

13 November 2015

Media Release

**ONLY JURISDICTIONAL COOPERATION CAN END DISADVANTAGES
SUFFERED BY TRADITIONALLY ADOPTED CHILDREN**

The states, territories and the Commonwealth must cooperate to address the jurisdictional issues being faced by traditionally adopted Torres Strait Islanders and their parents, and to offer them the same rights and protections as ‘legally’ adopted children.

In the latest *Indigenous Law Bulletin*, Torres Strait Islander and Griffith Law School academic Ms Heron Loban calls for the Commonwealth to take the lead to end the jurisdictional inconsistency and to bring Australia’s law in line with article 21 of the *Convention of the Rights of the Child*.

Loban points to recent case in the Queensland Court of Appeal *Eatts v Gundy*, where the decision of the court sat in direct contrast to the efforts of the Family Court of Australia in recognising Torres Strait Islander traditional adoption, highlighting the unresolved conflict between state laws and Aboriginal and Torres Strait Islander traditional laws.

In that case, Fraser JA decided that adoption for the purposes of the *Succession Act 1981* (Qld) refers to an adoption in accordance with Queensland state law, and that an ‘adopted child’ as defined in that Act does not include a child adopted under Aboriginal or Torres Strait Islander laws. His Honour noted that the potential for injustice under this law had been brought to the attention of parliament, but stated that any disadvantage suffered by Aboriginal and Torres Strait Islander people as a result of the law was a matter of policy for the government, not a matter for the court.

This is in contrast to earlier efforts of the Family Court of Australia, where the historical difficulty of recognising traditional adoption has been recognised and sought to be overcome; an approach which seems in keeping with Australia’s wider international obligations as a signatory to the *Convention on the Rights of the Child*. In both the New South Wales and Northern Territory jurisdictions, the state law forms a legal basis upon which an Aboriginal or Torres Strait Islander person’s estate can be administered in a culturally appropriate way, through recognition of traditional adoption.

The *Convention* encourages countries to legislate for traditional adoptions, and for Australia to do so, according to Heron, 'cooperation between the states, territories and Commonwealth would be required [and] it may be a better outcome for traditional adoptions to be formalised by the Commonwealth government.'

[Click here](#) to access a copy of 'Eatts v Gundy and Torres Strait Islander Traditional Adoption' by Heron Loban, Aidan Booker and Kathryn van Doore.

Media contact:

For interviews with Heron Loban, please contact Emma Rafferty on 02 9385 2256 or at ilb@unsw.edu.au.

The [Indigenous Law Bulletin](#) is a publication of the [Indigenous Law Centre](#) produced with the in-kind support of [UNSW Law](#).