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In brief
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Between the Lines: Pacific Cultural Adoptions in Australia

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Many Pacific families involved in the adoption process are torn between established Western legal principles and desiring recognition of Pacific ways of being and practices in the Australian system. Balancing Eurocentric legal systems and Pacific customary practice requires consideration of both mechanisms to navigate the best interests of the child. When Western legal frameworks are imposed upon cultural adoptions, without acknowledgement of context, the best interests of the child can be distorted.

This In Brief examines Samoan and Tongan adoptions from the points of view of the Samoan and Tongan authors. It does not elaborate on the legal aspects but focuses on Pacific worldviews. Cultural adoption remains a common practice within Pacific families in Australia, reflecting enduring kinship-based caregiving traditions. We aim to provide a 'snapshot' of the 'Pacific Cultural Adoptions Expert Report' (Fainga'a-Manu Sione et al. 2024), highlighting the importance of having a Pacific perspective that is conscious of custom and customary law. The report, commissioned by the presiding judge, discusses a case concerning the adoption of a Samoan child to a relative and his Tongan wife in Australia.

Pacific cultural adoptions are increasingly before Australian courts, reflecting the tension between cultural norms and Western legal principles. The essence of cultural adoption cases is the paramount consideration of *what is in the best interests of the child* within their collective, but how this is perceived can differ. Established family laws are embedded in Western notions of family, and these dictate the rights of all parties. Pacific families' collective culture and practices are often overlooked. In the Pacific context, the meaning of family is more broadly defined, and the act of cultural adoption is purposed to strengthen, not sever connections (Corrin and Farran 2019). In the Australian adoption system, the child is entrusted to adoptive parents, often outside their kin, rather than within relational circles. The key consideration becomes: What happens when Western and Pacific systems intersect?

This In Brief raises issues faced by Pacific families in Australia. While adoption in the Pacific is documented, little theory addresses Samoan and Tongan cultural adoption in Australia (Corrin and Farran 2019). The *Meriba Omasker Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2000* (Qld) provides a legal precedent for recognising Torres Strait Islander cultural adoption, underscoring the gap in legislation for similar Samoan and Tongan practices in Australia (Queensland Government 2020). Yet Pacific populations in Australia are growing at more than twice the rate of the general population (Liu and Howes 31/3/2023). Families have migrated to Australia either directly from Samoa or Tonga, or via New Zealand. These migration pathways shape how Pacific communities connect and express their cultural identities.

Best interests of the child

The Convention on the Rights of the Child (CRC) (1990) states adoption of the 'child shall ensure that the best interests of the child shall be the paramount consideration'.[1] The Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (Hague Convention) (1993), provides that there be 'safeguards to ensure that intercountry adoptions take place in the best interests of the child with respect for his or her fundamental rights'.[2]

All Pacific countries are signatory to the CRC and have assumed legislation that is consistent with international law. Australia is a signatory to the CRC and Hague Convention; regulatory regimes have been implemented reflecting international law. Section 60CC of the *Family Law Amendment Act 2023* provides general considerations of what should be considered in the child's best interests. While these general considerations provide a guide, a more nuanced understanding of Pacific worldviews is required to consider custom, practices and values. It is important that we understand the Pacific diaspora in the Australian context. Current legal frameworks in Australia do not necessarily provide the scope for the heterogeneous groups from the Pacific region who are engaging in cultural adoptions.

Pacific perspectives on child wellbeing require a holistic, intergenerational approach that extends beyond current research, incorporating Pacific notions of custom and spirituality. In some cases, this would include broader consideration of the meaning of consent for adoption. Consent from a Pacific perspective may require consultation with the wider family beyond the parents of the child, such as the elders and relatives involved in childcare (Faleolo 2023a). Decisions around cultural adoption often centre on who the parents are entrusting

their child to, with familiarity, trust, and established relationships being essential. As a result, informal and formal adoptions commonly occur within extended families such as sisters adopting a sibling's child, especially in cases of childlessness, to balance gender within the family, or through close ties with in-laws, or longstanding family friends, often grounded in kinship systems like *fāmili* or *āiga*.[3] Some cases may require broad consultation with those who are part of the child's village, for instance the church minister and community leaders. These multiple stakeholders can blur the lines in terms of what is the right decision. In some cases, a Pacific adoption may take place out of a sense of obligation and duty to maintaining family ties. Employing Pacific practice into cultural adoption is only one aspect of a wider picture of an exchange of knowledge and sharing to adhere to cultural adoptions (Fainga'a-Manu Sione 2023; Faleolo 2021, 2023b). Currently, such considerations are not reflected in the dominant Western framing of what is in the best interests of the child. Specifically, the welfare and best interests of the Pacific child are context specific and require consideration of connections to village, wider family (including blood line), and culture.

Adoptions must be culturally responsive to Pacific ways and should include Pacific elders/leaders as Indigenous knowledge holders in the Australian context. Employing Pacific methods builds on a Pacific worldview that uses dialogue focused on enhancing relational spaces, which in turn intensifies rich cultural conversation and reciprocal knowledge sharing.

Conclusion

When Australian legal systems preside over Pacific cultural adoptions, they must employ methods that are culturally responsive to Pacific knowledge sharing and are assessed on the merits of each case. In granting adoption orders, the Australian family court must seek to harmonise legal principles with Pacific customary concepts, ensuring that the decision reflects the child's best interests within the unique cultural and familial context of the case.[4] The welfare and best interests of the Pacific child cannot be viewed in isolation but must encompass the profound and lasting effects adoption will have on the child's entire family and village community.

Notes on authors

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Endnotes

1. CRC (New York, 20 November 1989) [1990] UNTS, vol. 1577, p. 3, art. 21.
2. Hague Convention (The Hague, 29 May 1993) [1998] ATS 21, art. 1.
3. *fāmili* is Tongan for family; *āiga* is Samoan for family.
4. For example, *Re M (Adoption)* 2 NZLR 237 cited in Application for Letters of Adoption for J, In re [2015] TOSC 5; FA151 of 2014, [21] (Supreme Court, Tonga, Paulsen, CJ).

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