents and talk to the grandmother. I explain to the people that this is the lady that raised the kids; they have been culturally adopted. I explain that to the principal at the school. The kids know that, because they are big, they grew up with their mother/grandmother. They call her Cairns

'mama'. So I do not see—unless there is something wrong now up there and they want to give to it a white man to turn it into white man law or whatever. I mean, I am quite happy for it to be the lore still of the Torres Strait people.

I know that I might be speaking against my niece Cynthia, but I got to speak my mind. I am older than Cynthia I am older than Cynthia's father.

If this thing goes through parliament, will it give the other kids right also to claim land or whatever the family has now in the Torres Strait? Would that give them right to do that also? I am asking you now: if it goes into parliament, what about the adopted kids? There are a lot of Papua New Guineans too, like Bel explained, being adopted by Torres Strait people. It will give other people the rights to claim land or whatever they have, so whatever I have they will claim too. Beside my children, the other kid is going to claim the same. To me it would be an open door thing.

Mrs Tillett: All those sorts of things were covered by a judge.

Mrs O'Shane: No, I do not agree with her and I am speaking my mind and that is it.

CHAIR: And we must respect your views on this. Everyone will have their respected views.

Mrs O'Shane: That is right. I do not agree with them.

CHAIR: We have yours on the record.

Mrs O'Shane: I lived on Torres Strait. I know. I visit Torres Strait. I go up there. I speak to people in the Torres Strait.

Mrs Tillett: We need to see the judge's submission.

Mrs O'Shane: There is more work to be done yet. There is more work to be done. This is not time to get this issue through parliament.

Mrs Lui: There is just something I want to say on that. My [redacted] name was [redacted]. He was taken off the island and we just realised that apparently he was smoking opium with the Chinese so they sent him to Yarrabah. He was one of the first Torres Strait Islanders that settled in Cairns here. They had a reunion. My [redacted] was brought up by the [redacted] family. They had a reunion just recently and the way that the adoption was, because my [redacted] was taken off the island, he was given to his brother's children to grow up. So there are five children there, but when the reunion came they would not accept us in that reunion. When it comes to land and that—and I know from working 20 years in Napranum up in the western cape, working with the Aboriginal people there—when people are adopted they do not allow adoptions to have a say about land and royalties from Rio Tinto and stuff like that.

Like Auntie said, there is a lot of consultation that needs to happen unless we are only going to focus on the identity of this child for future reference—to get a driver's licence, to get a birth certificate or something like that. Otherwise, these issues from the past will come up like they are coming out now. We witness that when we work in Indigenous communities. When I say law and lore, the law that my mother faced was non-Indigenous law agreed by the authorities that were on the island before the law came along. Then you have the lore that was a traditional process all the way through. My mother asked me to give up my first child, too, and I said no. I could not go through with it. That was down here on the mainland.

There are those issues that are going to come up if the consultation is not done properly. Depending on where it is coming from, issues like this are going to come up—land issues. My [redacted] sister's son married a woman—not married but lived together—and they have four children. The girl was born with the feet back to front because it came out later that my [redacted] grandfather is the same grandfather to the woman who gave children, so medical issues are there as well.

What process are we going to have in place to let them know that they cannot marry that person? My [redacted], when you look back through the family line, was adopted to [redacted]. I am supposed to be his auntie and we got told that on the day of our marriage, but we already had a child. I was supposed to have twins, but I lost one because the connection was too close. You see a lot of this in Boigu Island people. There are a lot of intermarriages and children are born with disabilities. Those things come into play as well. Sometimes in the past because of the taboo, our people do not tell people who their brother or sister is until they reach a certain age and sometimes that could be too late. That is something that we have to take into consideration.

Mr Lui: That was not spoken of, never discussed.

CHAIR: Mary, you wanted to add more?

Mrs O’Shane: There was a boy at my school. He came into my office one day and said to me, ‘Miss, do you know my father?’ I said, ‘No. Why don’t you ask your mother?’ ‘I’ve asked her that many times and she wouldn’t tell me. She said to me there’s a right time and place for that, but I want to know now. I’m 17. I’ll be 18. I want to know who my father is.’ He was very, very cranky. He swore and then he punched the wall. Why do they keep it a secret when they are going to find out anyway?

CHAIR: When did your mum talk to you and tell you? You said this in your opening. How old were you?

Mrs O’Shane: That I was culturally adopted?

CHAIR: Yes.

Mrs O’Shane: I must have been seven or eight years old when she told me that. I accepted that. I loved the couple very much. They loved me. We respected each other and I respected their children. They are like a brother and sister to me also. I stayed with my mum and dad until they died.

I want to talk about this other kid who was at the school, too. He knew that he was adopted out and he knew who his mother was. He came and told me his story and I said, ‘How do you feel now being with this other mother of yours from Mabuiag?’ He said, ‘Good. Good relationship. She looks after me. She comes down when we have an event at the school like a school fete or graduation.’ She came down for this also for this kid.

When I left St Augustine’s I got a job and I was working with her at the Aboriginal and Torres Strait Islander Legal Service. One day this same boy came and asked for me when I was working there. He asked me, ‘Miss, can I change my name?’ ‘What do you want to change your name for?’ He said, ‘I want to change my name. I want to go and have my real mother’s name.’ I said, ‘Okay, I will put you through to someone in the civil section to deal with that.’ He went and spoke to this person. He went home. About three or four days later, he came back and said to me, ‘I’m going to keep my name. I’m not going to have my mother’s name. I don’t want that name. I’m going to keep this adopted parent’s name. My mother never cared for me because she drank too much and she gave me as a child to this one and she went away. This one looked after me. This one grew me up, so I respect her.’ I said, ‘Good on you for doing that. If that’s your decision, you go with that.’ He came and filled all the forms out himself. I said, ‘Take it down to the courthouse and you will pay for that,’ which he did.

Like I explained, there are a lot of issues in the Torres Strait. We only had one meeting with that group that came around and spoke to us—Ivy and the other fellow. Three or four of them came and we had a meeting in Cairns and we spoke on this issue. They came and briefed us on that. I think they were at the meeting, too. I was not happy. I said no, this is a rush. They are pushing it. They were going to come back and meet with us again, but they did not come back and meet with us again. Next thing I hear it was on the TV news. It came on TV and in the newspaper. I read the *Cairns Post*. It was in the *Cairns Post*. Charles Passi said it is a historic event now for the Torres Strait Islander, and I do not think it was an historic event at all. This is not Mabo. This is something different. I said no. Everybody in the Torres Strait needs to be consulted. Every island needs to be consulted on this issue. You do not go from one island to Saibai to Bamaga. TI has a big population of non-Indigenous people and you were going to come back and go down to Brisbane and take the words of all you had spoken to. I do not know what you are going to do down there, but don’t Murray, Darnley, Yam, Yorke, Stephen, Warraber and Coconut have a say in it? Are you just going to go by what Ivy and them decided and go down and speak to you because Saibai and Bamaga and whoever on TI are going to agree to it?

CHAIR: In the explanatory notes that we have received, under ‘Consultation’ they said they had over 150 discussions at 30 different locations. I am not sure if you were aware of that.

Mrs O’Shane: Thirty different locations?

CHAIR: Yes.

Mrs O’Shane: Where is that? On TI?

CHAIR: No, they listed all of the locations in the explanatory notes. That is just to inform you that that was in there; that is what we received. That is from the Kupai Omasker Working Party. I might ask you a question. Do you consider it important at some stage for Torres Strait Islanders to have legal recognition over this? The intent of this bill is to provide, finally, legal recognition for people to be able to go and get a licence, as you just said, go and play a sport or whatever. Where do you sit? You are saying it is rushed, but is it important—

Mrs O'Shane: It is important for them to get those things, yes. It needs to be acknowledged and they do it. Cultural adoption belongs to the Torres Strait people and it should stay where it is. That is the last thing I need to say to people.

CHAIR: Thank you very much.

Mr Lui: I have a good example of when Eddie Mabo made a claim on the land under his adopted father. That is a clear-cut case. As I was saying, other issues come from that—traditional adoption. Sometimes the children are fostered, not adopted. There was an instance where the parents died and their aunty or uncle took them in—fostering. They are not adopted but they are fostered. We have to look at that issue as well.

CHAIR: When parents pass away, do you think it is important that kin looks after their children?

Mr Lui: Yes.

Mrs O'Shane: That child belongs to everybody—the family. Every aunty and uncle looks after those children. They do not go astray.

CHAIR: A lot of the reading so far has been around community—raising that child in the community on the island. It is just the way it has been done for many, many years—generations.

Mrs O'Shane: That is right. I am the eldest daughter of my mother. My mother's brothers and sisters all looked after me. We share things; we never fight over things. I see now that endowment money is paid to people. Before that, they never got much money but today they do. People are fighting because this kid has been given to this fellow, a relation. This fellow looks after that kid, puts him into sports and good schooling and makes sure he goes to school every day and whatever. This lady sees what is happening and she wants the kid back.

There is a thing with the kid and the father. The father explained to me, because he is a relation of mine from my mother's side—and that is something that the woman sitting down the end must have gone through, going to court. He told me that he came down for court regarding this kid and he explained to me what happened. I said, 'What are you going to do?' He said, 'I grew him up and I spent a lot of money on him. Why does she want to take him away? Because she gambles, she drinks, she wants that kid, but she doesn't look after that kid. That's why I took him in the first place. Now she wants him back because she needs the money for that purpose.' That is another thing.

CHAIR: We might invite Genevieve Meldrum to speak.

Mrs O'Shane: I must go and let somebody else talk.

Mr HUNT: I would love to ask you some questions if you can stay. If you have to go, that is fine.

Mrs O'Shane: No, I am just going to move this away from me. Mr Gela might want to come and talk. He is sitting over there.

CHAIR: Anyone can take a seat.

Mrs Meldrum: I am actually a mother who had to give my two boys away. Like Mary and Angela said before, there were various types of reasons for people like us having to give our children away out of respect for our parents and our family members. [REDACTED] was actually brought up by my parents because my dad wanted me to go away for education and educate myself. I did that and when I came back my parents were very proud of it. At the same time I still had to work. Even though I was studying, I still had to work til two o'clock in the morning to send money back to my parents to support [REDACTED] because [REDACTED] never supported [REDACTED], only me.

At the time, there were 14 siblings in the family and there was only one income in the family, so my eldest sister had to leave school and go to work at the age of 13, and so did I. I had to work at 13. When I had my first son, he stayed with Mum and Dad and I went away to study and I came back. Then I had my second son. My [REDACTED] was traditionally more or less adopted to my parents. When my first son was there, there used to be the DAIA in Torres Strait, the Department of Aboriginal and Islander Affairs. They had an office up on the hill there. They used to have this fellow, and I always remember his name; it was Albert. He used to go around to the Torres Strait with his little brown leather bags and go to the hospital every time a mother would have a child and register some of those children from there—whether they were given to family members or whether they were registered under the white government legislation at that time. They would get child endowment, which was very little at that time.

I went away and got educated and came back. I had my second son. By this time the law had changed, the legislation changed, but at the same time the traditional practices of adoption were still embedded there within the Torres Strait. I had to give [REDACTED] away whether I liked it or not. The reason was I had to go to work to help the rest of my family. Not only that, my parents decided for me that they would go to [REDACTED] because they could not have children.

[REDACTED], who is now living in Broome, has children of his own. He approached me one day as he was leaving on the ferry from TI. He has never, ever called me 'Mumsy' and he called me 'Mumsy' on that day when he left. He had tears in his eyes. He said, 'I know you've been hurting all these years but I know you're my mum. I want you to tell me who my father is.' Prior to that, I was actually working for a long time for stolen generation which gave me the privilege of having to read through Tindale records of children who were taken away through the traditional adoption and other ways and the white law. I said to my son, 'I'll help you find your dad.'

The last time I heard, his dad was in Weipa as an engineer. I was nine months pregnant. I worked right up until my waters broke at the bar of the Grand Hotel. My grandfather was on the other side and he said, 'One of the girls just said they just got a phone call from Weipa. The father of your child is on the ferry coming across to TI.' We had split up some time before that, before I got to nine months pregnant. I was in the labour ward and one of the girls from the bar said to me, 'We'll ring you at the hospital because we heard that the father of your child is coming.' I had my child, then two hours later the phone rings in the maternity ward at the hospital and he said, 'I've got to get the afternoon flight back to Weipa because I have to go to work.' He never had the audacity, respect or consideration to come and see me or see his own child, so my parents turned around and made the decision for me and said, 'You need to go to work because you have to go to work to help dad and your big sister.' At the time my sister had started at the hospital in TI as a cook and she stayed there working for 47 years after that.

I tried linking up with Link-Up through the stolen generation program and worked very closely with not only my child's case but every other case that I worked with. I have stayed there with stolen generation for 30 years and I still am with them. I helped put the bill together for stolen wages when the office first opened up in West End in Brisbane.

I have never forgotten my child, through traditional adoption, because my parents made that decision. As of next week, my eldest son turns 50 and I have compiled things together over the years that I had which will be presented to him by his eldest grandson from his nana. That will break and heal some of the pain and spiritual pain that we have suffered for so many years. I was given the opportunity and experienced other families with traditional adoption, through stolen generation, through Tindale records, after World War II where everybody got evacuated from the Torres Strait, so I collected a lot of history for 30 years. I have even had two reunions of our family which I have researched all around the world for both sides of my family.

My father is from Boigu Island and my mother is from Erub-Darnley, but I look like an Asian because of my two grandfathers. One was Spanish-Filipino and the other was Indonesian-Dutch. That is why we have such a jelly bean look family, but we are proud of what we are and who you are. You cannot help who you are and what you are. Wherever your journey takes you, it is up to you to heal with your children through this traditional adoption thing.

Like Mary said, what you guys are doing is you have come in and are going to take that away again and present it and we are going to follow under your law again. This is what we had with the last stolen wages meeting. Seven lawyers came together and sat with us in my workplace, with the elders around there. There were nearly 60 elders in the room that day. They all agreed that they wanted to help with stolen generation payment because they felt our people were entitled to more moneys, for which they did. Today they are getting more payment done, but also Mary said lots of other things about our children today. They get unemployment; they have a child. Not long ago, the government put out \$10,000 if you have a child. Everyone was having babies so they could get \$10,000. Then where were the babies? They had been dumped with athe, aka, grandma, nene, datho—that is all our grandparents' names in the Torres Strait as we reflect on. This is where the children were going. Our elders in this society today are still being handed children over whether they like it or not, but because the biological parents there is more around everywhere.

I tested myself one day. I went from pub to pub on a pension day. I really did, because it was hurting so much. I do not know whether I was upset because I could not find my child's father. I have gone right up to Burma to find him because I had last heard he was working on the oil rigs over there. I thought other people need help, so I went to every single pub and dot pointed how many people I knew who were of Torres Strait and Aboriginal at the time who were sitting at the pub playing poker machines. I tell you that it is no different to the \$750 extra lately because of the line-up out there at Edmonton at the bottle shop recently. Where I work, I have got people lining up and domestic violence has escalated, yet they can go and leave a bottle shop open during a pandemic. What is more important: the life of a child or the bottle shop?

There are a lot of issues in accordance with traditional adoption. Like Mary said before, it is up to them when they are ready to say, 'We've got to tell you who your mother and father are.' That is up to them. For 50 years coming next week, [REDACTED] always called me Genevieve. It was only Cairns

today that his son rang him and said, 'Don't you think it's time to turn the tables on Nan?' He said, 'What's that?' 'Don't you think it's time you called her "Mum" because she is your mum.' At four o'clock this morning I woke up, because [REDACTED] turned up on my doorstep because he received the phone call at three o'clock in the morning from his son to say that I am not going to work today, that I am going to this meeting because I need to express my pain and my experience in my life and my journey and pathway that gave me opportunities where I can help other people. I have always for the last 30 years helped other families link up back to their children, given the fact that they give consent for that.

That is why with stolen generation material, there is a lot of restricted information to families when they start connecting to get their reunion together. That green piece of paper a lot of people have is about that thick. There is restricted information. If a family applies to have their reunion and they want the paperwork to give to their families about all their family tree, you have to go to your eldest of the eldest who is living to qualify for that. If a family from that member already deceased puts an affidavit in saying, 'You cannot take this restricted document,' well, you are not allowed to take it. You are not allowed to share it within your family reunion get-together because it is restricted information. In those days as well, they did not quite know who they were related to so they had an affair and had children. That is your uncle; that is your aunty; that is your cousin. This is what happened. That is where some of that restricted information has been embedded in this stolen generation portfolio these days.

That is my journey. Like I said before, the seven lawyers came in. They helped us to get more money for stolen wages, but this is just a one-off. The outcome came out about when they were going to get paid, and the letters were coming out in September about who was going to be eligible and not eligible to claim. This is the problem with the children who were adopted. They have got no parents anymore. They have no siblings anymore. I have taken them to that office to claim. There are quite a lot of children that I worked with. I took them there and they had no birth certificate to claim so they were not eligible to claim. I said, 'Yes, they are.' I do not care if it is not in legislation but they had been brought up by that old man and that old lady to what they are today. If there is an uncle and aunty that justifies that and says, 'This pikinini should claim,' you should claim because he got consent from his elders. That is my story.

CHAIR: Thank you very much, Genevieve, for taking us through your own personal story. I think you should be enormously proud of the other work you are doing but the connection you have made with your son must be very, very special.

Mrs Meldrum: I still do it and I will always do it. People that I have connected with—my network, which is consisting of over 180 within the stolen generation network, is still consistent with what is happening today.

CHAIR: I understand. Pastor David, I see you are now at the table. Would you like to make a statement?

Mr Gela: I am from Erub, Darnley Island, in the eastern Torres Strait. Of the four clan groups on Erub, I am from the Peiudu clan on my father's side. On my mother's side, she is of the other clan group, the Samsep clan. We are proud of the information in the sense of our identity, but many of us did not come to know that until later on in life. That is very much so with information here in the sense of our traditional adoption practices.

I reflect back on the journey. I can remember that when I was living in Brisbane I was part of a discussion group. I pay tribute to brother Steve Mam and Belzah Lowah. There have been many along the journey. We earmark 1985, but well before that we had those discussions in Brisbane about kupai omasker, the traditional adoption practices. Each time we come to a meeting like this we reflect and think, 'When will there be closure? When will something be put in place?' We were having these discussions over 30 years ago in different communities in the islands and here on the mainland. We have heard a lot of stories that are gut-wrenching and heart-wrenching.

For me personally, I am looking for closure to all of those discussions and some sort of framework or structure that can facilitate us going forward. We need to go forward rather than have more 'round and round the mulberry bush' types of discussions. They have been important discussions—I am not belittling those discussions—but I think there comes a point in time where we need to develop it to the next the level and pursue another level of input into the situation. I am thankful for the bill that was introduced in parliament. I acknowledge our own Cynthia Lui, who presented the bill. That was something special. It was all our own but very much a part of all of us in Queensland and the Queensland parliament. I thank you for coming up this way and visiting our communities on the mainland and in the Torres Strait.

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

Like I say, the practice will always be with us. We do it because we have grown up with those practices from our forefathers. Lore is very much an observation of life and how it operates in our community. It is the practice of life. Because of those observances, our elders, our forefathers, have gathered the practices that they value and put order and the right perspective into our life to exist in our communities. That is why we can say it has been a practice since time immemorial. We will continue to practise it—those that understand it—when the opportunity arises because it is within us. It is in us—being able to give a child to a couple that has not been able to have a child, being able to give a child because the focus is on the child and it is for the benefit of the child. We see the ordinary pattern of a couple being able to give a child to another couple because they are not able to have a child. Even in the case of a single woman at the time, it was more beneficial for that child to grow up in an environment where there was support for that child. It was always for the benefit of that child. There were times when it was taken out of the hands of the birth mother, being a single woman, but certainly the community was looking at it from the perspective of being for the benefit of the child and the benefit of that single woman going forward as well, whatever that may be. That was the practice—the focus was on the child.

They are the common examples that we have of traditional adoptions. Then there were the adoptions in the sense that a couple would have a child and there would be a younger brother or sister who was still growing up and they would identify that the child was going to belong to him or her. That child would be growing up in the understanding that they were going to be their child. There were times when there was a happy conclusion to it. In the sense of traditional adoption, there was no paperwork. It was a heart decision—a ‘give them and take them’ type of exchange that was happening. There were times when children just grew up at the end of the family line. They became our brothers and sisters and we were the uncles and aunties. It was about caring for that child in whatever environment that child was able to fit in and be a part of—a family group.

I have been a minister for over 40 years. In a lot of marriage situations I have had to ask for birth certificates and I hear, ‘I don’t have a birth certificate.’ Inquiries have been made and there is not one. That has happened with couples in Queensland and in the Northern Territory where they were born on a cattle station. We had to look at different ways of gathering that information so we could perform that marriage on a legal basis. I have come across a lot of those instances in 40 years—someone showing up and saying, ‘I don’t have a birth certificate,’ or someone showing up and saying, ‘I have a birth certificate,’ and then when they looked at it their face would fall and they were just broken because the person stated on the birth certificate was not the person they grew up with. I am not only doing marriage counselling but doing that sort of counselling as well. I am having to say, ‘You have this marriage coming up in a month. You have to sort this out.’ We are facing those kinds of issues because of those situations. It has happened a number of times.

In confronting those kinds of issues, I am looking at this bill that is going forward and I am thinking that it can solve a lot of those issues. We can ask for more time, but we have been discussing this now for 35 years. It is time we started to do something more substantial. Something substantial has happened. It has become a bill in parliament. I am looking at the time it becomes law in the state of Queensland.

I had a quick look at the bill. I did not have a chance to read through it all but I looked at the framework of it. I am quite happy with a lot of the sections that are in there that are needed to support and provide strength to that legislation as far as having the framework to allow us the opportunity to have our agreements about traditional adoption embedded and enshrined where they need to be enshrined, especially in the sense of the other paperwork that is required. Certainly for us I feel that anything that we need outside of the initial agreement to have that child adopted, to recognise that child and to provide that safe structure for that child growing up I think it is important. A lot of those other issues will come up, but I think we have to deal with them as they come up.

As Torres Strait Islanders, we do best by practising rather than talking. We are very practical people. That is why lore is a practical application of life. We need to get this thing happening because we need to practise what it is going to say and what it is going to do within our system. Yes, we can adjust some things as we go along, but let’s get this thing in the water. Let’s launch this boat. Let’s get it where it needs to go. We can sort things out as we go on this journey. This journey will always continue.

I reflect back to Eddie Mabo. His journey through the courts ended in the highest court in Queensland. He could not go any further because he was traditionally adopted. The case was headed for the High Court in Canberra, but his part in it stopped because of his traditional adoption. It was not recognised. It was challenged by the Queensland government on that basis. We agreed to not

pursue it along those lines and allowed the other plaintiffs to take it to the High Court and allowed it to become that landmark case for land issues in Australia. He faced a real stumbling block in traditional adoption.

I highlight that to say how many more of our people—how many of our children and how many more of our adults—are going to face this stumbling block when they could be achieving things that are going to be landmarks for our families, for our communities, for our state, for our nation. I support this bill. I hope it becomes law, come what may. Mabo land, given his traditional adoption, is still practised as his land because it is recognised in our hearts. That adoption gave him that right to that land and no-one is going to question that. Because of the practice we uphold those agreements.

Let's give our children who are facing this area of no recognition the opportunity to be recognised. I thank you for your time with us. I thank the Queensland parliament for the opportunity to be able to enshrine this in legislation. I hope it passes as law. Thank you very much.

CHAIR: Thank you very much, Pastor David, for your very well articulated and practical experience from all of that counselling. Who would have thought that, in having to produce a birth certificate, people have to go through those barriers just to get married? It must be incredibly difficult. Thank you for doing that work in the community for all of those years. There is no doubt that it is a deeply intrinsic traditional cultural practice that has happened for millennia that we are dealing with here. The interpretation of meriba omasker kaziw kazipa is 'for our children's children'. I think what you have said strikes a chord. Thank you for your contribution.

Before I open it up to questions from members, I recognise three other members of parliament who are here today: David Batt, the member for Bundaberg; Brent Mickelberg, the member for Buderim; and Chris Whiting, the member for Murrumba. Welcome.

Mr HUNT: Thank you very much for sharing your personal stories. This is all new to me. Up until this point, I was probably led to believe that the whole community wanted this. Indeed, the judge said that there are people watching from the Torres Strait islands crossing their fingers and hoping, but we have heard a couple of dissenting voices. Mrs O'Shane, I appreciate you coming forward to talk about that dissent.

When I listen to the stories—and yours too, Mrs Lui—about pain, shame, regret and identity, there is a familiar ring to it. Western culture indeed has a poor history of forced adoptions. Even in my family, my uncle—my father's brother—was born to an under-age lady, who was 19 at the time, and he was adopted out to the aunty, so my father grew up thinking his brother was his cousin. That led, in March 2013, to Julia Gillard, the Prime Minister at the time, making an apology to children of forced adoptions.

I am concerned from what I am hearing in the evidence today about consent. This bill requires the consent of all parties. My question is particularly to you, Mrs O'Shane, and you, Mrs Lui, who have concerns about the bill. Do you have concerns about the consent issue? We have heard evidence such as, 'My parents decided for me that this was going to happen.' Do you have concerns that mothers will be culturally pressured into giving consent when they do not want to?

Mrs O'Shane: I have not heard of or seen a mother pressured to give their child away. They do give their child away from their heart. It is within the family: aunty or his sister or her sister or his brother. If the couple have been married they do that, but I have never seen or heard of being forced to give away. She might have a different thing to me.

Mr HUNT: Mrs Meldrum, you spoke of your parents making the decision for you. Maybe you can talk to that as well. Would you be prepared to talk about your experience? I am trying to unpack the consent in the bill. The bill requires the consent of a mother. Do you have concerns that a mother, despite the cultural pressures, might not really want to give consent or might feel as though they need to?

Mrs Meldrum: I did not really want to give consent.

Mr HUNT: Could you come up to the microphone, please?

CHAIR: Just to clarify, member for Nicklin, the bill and the explanatory notes say that a person making the application needs the consent of both the biological and the receiving parents.

Mr HUNT: That is right and my question goes to that. Do you have any concerns that that consent would be under pressure from the community or the cultural—

Ms PEASE: But this bill is not about the actual traditional family adoption process.

Mr HUNT: I am sorry, Chair. Could I have a ruling on that question? Is it in or out of order?

CHAIR: I think where you are trying to go is towards—

Ms PEASE: Questioning the actual adoption process.

Mr HUNT: It was the evidence that Mrs Meldrum gave.

CHAIR: This particular bill recognises cultural practices. You have just heard Mary say she has not had anyone being—

Mr HUNT: That is great and that is what I want to hear. I want to address the concern that people may have about the evidence Mrs Meldrum gave that her parents decided for her in terms of the adoption.

CHAIR: That might be different circumstances, like your uncle.

Mr HUNT: Yes, that is what I am asking. Does Mrs Meldrum have any concerns—

Mrs Meldrum: It is the suffering that is attached to that, which I have to suffer and endure for the rest of my life, until I am sitting here today. That is the difference.

Mr HUNT: Do you have any concerns about the bill?

Mrs Meldrum: There is the long-term trauma that has been happening for many, many years. I have not talked to anyone until today about this, really. It is traumatising, but now it is being fixed and it is getting fixed. It is because my parents took that consent from me. I do not care what you do or whatever, but we have to respect our parents at the end of the day. It was all about holistically respecting our parents at the end of the day. You just shut your mouth and you say nothing. They just take your pikinini from the ward and invite the parents taking them: 'Here it is. Here is a child for you.'

Mr HUNT: Does that give you concern about the bill?

Mrs Meldrum: In other words, they traumatise me by healing the heart of someone else, really. From a spiritual point of view that is what happened, not realising the consequences based on the decision they made at that time.

Mr HUNT: I will leave it there.

CHAIR: Thank you, member for Nicklin. Do members have any other questions?

Mr McARDLE: Can I clarify in my mind: there are two types of consent we are talking about here. In cultural adoption, there is a consent that an event should occur and that takes place within the family unit. The bill does not deal with that consent, as I understand it. The bill deals with a recognition application taking place. The consent for cultural adoption is already completed. It is then moving forward to another step, as I understand the bill. Maybe I am getting a bit confused, too.

CHAIR: That is the way I understand it.

Mr McARDLE: I think there are two different consents here. Mrs Meldrum, in the language that you used, you used the words 'they made me'. I think that raised in the member's mind a question mark about whether you consented to the cultural adoption taking place. Maybe you did not mean to use the word 'made' as strongly as you did. 'They made me do it,' you said.

Mrs Meldrum: Yes.

Mr McARDLE: I think the member's question then comes down to this—and if you do not want to answer this question, please do not. Does that then mean that you did not give consent to the cultural adoption? I think that then flows on to the consent in the bill.

Mr Lui: There are lots of reasons for cultural adoption.

Mr HUNT: I mean no disrespect. I am just trying to understand the consent stuff. I am just trying to understand how it works.

Mr Lui: There are a whole lot of reasons for cultural adoption. From the cultural side, you were saying about your parents making the decision and you have no say. At the end of the day, you cannot go against the parents. You show respect.

CHAIR: That has been a cultural practice for many years.

Mr Lui: Yes. There are other reasons, like you have an excellent family or you are friends and to save the shame they decide to give that child away to their extended family, adopted from—

CHAIR: That is from different circumstances?

Mr Lui: Yes.

CHAIR: I think we have clarity on that.

Mr Lui: There are a whole lot of reasons for it.

Mrs Lui: My comment was to show the different things that have happened in the past, the two different lores/laws and how things had happened and also the effects of traditional adoption. If it is traditional adoption for Torres Strait island lore—L-O-R-E, that respect—that is fair enough. But if it is adoption because somebody said that you broke the lore, that is where I was coming from because [REDACTED] broke the lore. You were not allowed to have a child outside marriage.

Mr HUNT: So that was western interference in that, essentially—a white man interference or a white man's law?

Mrs Lui: It was actually not western influence. It was the authorities on the island who decided that [REDACTED] broke the lore by having a child when [REDACTED] was not married. The lore then was that child becomes illegitimate and is taken off the parent and that parent is then punished and sent away. That was something that was embedded back then. Traditional lore became apparent when I had my first child, because my mother wanted me to give her away because I was young and I was not married. She wanted to carry on her traditional lore for me, but because I did not grow up in the culture—I grew up down here on the mainland, born and bred down here—until I understood properly why I would consent, but I did not consent at that time.

Mr McARDLE: Can I clarify, Mrs Lui: consent is not actually required under lore? It is simply an event that takes place?

Mrs Lui: Yes.

Mr McARDLE: Certain circumstances exist and then (a) happens. Down the track, sometime later, you may then give consent because you become aware of the reasons why, so consent is not required?

Mrs Lui: No.

Mr McARDLE: For example, if you have a young mum who becomes pregnant, in the lore sense the child will move to the mother's mother or the mother's sister. No consent is required and, therefore, the western idea of consent does not exist?

Mrs O'Shane: Yes.

CHAIR: It is about recognising L-O-R-E lore. I think we have finally got there.

Mr McARDLE: Yes. We apologise.

CHAIR: Mary, did you have any final comments?

Mrs O'Shane: My final comment is that I do not agree—sorry, David—about this law going through. Like I said before, it is our lore and it should stay with us. You people take too many things away and turn them into something else, like land rights for instance. It is very hard for us to get our land back because of white men watering down the lore. I do not want this one to go through, too. There needs to be more work done on it. Everyone has to talk about this in the Torres Strait and down here. The population from the Torres Strait and the population down here in Australia—everyone has to be consulted and agree to it, not one group of people here and there. It has to be every individual. Thank you very much.

Mrs Meldrum: I totally agree with what Mary is saying, because every time we have meetings and debates it happens in the city all the time. We need to go to community. I have for many years attended social and emotional wellbeing conferences and workshops and I have said this to them every time: 'Why are we having meetings in the city all the time? What about the community? That is where we come from. Bring the meetings back there. Bring the workshops back up there, so that they know.' They have a right. They have a voice, too, to be part of what we discuss here.

Mrs O'Shane: Thank you very much.

CHAIR: Thank you, Genevieve and Mary.

Ms PEASE: Thank you very much, everyone, for coming in. I know that most people have left now, but thank you very much for giving up your time and sharing your views and your opinions. It is really important that we hear from everyone, as you say, Mary. Thank you very much. All the best to you.

Mrs O'Shane: Thank you very much, too.

Mrs Lui: To sum up, I agree for the traditional adoption, legalising it, which is something that our people—our elders—face if the mother of the pikinini could come back and take it away again, so they have some grounds to stand on. But also, it is the trauma that can evolve after that, like who you are related to by blood, who you are going to marry down the track—that kind of thing. That has come into play.

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

Ms PEASE: Interestingly enough, Mrs Lui, that was raised at one of our hearings right back at the beginning about the intermarriage issue. I think it was Aunty Ivy who said that the parents or the families would normally say, 'You can't see that person. You can't go with that person.' That was traditionally a way that that was avoided. Given the way that, in current days, we travel so extensively and move around so much, it might not be quite as easy.

Mrs Lui: Yes, absolutely. We are going through those practices today, which is very hard work.

Ms PEASE: You did very well. Thank you, Mrs Lui.

CHAIR: On behalf of the committee, I say thank you to everyone for your contributions today. We are far more informed, having been here in Cairns. We look forward to our continuing trip up the cape to hear more from communities. Thank you. I declare this public hearing closed.

Mrs Lui: God bless and good luck.

The committee adjourned at 5.11 pm.