

AKUAR THOERIDHAY KAZI

'for our children's children'

TRADITIONAL TORRES STRAIT ISLANDER CHILD REARING PRACTICES

PUBLIC CONSULTATION PAPER

OCTOBER 2018

Department of Aboriginal and
Torres Strait Islander Partnerships



FOREWORD

The Queensland Government is committed to reframing the relationship with Queensland's Aboriginal and Torres Strait Islander peoples. Recognising and valuing the cultural practices of two of the world's oldest living cultures is a significant step towards achieving this outcome.

We are delivering on our election commitment to introduce new laws that will recognise Torres Strait Islander families' use of traditional Torres Strait Islander child rearing practices.

Sharing the care of children is part of Torres Strait Islander culture, custom and life. Generations of Torres Strait Islander children have been raised in supportive and loving extended family environments.

Providing legal recognition will be a historic step, both nationally and internationally. The aim of any new legislation will be for recognition of these enduring cultural practices to ensure Torres Strait Islander families are able to enjoy the same rights as other Queensland families.

Although long understood by Aboriginal and Torres Strait Islander people, maintaining a strong cultural identity is increasingly being recognised by governments as key to improving health and wellbeing, particularly for Aboriginal and Torres Strait Islander people.

As Queensland takes nation-leading steps we will be guided by decades of lived experiences, personal accounts and community insight. The Queensland Government has engaged three Eminent Persons, Ms Ivy Trevallion, the Honourable Alastair Nicholson AO RFD QC and Mr Charles Passi to lend their legal and cultural expertise to support this important process.

Consultation will build on existing work by the Queensland Government and communities to better recognise the importance of culture, family, connection and self-determination for Torres Strait Islander children and their families.

The unwavering determination of the Torres Strait Islander community and decades of advocacy by the Kupai Omasker Working Party have helped Queensland reach this important milestone as we progress towards legal recognition of this enduring and continuing practice.

Continuing the legacy of advocates past and present will help ensure these practices are recognised and strengthened for Torres Strait Islander families raising future generations and leaders of tomorrow. In doing so, we acknowledge the importance of culture, family, connection and self-determination for Torres Strait Islander children, individuals and their families now and into the future.

**The Honourable
Jackie Trad MP**

*Deputy Premier, Treasurer and
Minister for Aboriginal and Torres
Strait Islander Partnerships*

**The Honourable
Di Farmer MP**

*Minister for Child Safety, Youth
and Women and Minister for the
Prevention of Domestic and
Family Violence*

**The Honourable
Shannon Fentiman MP**

*Ministerial Champion
for the Torres Strait*



BACKGROUND

The Queensland Government has committed to introducing new laws that recognise the outcomes achieved by Torres Strait Island families continued use of traditional child rearing practices and to engage Eminent Persons to help consult with Queensland's Torres Strait Islander community on these laws.

The Queensland Government recognises that Torres Strait Islander people have practiced traditional child rearing since time immemorial. Traditional Torres Strait Islander shared child rearing practices are integral to the sense of stability and social order of the Torres Strait Islander community. It is a practice of permanently transferring a child from one family to another, with the child usually remaining within the extended family and the child taking the name of the new family.

The development of new laws will formally acknowledge the importance of cultural decision-making underpinning Torres Strait Islander family structures, community and social networks, and will provide resolution to a range of long-standing issues faced by Torres Strait Islander people whose legal identity does not reflect their lived experience and cultural identity.

The legal recognition of traditional Torres Strait Islander child rearing practices will be based on three key principles: the rights and best interests of the child throughout their life, the informed consent of biological and cultural parents; and the suitability of cultural parents. It is anticipated that any new laws will be informed by cultural advice provided by Torres Strait Islander community representatives with cultural expertise and the authority to speak about this practice.

WHY IS LEGAL RECOGNITION NEEDED?

Torres Strait Islanders have long sought the legal recognition of the Torres Strait Islander traditional child rearing practices and the Kupai Omasker Working Party, formalised in 1990, has actively advocated on behalf of community to government, the need for recognition.

By providing legal recognition, the Queensland Government will be honouring Torres Strait Islander people's right to their identity; to practice their own culture, traditions and enduring customs; and for their children to grow up with their family.

Legal recognition of traditional Torres Strait Islander child rearing practices will aim to provide resolution to long-standing legal and practical issues faced by Torres Strait Islander individuals and families.

These issues are the result of many Torres Strait Islander people not having a legal identity (birth certificate) that reflects their cultural identity and lived experience. When a person's birth certificate does not reflect their cultural identity (name their cultural parents), this impacts on day to day activities that all other Queenslanders take for granted such as:

- enrolling in school
- getting a tax file number or opening a bank account
- obtaining other legal identification, for example, a driver's licence or passport
- accessing Centrelink payments and other entitlements such as child support, Family Tax Benefit, child care, parenting payments, New start or Youth allowance
- accessing inheritance (because Queensland's succession laws do not provide for the recognition of traditional child rearing practices when cultural parents pass away without a will)
- making health care decisions for ageing parents.

Providing legal recognition of traditional child rearing practices will be a historic step for Queensland. Legal recognition will acknowledge the self-determination of Torres Strait Islander peoples and the importance of the community's cultural decision-making processes.

This is consistent with the Preamble to the Queensland Constitution honouring Aboriginal peoples and Torres Strait Islander peoples, as the first Australians, and pays tribute to their unique values and their ancient and enduring cultures. It is also consistent with other reforms underway in Queensland including: child protection reforms such as the *Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and families 2017–2037*, a long-term commitment by Government, Family Matters Queensland and the Aboriginal and Torres Strait Islander community to work together and ensure Aboriginal and Torres Strait Islander children and young people in Queensland grow up safe and cared for in family, community and culture; and the recent Queensland Government commitment to reframing the relationship with Aboriginal and Torres Strait Islander Queenslanders.



PROCESS FOR CONSULTATION

The Queensland Government has engaged three Eminent Persons: Ms Ivy Trevallion; Mr Charles Passi; and the Honourable Alastair Nicholson AO RFD QC to provide legal and cultural expertise during the complex and culturally sensitive consultations with Queensland's Torres Strait Islander community and other key stakeholders.

The Queensland Government acknowledges that there has already been considerable consultation on this issue, by community, and between government and the Torres Strait Islander community and other stakeholders, including the Kupai Omasker Working Party. This includes work that has identified that any new laws should aim to:

- support a person's right to culture, family and connection with community
- ensure a person's legal identity reflects their cultural identity and lived experience
- acknowledge the practice has existed since time immemorial and will continue
- put into place a process for legal recognition that is affordable, accessible and culturally appropriate.

Building on the work to date, the Queensland Government, along with the Eminent Persons (Ms Ivy Trevallion; Mr Charles Passi; and Mr Alastair Nicholson), will hold a number of forums and smaller meetings across the state to discuss the legal recognition of traditional Torres Strait Islander child rearing practices.

At the forums and meetings, the Queensland Government and the Eminent Persons will discuss and explore the below questions with the Torres Strait Islander community and other key stakeholders. There will be opportunity for individuals and small groups (for example families; younger and older women; younger and older men) to meet with the Eminent Persons and Queensland Government representatives.

The Queensland Government also invites feedback from Torres Strait Islander people and interested individuals and organisations, via email or in writing. Further to community forums, tailored group meetings and the written submission process, separate forums will be held with Queensland and Commonwealth Government agencies, non-government agencies and representatives from legal entities and advocacy groups. This will assist in informing the Queensland Government on how best to develop these new laws.

Further information on the dates and locations of the public forums can be found at www.datsip.qld.gov.au/torreschildrearing

KEY QUESTIONS

The Queensland Government is seeking feedback on the following key questions:

Traditional practices

- How are the traditional practices in the best interests of a particular child?
- When would legal recognition not be in the best interests of a particular child?
- Why are particular people chosen to be cultural parents?
- What are the reasons cultural parents might not be considered suitable to raise the child?

Legal recognition

- Who should be eligible to apply for legal recognition?
 - For example, should only Torres Strait Islanders living in Queensland be eligible to apply for legal recognition?
 - An applicant (if over 18 years and requesting legal recognition) or one/both biological and cultural parents (if the child is under 18 years)?
- What information should someone need to provide to show that the cultural practice was done the 'proper way' (i.e. in accordance with cultural protocols)?
 - Who could provide this information?
 - Should there be a Torres Strait Islander advisory body to review each of the applications?
 - What would their responsibilities be?
 - Who should be on the advisory body (eg Elders from each cultural group)?
- What other supporting documentation should be provided to apply for legal recognition?
- How do the biological parents, cultural parents and a child (if appropriate) consent to commencing the process for legal recognition?
- When should an arrangement not be legally recognised?
- Who, if anyone, should be able to appeal a decision to legally recognise the cultural practice?
 - Other than the child (or adult child), biological and cultural parents, should another family member or member of the community be able to appeal the decision?
 - Why or why not?
- Are there any reasons the Torres Strait Islander community might not want to use the new laws? What can the Queensland Government do to address this?
- What other issues are important to the Torres Strait Islander community in relation to legal recognition of traditional child rearing practices that the Queensland Government should consider?

EMINENT PERSONS

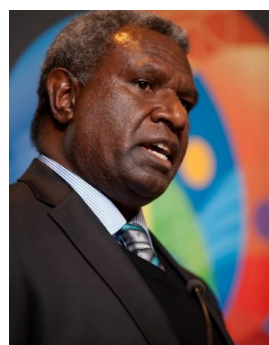
The Queensland Government has engaged three Eminent Persons to provide legal and cultural expertise during consultations with Queensland's Torres Strait Islander community and key stakeholders.



Ms Ivy Trevallion

First Torres Strait Islander social worker, having graduated from Queensland University in 1986 and current Chair of the Kupai Omasker Working Party.

“This is for our children, and our children’s children. Our families can rest assured that this is finally happening.”



Mr Charles Passi

Member of Aboriginal and Torres Strait Islander advisory to the Domestic and Family Violence Implementation Council and former Chair of the National Aboriginal and Torres Strait Islander Healing Foundation (2013–2015).

“Identity is important: we need to get this right as our children must have a space to call their own.”



Honourable Alastair Nicholson AO RFD QC

Former Chief Justice of the Family Court with extensive knowledge and experience of traditional Torres Strait Islander child rearing practices including leading the development of the Family Court’s Kupai Omasker program in the 1990’s, supporting government consultations in 2011–2012 and advisor to the Kupai Omasker Working Party since 1996.

“I’m very honoured to be associated with my Torres Strait Islander friends in this important process for which we have worked so hard for over many years.”

HAVE YOUR SAY

The Queensland Government wants your feedback on how best to develop new laws on the legal recognition of traditional Torres Strait Islander child rearing practices.

You can tell us what you think at one of the upcoming public forums or you can send written feedback to the issues raised in this paper and or any other comments you may have by:

Email: torreschildrearing@atsip.qld.gov.au
Mail: Attention: Policy
Department of Aboriginal and Torres Strait Islander Partnerships
PO Box 15397
City East Qld 4002

Feedback is due by: Close of business on 30 November 2018

For further information visit **www.atsip.qld.gov.au/torreschildrearing**

