

# PRACTICE GUIDE

## Torres Strait Islander traditional child rearing practice

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Torres Strait Islander traditional child rearing practice is a custom practiced throughout the Torres Strait Islander communities, including those who live in the Torres Strait and those families who reside on the mainland.

This practice guide aims to give practitioners an awareness and understanding of the cultural protocols and practice considerations relating to this cultural practice. An awareness of Torres Strait Islander traditional child rearing practices in relation to the *Child Protection Act 1999* will enable staff to respond effectively, sensitively and respectfully when working with Torres Strait Islander children and families to which this custom applies.

It is also important to note that the word 'adoption' is not to be used in association with traditional child rearing practice for Torres Strait Islander children and families.

### **What is Torres Strait Islander traditional child rearing practice?**

One of the most significant differences between Torres Strait Islander and Aboriginal child rearing approaches, is the Torres Strait Islander traditional child rearing practice, sometimes referred to as Kupai Omasker. Kupai is the Torres Strait Western Island word for 'umbilical cord', and Omasker is the Torres Strait Eastern Island word for 'children'. Together the words can be interpreted as 'the caring of all our children' (World Congress on Family Law and Children's Rights, Sydney Australia).


This traditional child rearing practice is a part of 'Ailan Kastom' and is outlined in the *Child Protection Act 1999* as 'Island Custom'. Ailan Kastom means a body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular community or group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, object or relationships (*Acts Interpretation Act 1954*).

The Torres Strait Islander traditional child rearing practice involves the blessing, or gifting of a child from the birth parents to the cultural parents<sup>1</sup>, to be raised within that cultural parents' family structure. This Ailan Kastom is a permanent arrangement, and the child is not returned to the care of their birth parents. It is significantly different to what is sometimes referred to as a 'family arrangement' by some Torres Strait Islander families, which is for a specific purpose, within a particular timeframe.

There are cultural sensitivities regarding Torres Strait Islander traditional child rearing practice. If Child Safety become aware that a child and the child's family is living in a traditional child rearing practice, it is important to seek out advice from the Torres Strait Islander Advisory Group, an

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<sup>1</sup> The term 'cultural parents' has been used in this document to assist in explaining Torres Strait Islander child rearing practice. Do not use this term when engaging with Torres Strait Islander families, or in written documentation. When a child is living within a traditional child rearing practice, use only the terms mother, father or parent/s.



appropriate Torres Strait Islander Elder, or a Torres Strait Islander staff member with cultural knowledge and understanding of traditional child rearing practice.

## **Understanding Torres Strait Islander traditional child rearing practice**

Torres Strait Islander traditional child rearing practice differs in each family, and it may not be something the family are willing to discuss. Families may choose this practice to:

- maintain the family bloodline the gifting of a male child. This is linked to the inheritance of traditional lands on the islands
- keep the family name going by gifting a male child from a relative into the family
- gift a family member who may not have a child
- strengthen alliances and bonds between families
- balance genders between families
- provide company and care for an older relative, usually an older child
- support the needs of both the families.

## **Recognition of Torres Strait Islander traditional child rearing practice in Queensland legislation**

In 2020, the Torres Strait Islander traditional child rearing practice was legally recognised in Queensland legislation. The [Meriba Omasker Kaziw Kazipa \(Torres Strait Islander Traditional Child Rearing Practice\) Act 2020](#), means 'For Our Children's Children', and is legal recognition through the application of a Cultural Recognition Order (CRO) to the Office of the Commissioner (Meriba Omasker Kaziw Kazipa) in the Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts. It provides for the recognition and acknowledgment of traditional child rearing practice in the Torres Strait community. There is no legal recognition of traditional child rearing practices within Aboriginal families at present.

A CRO is the legal recognition of this practice, and it is the family's decision to apply for a CRO through the Office of the Commissioner, Meriba Omasker Kaziw Kazipa. Applying for a CRO is voluntary and consent based. If a family chooses not to apply for a CRO, it does not have any effect on the validity or cultural significance of the arrangement.

It is important to note that not all families will apply for a CRO, and in most instances the child will not be aware that they are living within this traditional practice. It is disrespectful and culturally inappropriate to discuss this situation in front of the child and it is the family's right and responsibility to decide if and when the child is told.


If one parent is Torres Strait Islander and one parent is Aboriginal, an application for a CRO may take place, however this practice is not aligned with Aboriginal tradition.

## **What does a Cultural Recognition Order mean for a child?**

A CRO will permanently transfer a person's parentage from the birth parents to the cultural parents.

Under the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*, section 66(1) (a-e):

- a) the person's parentage being transferred from the birth parents to the cultural parents
- b) the person becoming a child of the cultural parents
- c) the cultural parents becoming the parents of the person
- d) the person stops being a child of the birth parents
- e) a birth parent stops being a parent of the person.



For a child whose grown up under Ailan Kastom with their cultural parents, they will finally have their legal identity match their cultural identity and can enjoy the same rights and recognition as other Queensland children and families.

## **How will I know when the Torres Strait Islander traditional child rearing practice has occurred?**

It may not be mentioned or documented in the notification that the family has a CRO in place. If a CRO is in place, then the child's birth certificate will state the cultural parents' names on the birth certificate as the child's parents. You may not know that this Ailan Kastom has taken place and it will not be relevant as the cultural parents are legally the child's parents.

If Child Safety become aware that Torres Strait Islander traditional child rearing practice has occurred, refer to the cultural parents as the child's mother, father, parent/s only. This includes in all written material and in conversations with colleagues and with stakeholders.

Traditional child rearing practice is not to be mistaken for a family arrangement. A family arrangement is often short to medium term. This Ailan Kastom of child rearing is permanent, sacred and unspoken.

## **Torres Strait Islander Traditional Child Rearing Practice in the *Child Protection Act 1999***

The *Child Protection Act 1999*, section 11, recognises a parent of a child as the child's mother, father or someone else having or exercising parental responsibility for the child and includes when the Torres Strait Islander traditional child rearing practice is applicable. However, this definition is only relevant for voluntary interventions such as adoption care agreement, child protection care agreement and intervention with parental agreement.

When Child Safety staff work with a family where Torres Strait Islander traditional child rearing practice has taken place, it is the **cultural parents** and **not the birth parents** who will need to be assessed on their ability to ensure the child's safety, belonging and wellbeing needs.


If you are applying for a temporary assessment order, court assessment order, temporary custody order or a child protection order, the narrow definition of who is a parent applies, which is outlined in the *Child Protection Act 1999*, schedule 3, under subsection (a) of '**parent**'. If there is no CRO in place, the birth parents will be the respondents.

If a child is subject to a child protection order and their case plan goal is reunification, reunification planning is carried out to the cultural parents (regardless of whether a CRO is in place), as would normally occur with reunification planning to birth parents.

Child Safety's obligations to help the child's family to meet the child's care and protection needs (under the *Child Protection Act*, section 73), are to the child's parents, but may include extended family. When determining whether Child Safety has met these obligations, a family-led discussion needs to occur as to who is the 'child's family'.

## **When there is no Cultural Recognition Order in place for emergent orders or child protection orders**

If there is no CRO in place, for any proceedings for emergent orders and child protection orders, the birth parents will be named as respondents. This means that the birth parents are identified as the child's parents in the court application. This can cause difficulties as typically under traditional child rearing practices, the children have not been informed of the fact that the cultural parents are not their birth parents.



For cultural parents to be included in the court proceedings, Child Safety must uphold the child and family's rights and apply the Aboriginal and Torres Strait Islander child placement principle to the standard of active efforts (connection, participation, placement). Staff must make timely, thorough and purposeful efforts to help the cultural parents access legal advice and support (such as through the Aboriginal and Torres Strait Islander Legal Service). It may be possible for them to make an application to the court to be part of the proceedings (*Child Protection Act 1999*, section 113).

### **How to document a child's kinship system for court purposes**

Great sensitivity is required when documenting family history, as some children may be provided with copies of material during child protection proceedings or when they attain adulthood.

If a child is subject to court proceedings and there is not a CRO in place, create two genograms:

- one that can be shared with the family (which only includes the cultural parents' details and their lineage)  
and
- one for Child Safety's records and court purposes only, which will include both birth parents' and cultural parents' details and is to be labelled 'confidential and sensitive'.

If there is a CRO in place, there is no need to develop two genograms. Only create a genogram that reflects the cultural parents' lineage.

Never develop a genogram without involvement from people with appropriate cultural knowledge. To develop a map of the family's kinship system, consult with:

- a Torres Strait Islander staff member, such as a cultural practice advisor or the Aboriginal and Torres Strait Islander practice leader or
- the Torres Strait Islander Advisory Group and
- the family or a family cultural spokesperson (a person who is an elder or person of authority within the family kinship system).

### **Applying for a Cultural Recognition Order**

Torres Strait Islander traditional child rearing practice are not initiated by Child Safety. It is an arrangement that is entered into between the birth parents, cultural parents and elders.


It is not appropriate or Child Safety's role to be involved in traditional child rearing practice, however Child Safety can offer support to a family if they are known to Child Safety. If a family wants to apply for a CRO:

- refer the family to the [Office of the Commissioner Meriba Omasker Kaziw Kazipa](#)
- encourage and assist (if required) the family to seek independent legal advice from one of the following services
  - [Aboriginal and Torres Strait Islander Legal Services](#) (ATSILS)
  - [Queensland Indigenous Family Violence Service](#) (QIFVLS)
  - [Legal Aid Queensland](#)
- allow that time to pause, remembering that English is often a Torres Strait Islander family's second or third language
- consult with the Torres Strait Islander Advisory group.

### **The Torres Strait Islander Advisory Group**

The Torres Strait Islander Advisory Group consists of Torres Strait Islander practitioners, Child Safety staff and community members. The purpose of the advisory group is to provide cultural advice to staff regarding families who are living within a Torres Strait Islander traditional child





rearing practice. It is important to note that Child Safety staff will only request support from the advisory group **IF** cultural advice cannot be provided by both the local cultural practice advisor and the regional Aboriginal and Torres Strait Islander practice leader.

For further information refer to the [Torres Strait Islander Advisory Group - Terms of Reference](#).

### **Referrals to seek cultural advice from the Torres Strait Islander Advisory Group**

If a CSO requires specific cultural advice regarding a Torres Strait Islander family who has a traditional child rearing practice in place, and if this cannot be provided by either the cultural practice advisor and/or the regional Aboriginal and Torres Strait Islander practice leader, a referral can be sent to the Torres Strait Islander Advisory Group.

Referrals are made via the CS\_PPAL mailbox. Include the following information:

1. Subject line: Seeking cultural advice from the Torres Strait Islander Advisory Group
2. Body of the email to include
  - CSSC/region
  - family name
  - outcome of discussions with the cultural practice advisor and the regional Aboriginal and Torres Strait Islander practice leader
  - intervention type and
  - specifics regarding cultural advice.


Once the referral is received, it will be sent to the Torres Strait Islander Advisory Group. A group member or the central office Aboriginal and Torres Strait Islander Practice Leader will respond accordingly.

For further information refer to the [Child Safety Policy and Practice Advice Line \(CSPPAL\)](#) intranet page.

### **Practice considerations when working with a Torres Strait Islander families**

When working with a Torres Strait Islander family, it is important to:

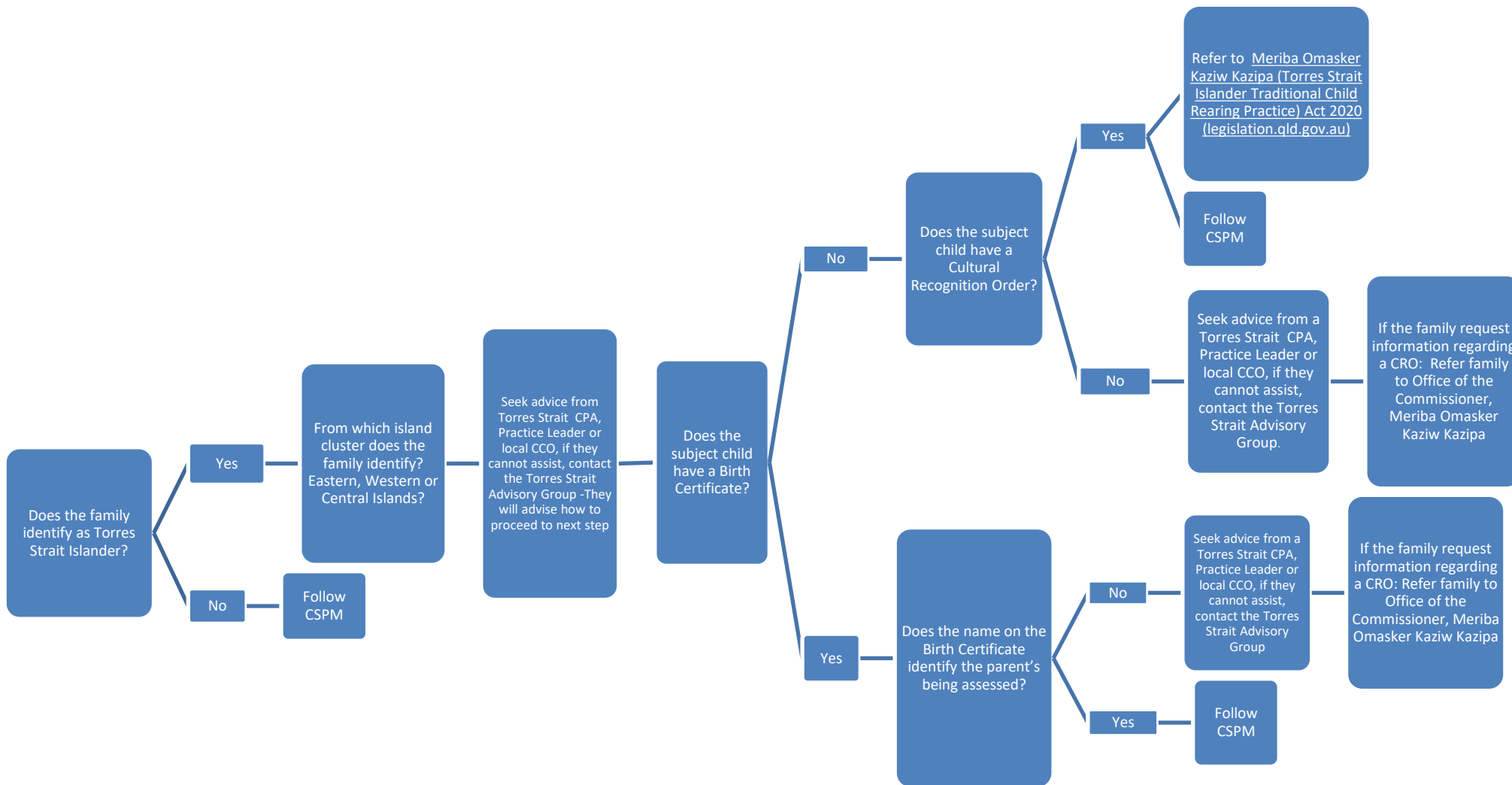
- Use plain English (both in written correspondence and when speaking with families), as most Torres Strait Islander people speak multiple languages and English might not be their first language. Avoid abbreviations, acronyms, complicated terminology and departmental jargon.
- Be comfortable with silence, as this allows processing of what has been said, before a response is given.
- Allow the family to nominate a cultural spokesperson to participate in conversations. This is a person of significance to the family and who can speak on the family's behalf.
- To assist with establishing a good relationship, listen and allow enough time for the family to be comfortable to speak with you. Demonstrate active listening without interrupting, as the family will want to fully explain their position to you. Their response will often take time. Do not rush the conversation with the family.
- Be respectful if you are asked to leave the room or the meeting for the family to discuss matters in private.
- Let the family lead the conversation to uphold their right to self-determination and be aware that decision-making usually involves input by other family members, so be respectful of the family kinship systems.
- Arrange an independent person with the family's consent, to help facilitate their participation in decision making about the child.

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- Consider the human rights of each individual when making decisions (*Human Rights Act 2019*, section 58(5)).

If Child Safety is aware of or discussing Ailan Kastom, specifically this traditional children rearing practice with a family:

- Always address the child's cultural parents as the parents of the child in conversations. Do not mention 'birth parents'.
- Do not speak about traditional child rearing practice in front of the child, as often they are not aware that the practice has taken place.
- Avoid becoming involved in family disputes about this practice.
- Do not use the term 'adoption' when referring to traditional child rearing practice. This is a western term and it is not recognised or used in Torres Strait Islander language. It is seen as being disrespectful to Torres Strait Islander peoples and Ailan Kastom.
- Seek cultural advice regarding Ailan Kastom in order to be respectful toward the family and uphold cultural protocols. Advice can be sought from a Torres Strait cultural practice advisor, the local Family Participation Program or the Family Wellbeing Service, or a Torres Strait Islander practitioner that hold appropriate cultural knowledge. If none of these sources are available, contact the Torres Strait Islander Advisory Group, which includes Torres Strait Elders.

## When working with a Torres Strait Islander family





## References

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## Version history

<b>Published on:</b>	March 2024
<b>Last reviewed:</b>	
<b>Owner:</b>	Office of the Chief Practitioner