



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**STANDING COMMITTEE ON JUSTICE
AND COMMUNITY SAFETY**

(Reference: Human Rights Amendment Bill 2015)

Members:

**MR S DOSZPOT (Chair)
DR C BOURKE (Deputy Chair)
MRS G JONES
MS M PORTER**

TRANSCRIPT OF EVIDENCE

CANBERRA

MONDAY, 12 OCTOBER 2015

**Secretary to the committee:
Dr B Lloyd (Ph: 620 50137)**

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

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Privilege statement

The Assembly has authorised the recording, broadcasting and re-broadcasting of these proceedings.

All witnesses making submissions or giving evidence to committees of the Legislative Assembly for the ACT are protected by parliamentary privilege.

“Parliamentary privilege” means the special rights and immunities which belong to the Assembly, its committees and its members. These rights and immunities enable committees to operate effectively, and enable those involved in committee processes to do so without obstruction, or fear of prosecution.

Witnesses must tell the truth: giving false or misleading evidence will be treated as a serious matter, and may be considered a contempt of the Assembly.

While the Committee prefers to hear all evidence in public, it may take evidence in-camera if requested. Confidential evidence will be recorded and kept securely. It is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly; but any decision to publish or present in-camera evidence will not be taken without consulting with the person who gave the evidence.

Amended 20 May 2013

The committee met at 2.07 pm.

DIXON, MS CATHERINE, Director, Commissioner's Office, Victorian Equal Opportunity and Human Rights Commission

THE CHAIR: Ms Dixon, we thank you very much for making yourself available for this hearing via teleconference. This is the second public hearing of the inquiry by the Standing Committee on Justice and Community Safety into the Human Rights Amendment Bill 2015. This hearing is being recorded by Hansard. Are you familiar with the privilege statement that has been sent to you?

Ms Dixon: Yes, but it would be great if you could refresh my memory. I have seen it; it was sent to me.

THE CHAIR: I will read it out to you. The privilege statement reads:

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This privilege statement was amended on 20 May 2013. While this is a public hearing, there is only the committee in attendance as well as our secretary, Dr Brian Lloyd. Do you have any questions regarding any of that?

Ms Dixon: No, that is really clear. Thanks for going through that again.

THE CHAIR: We generally give an opportunity to people who are making submissions to us to give a brief opening statement before we go to questions. Would you like to make an opening statement?

Ms Dixon: I am happy to do that.

THE CHAIR: Thank you.

Ms Dixon: Thanks for the opportunity to appear. The commission, as you know,

provided a written submission that expresses our support for the amendments that are proposed in the bill. I thought I would speak briefly today to the amendments that provide for the recognition of Aboriginal and Torres Strait Islander cultural rights. That is because we think, as the only other jurisdiction that protects those rights, that it might be of value to share some of our experience with you.

The Victorian charter explicitly protects Aboriginal cultural rights in section 19(2) and also acknowledges in the preamble the principle that human rights have special importance for Aboriginal people as our first people. In terms of the value and significance of these rights in Victoria, we see them as central to reconciliation and resilience and, indeed, the survival of Aboriginal communities.

This point has been made here in Victoria by Andrew Jackomos, who is our Commissioner for Aboriginal Children and Young People. In the last Human Rights Day oration he said:

... this human right is crucial to our wellbeing, it is crucial to our sense of pride, to our sense of belonging. Culture is the most resilient factor protecting our children. Culture links us to our past so we can navigate our future.

He characterised culture as a “shield against racist remarks and negative stereotypes”. In the context of speaking about Koori children in out of home care, he said:

Culture is not a ‘perk’ for an Aboriginal child—it is a life-line.

I thought I would share some of those comments by him about the value and significance of those rights here in Victoria.

In our written submission we gave some examples of where we think the cultural rights are making a difference. Some of the examples we gave relate to the way the cultural rights here have informed the development of legislation and policy and also where there have been some practical outcomes. We gave the example of the Traditional Owner Settlement Act. That act provides for an out-of-court settlement of native title in Victoria. But it was certainly developed with the cultural rights in the charter in mind. That was explicitly recognised by the government here when that act was introduced and passed. I am happy to talk a bit more about that if you have questions later.

Another example is in relation to the over-representation of Aboriginal people in the justice system. The cultural rights have been important in this space for rehabilitation. For example, the Wulgunggo Ngalu Learning Place was established around the importance of culture in rehabilitating Koori men interacting with the justice system. I have heard directly from a young man who went through one of the programs at that learning place. He had been addicted to ice and had really lost connection with family and community. The importance of culture in helping to get him back on track was probably the most critical factor in his rehabilitation.

We have also given some examples in our submission about the way that cultural rights are being considered by tribunals and courts. There are not many examples but there are a few. The cultural rights of children in child protection cases have come up

there. Also they have been relevant to some extent in some exemption applications under the Equal Opportunity Act. I am happy to talk more about that as well.

With some of the work that we are doing at the commission, we are trying to consult and produce more resources to increase awareness and understanding of Aboriginal cultural rights. We do think they have been underutilised. Despite the fact I have been able to give you some good examples of where they have made a difference, we do think they are underutilised. That is a piece of work we are doing at the moment, working with public authorities here and with Aboriginal communities. We hope to produce some resources that will be practical.

THE CHAIR: On the practical examples you are talking about, are they contained in the submission or would you like to talk about that at the moment?

Ms Dixon: I am happy to talk more. They are in our submission, so I did not want to dwell on it in too much detail. There are examples of the way in which the cultural rights have influenced things like that diversionary program in the learning place or like the development of that legislation which is aimed at the resolution of native title claims and some of those particular cases where the cultural rights have informed the court's thinking about analysing children that have been placed into out of home care.

The example in relation to the exemption application was Parks Victoria wanting to advertise for an Indigenous employee, giving preference to Wurundjeri people, because the job involved working to care for and protect Wurundjeri country. That application was analysed under the Equal Opportunity Act and analysed in relation to whether that would have been a special measure under that act; therefore it would constitute discrimination to be able to employ an Indigenous person from the Wurundjeri. When looking at the matter, the tribunal referred to the cultural rights in the charter and said that the actual nature of the role that was being advertised closely aligned with the cultural rights in the charter. That is an example of the way in which the cultural rights can be construed. I am happy to talk about that further if there are specific questions.

In terms of our work at the commission, we have this Aboriginal cultural rights project on foot. The other piece of work that we are doing is in relation to cultural support plans for Koori kids that are in out of home care. That work is really about acknowledging that cultural identity and connectedness are critical to the best interests of Aboriginal children. We are doing some work with the Commissioner for Aboriginal Children and Young People, as well as our department here, the Department of Health and Human Services. That is to improve cultural support plans for kids that are in out of home care so that even if they are not with their family, they are still connected to their culture and community. That is seen as being a key factor in their ability to cope and to be resilient. That is a work in progress as well.

That is all I have to say. In summary, we would highly recommend the explicit recognition of these rights, just based on our experience of their relevance and value here.

THE CHAIR: Thank you very much, Ms Dixon and the commission, for contributing to the inquiry. We will introduce every one of the speakers because you cannot see us.

I am Steve Doszpot, the chair. I have one question for you at the moment. Is there anything further that you would like to add on the Victorian experience of having Indigenous rights recognised in statute?

Ms Dixon: Only that obviously the protections have to be considered in light of the human rights framework as a whole. The whole framework of these bills of rights is about protecting parliamentary sovereignty, for example. There is a careful weighing up, of course, with any rights that can be limited when there are other public interests. I suppose placing these rights in that context needs to be taken into account as well. Otherwise, no. We think it is really important to explicitly recognise those rights. We would applaud you for doing it, if you did it.

THE CHAIR: I now hand you over to our next questioner, Dr Chris Bourke, who is the deputy chair of the committee. Dr Bourke.

DR BOURKE: My question goes to section 19(2) of your Charter of Human Rights and Responsibilities, which refers to the cultural rights of Aboriginal people. Is this a reference specifically to the Aboriginal people of Victoria, which is explicitly the case in the charter's preamble, and what was rationale for that drafting?

Ms Dixon: Aboriginal is defined in our charter to mean a person belonging to the Indigenous peoples of Australia, including the Indigenous inhabitants of the Torres Strait Islands, and any descendants of those people. In terms of the application of the charter, it basically is to people in Victoria in terms of that is the territorial limit of it.

DR BOURKE: I meant more in the context of Aboriginal people and whereabouts in Australia they came from with regard to their cultural rights in Victoria. You might take it that the reference specifically to the Aboriginal people of Victoria means people who are connected to country in Victoria as opposed to Gamilaraay or people from other parts of the country. Is there any sense of that in the legislation or the preamble?

Ms Dixon: That is a good question. I might take it on notice but certainly the examples that have come up to date have included the connection to country here in Victoria. But whether that meant though, for example, that an Aboriginal person from another part of Australia that was living here, I do not know—thinking out loud—that we would not also be able to protect the use of language or culture and identity in that context. I would have to think that through. Perhaps I had better take that one on notice.

THE CHAIR: Mrs Jones.

MRS JONES: Ms Dixon, how important is it to provide rights for children and families separately in the statute? In the submission there are examples of how separate provisions for the rights of children affected outcomes in the Victorian courts. Can you expand on that a little for us?

Ms Dixon: Yes. I think in our submission we referred to the best interest principle. I am turning to your legislation, if you just bear with me for a moment. We have both got in our legislation the protection of families and children but our provision deals

with children being protected and also refers to such protection in his or her best interest and is needed by him or her by reason of being a child. That addition, which is not in your legislation, has been quite useful in Victoria because the best interest principle comes up, of course, in a number of contexts where children do need protection.

The child protection area is a good example of that, and best interest is already in our legislation here, for example, and is the paramount consideration. It enables a broader understanding of best interest. I think when you have got a provision like ours in the charter it enables you to think through some of the principles you can take from the Convention on the Rights of the Child. I am just thinking of an example.

MRS JONES: Would that affect cases where the best interests of the family are not considered the best interests of the child and the child is more likely to be put into care or something like that?

Ms Dixon: One of the examples here is where a child is of a particular age where they may have their own views on what is in their best interests in a context like removal from the home or child protection. If you understand the best interests in light of the Convention on the Rights of the Child, then that would give you a context where a child does have the right to have an opinion, to have that opinion listened to and be taken seriously and the right to be provided an opportunity to be heard in judicial proceedings that affect them, either directly or through a representative. It is not just a matter of age; it is about maturity and a reference to an individual child's development in that opportunity. It is a more nuanced understanding of best interest because it draws on the convention.

We found it quite useful to have that best interest principle enshrined in our legislation when it comes to the protection of children, and probably child protection is a good example, and the example of children being able to be heard is another one. I am looking to see if we have any other examples in our submission that we gave you. That case I just talked about then to you, we referred to that in our submission. It is the decision of A and B in the Children's Court of Victoria. That is the example we gave there.

There was another example we put in our submission, which is the decision in *Sanding*. Again, that was a child protection case. I am just having a look at that one.

MRS JONES: So you are saying it pretty much boils down to in some instances the child's opinion is actively sought?

Ms Dixon: Yes, that is right. That is certainly the case.

MRS JONES: What is your definition of child for this purpose? Is it up to 12, 13, or is it right through to 18?

Ms Dixon: It is right through to 18. Child in our charter means a person under 18 years of age.

MRS JONES: I go back to supplement one of the earlier questions. In your preamble

I think it was you mentioned you have been developing information aids, educational tools, this type of thing, on the Indigenous affairs issue in this area. Is that presenting one consistent view of what someone does or does not determine to be Aboriginality or culture? My understanding is people can have quite a diverse background, even as far as originating culture or what have you which has developed till now.

Also, in my work previously in Indigenous affairs it was presented to me that much of Aboriginal culture is quite private. I guess one of the troubles when we hit up against Anglo culture is that we have an expectation to be told everything in order to respect it, and quite strongly in the white part of our culture essentially. That really does not wash very well with this stuff. Is one of the problems that we have here that we do not have an understanding because partly it is actually none of our business?

Ms Dixon: Yes. That is an interesting point. Part of our process for developing better awareness and resources in this area has been to consult with Aboriginal communities about that so that we can convey a better understanding for non-Aboriginal communities. I think the answer to your question, though, is about doing so in a culturally safe way. For example, I know in the child protection area—sorry to keep coming back to it—if you are trying to develop cultural plans for Aboriginal children obviously it is a very sensitive process because a child may have been removed from their family and so it is very difficult to then be going to the parents and to the family to be asking for the kind of information you need to do a meaningful cultural plan because it is all about what are the connections that we need to know about in order to make sure that the cultural plan is meaningful.

In Victoria a lot of that work is done by community-controlled organisations so that it is not seen as—

MRS JONES: Invasive?

Ms Dixon: Invasive, yes, that is right, and it is actually for the benefit of that child.

MRS JONES: Basically I think you are saying that in a way the statute can be used to create a document which is essentially rather private and stays the purview of those who have informed it, those who are making it happen and the child?

Ms Dixon: Yes, certainly in the case of cultural plans for Aboriginal children.

MRS JONES: Your educational role is talking about generic types of things that could be in a cultural plan or just talking about the fact that plans do exist?

Ms Dixon: With the educational side, at this point we are still working with the department to see what we might be able to do to help child protection workers understand the importance of cultural rights in this area. So that is raising awareness in that way. In terms of the work we are doing in terms of resources for the cultural rights, I think that is, again, still a work in progress. But I think it is part of celebrating Aboriginal culture and promoting reconciliation more broadly. That is where we probably see that bit of work.

MRS JONES: I go back again to conversations I had with Indigenous people a

couple of years ago, and the message to me was, “I’d tell you but it’s none of your business. When we’ve shared this with people before, it’s been misused.” I do not underestimate the importance of those conversations but they have to be safe as well.

Ms Dixon: That is right. It has to be culturally safe.

MRS JONES: The other thing is: has the Victorian commission had any thoughts about how to expand this kind of right to other parts of the community, the cultural rights messaging within the human rights framework?

Ms Dixon: Our provision in relation to cultural rights in the charter has two parts to it. The first really deals with people from other particular cultural, religious, racial, or linguistic backgrounds. The second part of the cultural rights provision here is specific Aboriginal rights. Yes, we work, for example, with CALD communities in promoting cultural rights in that context. It is different depending on what the issues are. Often with CALD communities it is about a better understanding of social cohesion, for example. Yes we do but at this particular stage, in terms of some of the work we are doing this year, we are very much focused on trying to get a better understanding of the Aboriginal cultural rights, but that does not mean that other rights are not still really important as well. We still work in that area as well.

MRS JONES: Finally, to add to that, what would your next steps be? If you could decide what your legislature did next in this sort of area, what would you think the next steps should or could be?

Ms Dixon: We have just had an eight-year review of our charter which was undertaken by an independent reviewer. That review looked at some of the next steps. If you give me a moment, I will grab the recommendations.

MRS JONES: Sure.

Ms Dixon: We had a four-review and now we have had an eight-year review of the charter. Michael Brett-Young undertook this review, and it has only just been tabled. One of the recommendations that he made that the government will be considering and the commission is also considering is in relation to self-determination. One of the recommendations is that we amend our preamble to our charter to refer to self-determination having special importance for Aboriginal people in Victoria and that the Victorian government work with Aboriginal communities to promote, protect and respect self-determination and the empowerment of Aboriginal people. That is probably a next step that at least the government here will be considering. We are certainly considering a lot of the recommendations in the report. I think there are 52 all up.

MRS JONES: If that has been tabled, we would be able to get a copy of that, would we not?

Ms Dixon: Yes, absolutely. Self-determination is probably the next step that they have recommended. So that is something we would also look at.

MRS JONES: And maybe if you do not mind taking on notice to provide a copy of

that document, if that is possible.

Ms Dixon: Yes, I can.

MRS JONES: Our secretary has a copy; so do not worry.

Ms Dixon: Okay.

THE CHAIR: Thank you, Mrs Jones. Ms Porter.

MS PORTER: I am really pleased to meet you over the telephone, Ms Dixon. Thanks very much for your submission and for all the answers to our questions so far. My question is around the diversionary program that you mentioned. My particular interest in this is that I have been working with the government here, along with other members, on restorative justice practice. There are obviously some similarities, I would think, with the diversionary program. At what point does this diversion kick in with the Koori males? Is it once they are sentenced and actually in detention or in some form of program, or can they be diverted to restorative justice before they get into the court system?

Ms Dixon: I would have to take that on notice. I know that the diversionary program—I am just trying to find my notes on that—

MS PORTER: You mention it at page 3 of your submission, under the “learning place”.

Ms Dixon: I think it was for men on community corrections orders, but I do not know that it is limited to just that. I can certainly find out some more information. It is done through Corrections Victoria.

MS PORTER: Yes, I noticed that. I was wondering whether you knew any more about it. We would be very interested to learn more about how that operates in Victoria, because of what we are trying to do here in the ACT—with good results, by the way.

You were talking before, in answer to Mrs Jones’s question, about the fact that culture is often a very private thing and information sharing is sometimes not desired by the Indigenous person or the Indigenous person and their family. Have you had any pushback at all on the charter by either Indigenous persons themselves or other members of the community that have not quite understood the reason why these parts of the charter have been introduced?

Ms Dixon: No. I think it goes back a little bit to what I said before about our sense that perhaps this provision has been underutilised. That does not mean that we expect pushback if it is utilised, but part of why we are doing our project on raising awareness is to make sure that people are better informed and better aware. We are engaging really closely with the Aboriginal communities to make those resources meaningful. In our consultations—I do not have the officer with me that has been doing them—I do not think there has been negative feedback from anyone, whether it is Aboriginal communities or the public authorities that we have dealt with.

Aboriginal communities particularly see culture as critical, potentially empowering and a really good advocacy tool to get better outcomes. I would say it has been positive, bearing in mind what we spoke about before about needing to make sure there is cultural safety built in.

MS PORTER: So overall it has been a positive experience?

Ms Dixon: Yes.

MS PORTER: That is fantastic. Thank you.

THE CHAIR: Ms Dixon, how has the Victorian experience of having Indigenous rights recognised in statute affected the relationship between the Victorian government and Indigenous people?

Ms Dixon: Are you referring to the rights in the charter? There are a number of pieces of—

THE CHAIR: It is a broad question. How has having Indigenous rights recognised in the statute affected the relationship between the Victorian government and Indigenous people?

Ms Dixon: From our perspective it has been in a positive way. When I look at the Aboriginal heritage legislation—including, for example, the Traditional Owner Settlement Act—these are all acts that are quite empowering when it comes to protecting Aboriginal cultural heritage and culture, and place Aboriginal people at front and centre of being able to make decisions in relation to those matters. I think that is positive from both points of view. For example, with the Traditional Owner Settlement Act, one of the positive outcomes of this law has been settlement agreements for the Dja Dja Wurrung people. I have a quote that you might be interested in. Mick Dodson said:

What it delivers to the Dja Dja Wurrung People is the transfer title of two culturally significant properties, the granting of “Aboriginal title” over a number of parks and reserves to enable joint management, access to flora and fauna and other natural resources for traditional and limited commercial purposes, and a system that gives the Dja Dja Wurrung a significant say over future land use activities on public lands in their region.

That is an example of someone that has come in and looked at one of the positive outcomes of that piece of legislation. I know of similar outcomes that have been positive in the Aboriginal heritage area. Those pieces of legislation obviously give effect to cultural rights, so I think it is a positive enhancement of the relationship between government and the community. I am speaking from the point of view of an independent statutory authority looking in; there would be people in government that would probably be in a better position to comment on that question.

THE CHAIR: I will hand over to Dr Bourke for the last question. Unfortunately, time has almost run out.

DR BOURKE: I note that the proposed ACT cultural rights provision adopts the

wording from your charter—that people must not be denied certain rights. Does the commission believe this wording in the negative as opposed to positively asserting rights could result in substantively different outcomes? Why was that drafting used in the Victorian charter?

Ms Dixon: You are right; there is a difference in wording between the provision you are proposing and ours—not a significant difference, I do not think. The cultural rights provision that we implemented was based on article 27 of the International Covenant on Civil and Political Rights. That is the way that that right is framed; it is framed in the negative. We also referred at that point to the draft declaration on Indigenous rights. So it was a bit of a mix of both the declaration and the ICCPR, whereas I think yours is probably more squarely framed around the declaration, which makes sense, given what has evolved since we introduced our provision.

DR BOURKE: Also, yours includes the words in section 19(2) “with other members of their community”. Our proposed provision does not include that formulation. Do you think those words add anything to the provision; if so, what?

Ms Dixon: Off the top of my head it is really just recognition that Indigenous rights can be practised in a community with others. I think it is just a reflection that they can be group rights, if you like.

DR BOURKE: Turning to public authority obligations, the ACT’s Human Rights Act allows proceedings to be brought directly against a public authority in the Supreme Court for failing to fulfil its human rights compliance obligations. Do you perceive this lack of avenue for redress in the Victorian charter to be a significant brake on the advancement of human rights in Victoria?

Ms Dixon: Our submission to the eight-year review was that the lack of accessible and enforceable remedies in our charter does have an impact on ability for our charter to fully protect and promote human rights. Also, we said in our submission to the independent reviewer that it limits the development of a human rights culture. We think accessible and enforceable remedies are critical, and that is something that we have advocated for strongly.

DR BOURKE: Finally, Ms Dixon, the Attorney-General told the committee at its previous public hearing that it has not always been easy in the ACT to identify an agreed Indigenous entity for government to deal with when negotiating Indigenous cultural rights to lands or water. Sometimes there is disagreement in communities as to who should be a representative of those interests. That has probably been part of the experience in Victoria. What approaches have you developed and what solutions have you achieved that could help provide advice to the ACT?

Ms Dixon: I know in the Aboriginal heritage area and in the traditional owner settlement area we have tried to get a better sense of all traditional owners for a particular area, whether that is an area for the protection of cultural heritage or an area for which an agreement can be made under the Traditional Owner Settlement Act. I think that inclusiveness is really important. I know under the Traditional Owner Settlement Act it is perceived as important because it can give some certainty and finality about the resolution of native title.

Under that act, for example, settlements are available only to groups that can show that they include all traditional owners for an agreement area. Having that framework has been really important. In the Aboriginal heritage legislation it has been about having registered Aboriginal parties who are the traditional owners for particular areas as well, and mapping that and getting better certainty about that.

DR BOURKE: That sounds to me, Ms Dixon, like there is a powerful argument within your traditional owner settlement legislation for groups to come together and negotiate their differences so that they can deal with government.

Ms Dixon: I think that is right from my perception, but we at the commission are not dealing directly with that legislation. There would be people within the department of justice who would be able to tell you more, but I think that is right.

DR BOURKE: Thank you.

THE CHAIR: Ms Dixon, that brings us to the end of our allotted time. On behalf of the committee, I would like to thank you for your submission and for appearing before the committee today.

Ms Dixon: Thank you. Can I check a couple of things that I agreed I would get back to you on?

THE CHAIR: Certainly.

Ms Dixon: I am here on my own, so I did not take a note. There were two decisions that I think I said that I would provide a little bit more information on in relation to how the protection of children, that right, has been considered in the courts?

MRS JONES: I think you said you would try to flesh out a bit how the provisions have assisted in specific examples.

Ms Dixon: Great.

MS PORTER: The other one was to do with the diversionary program. You were going to get back to me with some more detail on whether it included any diversion before a person entered the court system for sentencing and those kinds of things or whether it was in relation to people after they had been sentenced to a corrections order of some sort.

Ms Dixon: Thank you. I will follow those two matters up.

THE CHAIR: Thank you once again.

FAULKNER, MS SAMANTHA, Chairperson, ACT Torres Strait Islander Corporation

THE CHAIR: Good afternoon, and welcome to the second public hearing of the inquiry by the Standing Committee on Justice and Community Safety into the Human Rights Amendment Bill 2015. We have already heard from the Victorian Equal Opportunity and Human Rights Commission. We now have the pleasure of having with us Ms Samantha Faulkner, the Chairperson of the ACT Torres Strait Islander Corporation. Good afternoon, Ms Faulkner. You are familiar with the privilege statement that has been put before you. Generally, we give an opportunity for witnesses appearing before us to make an opening statement. Would you like to make an opening statement?

Ms Faulkner: Yes, indeed. Good afternoon. I would like to thank the standing committee for the opportunity to discuss the ACT Torres Strait Islander Corporation's support for the proposed amendment bill. I acknowledge and pay my respects to the traditional owners of the land, our elders past, present and future, and acknowledge other Aboriginal and Torres Strait Islander people here today.

On behalf of the Torres Strait Islander Corporation in the ACT, I would like to state that we are Torres Strait Islander people originating from the northernmost part of Australia, between Cape York and Papua New Guinea. We are Indigenous Australians who are uniquely different from our Aboriginal brothers and sisters. We are diverse and multicultural as a result of a long history of seafaring and trading with our regional neighbours.

We welcome and embrace cultural, social, educational and economic opportunities. We currently live all over Australia and, indeed, overseas. We practise our island custom—the body of Torres Strait Islander customs, traditions, observances and beliefs.

As we mention in our submission, the ACT Torres Strait Islander Corporation was incorporated in 1996 under the Corporations (Aboriginal and Torres Strait Islander) Act 2006. We are a not-for-profit, volunteer community organisation with the following aims and objectives: to promote and encourage the Torres Strait Islander heritage and culture to the members of the corporation; and to maintain the objects of the corporation through economic, cultural, social and educational activities.

Membership of the corporation comprises Torres Strait Islander people living in Canberra and in the surrounding regions. Aboriginal people and non-Indigenous people who support Torres Strait Islander people and culture are also welcome as associate members.

Each year the corporation hosts and celebrates Mabo Day, 1 July, and NAIDOC Week. These events are highly important to Torres Strait Islander people as we seek to share our culture and traditions with others. Mabo Day is celebrated each year on 3 June in honour of the great achievements of Eddie Koiki Mabo and the Miriam plaintiffs who secured recognition of our traditional and continuing system of land ownership. The first of July is the coming of the light, or the coming of Christianity in the Torres

Strait. NAIDOC Week showcases the diversity of our Torres Strait Islander culture, heritage and practice.

Torres Strait Islander people are distinct Indigenous Australians. We live, work and study in the ACT community. We are active citizens of Canberra and contribute to the Canberra community in a number of different ways. We support the explicit recognition of our distinct cultural rights in the amendment bill. I am happy to take questions from the committee. Thank you.

THE CHAIR: Ms Faulkner, at its public hearing last Friday the committee asked the Aboriginal and Torres Strait Islander Elected Body what it would mean from its point of view to have Indigenous rights recognised in the ACT's Human Rights Act. What is your view on the importance of Indigenous rights being included in the act?

Ms Faulkner: I think it is very important. For the Torres Strait Islander community and the people, because of our low numbers of population, sometimes we are overlooked. In one of the previous submissions there was support for Aboriginal people in a particular state and territory, but, as I mentioned, Torres Strait Islanders live across Australia and, indeed, overseas. So for a minority, we have to be quite vocal in terms of our recognition, representation and practise of our distinct cultural identity.

THE CHAIR: Dr Bourke.

DR BOURKE: Ms Faulkner, good afternoon. Perhaps you could tell the committee more about the experiences of Torres Strait Islanders living in the ACT and also let us know how many people there probably are and what their circumstances here in the ACT are?

Ms Faulkner: I will start with the population statistics. As at 30 June 2011 Torres Strait Islander people in the ACT numbered about 326. That number varies from time to time, with a lot of people moving down to study and to work. I think the winter weather catches up with a lot of people, who do head back north to Queensland quite a bit. The majority of the population—63 per cent—live in Queensland, including the Torres Strait, and 37 per cent live in jurisdictions other than Queensland; 63,700 people live in Australia—10 per cent of the total Indigenous population. Sixty per cent—38,100—were of Torres Strait Islander origin only, and 40 per cent, or 25,600, were both Torres Strait Islander and Aboriginal. So while we do consider ourselves to be quite distinct, a lot of Torres Strait Islander people also identify as being Aboriginal. That gives you a sense of the population here in the Canberra community.

In terms of the experiences and circumstances, there are young people who live here, young children who go to school, young families, and we are very fortunate to have quite a number of elders here as well. Some of you may be familiar with Aunty Thelma Weston, and Aunty Lily George, who are our senior elder women in the community. We also have Benny Mills and Benny Hodges, who are our senior Torres Strait Islander men. They participate in and contribute to the activities that we hold each year. We are community citizens. In terms of experience and circumstances, we live and work here and contribute as well.

DR BOURKE: What opportunities and benefits do you see that might arise for Torres Strait Islanders from this cultural right amendment?

Ms Faulkner: Coming back to recognition and representation, Torres Strait Islanders have been a part of the Canberra community for many years, even before the ACT Torres Strait Islander Corporation came into being. In terms of the opportunities and benefits, I think there is the visibility, because obviously there is an absence right now in terms of the legislation not clearly stating that, even though we do participate in festivals—NAIDOC Week, the Multicultural Festival at times, too—where the capacity and skills allow us to do so.

DR BOURKE: With the cultural rights provision, you might have heard the discussion I was having before with the Victorian commissioner. The provision in their charter includes the words “with other members of their community” when describing how people are able to enjoy their cultural rights. The proposed ACT provision does not have such a formulation. Do you think that is a problem?

Ms Faulkner: I would say we do participate with other members of the community. Non-Indigenous people and Aboriginal people are invited to be associate members of our corporation, so we are inclusive. Were you going to say something else?

DR BOURKE: It really hangs around the meaning of what “other members of their community” is. The Victorian commissioner was not specific about what that might have meant, either. That would be one way to interpret it. Another way to interpret it would be to say “with other members of your community”. Essentially, in some ways it re-emphasises that cultural rights are a community effort, not just an individual experience.

Ms Faulkner: That touches on, I suppose, defining the other members of the community—whether they are invited to be a part of the community, who invites them and who has the authority to do that. With Torres Strait Islander people, if you have an Aboriginal partner or a non-Indigenous partner but you participate in an activity, you would be participating as a family, not just as a Torres Strait Islander person and the other. So in terms of being inclusive, we would be accepting.

MRS JONES: As a supplementary to that, we were given examples of children who are involved in proceedings about possible separation from family. But if it states “with other members of their community”, potentially—I am not sure—it could mean that if there is a cultural plan written for that child, it has to include the broader community, and they cannot be expected to fulfil those cultural obligations alone outside that community; they have to then be able to access back in.

Ms Faulkner: And it comes back to who has the authority—

MRS JONES: To determine.

Ms Faulkner: Yes, to determine that. Where is the consultation in that, the monitoring and the follow-up, to ensure that the care is provided?

MRS JONES: If our provisions do not have the words “with other members of their community”, the question is: do you feel that that leaves the situation weaker, or is it really very little different to what we have in ours?

Ms Faulkner: I am not too sure about that. Maybe that is something to consider and come back to you on.

THE CHAIR: Mrs Jones, your substantive question.

MRS JONES: I’ll go back to your initial comments, if I may. You mentioned that the corporation represents—I think your words were something like, and I may not have heard right—people who live in Canberra and the surrounding regions. Can you expand on what that means? I am sorry, I am not quite following.

Ms Faulkner: Yes, we have taken it as Canberra at this point. I think our rule book states the Canberra area. We do have some members who live in Queanbeyan. We include them as community members. Say we have an activity or a meeting, we just invite everybody, because we are such a low number anyway. So it is usually planning an event, and the more on board the better, type of thing.

MRS JONES: Do people find you or do you find them, or is it a mix of both?

Ms Faulkner: Yes, a bit of both. Usually word of mouth or if someone from the Torres Strait is coming down to work, it is through a family member who is already here or sometimes even just a phone call or there is an email address somewhere.

MRS JONES: When was the corporation started and can you give me a little background about how it was started so that I understand a little better?

Ms Faulkner: I was around. I was one of the founding members, about 19, 20 years ago now. There was a meeting at the Southern Cross Club in Woden and that was when the Aboriginal and Torres Strait Islander Commission was around and the Office of Torres Strait Islander Affairs. I guess that was the focal point for the Torres Strait Islander community at the time, as well as the Shadows basketball club where a lot of the young Torres Strait Islander men and women played basketball or were engaged and involved.

I guess it was just a natural progression that an organisation be founded so that Torres Strait Islander people could come together, support one another, identify, because we were quite a dispersed community as well—people living on the north side, the south side, over in Queanbeyan. Distance is still an issue as is transport, especially if you are new to Canberra and finding your way around. I guess people coming to work with ATSIC at the time, having a community organisation where we could celebrate our cultural days around NAIDOC Week, was one of the reasons it started, yes.

MRS JONES: On that, do you remember why the corporation structure was the best option for you?

Ms Faulkner: I think it was because of public servants in Canberra and another sort of federal agency; it just seemed to be a nice fit at the time.

MS PORTER: In relation to the statement you made about, just to paraphrase, depending on who gives permission or who gives—what was the phrase you used in relation to the rights? It appears that there is someone, an elder or someone, within the family or within the relationship, that gives ultimate permission for something to happen. Is that right? They might invite somebody in or open up a dialogue with someone.

Ms Faulkner: Yes.

MS PORTER: We heard previously from Ms Dixon about the rights of children in the charter in that the right of a child to be heard is very important, with special reference to Indigenous children. How does that bump up against the right of someone to give permission for something to happen in that sometimes the rights of that child will override the rights of that person to actually give permission for something to happen? We were talking before about the very private nature often of the information that might be shared within a particular group or community. How does that all play out in this community?

Ms Faulkner: I guess that brings to mind too that Torres Strait Islander people have a traditional adoption practice as well, Kupai Omaker, which I think is legislated for in Queensland and recognised. That is where a child may be given to someone else within the extended family but the child may grow up and not know who their biological mother or father is but the community may know. In terms of permission and rights of child, I guess I just note that example.

It will come back to, I guess, there being a person or persons who would have a duty of care to the child or children and would be consulted in the matter of the care and ongoing care and hopefully in the best interests, I would imagine. But I am not sure if that has answered your question or responded in any way.

MS PORTER: In relation to, say, a child protection matter and the rights of the child were seen to be paramount in this rather than the rights of the primary carer or the other family members, how would that be interpreted by the community?

Ms Faulkner: In the Torres Strait community in Canberra?

MS PORTER: Yes.

Ms Faulkner: I guess the information is also an interesting issue in regard to how much do people share or not share. I guess it comes back to what is in the best interests of the child. Not all family are here in Canberra, particularly if the child has family back in the Torres Strait, in Queensland, or outside the state or territory. I guess they would be engaged or consulted in the matter as well, too, not just necessarily the family or parents in the Canberra region. There will be extended family. I guess the child would ultimately have a carer within the extended family.

MS PORTER: Have you got any concerns about this bill at all or has the community itself voiced any concerns?

Ms Faulkner: I guess our focus was looking at having Torres Strait Islanders as distinct people and having cultural rights within the bill. I did note that—and possibly read wrongly somewhere there too—the elected body in their submission mentioned Torres Strait Islanders are mentioned as traditional owners of the Canberra region. I would support that. It is not our intention that Torres Strait Islanders be recognised as traditional owners of the Canberra region. I am just confirming that last point. We certainly respect and thank the traditional owners of the land that we live on and work on here in the Canberra community. It is not our intention to be acknowledged as traditional owners.

THE CHAIR: You mentioned at the outset that you have to be quite vocal to get your message across. This is an opportunity to do so. Are there any other concerns or issues that you want to make us aware of?

Ms Faulkner: Not with the bill. I think it certainly was great to be invited to submit a response to it and to be invited here today as well. But I guess, just in terms of time frames, if I take it back and have a look and if there is an opportunity to provide further input, that might be something that members of the community might choose to do as well.

THE CHAIR: Certainly there is always that opportunity. If any additional information comes to hand, we would be happy to receive that. But it would have to come in fairly quickly—in the next five days.

Ms Faulkner: Sure.

THE CHAIR: Dr Bourke, do you have any further questions?

DR BOURKE: No, I do not have any questions.

MRS JONES: Is there anything else you wanted to add in relation to your community and their experience in the ACT?

Ms Faulkner: Thanks for that opportunity. If I look at my potential questions and additional comments, I guess in terms of the recognition of our unique island custom, which is the body of Torres Strait Islander customs, traditions, observances and beliefs, some of those examples are speaking our language, the singing of island hymns and dancing Torres Strait Islander dances. That is what we do during Mabo Day, 1 July and NAIDOC Week. They are quite public.

MRS JONES: Are you involved in the Multicultural Festival as well?

Ms Faulkner: Yes. In the past there has been a dance group based in Canberra and also I think in recent years we have had a Sydney dance group come down with Sydney performers. Again, that just depends on capacity of who is here, who can dance, who has been at practice and who is able to attend. Yes, in terms of recognition, representation and being visible, we try to practise our island custom when we are not in the Torres Strait to keep our unique culture alive and well. I suppose that is probably the only other point to add. Yes we look forward to continuing to contribute to the Canberra community.

MRS JONES: Just on that, I also ask: are there any specific problems that your community is facing?

Ms Faulkner: There are, and I guess we are hoping to take that up with the elected body and the relevant minister as well. Just in terms of access, because we are a volunteer, not-for-profit, we have issues with venue hire and public liability. If we are holding a public event we do apply for government funding. The ACT government and the federal government have been generous in that respect. But, again, we do not want to apply for funding so that we can pay for a venue hire if there is some kind of arrangement in place already. I guess that limits our opportunities to hold events on a broader scale and showcase our culture.

THE CHAIR: Thank you, Ms Faulkner, for coming along and thanks to the ACT Torres Strait Islander Corporation for appearing before us here today. If you do have any further thoughts that get communicated to you by your community, we would love to hear from you. Otherwise, thank you very much for joining us. I thank all the witnesses who have appeared before the committee today, and I now close the hearing.

The committee adjourned at 3.17 pm.