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RE: LEGAL RECOGNITION OF TRADITIONAL TORRES STRAIT ISLANDER CHILD REARING PRACTICES (TRADITIONAL ADOPTION)

Dear Colleagues,

We welcome and appreciate the opportunity to make a submission in relation to the legal recognition of Traditional Torres Strait Islander Child Rearing Practices by the Queensland Government.

Preliminary Consideration: Our Background for Meaningful Comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander people across Queensland. The founding organisation was established in 1973. We now have 26 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander people.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout the entirety of Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by four and a half decades of legal practise at the coalface of the justice arena and we therefore believe we are well placed to provide meaningful comment. Not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

Preliminary Comments

Traditional adoption practices are widespread throughout the Torres Strait and amongst Torres Strait Islander families on the mainland. They are long standing cultural practices which support and protect children, parents and families. Generations of Torres Strait Islander children have been raised in supportive and loving extended family environments. The practice of traditional Torres Strait Islander child rearing and adoption forms part of the well-being and survival of Torres Strait Islanders and their communities.

Traditional adoption and child rearing is different from formal adoption, in that arrangements are made between giving and receiving parents in accordance with cultural norms. Generally, under Torres State Islander traditions, an adopted child becomes a full member of his or her new family and takes on the family surname and is expected to inherit from the receiving family although it is also possible to inherit from the birth parents should they be so inclined. In Torres Strait Islander society it is not customary or culturally appropriate to tell a child about their adoption at an early age.

The current lack of formal recognition of traditional adoptions and child rearing practices consequently raises a number of legal issues, mostly to do with civil and family law, for our Torres Strait Islander clients. On one hand there are some families that would not consider seeking legal advice or assistance because traditional adoption is such an ingrained part of culture and custom. On the other hand, for those families who do seek legal assistance, the issues arising out of traditional adoption are the most prevalent issues that our lawyers address for clients, especially our Thursday Island and Bamaga offices.

The receiving parent faces significant practical and legal hurdles to organise medical treatment and education for the child, as well as, access to parental leave and child support or benefit payments to care for the child. Similarly, the child experiences a number of hurdles affecting their ability to obtain identification in their name, to succeed upon intestacy, and to have a status to care for and make arrangements for an elderly parent. Our office provides advice and representation, runs community legal education workshops and has published a factsheet[1] to assist our clients to mitigate the legal difficulties where possible. However, as set out in this submission, the legal solutions are only partial solutions, and are costly and time-consuming to achieve.

There is consequently considerable and unnecessary inequity and disadvantage visited upon those whose family arrangements arise from traditional adoption, and that disadvantage is widespread through the community.

Legal issues arise in both state and federal law. So far, when there is a parenting dispute in some instances one of the parties involved have sought Family Law Court Parenting Orders. However, there are substantial limits to what can be achieved by Parenting Orders. What is really needed is law reform. As noted by Watts J in *Beck v Whitby* [2012] FamCA 129 at [75]:

> *The Federal Government has power to amend the Family Law Act to enable a court to declare persons in the positions of the Applicants in this case as parents. Alternatively, the States have power to amend State legislation to allow full recognition of traditional Torres Strait Islander child rearing practices. Maybe one day the law will be changed.*

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[1] See: ATSILS, *Fact Sheet: Torres Strait Islander Traditional Adoption* (Oct 2018), available at: http://www.atsils.org.au/wp-content/uploads/2014/10/Fact-Sheet_Traditional-Adoption_Updated_4-Oct-18.pdf.

We welcome the Queensland Government's commitment to taking nation leading steps to introduce new laws that will recognise Traditional Torres Strait Islander Child Rearing Practices.[2]

A note on Traditional Adoption as part of Traditional Child Rearing Practices

The broader term "Traditional Child Rearing Practices" refers to a number of cultural practices including temporary care arrangements, such as where a child spends a part of their life being raised by carers before returning to live with the child's biological parents. Traditional adoption is but one of a number of different traditional child rearing practices. For reasons of precision and clarity, we have used the expression "traditional adoption" to describe the situation where it is intended that a child be adopted and raised by receiving parents in accordance with custom and to avoid confusion with other child rearing practices.

We have been assisted in the preparation of this submission by a number of community members with direct experience of adoption practices. Torres Strait Islanders are divided linguistically into several language groups, with Meriam Mir spoken in the Eastern Torres Strait, Kala Lagaw Ya spoken in the Central and Western Torres Strait, and a dialect of Kala Lagaw Ya called Kalaw Kawaw Ya spoken in the top Western communities of Saibai, Boigu and Dauan, and Kriol is spoken broadly. There is a great deal of diversity in traditional practices across the islands. The references we make below to particular practices are in no way intended to be a prescriptive description of what the traditional adoption practices are.

Proposed Reforms

From our experience of assisting clients in the Torres Strait with respect to issues arising from lack of legal recognition of traditional adoptions, many of the problems arising for the children and the receiving parents can be traced back to the lack of a Birth Certificate.

Subject to our further comments, the most critical legal consequence would be changes to the *Births, Deaths and Marriages Registration Act 2003 (Qld)* section 10 and other relevant provisions to enable the amendment of the Birth Certificate to record the receiving parents as parents of the child, and the status of the child as a child of the parents. The amendments to registration would in turn create a rebuttable parenting presumption to arise under section 25(1) of the *Status of Children Act 1975 (Qld)*:

> *If, under a law of the Commonwealth, a State or a prescribed overseas jurisdiction, a person is named as a child's parent in a register of births or parentage information, the person is presumed to be the child's parent.*

The lack of legal recognition of the traditional adoption arrangement causes significant practical and legal hurdles for both the child and the receiving parents in a number of important aspects in their lives, including as outlined below: enrolment at school; obtaining passports and visas; access to child support and government benefits and payments; parental leave; lack of recognition from child safety; succession laws; and interstate registration of Birth Certificates.

[2] Further, we recognise that this is an essential first step for wider reform necessary to ensure equitable recognition of Traditional Torres Strait Islander Child Rearing Practices across both Commonwealth and State jurisdictions.

Enrolment at School

A number of difficulties arise with the requirement to provide a copy of the Birth Certificate for school enrolment. Parents are distressed that a child may see the copy and learn of their origins before it is considered culturally safe for the child to know. School teachers struggle to balance their need to access such documents for children in their care while still honouring the parent's wishes regarding cultural practice. For example, a school teacher reported the difficulties assisting children to check-in for flights at an airport[3] using the legal name for a child instead of the adopted name without alerting the child to the fact that they had been traditionally adopted.

Passport Applications and Travel with Children

An original full Birth Certificate issued by a Registry of Births, Deaths and Marriages must be provided with a Passport Application. At present, receiving parents must rely on the giving parents to complete the Passport Application, as the named parents on the Birth Certificate, they are presumed to continue to hold 'parental responsibility'.[4] The only other option is an application to the Federal Circuit Court for an order for a passport to issue – an option that attracts extensive delays, requires a number of parties including lawyers to be involved and a requirement for an application to be filed in court seeking the requisite orders. If the Birth Certificate states the names of the receiving, rather than giving, parents, the presumption of 'parental responsibility' would shift and the process of applying for a passport and visas would be significantly easier.

Inter-State recognition of Birth Registration

Members of the Torres Strait Community who live outside Queensland face additional difficulties obtaining recognition of their status as parents of the child. A change to birth registration in Queensland would allow for a presumption of parentage to arise under some other State and Territory laws.[5]

Access to Child Support and Government Benefits and Payments

At present the *Child Support (Assessment) Act 1989 (Cth)* does not recognise the receiving parents as a 'parent'. A non-parent carer may ask the Registrar to make a child support assessment however there are limited circumstances in which the Registrar will be satisfied that a person is a parent. As far as we are aware, receiving parents need to apply for Parenting Orders from the Family Law Courts to obtain child support. A change to the birth registration practice to allow receiving parents to be listed

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[3] Given the locality and remoteness of the Torres Strait Islands, this is a more frequent occurrence than would happen elsewhere, for example in South East Queensland.

[4] Parental responsibility is defined in section 11(5) of the *Australian Passports Act 2005 (Cth)* which in turn refers to the presumption of parentage arising from registration of birth set out in section 69R of the *Family Law Act 1975 (Cth):* "If a person's name is entered as a parent of a child in a register of births or parentage information kept under a law of the Commonwealth or of a State, Territory or prescribed overseas jurisdiction, the person is presumed to be a parent of the child."

[5] For example, section 11 of the Status of Children Act 1996 (NSW), *Status of Children Act 1974 (Tas)* section 8A; *Status of Children Act (NT)* section 9; *Parentage Act 2004 (ACT)* section 9; and on a more limited basis *Family Relationships Act 1975 (SA)* section 7(b); *Family Court Act 1997 (WA)* section 190 although the presumption is limited to the purposes of that Act; In Victoria, the presumption of parentage arising from Registration of a birth only applies to when a child is registered in that State, and evidence of parentage only accepted if there exists "an order made outside Victoria declaring a person to be a parent of a child."

on the Birth Certificate would avail them of the parentage presumptions under the Act[6] and allow the Registrar to be satisfied that the receiving parent is a parent of the child.

Similarly, a change to the birth registration practice to allow receiving parents to be listed on the Birth Certificate would assist them to access benefit payments if so required. Anecdotally we hear of some receiving parents attending at the local Centrelink office with giving parents to advise of the child being 'given up' or 'passed over' to effect a change of payments for the child.

Parental Leave

The issue with accessing parental leave often results from the need to provide proof of a child's birth, as receiving parents usually make a claim after the child has entered their care. This creates practical difficulties for receiving parents who may only have a Birth Certificate listing the giving parent's names and no other solid proof that he or she is the child's primary carer. For example, one receiving parent assisted by our legal service first had to obtain Parenting Orders from the Federal Circuit Court prior to an employer paying parental leave.

Recognition by the Department of Child Safety

Giving parents may often be part of the extended family network tasked with providing care to a child, having a role as 'Aunty' or 'Uncle' under traditional child rearing practices.[7] Section 11 of the *Child Protection Act 1999 (Qld)* states:

> *A parent of a Torres Strait Islander child includes a person who, under Island custom, is regarded as a parent of the child.*

Part 4 of the *Child Protection Act 1999 (Qld)* section 52 however narrows the definition of 'parent' for the purpose of Child Protection Orders and excludes any reference to Torres Strait islander children who are cared for under Traditional Torres Strait Islander Child Rearing Practice[8] and other relevant provisions are couched in similar terms. [9]

Consequently, we have come across matters where Queensland's child safety services intervened to remove a child but chose only to deal with the giving parents, as in their view the receiving parents did not have standing. Although ultimately the receiving parents would be accepted as the long-term or permanent guardians of the child, the distress caused to the parents and to the children in the meantime could be avoided if there was legislative recognition of Traditional Torres Strait Islander Child Rearing Practices and the receiving parents designated as the child's parents.

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[6] *Child Support (Assessment) Act 1989 (Cth)* s 29(2).

[7] See e.g. K Cripps*, '*Indigenous Children's "Best Interests" at the Cross Roads: Citizenship Rights, Indigenous Mothers and Child Protection Authorities' (2012) 5(2) *International Journal of Critical Indigenous studies* 25, 31, cited in A Titterton, 'Indigenous Access to family Law in Australia and Caring for Indigenous Children' (2017) 40(1) *UNSW Law Journal* 146, 149.

[8] *"parent", of a child, means each of the following persons—*

(a) the child's mother or father;(b) a person in whose favour a residence order or contact order for the child is in operation under the Family Law Act 1975 (Cwlth);(c) a person, other than the chief executive, having custody or guardianship of the child under—(i) a law of the State, other than this Act; or(ii) a law of another State; (d) a long-term guardian of the child; (e) a permanent guardian of the child.

[9] An identical provision exists defining "parent" for the purposes: of ss 23 (Temporary Assessment Orders), 37 (Court Assessment Orders), 51AA (Temporary Custody Orders), 51F (Case Planning) and 205 (Interstate Transfers of Child Protection Orders and Proceedings).

Succession

In accordance with custom, children who are adopted may inherit from the receiving parents, and it is expected generally that they not claim on the estates of the giving parents. Receiving parents may request provisions in their Will to ensure the children they have 'adopted in' are listed as beneficiaries and also giving parents may want to ensure children 'passed over' cannot claim on his or her Estate after death, unless they specifically wish to make provision for those children. Of course, sometimes one person is both a 'giving' and 'receiving' parent for different children, and having a comprehensive, valid Will is essential to ensure that the parent's wishes are met.

However, rates of intestacy among Torres Strait islanders is anecdotally quite high and the *Succession Act 1981 (Qld)* does not provide for the situation of traditionally adopted children.

Our office assists clients who have been traditionally adopted to make claims on a receiving parent's deceased estate when a parent has died intestate, as well as related issues such as claiming on funeral insurance and accessing superannuation.

Both the proposed amendments to the birth registration of a child and an amendment to the *Succession Act 1981 (Qld)* to expand the definition of 'child' for the purposes of family provision to include a 'child' who has been recognised as 'traditionally adopted' by the deceased would allow for that child to be appropriately provided for.

The Proposed Model: Recognition Coupled with a Formal Consent Process

We would support a process that provides formal legal recognition after a traditional adoption has in fact occurred in accordance with customary practice or process. We would suggest that for new traditional adoptions, that there be not only the observance of customary practices for the traditional adoption of a child, but also a process of recording formal consent.

Who May Apply

a) Either the giving or receiving parent or parents should be able to apply.
b) A traditionally adopted child should have the right to apply for recognition of a traditional adoption having occurred once they attain the age of 18 years. The "child", whether an eighteen-year-old or an adult in their sixties, should have the right to apply for recognition, regardless of whether or not a formal consent process was also undertaken.

Benefits of the Addition of a Consent Process for new Traditional Adoptions

In our view, for new traditional adoptions, the informed consent of both giving and receiving parents must be assured prior to legal recognition being granted. This is consistent with requirements for other permanent care arrangements for children, such as under the *Adoption Act 2009 (Qld).*

Some Specific Instances of Adoption

We appreciate some traditional adoptions do occur within the Torres Strait Islander community when the giving parent is under 18 or arrangements are made while the child is in utero. We understand that in custom if the giving parent is under the age of 18 and is unable to rear the child the maternal grandmother or in the absence of the maternal grandmother, an immediate family member may speak

on the parent's behalf and initiate discussions about arrangements for the child with the final decision however not being made without the consent of the parent.

There are also instances of the paternal family traditionally adopting a child.

Application of a Formal Consent Process in Practice

In accordance with Australian law the preferred approach would be that legal recognition cannot occur until after the baby is born and only after the full and informed consent of the giving and receiving parents can be obtained; in other words, after all have attained the age of majority. The implication of this for underage parents, is that the traditional adoption would occur and be in place for a few years (for example two years if the parents are sixteen years old) until the parents gain majority and are able to engage in the formal consent process. It would be preferable to have some level of recognition of this arrangement before full legal recognition.

Where the giving mother is unsure of the identify of or cannot locate the biological father of the child, and where relevant, all attempts to locate the father have been made and documented, consideration can be given as to whether only consent of the giving mother (and not the father) is required under Torres Strait Islander Traditional child rearing custom prior to a child being 'given up' or 'passed over'.

The consent process would also encourage great specificity by the giving and receiving parents in setting out clearly the living arrangements they want for the child, thus reducing the likelihood of future disputes arising and recourse to the family law courts for Parenting Orders to resolve them with its attendant risk of culturally unsafe scenarios.

The Consent Process to Address Particular Issues Such as Separation or Family Breakdown

The consent process could also address the question as to whether the child is traditionally adopted to a named person in the couple. For example, in a traditional adoption scenario when a child is given to a specific person such as a brother, sister, aunt, or uncle of a giving parent ('the primary receiving parent'), if that person subsequently separates from their partner, under the law as it now stands, the child may end up going into the care of that person's partner or spouse rather than remaining with the brother, sister, aunt or uncle of the giving parent. Anecdotally we are aware of instances where third parties have obtained "live with" orders for the child resulting in understandable distress to the giving parent and family.

In contrast, we understand that the way custom operates within some communities is that, in the event of a separation, the giving parents' family discusses where the child would go, for example both parties would nominate whom the child should go to, such as having the child revert to the giving parent or immediate family. The best way to incorporate these traditional arrangements would be for the parties to agree at the time of formal consent to the adoption how the care of the child should be addressed in the event of separation or death of the primary receiving parent.

Under traditional practices, if there are circumstances where the giving parents' family observes neglect, harm or risk of harm to the child by reason of alcohol or drug abuse, or violence from the receiving parent or parents, then discussions are conducted between family members regarding the best interests and living arrangements for the child. These traditional mechanisms which offer protection for the child are currently not explicitly recognised under our legal system. The giving parents' family should have legal standing to intervene in such an event.

Benefits of an Appeals Process in Conjunction with the Consent Process

An appeals process can be introduced to allow a parent (for example, the child's biological father who was not a party at the time the custom was recognised) to appeal provided satisfactory evidence is put forward as to the reason the parent was not involved at the outset. The test for what constitutes satisfactory reasons for the delay should be broad enough to encompass cultural reasons for the delay.

Continued Applicability of Parenting Orders and Child Safety Mechanisms

As for any other child, the normal processes for child safety or application for family court orders may be triggered when a child is harmed or at risk of harm or intervention is needed for parenting arrangements for the child.

Interaction of Recognition and Parenting Orders

Presently, one method of formalizing the arrangement for care of the child by the receiving parents is achieved through Parenting Orders obtained from the Family Law Courts.

The Family Court has emphasized that it is not the Court's place to determine whether or not a traditional adoption has occurred[10] but to determine parenting arrangements for the child based on the paramount consideration of the child's best interests.[11]

The hazard of applying for Parenting Orders to formalise the care arrangements is that through participation in a Child Inclusive Conference or the provision of a Family Report that the child will be exposed to conversations and interactions with family members in an environment that may not be culturally safe, and possibly risk the child becoming aware, or confused regarding whether, they were subject to a traditional adoption before they have reached the age when it is considered culturally safe to inform them.

The creation of a formal recognition process of traditional adoption would avoid that concern. Recourse to the courts and questions as to who the child should live with or spend time with, would remain a matter for the Family Law Courts.

Interaction of Recognition and Child Safety Services

To recognise Torres Strait Islander Traditional Child Rearing Practices is to allow Torres Strait islander families to make empowered choices about where children in their community will live and how they are to be raised in keeping with custom and tradition. Inherent to the practice of traditional adoption is the consideration of how best the child may be raised and who the appropriate receiving parents are to raise the child.

Unnecessary involvement by child safety services in the process would not allow for an effective or appropriate model for recognition. It is neither realistic nor necessary to automatically bring Torres

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[10] See: *Lara v Marley* [2003] FamCA 1393 at [117] per Nicholson J.

[11] Family Law Act 1975 (Cth) s 60CA.

Strait Islander Child Rearing Practices under the purview of the Department of Child Safety or treat practice of custom as a child protection issue.

Any onerous requirement for checks and supporting documentation may lead to low engagement with the recognition process, or over-reliance on support services and legal assistance for participation. This is problematic, especially for Torres Strait Islander families who live in remote areas and where access to services is extremely limited.

The normal processes for Child Safety and intervention where it is identified would continue to exist as they do for any Queensland child.

Appropriate Body for Recognition

Any recognition process should place the responsibility for deciding whether Torres Strait Islander Traditional Adoptions have occurred into the hands of Torres Strait Islanders themselves.

When the Family Court commenced the practice of making Parenting Orders for 'Kupai Omasker' arrangements both the giving and receiving parties were expected to complete affidavits relating to the giving of the child which was supplemented by a report from a Torres Strait Islander Elder.

The experience in Canadian provinces which recognise traditional adoption is that the incredible diversity among Indigenous adoption traditions means that they do not lend themselves well to one-size-fits-all legislation (the Canadian Model is discussed in further detail, below).[12] As each community will have their own practices and protocols in relation to this cultural practice a better approach would be that the community decide on the criteria to be met for confirming that the adoption was done the 'proper way' and that such be community-led.

We would recommend that the appropriate composition of any such Body should be arrived at after consultation with the Torres Strait Islander community, however it is anticipated that any such Torres Strait Islander Advisory Body would, at a minimum:

a) Consist of Torres Strait Islander persons identified by the community as having the expertise in, or knowledge of, the traditions and customs of the community including the customs relating to traditional adoption and who are also properly trained to understand the nature and scope of the duties they are to carry out.
b) Be appropriately remunerated for the service they provide and provided with sufficient administrative support. Proper travel allowances will need to be factored into the logistics of reaching the island communities as living and travel costs are significantly higher in remote areas.
c) Be funded to conduct awareness raising and community education initiatives so as to ensure the process is properly understood by the communities and persons who may wish to apply for recognition.
d) Have the assistance of a legal practitioner or panel of lawyers to provide advice and guidance on applicable State and Commonwealth Laws.

[12] See: https://nelliganlaw.ca/blog/indigenous-law/customary-adoption-law-province/. We would also like to thank Nelligan O'Brien Payne for the provision of several papers from Quebec on customary adoption in the Canadian context.

The role of the Body would be to determine whether the cultural practice has been carried out the 'proper way'. This is additionally important when either the giving or receiving parent has a partner who is not Torres Strait Islander and consents to being either a giving or receiving parent.

The Body will also need to distinguish between whether a traditional adoption has occurred or whether an alternate care arrangement, such as a temporary arrangement, was made instead.

The Advisory Body must be held accountable for their determinations which can be by way of a review process initiated by a party.

The Canadian Model

We note that a simplified system for the recognitions of traditional adoptions has been implemented in Canada, by the enactment of the *Aboriginal Custom Adoption Recognition Act* (the *ACARA*)[13] by the North-West territories legislature.

The *ACARA* provides for the appointment of a "Custom Adoption Commissioner" who "in the opinion of the Minister, have a knowledge and understanding of aboriginal customary law in the community or region in which they reside."[14]

The following information must be provided to the Custom Adoption Commissioner to make a determination:

1) With respect to the child, the name given at birth and current name, date of birth and of adoption, place of birth, sex and the names of the mother and father, so far as is known.
2) A statement by the adoptive parents and any other person who is, under Aboriginal customary law, interested in the adoption that the child was adopted in accordance with Aboriginal customary law.
3) A certified copy of the registration of the birth.

Once the Custom Adoption Commissioner determines the information is complete, he or she prepares a certificate recognising the adoption and recording any change made to the child's name, and files that certificate in the Supreme Court. Once filed, that certificate is deemed an order of the Supreme Court, and copies then provided to other bodies, including the Registrar-General and Adoption Registry.

The benefit of such a recognition process is that it remains relatively simple and does not require legal proceedings. However, we note that the Canadian process under the *ACARA* does not require the consent of the giving parents to be assured (either mother or father). We would support the additional requirement of consent from the giving parents.[15]

[13] See: https://www.canlii.org/en/nu/laws/stat/snwt-nu-1994-c-26/latest/snwt-nu-1994-c-26.html. Prior to the *ACARA*, applications had to be made to the Court for a declaration recognising a custom adoption.

[14] *ACARA* s 6.

[15] Which in turn would avoid the problem highlighted by *R.A., as Guardian ad litem for her minor child, I.A v. S.K. and D.K*. 2017 NUCJ 5, available at: https://www.canlii.org/en/nu/nucj/doc/2017/2017nucj5/2017nucj5.html; see also: CBC, *Judge questions Nunavut custom adoption procedures after quashing certificate* (21 March 2017), available at: https://www.cbc.ca/news/canada/north/judge-questions-nunavut-custom-adoptions-after-baby-returned-1.4032997.

Best Interests of the Child

The Best Interests of the Child is an international standard expressed in the United Nations Convention on the Rights of the Child. Article 3 of the UN Convention on the Rights of the Child requires member states to observe the "best interests of the child as a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies." It is recognised that the best interests of the child include both long-term concerns and short-term concerns and they include the consideration of the child's physical and emotional wellbeing and their health, financial, educational, moral, cultural and religious interests.

Being an international standard, the Best Interests of the Child are not confined to just the family structures of nuclear families but also encompass the many and varied family structures present in the member state of the United Nations system. The hazard, as has been noted by Canadian practitioners working in the area of traditional adoption is that assumptions and generalizations of "what is in the best interest of the child" from a nuclear family do not necessarily translate to what is in the best interests of the child with respect to collective family rearing practices.[16]

It should be recognised that central to the practice of Torres Strait Islander traditional adoption is the consideration of how best the child may be raised and the appropriate receiving parents to raise the child.

We thank you for the opportunity to provide input at this initial stage and thank you for your careful consideration of these submissions. I also take this opportunity to acknowledge invaluable input from other staff: Annabelle Craft, Kate Greenwood, Jennifer Ekanayake and Rowena Medland.

Yours faithfully,

Gregory M. Shadbolt

Principal Legal Officer

Acting Chief Executive Officer

[16] See for example Ontario Centre of Excellence for Child and Youth Mental Health, *Evidence In-Sight request summary: Culturally appropriate adoption practices for First Nations children and Youth*, (2014) available at http://www.excellenceforchildandyouth.ca/; see also the discussion in the report from the Australian Law Reform Commission, *The Recognition of Aboriginal Customary Laws*, ALRC Report 31, available at https://www.alrc.gov.au/publications/report-31.