Speech By

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MEMBER FOR MAIWAR

Record of Proceedings, 8 September 2020

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

Mr BERKMAN (Maiwar—Grn) (5.00 pm): I rise to make a contribution in support of the Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Bill. I want to begin by acknowledging what a privilege it was to be guided through the inquiry process by the Torres Strait Island communities which welcomed the committee in Townsville, Cairns, Bamaga, Thursday Island and on Saibai. I also want to acknowledge and thank Cynthia Lui, the member for Cook, for introducing the bill and accompanying us in Bamaga and on Thursday Island and Saibai. That trip was my first time in the Torres Strait Islands and the northern peninsula, and it is truly stunning country.

At the beginning of each sitting day here the Speaker acknowledges how fortunate we are to live on the land of two of the world's oldest living cultures, and it is true. To visit and be welcomed into these communities makes it all the more clear that these vibrant cultures and communities with their unique and ancient law and custom are alive and long overdue for proper recognition of sovereignty no matter how much damage western invasion and colonisation has done. In debating a bill such as this, it is all the more important to be mindful of this colonial backdrop and to recognise the ongoing injustice faced by Aboriginal and Torres Strait Islander people. Until First Nation sovereignty is recognised, whether in the Torres Strait or here in Meanjin, we live and work each day on stolen country. We continue to go about our lives, benefiting from the historical and ongoing dispossession and oppression of Aboriginal and Torres Strait Islander people.

I want to sincerely thank everyone who appeared before the committee and so openly shared their own experiences of island custom and cultural child-rearing practices and the immense heartache and trauma caused when western law cuts across this custom, and that is essentially what this bill seeks to address—the incompatibility of western law with Torres Strait Islander custom around parentage and child rearing. Much of the discussion and reporting on this bill refers to traditional Torres Strait Islander adoption practices, which is not surprising simply because adoption is the best analogy available to most of us from western cultural backgrounds, but island custom is so much more than that. There is more intricacy and depth to this custom than any of us could possibly hope to address in a 10-minute contribution to this debate—the member for Cook would be excepted from that, I am sure—and certainly more than we would hope to properly address in legislation.

That brings me to perhaps the most fundamental point about this bill. Its intent is not to codify island custom child-rearing practice. The role of the committee was not to appraise and pass judgement on the appropriateness of any aspect of this customary practice and nor is that our role here today in considering this bill. I hope that is the spirit in which each and every member will approach the debate. The purpose of the bill is instead to give legal recognition to island custom child-rearing practice and to establish a process for applications to be made for the recognition of the practice. It aims in this one respect to enshrine the fundamental human right to cultural self-determination for Torres Strait Islander people and to address the countless ways in which western law has cut across this practice to the detriment of Torres Strait Islander people, communities and the ongoing cultural practice as a whole.

The quintessential example, as we have heard from other members already, is when a child learns the details of their parentage inadvertently by seeing a birth certificate or other official documentation. To learn information like this without any of the culturally appropriate family support and context is a jarring and a harmful experience, and the committee heard this all too many times while we were away, but the alternative faced by all too many children is that they simply are not able to access their birth certificate or get a driver's licence and, as a result, they are deprived of opportunities to travel for education or sport or work opportunities later in life. There is an undeniable and perhaps an inevitable tension in trying to position such longstanding cultural practice in western law, but it is essential to create a framework like this if we hope to overcome the countless intrusions of Queensland's legal and administrative framework into Torres Strait Islander cultural practices.

It is clear from the variety of comments and criticisms from stakeholders that this bill is not perfect and, to be completely honest, given the juxtaposition of western tradition and island custom, I am not convinced that any piece of legislation could perfectly do what this bill hopes to, but the bill flows, as we have heard, from decades of work and engagement with Torres Strait Island elders and communities to address these issues and it is vitally important that this reform happens. There are a number of important critiques of the bill, many of which are outlined in the committee's report—and I will address some of those shortly—but perhaps the most stinging criticism and one that could have been most easily addressed is not in the report and it is not directed at the bill itself.

I make no criticism of the member for Cook in raising this issue. It is to her credit that we are finally addressing these issues in legislation and I have no doubt that her perseverance is the main reason that this bill will pass before the 56th Parliament is dissolved, but it is inexcusable for the government to have left this issue until so late in the term. This was a 2017 election commitment, but the bill was introduced on literally the last possible day for it to pass in this term of government without an urgency motion. Some might say that it is no big deal, it will get done and the government will follow through with that commitment, but it was made crystal clear to the committee that pushing such significant legislation through at five minutes to midnight was deeply disrespectful to the communities it seeks to benefit.

Some people told us point-blank that it was disrespectful to them and their community for the committee to come and go so quickly and to give them so little opportunity to understand what is proposed in the bill, let alone offer useful feedback. Others were more circumspect in their comments but delivered the same criticism, expressing what a shame it was that we did not have the opportunity to visit each of the islands or even the main island groups to give them an opportunity to provide feedback.

On Saibai we know that there were people who wanted to give private evidence to the committee, but they were denied the opportunity to do so because we had to leave. The community there had prepared a ceremonial farewell and thanks for the committee, but we were left with so little time to undertake this inquiry that we could not even stay and afford them that respect and I felt ashamed of that. Even putting aside the cultural insensitivity of rushing this process, it is just a shame that we as a committee did not get all of the input we could have from the communities affected by the bill. It was clear from very early in the committee's travel that there had been barely enough time to inform the various Torres Strait Islander communities that we were coming and also that so many people who wanted to give input had not been given any useful explanation of what the bill proposes.

One of the concerns most routinely expressed about the bill itself, as we have heard again, was that it creates an unnecessarily complex process and that this will deter people from engaging with the new commissioner. It is true that the bill proposes an opt-in scheme, but it would obviously be self-defeating to introduce a scheme that the affected communities are disinclined to engage with because of its complexity. The requirement that receiving parents are to consent to a criminal history check as part of the application is one specific element that raised considerable concern. I do share these concerns and I note that the amendment proposed by the minister does little to address them by requiring only that the commissioner promptly destroy these criminal history checks.

Submitters also raised concerns about the amount of detail required to be provided by both the birth and cultural parents in the application, including the nature and details of the island custom practice that has taken place. The submission by Dr Loban and her colleagues from Griffith University note that this element of the process quite directly conflicts with island custom and suggests that the applicants should instead simply provide a statement that attests that the practice has occurred with their consent. Additionally, there are elements of the bill that are quite clearly not consistent with island custom such as the limitation that only adults can participate in the scheme. What is more, this limitation sets out a higher bar than what is considered appropriate under the Adoption Act and goes beyond the age of lawful consent in other legislative contexts.

That is not an exhaustive list of the important and well-considered concerns raised, but the counterpoint presented by a number of stakeholders and submitters, some with decades of experience in this space and with lived experience of island custom, is that the detail and complexity of this scheme is appropriate and strikes the right balance, and this position reflects the views expressed by the department that it is necessary to find that balance between not overly intervening in the practice and ensuring there are appropriate safeguards. Despite these competing positions on the specifics of the bill, there is no dispute that reform in this space is long overdue. I think all stakeholders, like me, would have appreciated longer to consider and work through the various issues raised by everyone involved, but the time left to progress this bill unfortunately does not afford that luxury.

Given the haste with which the bill will be passed, it is of fundamental importance that the review of this bill required in two years is based on meaningful and ongoing engagement with the Torres Strait Islander communities about all facets of the scheme. It must start immediately with consultation about the appointment of the commissioner. It is Torres Strait Islander communities that must be satisfied with the appointment of the commissioner, not just the minister. It is also essential that the government commit to proper resourcing for the department and the commissioner to ensure that they can help Torres Strait Islander folks through the process established by this bill and to ensure that it is as accessible as possible. I do maintain that this is incredibly important and well overdue reform and while I wish we had more time to properly consult with affected communities I will be so very proud to support its passage today.