




Speech By
Hon. Craig Crawford

MEMBER FOR BARRON RIVER

Record of Proceedings, 8 September 2020

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

Second Reading

 **Hon. CD CRAWFORD** (Barron River—ALP) (Minister for Fire and Emergency Services and Minister for Aboriginal and Torres Strait Islander Partnerships) (3.55 pm): I move—

That the bill be now read a second time.

I would like to thank the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee for its examination of the Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Bill 2020. I would like to thank the community members and the organisations who provided written statements and submissions to the committee inquiry and also thank the witnesses who appeared at the committee hearings on Saibai Island and Thursday Island as well as in Bamaga, Cairns, Townsville and Brisbane. I note the overwhelming support from submitters for the passage of the bill.

As the member for Cook said in her introductory speech, this bill is the first of its kind in Australia and delivers on our election commitment to introduce new laws that recognise the outcomes achieved by Torres Strait Islander families' continued use of Torres Strait Islander traditional child-rearing practice. The member for Cook also recognised the significance of the inclusion of Torres Strait Islander languages in the title of the bill and that this honours the legacy of the Kupai Omasker Working Party, formed in 1990 by the late Uncle Steve Mam.

I would once again like to acknowledge the Kupai Omasker Working Party, who have been such strong advocates for the legal recognition of Torres Strait Islander traditional child-rearing practice for over 30 years. I would also like to acknowledge Ms Ivy Trevallion, Mr Charles Passi and the Hon. Alastair Nicholson, former chief justice of the Family Court of Australia, as the eminent persons who guided community consultations and provided extensive feedback on the bill.

Under the bill, a cultural recognition order will result in a completely new birth certificate being issued to the person who is the subject of the application. Being able to obtain a new birth certificate will result in positive flow-on effects that many of us take for granted such as obtaining other legal identity documents like a passport or driver's licence, access to government services and school enrolments.

Consistent with community feedback, we have worked to ensure that the bill incorporates cultural considerations including requiring that an appropriately qualified Torres Strait Islander person will be appointed as the commissioner to make decisions on applications for cultural recognition orders. We have also included in the bill the requirement for a two-year operational review of the framework. This will provide the opportunity to review the operation of the legislation and service model and consider how well it is working in practice for the families involved.

I would like to turn to the recommendations made in the committee report. I table the response to the six recommendations contained in the committee's report.

Tabled paper: Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee: Report No. 40, 56th Parliament—Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Bill 2020, government response [1566](#).

I thank the committee for its detailed consideration, noting recommendation No. 1 of the report, that the bill be passed. Recommendation 2 of the report recommends that the department prioritise the implementation of education programs as well as explore opportunities for the provision of independent counselling and support to be made available to people who may experience trauma as a result of their interaction with the legal recognition process. We are very aware that there will be a need for extensive community engagement to support awareness and understanding of the legal framework and for appropriate support for applicants throughout the process.

Committee report recommendation No. 3 was that the department establish offices for the office of the commissioner in both Cairns and Thursday Island in facilities separate to departmental offices. This recommendation is supported in principle, noting that it is proposed to establish the office of the commissioner in Cairns, with office space also available on Thursday Island. The Department of Aboriginal and Torres Strait Islander Partnerships will take this recommendation into account when determining the final location of these facilities, subject to availability of accommodation.

Recommendation No. 4 of the report recommends that section 44 of the Births, Deaths and Marriages Registration Act 2003 be further amended to explicitly instruct the registrar to remove the names of the birth parents from the new birth certificate. I acknowledge the importance of this point. I am advised that a change to the bill is not necessary as the bill combined with the Births, Deaths and Marriages Registration Act already works to achieve this outcome. The names of the birth parents will not appear on the new birth certificate issued.

Committee recommendation No. 5 also recommends amendments to section 44 of the Births, Deaths and Marriages Registration Act 2003 in this case to ensure that the registrar may only give information to a child about a closed entry with the consent of one of more of the child's cultural parents or guardian. I am pleased to advise the House that this is already addressed in the bill. Only adults—namely, the adult applicants for a cultural recognition order or an adult who was the subject of a cultural recognition order when they were a child or their guardian—may apply to access certain information from the registry of births, deaths and marriages under the bill. A child will not be able to gain access to a closed record.

Finally, recommendation No. 6 of the committee report recommends an amendment to clause 45 of the bill to ensure the destruction of any criminal history information received by the commissioner as soon as practicable after the information is no longer needed. This recommendation is common sense. I will be moving an amendment during consideration in detail to include this in the bill. While there are provisions in the bill that protect confidential information held by the office of the commissioner, it is accepted that the bill should include a clause dealing with the destruction of criminal history information when no longer required.

I will be moving two further amendments during consideration in detail for the bill in response to submissions made to the committee. The committee report, informed by the submission from the Torres Shire Council, suggested that the term 'time immemorial' in the bill's preamble be replaced with a term that is more culturally appropriate. It is proposed to amend the preamble to remove these words, taking on board the view that the legal definition of this phrase does not adequately reflect the long period of time that Torres Strait Islander communities have practised traditional child rearing.

As referred to in the submission by Dr Heron Loban, Zoe Rathus AM and Dr Kate van Doore of Griffith University, clause 36 of the bill should require information about how long the child has lived with cultural parents rather than how long a child has lived at the address. The government agrees with this point and an amendment to clause 36 will also be moved during consideration in detail.

While an overwhelming majority of the submissions provided to the committee during its examination of the bill were supportive of the passage of the bill, I would like to refer to a number of issues that were raised. These are policy based issues that were considered during the development of the bill. One issue was whether there should be two commissioners or perhaps a deputy commissioner, including for the purposes of ensuring representation for eastern and western Torres Strait Islands. Multiple models were explored during the development of the bill, including how to appropriately incorporate the cultural diversity of the Torres Strait in the legal framework. Ultimately, a decision was made to proceed with one commissioner. Importantly, the model provides for a Torres Strait Islander to be appointed as commissioner. The commissioner will also need to be appropriately qualified.

As well as having appropriate cultural experience, the central role of the commissioner will be to act as an independent decision-maker, to treat all applicants fairly and to thoroughly consider the circumstances of every applicant who applies for legal recognition. The application for a cultural recognition order will also be accompanied by a statement by an informed person to confirm that the cultural practice as occurred has been verified by persons with knowledge and understanding of the cultural practice specific to the family's community—for example, senior family members.

A further matter raised in submissions is the issue of dispensation of consent, including whether this should be considered by the commissioner instead of the court. The bill initially provides for a consent based process where families voluntarily apply for legal recognition. In weighting up the options, it was considered most appropriate for an administrative decision-maker, the commissioner, to decide applications for a cultural recognition order. For matters where disputes may arise—for example, whether someone's consent should be dispensed with—this type of matter is considered more appropriate for a court. Courts deal with these matters regularly and have processes and legal expertise in place to address the complexities that may arise.

Another matter raised during the committee stage was why the bill requires the consent of an 'other carer' to an application. The legal framework set out in the bill acknowledges that not all families are the same. There may be important people in a child's life other than the child's birth parents or cultural parents who have legal responsibilities to make decisions involving the child. An example of an 'other carer' could be a person who has been granted legal parental responsibility for a child under the Family Law Act. The inclusion of the 'other carer' recognises that other legal rights and responsibilities may be relevant to the family's circumstances and that the commissioner needs to take these matters into account when considering the best interests of the child.

Another matter raised in submissions is whether a birth parent or cultural parent who is under 18 years of age should be able to make an application. The eligibility requirement under clause 32 of the bill requires an applicant to be 18 years of age or above if they wish to apply for a cultural recognition order. The intention is not for the bill to interfere with the cultural practice as the cultural practice can occur when a parent is under 18. Due to serious and permanent implications of legal recognition, it is considered important at this stage that only adults are able to apply. I acknowledge that this is an issue that can be further considered as part of the two-year review of the legislation, after we have allowed the legislation to operate and then consider whether it is delivering accessible services and outcomes to the families involved.

I would like to address the statement of reservation in the committee report by members of the opposition. Firstly, I thank honourable members for their support and for the committee recommendation that the bill be passed. The bill achieves an effective balance between providing for an accessible process for applicants as well as providing safeguards for the parties involved. To summarise a point made by the Hon. Alastair Nicholson QC in response to the committee, a change of identity involving issuing a new birth certificate is not something to be carried out by a rubber stamp. This change permanently transfers parentage and has significant flow-on effects. These matters need to be dealt with in a comprehensive legal framework that is also accessible for applicants. We acknowledge that support for applicants in navigating the legal framework is also essential. This support, including initial advice about the process, optional legal support and access to interpreters, will be provided as part of implementing the new legislation.

Another matter raised is how the bill deals with the principle of the best interests of the child as referred to in a number of the submissions. This is an established principle that is consistent with community expectations and the prevailing law. We made a public commitment to include best interests as one of the key elements of the bill and have crafted the legislation on this basis.

In relation to the issue of criminal checks for cultural parents, I note these are provided for in the bill as an important safeguard where the application concerns a child. I acknowledge the significant privacy, confidentiality and cultural concerns raised in relation to criminal history checks. However, we have paid close attention to ensuring that the bill appropriately addresses these concerns by ensuring that there is procedural fairness for the cultural parent—for example, giving cultural parents the opportunity to respond to what is included in a criminal history report and being able to challenge the commissioner's decision.

In the concluding remarks of Paul Ban's submission on behalf of the Kupai Omasker Working Party, this bill provides Torres Strait Islanders with the legal security to their cultural family practice that they have been seeking for the past 35 years. It has been a long time coming and it will be groundbreaking legislation.

The bill marks a historic and significant milestone in bringing together island custom with Queensland law, delivering on our commitment to reframe the relationship with First Nation Queenslanders and move forward with mutual respect and recognition of a Torres Strait Islander cultural practice that deepens and enriches the lives of our Queensland communities.

In summary, I want to thank the Premier for her leadership and for her support. I want to thank the member for Cook, Cynthia Lui, the first Torres Strait Islander elected to this parliament and someone who has fought to make this happen for her community. I want to thank the member for South Brisbane. I want to thank the member for Waterford, the ministerial champion for Torres Strait Islanders. I want to thank the member for Bulimba.

I want to thank the departmental officials who did so much work behind the scenes: from DATSIP, Jason Kidd and Tony Cheng; from the Department of Child Safety, Youth and Women, Megan Giles; and from DJAG, Leanne Robertson. I commend the bill to the House.