



WRITTEN INFORMATION ON INTRAFAMILY ADOPTION

Additional Information for Parents of a Torres Strait Islander Child

This document must be read in conjunction with
the Mandatory Written Information For Parents

Introduction

This booklet provides important information for parents who are considering the adoption of their child who is Torres Strait Islander. It is to be read in addition to the *“Mandatory Written Information on Intrafamily Adoption - Information for Parents”*.

The law governing adoption, the NSW Adoption Act 2000, requires that if a parent is considering giving consent to their child’s adoption, the parent must have the opportunity to read the information in this booklet and talk with an appropriately qualified Torres Strait Islander person to ensure they understand the contents before they give their consent.

Even if you are not Torres Strait Islander, the information contained in this booklet applies to you if your child is Torres Strait Islander.

1. Overview

What is Adoption?

Adoption is the legal process by which all the legal rights and responsibilities of being a parent are transferred from the child's biological parent(s) to the adoptive parent(s).

NSW Legislation (*Adoption Act 2000*), allows for the adoption of an Torres Strait Islander child, but only when the making of an adoption order is clearly preferable and in the best interests of the child to any other care arrangement.

Adoption is a major life decision, for parents and their child. It is important to carefully consider the implications of adoption for your child before you decide to give consent to your child's adoption.

What are the legal effects of adoption in NSW?

Adoption is the legal process which permanently transfers all the legal rights and responsibilities of being a parent from you, as the child's parent(s), the Minister or any other person who holds parental responsibility, to the adoptive parent(s). Adoption orders are made in the Supreme Court of NSW.

- **Once an adoption order is made, it is final.** An adoption order can only be discharged if the adoption order was obtained by fraud, duress or other improper means.
- A new birth certificate will be created once your child is adopted, naming the adoptive step parent and custodial biological parent, in the case of a step parent adoption, and adoptive parent(s), in the case of a relative adoption, as the child's legal parents.
- A child's surname is often changed to the same surname of the adoptive parent(s). Sometimes the child's original surname from their birth family might be kept, or used as their middle name but this may not always be the case.
- **The child's given name(s) do not generally change.**
- A child's right to automatically inherit from the consenting birth parent changes to automatically inherit from their adoptive parents in the case of a joint application or their adoptive parent, and custodial birth parent in the case of a sole application.
- The child may continue (as part of the Adoption Plan agreed to by all parties) to have contact with you and members of his or her family, extended family and/or Torres Strait Islander community after an adoption. Contact is agreed to by all parties and must consider the best interests of the child.

Adoption Consent

Consent for the adoption of a child can be given in one of the following ways:

1. Consent of Parent or Person who Holds Parental Responsibility for the Child

The Court cannot make an adoption order unless the specific consent has been given by the non-custodial biological parent(s). In every adoption, all reasonable attempts are made to encourage both parents to participate in decisions made about their child.

2. Child Over 12 years of Age Gives 'Sole' Consent

Where a Torres Strait Islander child is

- 12 or more years of age, and
- of sufficient maturity, and
- the child has been cared for by the proposed adoptive parent(s) for at least 2 years,

In this circumstance, the only consent required for an adoption, is that of the child

Children giving 'sole' consent will be given the same opportunity for 'adoption counselling' as parents would if they were giving consent. Every effort is made to let parents know if their child is considering or has given 'sole' consent to their adoption.

3. Dispense with the Requirement to Give Consent

The Court may dispense with a parent's consent if there are specific grounds to do so, being

- the parent cannot be identified or located, or
- the parent is in such a physical or mental condition and is not capable of properly considering whether they should give consent, or
- there is serious concern for the welfare of the child.

NB: In the case of a sole application to adopt by the prospective adoptive parent in a step parent matter, the custodial biological parent must consent in writing **to the application for the adoption order**. Consenting to an adoption application is different to consenting to a child's adoption

2. Torres Strait Islander People and Adoption

In the *Adoption Act 2000* a Torres Strait Islander child means “a child descended from a Torres Strait Islander person”.

Torres Strait Islander person means a person who:

- (a) is descended from a Torres Strait Islander, and
- (b) identifies as a Torres Strait Islander, and
- (c) is accepted as a Torres Strait Islander by a Torres Strait Islander community.

Given the displacement that has occurred over generations for many Torres Strait Islander people it is not always possible to meet all three requirements. Therefore a child may also be considered to be Torres Strait Islander if the Court is satisfied that the child is of Torres Strait Islander descent...

It is recognised that customary adoption is a part of Torres Strait Islander culture and involves the permanent transfer of care responsibilities, it is considered to be a “social arrangement”.

Traditionally the chosen adoptive family was in the same Torres Strait Islander bloodline as the birth family. However, with inter-racial marriage now more frequent, adoptive parents may be related only by marriage. There is also a growing practice of giving a child to Torres Strait Islander family friends rather than relatives.

Customary Torres Strait Islander adoption makes the child a full member of the adoptive family. However, in the eyes of Australian law, customary adoptions are private arrangements, and although not prohibited, they are not legally recognised unless a formal adoption order is sought in the Supreme Court.

Within the Torres Strait Islander community relative or kinship care placements are the preferred care arrangements for Torres Strait Islander children who are unable to live with their parents. These are placements with a carer(s) from within the child’s family, extended family or Torres Strait Islander community and assist the child to maintain their connection and sense of belonging to their family, community and Torres Strait Islander culture.

However in some circumstances parents may feel it is necessary to formalise the placement of their child with step parents or relatives by adoption.

The *Adoption Act 2000* does allow for Torres Strait Islander children to be adopted. Additional requirements must be met under the *Adoption Act 2000*, prior to an adoption order being made for a Torres Strait Islander child

The Stolen Generation

It is important to acknowledge past practices and the impact of forced removals on Aboriginal and Torres Strait Islander communities. Between 1909 and 1969 Aboriginal and Torres Strait Islander children were taken from their families without parental consent and placed in institutions or mission dormitories - many were fostered or adopted. The generations of children who were taken from their families became known as the Stolen Generations.

The forced removal of Aboriginal and Torres Strait Islander children broke important cultural, spiritual and family ties which affected not only individuals, but whole families and even whole communities and resulted in long lasting feelings of loss and grief. No-one really

knows how many children were taken and no-one will ever know the true effects that these forcible removal policies have had on generation after generation of families and communities

Today, the Law through the Aboriginal and Torres Strait Islander Child Placement Principle and Torres Strait Islander consultation requirements seek to protect future generations of Torres Strait Islander children from the devastating effects of the past that separated children from their families, communities, and culture.

3. Legislative Requirements

The Law seeks to protect future generations of Aboriginal and Torres Strait Islander children from past practices that separated children from their families, communities, and culture. Therefore, an adoption of a Aboriginal child is not to occur unless the Court is satisfied that an adoption order is preferable, and in the child's best interests, to any other order which could be taken by law.

One of the objectives of the *Adoption Act 2000* is to ensure that a child who is adopted is assisted to know and have access to his or her birth family and cultural heritage. Identifying and preserving a child's name or given names, identity, language and cultural ties must be taken into consideration when making a decision about the adoption of a Torres Strait Islander child.

Torres Strait Islander people should be given the opportunity to participate with as much self determination as possible in decisions relating to the placement for adoption of Torres Strait Islander children.

Adoption Counselling

If adoption is being considered for your child, the *Adoption Act 2000* requires that an approved Torres Strait Islander person with relevant experience working with Torres Strait Islander children provide 'adoption counselling' to you, your family or kinship group. This includes:

- the effects of adoption (what adoption means legally, and emotionally)
- alternatives to adoption ie a simple name change or Family Court orders for parental responsibility

The *Adoption Act 2000* requires that:

If parent(s) refuse 'adoption counselling' they must be provided with written information which details matters that would have been discussed by the adoption counsellor. Those who do not wish to participate in counselling cannot consent to their child's adoption until at least seven days after being given this written information.

As a parent of a Torres Strait Islander child you will be asked to sign a document confirming you have:

1. Been given an opportunity to participate in 'adoption counselling' with someone from the Torres Strait Islander community, and

Been provided with the Mandatory Written Information on Adoption – Additional Information for Parents of an Torres Strait Islander Child and understood the contents.

OR

2. Declined to receive 'adoption counselling', and

Been provided with the Mandatory Written Information on Adoption – Additional Information for Parents of a Torres Strait Islander Child and understood the contents.

Adoptive parents of a Torres Strait Islander child

It is expected that the adoptive parents of an Torres Strait Islander child are committed to supporting the child to learn about his or her Torres Strait Islander culture and heritage.

Adoption Plans

Today, open adoption allows your child to retain links with their Torres Strait Islander family, community and significant people.

Your views will be sought about post adoption contact with your child, and sharing information. An Adoption Plan may be developed to include arrangements that are agreed to by you, the adoptive parents and the child (if age appropriate).

The Adoption Plan will include things such as:

- Arrangements for contact, and information sharing between you, your child, siblings and other family members after adoption
- How your child will learn about their Torres Strait Islander identity and culture

You are encouraged to participate in developing an adoption plan for your child by providing information such as:

- ***Where do you come from or where is your area/s of belonging?***
 - ❖ the traditional community/Island/country/nation of one or both parents;
 - ❖ the community(ies) where you or your child was born;
 - ❖ the community(ies) where you were raised or lived most of your life;
 - ❖ the community where you currently reside; and
 - ❖ language group(s).
- ***Who are your family/kinship or community ties?***
 - ❖ blood related (mum, dad, brother, grandparent, cousin, aunty);
 - ❖ marriage (aunty, uncle, cousin);
 - ❖ community or non-related family (Elder, neighbour, friend);
 - ❖ kinship relationship (Elder, aunty, uncle, community);
 - ❖ people within the community whom you feel a sense of belonging.
- ***Community and cultural activities and events your child could participate in***

This information will be used in the development of a cultural support plan for your child to ensure they develop a healthy and positive cultural identity and maintain a sense of belonging to their Torres Strait Islander community(ies) and culture.

Adoption is a major life change for you and your child. It is important you take your time and consider all options available to you.

Remember support is always available to help you make important decisions about the care of your child and help you through the adoption process.