THE APPLICATION OF THE QUEENSLAND ADOPTION ACT 1964 - 1988 TO THE TRADITIONAL ADOPTION PRACTICE OF TORRES STRAIT ISLANDERS

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INTRODUCTION:

The intention of this study is to examine the relevance of applying the Queensland Adoption Act 1964 - 1988 to the traditional adoption practice of Torres Strait Islanders. The concept of adoption as defined by the Queensland adoption legislation reflects the cultural context of "white Australia" and the intention of the Adoption Act 1964 - 1988 is to legalise a specific concept of adoption. This study will show that the Queensland Government, through the Department of Family Services, the Department which has the responsibility for implementing adoption legislation, does not make any allowance for differing views of adoption. The accepted definition of adoption is biased toward the dominant white culture in Queensland and the legislation was intended to service the needs of the dominant white culture.

This study will show that the practice of adoption can be better understood when placed in the cultural context in which it occurs. The study will demonstrate that adoption has a social function in Islander life that can be understood within the totality of Islander culture in a similar way that white adoption practice is part of the value system of whiteQueenslander culture. To date there has been little documentation on the traditional adoption practice of Torres
Strait Islanders and this study serves as a contribution to the development of knowledge in this area.

While the main purpose of the study is knowledge development, the ultimate purpose is to assist Torres Strait Islanders to retain their traditional adoption practice if they so wish. Chapter Six will discuss the options available to both Islanders and the Queensland Government to achieve this purpose. As traditional adoption is an integral part of Islander life, the practice is not under immediate threat of disappearing. Torres Strait Islanders are continuing to retain many aspects of their traditional customs both in the Torres Strait and Brisbane and are continuing to retain aspects of family practices side by side with the family practices of white Queensland Society.

Following white contact and settlement in the Torres Strait from 1870, there has been limited contact with white society until after the Second World War. Traditional extended family customs were not immediately affected by white Queensland laws and it has been only in recent years that Island Customs have been influenced following a large migration from Torres Strait to the mainland. This study will show that Torres Strait Islanders are requesting the Queensland Government to legalise their traditional adoption through the Adoption Act 1964 - 1988. This request is an attempt by Islanders to end the legal insecurity they are experiencing due to an increase in disputes over the adoption arrangements of children.
However, Torres Strait Islanders do not generally understand the process or intention of adoption as defined and carried out under the Adoption Act 1964 - 1988. When making application to the Department of Family Services, they intend to formalise a practice which has been part of their culture for generations and they consider that recognition of their practice by white law can prevent traditional adoption disputes.

This study highlights the difficulties faced by the Social Work profession in trying to understand and deal with a culturally alien and remote group within the State of Queensland. The specific knowledge workers have within the Department of Family Services of adoption plus the manner in which the assessment of adoption applications is handled, creates a gap of understanding between the Social Worker and a client group who are operating from a different cultural context. The study is intended therefore to assist Social Workers to take the relevant action needed to meet the needs of an indigenous group of people whose culture is not understood.

A. THE TORRES STRAIT AND TORRES STRAIT ISLANDERS:

This section will cover geographic and demographic data on the Torres Strait and Torres Strait Islanders. A brief overview will be presented of Islander life from pre-European contact to the present day.
DISTRIBUTION OF TORRES STRAIT ISLANDERS IN QUEENSLAND ACCORDING TO 1901 CENSUS AND DEPARTMENT OF ABORIGINAL AFFAIRS SURVEYS OF OUTER ISLANDS
1) Pre-European Contact:

The Torres Strait, which separates Australia from Papua New Guinea, is a shallow shelf (15 metres to 35 metres deep) from which numerous volcanic islands, atolls, cays and reefs emerge. The habitable islands are divided into four main groups, 1) the high western islands composed of old eroded volcanoes forming poor soils, 2) the central islands consisting mainly of atolls and cays, 3) the eastern group where more recent volcanism has produced rich soils, and 4) the low northern islands off the Papuan west composed of silt from the New Guinea rivers. (Moore 1984:9).

The early inhabitants of the Torres Strait, whose origins are not known, were of Melanesian extraction and there was intermarrying in the north with the Pauans and in the south with the Aborigines of Cape York. A subsistence pattern of life was influenced by the tropical climatic pattern of the region and both the sea and cultivated crops provided sustenance for the Islanders. Beckett (1978:210) believes that Islanders had their ties and affinities more with Papua than Aboriginal Australia due to their common Melanesian origins. Trade was important with Papua in order to obtain the timber for sea-going outrigger canoes for without transport between the islands life would have been difficult. Transport provided not only a means of obtaining goods by trade but also the vehicles of warfare.
Torres Strait Islanders developed a system of individual ownership of land and this related to the control of economic resources. However ownership of land was linked to the spheres of history, social relations, religion and emotion so that every inch of land was owned even if it did not have economic significance. (Beckett 1983:85).

Social organisation was broadly the same throughout the islands and neighbouring Papua New Guinea, with social relationships based on kinship. Sharpe (1980:72) states that before foreign intrusion became constant or permanent the Islanders had become a sea-people with an identity of life-ways common to all the people of the Strait. Each Islander community formed an integral whole and was bonded together through social relationships which created and maintained strong ties between groups. The similarities between the Islander communities made it possible to co-operate, and the differences made for an interdependent relationship which ensured their mutual survival. Reciprocity through mutual exchange relationships provided the basis for stability as alliances formed avoided hostilities and served to keep the peace.

2) Early European Contacts:

Several early explorers have documented their experiences of travelling through the Torres Strait. Foley (1982:5) writes that the first sighting of the Torres Strait by a European was
in March 1606 when Dutch navigators approached from the west. However it was a Spaniard from the east, Luis Vaes de Torres, who, in August 1606 penetrated and transversed the Strait. In 1770 Captain James Cook gave the first official account of a landing on a Torres Strait Island. Captain Bligh followed in 1792 and one of his ships was attacked by Islanders in canoes. Matthew Flinders was with Bligh and returned in 1802 to charter a number of islands and reefs in the Strait.

In 1864 a European settlement was established at Somerset opposite Albany Island on the tip of Cape York. This settlement was later moved to Thursday Island in December 1876 and it was declared a government reserve for public purposes. Several shipwrecks occurred during the early period and there were accounts given by shipwrecked survivors of the culture of the Islands at the point of European contact. Finch (1977:23) believes that although skirmishes did occur between white crews and Islanders, in general violence was minimal. However Singe (1979:62) states that the period 1840 to 1870 was perhaps the grimmest in the Strait’s history. This was evidenced in the lawlessness which reigned throughout the period. Europeans raided the Torres Strait Islands for their women and Islanders fought with Europeans to obtain their material goods such as iron.

Hundreds of boats were working in the Torres Strait by 1846 as the market for beche-de-mer had developed. The presence of a
large number of Europeans in the Strait led to an exploitation of Islander labour through the discovery of marine resources.

3) Development of the Marine Industry and its Effect on Islanders:

The Chinese market for beche-de-mer was already developing strongly before Captain Banner spent a season in 1868 exploiting the pearl beds of the Torres Strait. (Finch 1977:31). When he returned to Sydney with tons of good pearl shells, the way opened for an influx of fortune seekers to the Straits. Consequently, the beche-de-mer market was quickly overtaken by the pearling industry. As the greed of the men grew so did the exploitation of labour of the Islanders increase with many being forced to work for white pearlers. South Sea Islanders were introduced to the Straits to dive for shells and when shells became more difficult to obtain, diving helmets were brought in.

According to Foley (1902) the combination of greed and lack of law enforcers produced a period of extreme lawlessness in which Islanders were murdered when no longer useful in obtaining shells. Violent clashes increased with the rapid growth in white population and this led in 1873 to, first, the Imperial Pacific Islanders Protection Act to prevent South Sea Islander (Kanaka) blackbirding and, second, the Queensland Government Native Labourers Protection Act. Before the Acts, Torres Strait
Islanders were being exploited for their labour which was only of value if it was cheap or obtained by coercion.

Loos (1982) believes that even though whites were exploiting the labour of Islanders, it was not their intention to dispossess them of their land. The authority of the white fishermen became accepted due to their superior powers and a relationship of interdependence was developing between the two societies. The whites who came to the Islands were unsophisticated and rough, and all motivated by hopes of a quick fortune. However, they realised the value of Island labour, and after working together for long periods of time, some sense of tolerance and mutuality developed. Loos (1982:95) states that the Islanders, for their part, accepted challenges as labourers on the white boats. He considers that the development of this relationship may have been workable if left unchecked by a paternalistic bureaucracy and equally paternalistic theocracy.

4) Influence of Christianity Since First Contact in 1871:

At the time the pearling industry was developing in the Strait, missionaries in the Pacific, with the assistance of their London Missionary Society headquarters in London, decided to establish Mission stations in the Torres Strait as a stepping stone on the way to Papua New Guinea.

On July 1, 1871 the first missionaries landed at Darnley Island
and that date is celebrated annually in the Torres Strait by all Islanders as the festival of the 'Coming of the Light'.

Beckett (1978) believes that the Islanders were willing to accept the initial friendliness and protection offered by the Church due to past experiences of violent exploitation by whites. Within a decade the London Missionary Society had won over many Islanders and began overturning their old religion in favour of Christianity. Most of the new pastors were South Sea Islander converts and the development of the Church congregation was along the lines of the Christianised communities of the South Pacific. Christianity became the super-cult to the Islanders that quickly pushed away all other religious ceremonies. Elders on the Islands became absorbed into the roles of church deacons and the authority of the church became associated with the authority of the Island leaders. Within a few years Islanders were assisting with time and money to build churches in which they were to worship.

Sharp (1980) postulates that, concerning belief in Christianity, the Islanders' response was two-fold. Firstly, given the harmony of Christianity with pre-existing religious belief, the effect was to kindle a flame which already burned. Secondly, that Christian universalism made possible an extension of ancient belief. This meant that Islanders were able to interpret and generalise their experience in a new way. Whether Sharp's analysis is correct or not, the effect of the Christian
message was such that as a result of contact by the missionaries
Christianity became interwoven with Island culture.

5) Queensland Government Administration in the Torres Strait:
1864 to the Second World War:

After the early European settlement was established at Somerset
in 1864 one of the first acts of the Government Resident was to
have each community appoint a leader or Mamoose to act as the
island's magistrate and later the Resident's representative.
The Mamoose was to see that the 'local laws' were observed in
the community, while serious crimes were handled by visiting
European J.P.'s.

By the end of the 19th Century the Island's by-laws were a
combination of the influences of government, missionaries, and
traditional values of the people. Finch (1977) states that it
was thought at the time that the communities were progressing
and the Islanders were industrious law-abiding Christians.
However, while Islanders appear to have adapted to a European
framework in their village life, many aspects of Island culture
remained. These included child care through the extended
family, ties through old religious beliefs, land inheritance
practices, and the Islander's concept of sharing with other
members of the community.

An Aborigines Protection Act was passed in 1897 but the then
Government Resident did not consider the islands to be in need of it as he had operated his own paternalistic regime since 1886. (Beckett 1982). However, on his death in 1904 the incoming Protector declared the Islanders were Aborigines for purposes of the Act.

A struggle between the government and the London Missionary Society for control of the Islanders eventually saw the London Missionary Society withdraw in 1914. At this time in white Australia a policy had developed for protective segregation of Aborigines whereby they would be confined in settlements and have as little outside contact as possible. In the Torres Strait it was decided to keep Islanders away from the white settlement of Thursday Island and to control the economic affairs of the Torres Strait communities by monopolising employment and retail trade. The Queensland Government managed the economic interests of the Islanders and utilised Island labour while owning the means of production (fishing boats and equipment). (Beckett 1982)

Growing resentment of the exploitation that occurred led to a general strike in 1936 where Islanders were unified in their cause for better treatment, conditions, and ownership of their own businesses. The period of time leading to the general strike was characterised by isolation of the Islanders from the outside world and a tightening of the grip of the Protector over their lives. At its high point the strikers demanded total
control over their boats and village and island affairs, with an equal footing within Australian society. (Sharp 1980). The strike served to strengthen inter-island bonds and made Islanders aware of their interdependence on each other.

The Queensland Government was aware of the sense of determination and self-confidence the Islanders had developed and, in 1939, Queensland Parliament passed the Torres Strait Islanders Act. Following this legislation 'managers' replaced 'protectors' and 'Aboriginal Department' became 'Department of Native Affairs'. Sharp (1980) believes that the implication of the new legislation was a policy to destroy the basis of Island character and independence in the hope of establishing conformity.

6) Effect of Second World War:

With the onset of the Second World War the lives of Torres Strait Islanders were considerably changed. Their boats were taken over by the navy and pearl and trochus fishing almost ceased. A volunteer group of Islanders known as the Torres Strait Light Infantry Battalion was formed and recruitment far exceeded expectations. Life on the Islands was still able to be carried out by the remaining Islanders due to increased self-government responsibilities under the 1939 Act. European civilians were evacuated south with the result that schools and all essential services were run by the Islanders.
This contact Islanders had with the white Armed Services represented the first time they were able to work and live with whites on an equal basis. Islanders learnt of the advantages and facilities available in other Australian communities outside their Islands. They also became aware of the political advantages of Australian citizenship but, although they became Australian citizens under the Nationality and Citizenship Act of 1948, they were not able to vote until 1961 on a Commonwealth basis and in State elections until the passing of the Aborigines and Torres Strait Islanders Act of 1975. (Finch 1977)

From 1947 the Department of Native Affairs developed a policy to assimilate all Islander (and Aboriginal) people into the Australian community. It was thought that Islanders and Aboriginals would benefit by adapting to the white life style. There was an increase in spending in housing, education, health, social welfare and work opportunities in the 1950's. Beckett (1982) states that even with a substantial input of government money the regional economy could not adequately support the growing population in the Strait. However, the growth in the North Queensland economy allowed small parties of Islanders to go south firstly to work on the cane fields and later on the railways, so that, when the pearling industry collapsed in 1962, Islanders had already developed a good reputation as tropical workers. Eventually large settlements of Torres Strait Islanders formed in the northern coastal cities of Queensland,
leading to a generation of Islanders whose knowledge of Island life was largely second-hand.

7) Torres Strait Islanders Today:

Over the past 25 years, there has been a continual flow of Torres Strait Islanders leaving the Strait to find work on the mainland. Beckett (1987:179) states that the total population of Torres Strait Islanders at the 1976 census was 16,533 and at the 1901 census, 15,232. Verbal communication with Island Leaders in Brisbane indicates that the total Islander population is now approximately 20,000.

Of the total Torres Strait Islander population, over half live on the mainland of Queensland, principally in Townsville, Cairns and Brisbane. Within the Torres Strait region, the population has remained constant at 4,500 from 1961 to 1981. As there has been a natural increase in births, the migration to the mainland has maintained the total population equilibrium. According to Beckett (1987:179) the Islander population in the Torres Strait has half the population living on the outer islands and the other half living on Thursday Island and Bamaga. Within the region there has been a drift to Thursday Island leaving the outer islands with two-thirds of the population they had in 1961. Beckett (1987:180) states that the majority of all Islanders still live in Queensland but the percentage has
dropped from 97% in 1966 to 78% in 1971 and 70% in 1981. There are significant numbers of Islanders now living in the Northern Territory and Western Australia engaged in the fishing and diving industries.

The population figures given by Beckett (1987:179) based on Australian Bureau of Statistics are open to question. The Queensland Government Department of Aboriginal and Islander Advancement estimated the Townsville Islander population as being between 4,500 and 8,000 and Beckett (1987:180) states that the large discrepancy in estimation was the basis of the A.B.S. figures. Personal communication with Islanders in Brisbane during 1987 provided estimates of the total Brisbane Islander population as being 2,000 rather than the 1,000 given by A.B.S. in 1981.

Accurate information on Islander mobility is not readily available although personal contact with Islander agencies and community meetings has shown that there is a continual emigration from the Strait. While large number of Islanders visit relatives in the Torres Strait, few ever return to live there permanently. The north Queensland coast is the point of entry for Islanders leaving the Strait as they initially link up with extended family living on the mainland.
B. BACKGROUND TO THE DELIVERY OF ADOPTION SERVICES TO TORRES STRAIT ISLANDERS BY THE QUEENSLAND GOVERNMENT.

At the 1967 referendum, the people of Australia voted affirmatively to give the Commonwealth Government the power to assume national responsibility for Aborigines and Islanders. However, in Queensland a strong reluctance to hand over any authority to the Commonwealth was shown. This resistance to Federal intervention in the lives of Torres Strait Islanders and Aborigines during the 1970's and through to the mid 1980's was personified in the stance taken by the Director of the Department of Aboriginal and Islander Advancement, Mr. Pat Killoran. (Ryan 1985).

During the 1970's, Aboriginal Legal Services, which were funded by the Commonwealth Government, were introduced into the Torres Strait and mainland Australia. Whereas previously the Department of Aboriginal and Islander Advancement had maintained total administrative control over Islanders in the Strait (controlling health and education services until 1985), there was an influx of both Commonwealth funded and Commonwealth Department based services to Islanders. The Department of Aboriginal and Islander Advancement, which had administered social security payments until the mid 1970's, had arranged with the Director of the Department of Children Services (now Family Services) to process Islander traditional adoptions
administratively so that new birth certificates could be issued to the adoptive parents. The intention of processing these adoptions was to simplify the administration of social security payments as the Department of Aboriginal and Islander Advancement required the simplification for its own administrative procedures. It is believed that the 'rubber stamping' of Islander traditional adoptions commenced well before the Adoption Act of 1964. Birth certificate changes were only possible through the process of adoption and the Department of Aboriginal and Islander Advancement would present the Director of the Department of Childrens Services with a list of cases for which adoptions orders were to be made.

The Department of Childrens Services began to employ graduates of social work during the 1970's and the graduates moved to positions in policy development and service delivery. As a result of this professionalisation, concerns were raised over the validity of the 'rubber stamping' of Islander traditional adoptions so that new birth certificates could be issued for the administrative convenience of the Department of Aboriginal and Islander Advancement. In the late 1970's, a decision was made by the Department of Childrens Services not to approve any further adoptions until a study was carried out to understand the nature of Islander traditional adoption. Senior staff of the Department thought that it was inappropriate to continue legalising traditional adoptions when there was a lack of
understanding of the meaning of adoption to Torres Strait Islanders. The intention of the Department was to commission a study of Islander adoption so that appropriate adoption policy and practice could be developed. Islander adoption was viewed as a private transaction, involving the movement of children between extended family members with the Department of Childrens Services engaged in the formality of approving an adoption order and issuing a new birth certificate.

Senior staff of the Department of Childrens Services considered that such a practice was illegal under the Adoption Act and that the professional judgement of social workers and the Department's legal responsibility were both being compromised. Basically, it was not known whether the issuing of adoption orders was in the best interests of the children, which is an essential requirement under the Adoption Act.

The subsequent halt to adoption applications from the Torres Strait began to create a backlog as the Department of Childrens Services came into conflict with the Department of Aboriginal and Islander Advancement over its decision to conduct a first hand study of Islander adoption. The Department of Aboriginal and Islander Advancement, through its Director Mr Killoran, did not co-operate with the decision of the Department of Childrens Services to send a case worker to the Strait with an anthropological and legal background and prior work experience
with the Department of Aboriginal and Islander Advancement. The attitude of Mr Killoran was that the Department of Aboriginal and Islander Advancement had full expertise on all Islander cultural matters and that it should have been consulted for information rather than a Department of Childrens Services worker going to the Strait to speak directly to the people.

The report by the caseworker was based on a pilot study from which a survey was to be developed as a more in-depth study. The outcome of the study was to assist in developing appropriate policy and practice guidelines for the Department of Childrens Services.

However, in 1981 the Department of Aboriginal and Islander Advancement politically manoeuvred to take back the responsibility for 'rubber stamping' Islander adoptions from the Strait. The Director stated that Islander leaders were becoming agitated over the delay in processing their applications and that the matter was becoming politically embarrassing for the Queensland Government. The procedure of 'rubber stamping' continued during the period 1982 - 1984 in which the researcher was the Supervisor of the Cairns office of the Department of Childrens Services.

In 1985 the Department of Aboriginal and Islander Advancement returned the responsibility for Islander adoptions in the Torres
Strait to the Department of Childrens Services. The Department of Aboriginal and Islander Advancement had begun an overall plan for being slowly phased out, and assumed the new name of the Department of Community Services.

Aboriginal and Islander communities were to take on greater administrative responsibilities and other State Government Departments such as Health and Education were to administer services to the Torres Strait without having to consult or be overseen by the Department of Aboriginal and Islander Advancement.

The responsibility for devising a policy on Islander adoption was given to senior staff of the Department of Childrens Services in Cairns and Townsville, due to a policy of decentralising decision-making. It was decided to deal with all Islander adoption applications from the Torres Strait in the same manner that Islander adoption applications on the mainland were being treated. While there was confusion and debate over Islander traditional adoptions in the Torres Strait, on the mainland Islanders had to meet the same criteria as white adoption applicants before their adoptions could be legalised. Department of Childrens Services senior staff in North Queensland decided that overall policy for Islander adoptions would be the same as the existing policy for mainland Islanders and that there would be no further research conducted into the
cultural significance of Islander adoption. Special consideration was not to be given to Islander adoption applicants and Islanders were discouraged from applying for legal adoption. The current policy (1988) is to consider that Islanders practise a form of adoption that is not covered by the Queensland Adoption Act and consequently cannot be serviced by that Act.

C. SIGNIFICANCE OF THE STUDY:

Torres Strait Islanders have traditionally had a culture that has been passed on orally from generation to generation. They are aware of the need to document their traditional culture as they are now part of white Queensland Government administration which relies on the written word. This study highlights the problems in interaction between Islander traditional culture and the Queensland Government administration.

Islanders do not want to lose their traditions and are aware that white society do not understand or recognise the importance of traditional customs to the identity of Torres Strait Islanders. State and Commonwealth Government Departments have been established to service the needs of Aborigines and Torres Strait Islanders, and Islanders have stated that they are treated as through they have the same traditions and culture as Australian Aborigines.
Nor do Torres Strait Islanders want to be confused with South Sea Islanders who were brought to the Strait by whites for their labour and later as missionaries. While there are similarities in cultural practices with North Queensland Aborigines, Pacific Islanders and Papuans, Torres Strait Islanders wish to promote their own identity.

The researcher became aware of Torres Strait Islander traditional customs when working for the Department of Family Services based in Cairns and making regular trips to the Torres Strait. Islanders in the Strait recognised the interest shown by the researcher in their traditional adoption practice and perceived the researcher as having extensive knowledge of white adoption practice and legislation due to his professional position.

The researcher was encouraged by Islanders to undertake a study to document the difficulties of applying the Queensland adoption legislation to the traditional adoption practice of Torres Strait Islanders. After leaving Cairns and the Torres Strait to eventually reside in Brisbane, the researcher had to gain the trust of the Islander community before continuing with the study. Brisbane-based Islanders were willing to co-operate and contribute to the study when they recognised that the researcher was in a position to relate the application of white adoption legislation to their traditional practice. The Islanders do not
want to lose their adoption practice, and consider that the documentation of the difficulties they face in retaining their practice will be to their benefit as possible solutions can be explored.

The researcher's interest in the traditional adoption and fostering practices of Torres Strait Islanders relates to his personal and professional experiences of white substitute care services. After living for nine years in a large residential facility for children who could no longer live with their parents, the researcher undertook a social work degree and gained employment in the field of family and child welfare. The researcher's professional interests have been fostering, adoption, and residential care services for children who cannot live with their parents.
LITERATURE REVIEW - ADOPTIONS

INTRODUCTION:

The review of literature has been divided into two Chapters. Chapter Two will consider the concept of 'adoption' and Chapter Three the concept of 'race relations'. The two concepts are interrelated for the purposes of this study. Adoption can be considered to occur within a cultural context, which in this study is Western adoption practice carried out specifically in Queensland and traditional adoption practice as conducted by Torres Strait Islanders. The researcher contends that a race relations situation exists when a traditional adoption practice is confronted with Western adoption legislation.

The review of adoption will begin with some anthropological notions of adoption before considering existing information on the traditional adoption practice of Torres Strait Islanders. Islander adoption practice has many similarities to traditional adoption in the Pacific Islands. A review will be made of adoption in Island communities with a particular focus on traditional Hawaiian adoption. A brief report will be made of Sub-Saharan adoption which is relevant to Pacific Islander and Torres Strait Islander practices as all these societies are
based on extended family relationships. Western adoption practice will be discussed and the differences between Western and traditional adoption highlighted.

One of the purposes of the study is to highlight the interaction of Western adoption laws with traditional adoption practices. This interaction will be reviewed, including the response of traditional societies to the importation of Western adoption laws.

An understanding of the concept 'race relations' provides the context for contrasting Western adoption legislation with the traditional adoption practice of Torres Strait Islanders. The interaction of a Western legal system with a traditional society leads to the traditional society being subordinated. This subordination is considered as a product of race relations where the two groups have differing access to power.

A contrast is made between assimilationist and power conflict theories, with the latter being considered by the researcher as more relevant to the situation of Torres Strait Islanders in Queensland. These are used to understand race relations in Australia as they have affected the indigenous populations of both Aboriginal and Torres Strait Islanders.
A. DEFINING ADOPTION:

The purpose of this section is to show the variability of adoption practice as viewed by anthropology and to open up the idea of adoption from its Western culture-bound notion of rigidity. The following definition of adoption is sufficiently broad to provide a meaning that encapsulates Western adoption and makes allowance for traditional adoption. The Macquarie Dictionary, 2nd Revised Edition defines 'to adopt' as 1) 'to take as one's own child, specifically by a formal legal act; 2) 'to receive into any kind of new relationship'; and 3) 'to choose for or take to oneself; make one's own by selection or assent.'

From an anthropological point of view, Vern Carrol (1970), in a symposium on Eastern Oceania, raises the difficulty of identifying a particular cultural practice in the Pacific as 'adoption' when the act of labelling the practice defines it in terms of the Western notion of adoption. Carrol (1970:6) attempted a working definition of adoption for his symposium as: Adoption : any customary and optional procedure for taking as one's own a child of other parents."

Another more rigorous definition by E N Goody (1971:342) is that adoption occurs when "the complete set of available parental role elements is transferred from natal to 'pro-parents'".
McDonald (1980:2), in a paper on conceptual refinements and theoretical perspectives of adoption, shows that in 18 societies total transfer of parental roles did not, or appeared not to occur. McDonald further showed that in 15 cases the adoption transaction was reversible. There are clearly cultural differences in understanding adoption indicating the need for conceptual clarification of the term. The cultural differences between Western and Pacific adoption are delineated by Levy (1970:83):

"In Form, Polynesian and Micronesian adoption is relatively frequent, public, casual and involves only partial transfer of the adopted child to the new family. Western adoption is relatively infrequent, private, formal and involves an almost complete transfer, limited in principle only by incest considerations."

McDonald defines adoption in her study as follows:

"Adoption: the imparting of a person from one set of kin relations and his or her reception into another, excluding those transactions ascribed by rules of marriage or descent."

This definition of adoption is sufficiently broad enough to include adoption practice of both Islanders and Western society, and is appropriate for the purposes of this study. McDonald, in
her paper, provides a table based on 37 case studies in which 60 different reasons given for adoption were extracted and clustered in 28 types of reasons. In the table the 28 types are categorised into four groups depending upon whether the reasons are orientated toward the motives of a particular party. This table does not fully reflect the complexity of the motives but provides some understanding of the range of motivations behind adoption.

B. TRADITIONAL ADOPTION PRACTICE:

1) Torres Strait Islanders

There is no published material on the traditional adoption practice of Torres Strait Islanders. The small amount of literature available is in the form of an honour's thesis and unpublished manuscripts, all of which have focused on traditional adoption practice in the Torres Strait and not the mainland. As over half the Torres Strait Islander population live on the mainland of Australia, particularly Queensland, it is one of the purposes of this study to document issues concerning Islander traditional adoption in mainland Australia.

McDonald's thesis on the Saibailaig of the Torres Strait is a study of adoption and social organization of Islanders living in
the top-western section of the Torres Strait. She contends that adoption is an important way in which Saibailaig Islanders express social relations, social organization and their cognitive order. Adoption occurs frequently and is one of the last remaining Saibailaig institutions which has not been challenged in the past century of social upheaval since white contact. Adoption, together with descent and marriage, define the social organization of Torres Strait Islanders in the Saibailaig. McDonald states that adoption stabilizes the social order and that the resultant strengthened bonds exist in the continuity of social organization. Adoption allows for relations of greater depth with dependency and commitment both within and beyond the relationships which usually occur between kin. The adopter is in a position of indebtedness to the birth parents and the latter is able to activate those obligations when desired. An adopted child is sometimes the product of a close relationship between community members. This is because Islanders give a child to close friends to make the friendship stronger.

However, factors such as a badly handled refusal by both parents will cause the child to be seen as the symbol of hatred and he or she is said to bear a burden of maladies as a result. McDonald emphasizes that adoption is more than a significant transfer and an expression of familial bonds; it is a testing ground, potentially explosive but extraordinarily powerful in constructive terms.
Beckett's unpublished paper is based on studies carried out on Badu Island, Murray Island and Saibai Island. He states that it is better to regard Island adoption not in terms of reciprocity but as the creation of a common interest to be shared by the two sets of parents who are already related. Beckett found adoption was most frequent in Saibai, where of 26 Saibai adults who had adopted, 9 had withdrawn from the relationship and there were 2 doubtfubs. He concluded that although adoption was most frequent on Saibai it is also most likely to be impermanent there. Beckett states that it is usual for adopted children to grow up respecting both sets of kinfolk. The two families are drawn closer together and the adopted child who provides the link can count upon help and friendship from a larger circle than the ordinary child. However, there is a sense of fragility in adoption arrangements. Beckett sees adoption as an expression of continued good relations between the two families but not a guarantee of them. A quarrel between parties may have deleterious effects on the adoption or the child itself may be the cause of the disagreement. Beckett goes on to say that it is developments such as these which render adoptions unstable.

Both Beckett and McDonald found Islander adoption to be occurring frequently, socially useful, but also fragile - being both potentially explosive and powerful in maintaining friendships. Their conclusions were based on empirical work in the Torres Strait - Beckett in the mid 1970's and McDonald in 1979.
Maureen Fuary, then a Ph.D. student completing a thesis on Yam Island in the Torres Strait, gave a lecture to the North Queensland Family Therapy Association in Townsville and made reference to traditional adoption practice. Fuary (1984) stated that adoption is an extremely important social practice in the Torres Strait and frequently occurs in a number of instances. When a woman has her first child she is usually single and it is expected that this child will be given to a close family member if the mother chooses not to keep the child. Most commonly the child is adopted by the girl's own mother and father, and when this happens the girl ceases to become the child's mother and relates to it as a sister or brother. A girl's married sister or brother may also adopt her child and on occasion her unmarried brother may ask for the child. With subsequent children there is not as much adoption out by single mothers, and generally boys are more often than not retained by their biological mother. On occasions, a married couple will give one of their children to a brother (on the patrilineal side) who may or may not be married. Reasons for this include that the brother has no sons or the brother and his wife have no daughters. It is the ideal for a married couple to have children and it is common for a baby to be adopted by newly-weds.

Although attempts are made to protect a child from the knowledge of his adoption, as the child becomes older it generally finds
out the identity of its birth parents. This can happen by an accidental naming of the child by another relative, or in an argument a child may overhear that it is adopted. Telling the child of its adoption is considered socially inappropriate and the transgressor receives social disapproval.

Islanders practise a form of fostering of children known as 'growing up' a child. The child concerned knows its biological parents and calls them by appropriate kin terms based on their biological connections. There is no change in kin terminology as is the case with adoption. "Growing up" can occur when a mother goes into hospital or when a mother is pregnant and does not want her child to suffer while the foetus is being nurtured.

In 1979/1980 the Queensland Department of Childrens Services, who had responsibility for administering the Adoption Act, sent an Anthropology honours graduate to the Torres Strait Islands to compile a report on the traditional adoption practice of Torres Strait Islanders. The Departmental representative's study was based on selected informants on a number of outer Torres Strait islands, and he utilised an 'expert' Islander informant who worked for the Department of Aboriginal and Islanders Advancement. The study intended to have a questionnaire which would have been based on information obtained from initial interviews with informants. The questionnaire was to be given widely to community leaders, adoption applicants applying for
legal adoption of their traditional practice, and natural parents of adopted children. A second questionnaire was to be prepared to elicit information on the developments of children adopted over a ten year period. The purpose of the questionnaires was to provide information on current Islander views on adoption so that new adoption policies could be formulated that would assist Torres Strait Islanders. The following is based on the initial interviews with selected informants. Difficulties with government policy prevented the two questionnaires from being administered.

i) Traditional adoption

Traditionally a system of adoption of children by relatives of their natural parents was widespread. Although such arrangements were occasionally made between 'best friends', the most frequent occurrence was between relatives. Often an adoption arrangement was made before the birth of a child and sometimes a man would promise his child for adoption prior to his wife's pregnancy. The arrangement of adoption has the intention of permanency, with the child assuming the adoptive parent's name and inheriting from them. Islanders also care for children by a guardianship arrangement for specific periods of time, and there is no confusion between this concept and the concept of permanency with adoption.
iii) Purpose

In the case of childless couples who adopt, Beckett (1975) says that a major purpose in adoption was to provide children who can help the couple in old age. Without contraception and abortion, traditional adoption was the only means of spacing families and for sharing children amongst the community. Adoption is a means of strengthening social ties and binds the two families through a common interest in the child.

iii) Instability and breakdowns

Beckett's study (1975) shows that 9 of 26 Saibai adoptions were dissolved with a further two doubtful. On Murray Island 5 of 25 were dissolved with a further one doubtful and on Badu Island 2 of 9 were dissolved.

The adopted child may sometimes become the centre of a dispute between the natural parents and the adoptive parents, and sometimes adopted children have returned to their natural parents as a result of such disputes. Beckett (1975) sees another cause of breakdown being that natural parents see advantages in keeping a child once he has reached teenage years, and may entice him back into their care. On the death of adoptive parents children can often return to their natural parents without necessarily surrendering their rights to
inheritance from the adoptive parents. In the case of harsh treatment by adoptive parents children have returned to their natural parents. Beckett (1975) summarises by saying that the abrogation of rights by the birth parents in adoption is: "not necessarily permanent but is in effect revocable under certain conditions. One condition is that birth parents retain an interest in the child so that they will accept it back if it wishes to come, if the adoptive parents no longer wish to keep it, or if they wish to sever relations with the latter ... the decision of the child itself may be crucial." Beckett (1975) is not surprised there is instability in Islander adoption practice as the adoption must depend on the continued consent of both parties and the child who is the object of the transaction.

iv) Guardianship

Islander children are placed with relatives so that the relative can 'grow them up' for a specific period of time. The natural parents may wish the child to go to a particular school to be educated or the parent may be temporarily incapacitated. Sometimes natural parents die and the child is 'grown up' by relatives with the child retaining the name and identity of his natural parents. This system of guardianship is similar to fostering by relatives and is distinguished from traditional adoption.
CONCLUSION:

The most significant features to emerge from the literature on traditional Torres Strait Islander adoption practice are:

1. adoption provides a sense of stability to the social order of Islander society and consequently is seen to have a useful social function;

2. Islander adoption is characterised by the notions of reciprocity and obligation;

3. adoption occurs frequently in Islander society;

4. traditional adoption has been considered to be unstable and fragile;

5. adoption generally occurs within the wider network of extended family; and

6. adoption carries with it the intention of permanency as opposed to temporary care or 'guardianship.'
2) **Traditional Adoption in the Pacific Islands**

Literature reveals that there are considerable similarities between Torres Strait Islander adoption practice and Pacific Islander adoption practice. Hence a deeper understanding of Torres Strait Islander adoption can be developed by studying the broader Pacific content.

1) **Hawaii**

Hawaiian adoption is relevant as a comparison to the Islander situation as Hawaiian adoption has been researched both traditionally (early post contact) and in its present day form. The researchers have concluded that Hawaiians have retained their traditional adoption practice in spite of the overwhelming influence of Westernisation. The researcher considers that Torres Strait Islanders have had their traditional adoption practice influenced by Western contact, but not to the same degree as traditional Hawaiians.

Howard et al (1970), writing about adoption in Hawaii, define 'adoption' as 'the establishment of relationship rules appropriate to a specific set of kinsmen between persons not occupying those genealogical positions.' Adoption occurred frequently in Hawaii before and during the early period of white settlement. The aboriginal Hawaiians distinguished three forms of adoptions; ho'okama, ho'okane - ho'owahine, and hanai.
a) Ho'okama means 'to make a child' and implies that the adopting parents took as their own either someone else's child or an adult for whom they had a special regard. Ho'okama can also mean the adoption by older persons of younger adults.

b) The Ho'okane - Ho'owahine relationship is described by Handy and Pukui (1950) as an 'adoptive platonic marital relationship between persons of opposite sex. This could include a mature man and a young girl and the opposite of a young boy and a mature aged woman.'

c) The Hanai relationship is the one of most significance to this study. The meaning of hanai as a verb means 'to feed', and the concept in relation to children means that the children had been taken into the household of his makua hanai 'feeding parents' and reared as their offspring. Four principles were important in the traditional patterning of hanai relationships. They were: i) kinship, ii) seniority between the natural parents and the adopting parents, iii) sex of the child and iv) age of the child. These principles are elaborated:

i) Hanai children were almost always taken from one's own kindred grouping, although sometimes a child was asked for by a friend before it was born, with the idea of cementing
the friendship through the care of the child. This did not apply if the child was the eldest.

ii) Seniority was considered relevant as if a senior relative asked for a junior relative's child, it would be very difficult for the junior relative to refuse the request. In conjunction with this the rights of grandparents were strong, and Howard et al (1970) state that some parents said they needed the grandparents' consent to keep their own children.

iii) The significance of sex was that the first born male child was considered to belong to the father's side and the first female born to the mother's side.

iv) The age factor was that there was a strong preference for adopting children at birth or shortly after.

The desire of older people to 'hanai' children was motivated frequently by a wish to be provided for in old age. However, the most frequently cited motive for adoption was simply a fondness for children and a desire always to have some in the household.

Howard et al (1970) discovered during their research that adoption still occurs frequently among the Hawaiian population.
They consider the persistence of adoption as unusual for a people whose customs have changed drastically in modern times. Although adoption remains prevalent in Hawaiian life, the form it takes, the terminology used to describe it, its functions and the motives behind it have all been modified. The term 'hanai' is used to describe the non legal assumption of parental rights and obligations.

Howard et al (1970) found that most aboriginals preferred to adopt traditionally rather than through adoption agencies, and there existed a strong desire to adopt from relatives or close friends. A reason for this was that it is easier to deal with a relative or close friend where the bonds of trust have already been established regarding such an important arrangement. Also there is a belief that most characteristics within a child's personality are inherited, and it therefore best to deal with families where the genetic background is known. Rather than sever the ties between natural parents and adoptive parents, Hawaiians believe it is desirable for a child to know his natural parents and to have intimate contact with them.

Howard et al (1970) confirmed that kinship seniority remained significant among modern Hawaiians with grandparents asserting pressure to adopt their children's children. However, parents of children are not always acceding to requests from their parents and Howard et al have recorded cases of overt conflict in regard to this (1979:36).
The study also discovered that Hawaiians retained their preference for adopting children at birth or shortly thereafter, and that the principle of the first born male child belonging to the father's side and the first female child to the mother's side was less evident than in earlier times.

In their investigation into modern Hawaiian adoption practice, Howard et al (1970) found that there was an increasing concern for legalising adoptions. The tendency was most pronounced when the child was unrelated, but even close relatives were concerned to legally adopt their children. While part of the motivation was the desire for legal protection of the child as regards inheritance, the most frequent reason was the fear that natural parents would take back the child. Examples of this situation have been documented (Howard et al 1970:41). There are several motives which effect the decisions of present day parents to allow their children to be adopted by others. There is a traditional fear of sorcery occurring to the child if a request for adoption is refused. Hawaiians have the idea that harm may come to a child over whom there is ill feeling and hostility. It is more those sanctions which operate against attempts to take back a hanai (adopted child). Another strong feeling is that anyone with many children, especially many young children, has an obligation to share the 'wealth' by giving children to relatives who request them. Also related is the belief that adoption of a child by a childless couple promotes fertility and allows them to produce children of their own.
Howard et al (1970) believe the reason for the persistence of traditional Hawaiian adoption practice, when most other forms of traditional culture have disappeared, lies in the continued significance of nurturance as a motivational force among Hawaiians. Within traditional culture, nurturance was an institutionalised value around which a substantial body of custom was built. The proposition by Howard et al (1970) is that despite the elimination of supportive custom, nurturant behaviour has been perpetuated among the Hawaiian population by virtue of a widely shared child-rearing pattern. This pattern begins with the indulgence of children for the first few years of their life. As the child becomes older the child's activities are ignored until they imitate adults. The adults then punish the child spontaneously and unpredictably, making one feature of child rearing the early withdrawal of nurturance and punishment for dependency. The child discovers that dependency overtures can provoke punitive responses and learns to avoid interpersonal involvements in which dependency strategies are required. Adults find that their dependency needs can be met by way of interdependence through babies which provide an unthreatening opportunity for intimate emotional exposure. Generosity and nurturance are uppermost in the hierarchy of desirable personal attributes, and a person can gain status in caring for a dependant child or adult. Consequently, adoption combines personal gratification with social reward and is able to be maintained as a traditional practice which outlasts other cultural practices.
ii) Tahiti

Tahitian adoption is compared to Torres Strait Island adoption in terms of being both fragile and conditional on the consent of extended family members and society as a whole. Levy (1970) considers the Tahitian variety of Oceanic adoption (particularly in contrast to some aspects of North American and Western European adoption) as a 'cultural message' which involves not only the participants in specific adoption transactions but the community as an audience. He states that 'children are kept by their parents, not because of the natural given order of things, but because the parents happen to wish to, and are allowed to, by others in the community.'

The message in Polynesian and Micronesian adoption is that the relationships between all parents and children are fragile and conditional. This is in contrast to Western adoption which carries the message that relationships between all parents and children are categorical.

iii) Gilbert Islands

The Gilbert Islander's traditional adoption provides for reciprocal obligations to be met by the parties involved in adoption, which is similar to Torres Strait Islanders.
The Gilbertese recognise two distinct modes of adoption and, according to Lundsgaarde (1970:237), the crucial difference in the usage of the two terms lies in the differential rights and privileges conferred on the adopted person by his adopter. If a person is adopted as 'naturati', those legal rights and privileges are identical to those conferred on natural children by direct descent. When the term 'tibutibu' is used, the person adopted expects to receive the rights and privileges normally extended to any stranger who enters a formal friendship relationship with a non relative.

The Gilbertese adoption contract signifies the public recognition of a well-defined series of reciprocal economic and ceremonial obligations between two kin groups or between members of the same family. (Lundsgaarde 1970). Those reciprocal obligations usually endure until the adopted child reaches maturity.

iv) Nukoro

Traditional adoption on Nukuro highlights the high frequency of adoption, a situation similar to Torres Strait Islanders.

The following quote from Carrol (1979:121) outlines the state of adoption practice on Nukoro:

"Nearly every adult Nukuro has had first hand experience with an
adoptive relationship. A majority of the individuals living on the island in 1965 had been adopted at least once in their lifetime and had thus experienced having adoptive parents. Most children have had the experience of growing up with adoptive siblings. The experience of adoptive parenthood is also shared widely. Almost all the married adults on Nukuro have either given or taken a child in adoption or helped to raise a spouse's adopted child."

3) Traditional Adoption in Sub Saharan Africa:

By way of comparison, the researcher intends to include a small section on traditional adoption practice in Sub-Saharan Africa, a society where adoption is practised between members of the extended family. A brief review of Sub-Saharan adoption provides the view that traditional adoption as practised in the Pacific is probably quite common throughout traditional societies. Although the following relies primarily on one study of Sub-Saharan African adoption, it nonetheless may assist in developing a deeper understanding of traditional adoption practice in general.

O'Shaughnessy (1987) sets out to understand adoption practice from within the context of the deeper levels of its societal setting, with African adoption based on tribal society.
Most traditional adoption and fostering practices carried out by Africans take place within the clan grouping, which is a major subdivision of the tribe. In traditional societies kinship has central importance, and for a child to be placed apart from the clan meant that the clan was losing a part of itself. Openness surrounds adoption in traditional African societies with one of the requirements being that the transaction is made public so that there are witnesses to the proceedings.

In traditional adoption practice, existing parental ties usually were not broken and the transfer of major parental responsibility existed side by side with a continuing link with the child's biological kin. Traditional African adoption is flexible, varied, and there exists a fluid boundary between adoption, with its implications of permanent and changed relationships, and fostering, where there occurs temporary or partial changes in parental rights and responsibilities. In traditional African society the adoption transaction is both a personal and social transaction that takes place between the families concerned. The child is given as a gift to another family and a sense of obligation is established toward the giver. This obligation enhances the relationship between the two families who are able to share an event (a person's life) in common.
CONCLUSIONS

The major points about traditional adoption of Pacific Islanders and Sub-Saharan and Africans are:

1. adoption occurs frequently and usually between extended family members;

2. adoption is one end of a continuum ranging from temporary care to permanent care, adoption having the intention of permanency but with fluid boundaries; and

3. adoption creates close ties within a reciprocal relationship based on mutual obligation between the families concerned.

C. WESTERN ADOPTION IN THE TWENTIETH CENTURY

1) Major Characteristics

The definition of adoption, as it is generally understood in the West, is of a process by which a childless couple accept into their lives an infant to raise as their own. Usually the adoptive parents are non-relatives to the birth parents and the understanding of the adoption transaction is that the birth
parents will not play any part in the raising of the child. The transaction is not made directly between the birth parents and the adoptive parents but instead via a neutral professional adoption agency. It is considered imperative that the identity of the couples remain a secret from each other. This confidentiality is thought to be in the best interest of the child as it removes the possibility of a competitive and emotional tug-of-war between the birth parents and the adoptive parents. Consequently Benet (1976:11) views adoption as a sensible solution to the problems of two groups of people, childless couples and children without families.

Although this may be the current perception of adoption in the West, prior to the industrial revolution adoption was widespread and an integral part of the extended family system. This is evidenced today in the numbers of grandparent adoptions and adoption by relatives that still exist. The break-up of the extended family followed the industrial revolution, and the nuclear family took over in importance with there being an increased pressure on relationships. These pressures were felt particularly on poor families with one of the outcomes, due to public attitudes, being the removal of children from their impoverished backgrounds and their subsequent placement in the care of institutions. Benet (1976) states that adoption still provides the most satisfactory form of permanent care (as well as the cheapest) yet devised for socially deprived children whose parents were unable to care for them.
The adoption of children had an advantage over institutional care and long term fostering, the last two being unwieldy and expensive and providing no legal security for the child or care givers. Benet (1976) believes that the post war increase in the popularity of adoption was seen as a solution to the social problems arising from white middle class permissiveness which led to an increase in illegitimate children in the 1950's and 1960's. Although contraception and abortion have been alternatives, adoption has continued and it has only been in the past ten years (1970 - 1980) that adoption has begun to wane.

Benet (176:17) makes the point that adoption in the United States and Europe is an event that is not 'supposed' to happen:

> It is, in most people's minds, an indication that the child's original parents failed to care for him, and that his adoptive parents failed to have their own children.

The main feature of adoption in the West, as influenced by Anglo-Saxon adoption law, is the intolerance of any form of semi-adopted status.

Benet (1976:17) states "if adoption is to exist in a society where possession, ownership and materialism hold sway, it must be absolutely total and water tight." This attitude has been predominate in England, the United States and their colonies
throughout the 20th Century. Whereas once parental responsibilities toward a child were shared by the extended family prior to the industrial revolution, parental rights have become the prerogative of the adoptive parents to the exclusion of the birth parents. This all or nothing system allows for either the adopters to become the parents with total legal jurisdiction over the child, or for the natural parents to retain their sovereignty.

Winkler et al (1988:16) state that the major rationale for the introduction of British, American and Australian adoption laws from the 1890's to 1920's was to recognise adoption as a legitimate social practice and to regulate it in order to prevent excesses and ambiguities. Debates on the development of adoption laws revolved around three themes:

a) a desire to protect the interests of adoptive parents;

b) a desire to protect the good name of the birth mother; and

c) a desire to protect the interests of the child.

Winkler et al (1988) view the shift from an adult focus to a child focus as typical of most Western adoption laws. The child welfare focus, incorporating "the best interests of the child", is considered a relatively recent phenomenon.
Most of the adoption placements this century are considered by Winkler et al (1988) as slanted toward the perceived interests of adoptive parents and the perceived interests of the birth mother. Widely held social attitudes throughout the Twentieth Century helped shape adoption law and practice. A pregnant single woman was often completely rejected by family and society. Abortion was difficult to obtain and the relinquishment of a child to a 'proper' (middle class) family was considered the only reasonable alternative. Winkler et al (1988:16-17) outline the little choice birth mothers had in making a decision about an ex-nuptial child:

There was no effective form of contraception, male sexual attitudes were exploitative of women, particularly women of a 'lower' social or racial class; abortion was not generally available; and social services to enable single mothers to parent their children were absent or primitive. Keeping a child was regarded as selfish, inconsiderate, and further evidence of moral turpitude."

Up until twenty years ago there were more children available for adoption than there were adoptive parents, with prospective adoptive parents being able to pick and choose children with virtually no assessment made of their suitability to adopt. Ryburn (unpublished paper) discusses the development of adoption laws for infant adoption since 1926 as a progression towards
closed adoption. He considers that when adoption in the West took the status of a legal relationship, it placed an emphasis on the complete severance of ties. This occurred in spite of society's strong emphasis on blood relationships. The severance provided the illusion that the adopted child was a child of that family as if by birth. The severance of all ties between adopted infants and birth families was believed to preserve children from the stigma of illegitimacy.

Cole (1984) views Western adoption as differing from fostering and other forms of custody in that it confers legality on the relationship between child and parent. This legal protection was the central reason why statutory adoption came so late (nineteenth and twentieth centuries) to Western civilisation. The ingrained belief in the importance of blood ties meant that people were reluctant to accept legally one not of their own blood and act as though the child was born to them. However, the dominant belief prevailed that the full legal relationship was preferable and this still predominates in the West today (Benet 1976:52). While adoption is considered as a valuable means of providing a permanent family for a child who cannot be raised by his birth family, Western society is still ambivalent toward adoption. As David Kirk (1964) says, people still doubt whether one 'feels the same way about a child who is adopted as one would toward one born to you.'

In summary, the major characteristics of Western adoption have been:
i) the total severance of ties, legal and otherwise, between the adopted child and the birth parents;

ii) the establishment of a legal relationship between the adoptive parents and adopted child as though the child were born to the adoptive family;

iii) the maintenance of 'closed' adoption bound by confidentiality and secrecy; and

iv) that adoption reflected society's intolerance to illegitimacy and maintained a social stratification in which relinquishing parents were made to feel themselves on the lower stratum of society.

2) Changing Trends in Western Adoption:

Over the past twenty years there has been a change in attitudes toward Western adoption practice, brought about by changing social values toward illegitimacy and the role of women in society. This section discusses the changing trends in Western society which have challenged the traditional beliefs regarding the value of closed adoption and the severing of all ties between birth parents and adopted children.

1) Adoption of older children
Howe (1987:44) reviews the statistics of adoption by non-relatives in England and Wales from 1967 to 1984. He states that although the number and proportion of children born illegitimately has gradually increased every year, the rate of baby adoptions (under 1 year of age) has fallen by a factor of 5 over the period of 16 years. Older children being adopted remained a steady figure but, as the number of babies available for adoption has decreased, the proportion of older children available for adoption has dramatically increased. There was an increase in 1979 - 1983 of older children which Howe (1987:46) believes was due to social workers operating the permanent planning principle in planning the longer terms needs of children in care.

Howe (1987) believes the following future trends will occur:

1. there will be a continued fall in the total number of children adopted; and

2. the number of older children adopted will grow slightly but as a proportion of total adoptions, will show a more pronounced increase.

The report of the Victorian Legislation Review Committee (1983) reflects the major adoption trends in Victoria over a period 1966/67 to 1981/82. The number of local children placed for
adoption with non-relatives fell from 1818 to 298. (1983:3). Despite the decline in the availability of babies for adoption, there has been a continued high interest among prospective adoptive parents. This has led to an increase in the adoption of older children and children with disabilities, as well as a sharp rise in the interest in adopting children from overseas. As there have been changes to the adoption pattern, legislators have had to come to terms with the fact that older children and mixed race children can no longer be 'covered up' and the myth perpetuated that the adopted children lose totally their previous identity.

These demographic trends have been part of the catalyst that has brought a flexibility to Western adoption practices.

ii) Abandonment of "professional assessments" of adoption applicants

Trends in adoption practice in New Zealand namely declining numbers of infants becoming available for adoption combined with a growing understanding of concepts of identity and genealogical attachment, have brought about changes to the country's policy and practice in the adoption field. Innovative work has been undertaken by the Catholic Social Services in Christchurch to establish a more 'open' practice to infant adoption. Howell and Ryburn (1987:30) have discussed the response of their particular
adoption agency (Catholic Social Services, Christchurch) to those changes by abandoning the traditional matching procedure of babies to applicants and altering the notion of assessment, both of which have been the responsibility of social workers.

The belief of the Catholic Social Services is that there has been no evidence to indicate that a social worker's assessment of a couple is a valid predictor of a stable and happy life for the adopted child. The contention is that assessments are subjective and the response to this dilemma has been to hand the responsibility for the selection of adoptive parents back to the birth parents themselves. Agency workers did not want to present birth parents with assessments that had been written by social workers as they believed that the information was 'filtered through the eyes of a third party' (1987:39). A decision was made to run education groups for adoptive couples and for the couples to prepare a profile on themselves, with the assistance of social workers, following input on the various issues of adoption. This education included exposing couples to the idea of 'open adoption' by including in the program input from birth mothers, people who had been adopted, and adoptive parents who had experience of continuing contact between the parties in adoption.

Open adoption was defined as a negotiable continuing contract between birth parents, adoptive parents and adopted children; in
form it ranged from letters and photographs to frequent and direct meetings which did not require agency supervision. Howell and Ryburn (1987:39, 40) believe that, based on their experience, the severance of links between adopted child and birth parents is not necessarily in the best interests of the child, birth parents, or adoptive parents. They found that the selection of adoptive parents by birth parents was highly successful and, in situations where the adoptive parents met the birth parents, the adopted persons were more likely to grow up with a sense of knowing their identity and considering themselves as being the product of two sets of parents.

iii) Limited adoption

In France, the authority of legitimate children is held by the mother and father and for illegitimate children by the mother only. While authority can be transferred to adoptive parents via a full adoption which involves complete severance from the natural family, there is a range of less restrictive measures available to birth parents. This includes limited adoption, which Verdier (1988:42) describes as a child retaining links with the natural family while being raised in an adoptive family. The natural parents lose their parental authority, which is transferred to the adoptive parents, and the natural parents have a secondary duty to maintain the child. Adopted children keep their original name but are permitted to add the
name of their adoptive parents. There is provision for the Court to decide that the adopted child will bear only the name of the adopter. The adoptive parents have the same responsibility to the adopted child as they have toward their legitimate children.

A limited adoption can be terminated as the result of a repeal or as the result of an upgrading to a full adoption. Although full adoption is irrevocable, limited adoption can be revoked by the adoptive parent or the adopted child if sufficient reason is presented.

Verdier (1988:43) explains there are 2000 limited adoption per year in France, generally of older children who know their origins. There are other variations of transferring parental authority (Verdier, 1988):

1) Delegation of parental authority where a court order is needed to terminate parental authority. The delegation may be complete or partial but, in the case of total delegation, children retain their relationship and their name.

2) Guardianship can be instituted to other family members when the natural parents are unable to fulfil their rights and duties through death, disappearance, and imprisonment.
3) Child care, which is a change to parental authority brought about by a judge if a child's health or welfare is considered seriously at risk.

Adoption information services

As early adoption legislation in many Western countries was written with little forethought to the possible future needs of adoptees and natural parents, the secrecy criteria that was incorporated into the legislation came under challenge in the U.S.A. and U.K. in the early 1970's. In the U.S.A. adult adoptees began petitioning courts for access to their original birth certificates and, at the same time adult adoptees in Australia, England and Wales began applying pressure to Governments to make accessible their original birth certificates and adoption orders. Kloske (1987) prepared a discussion paper for the Department of Children's Services, Queensland, entitled 'Access to Adoption Information and Reunion: Systems, Motivations, and Outcomes.'

Adoption information systems can be closed or open. Closed systems only permit a general and limited amount of information to be made available to triad members (adopter, adoptee, natural parent), whereas open systems permit adoptees access to their original birth certificate. Kloske (1987) indicates that the trend in adoption information access has been toward openness.
An example is New Zealand, where children available for adoption may be physically handed over to the adoptive parents by their natural parents and the natural parents can have ongoing visiting access to the adoptee.

The current Australian situation is that States have enacted legislation permitting exchange of identifying information and reunion between adoptees and natural parents. Differences exist in the level of information available and the management of information dissemination to members of the adoption triad.

Kloske (1987) sought to identify the reasons why adoptees, natural parents and adoptive parents seek access to non-identifying information, identifying information, and reunions so that she could highlight the differences between searching and non-searching adoptees. She found that non-identifying information was sought by adoptees for medical and genealogical reasons, while there was no clear answers to the motives for adoptees seeking identifying information.

The feeling of adoption workers was that adoptees seeking identifying information or reunions tended to have a negative experience with adoption and their adoptive parents, and an uncertain sense of identity and family history.

Slaytor (1986) used a postal questionnaire to study the
motivations and experiences of adopted people and relinquishing parents who had a reunion, and the attitudes to, and involvement of the adopting parent in the reunion. She found that there was a high degree of satisfaction with the reunion (from natural parents and adoptees) despite the range of difficulties that had to be overcome. Slaytor received a poor response from adopting parents which she believes highlights the difficulty experienced by many adoptees in communicating with their adoptive parents.

Kloske (1987) indicates that the number of adoptees seeking more adoption information or reunion is about 1 to 2% of the adopted population. While numbers where small, Kloske found that the outcome experiences tend to be positive for most adoptees and natural parents. Some of the reasons for the low percentage are:

1) the adoptee does not want to intrude on the natural parents lives or hurt the adoptive parents;

2) the adoptive parents are threatened that they may lose the child to the natural parents; and

3) natural parents do not want to interfere in the adoptive relationship or face past feelings associated with the initial adoption.

v) The debate surrounding open adoption
Baran et al (1976) contend that as adult adoptees are increasingly challenging the practice of the sealing of the birth records, the time has come for open adoption to gain acceptance as a viable alternative. Adoption performs the function of fulfilling a childless couple's lives and gives the couple a tight family unit that conceals their infertility and denies the existence of another set of parents. Baran et al (1976) believe that the shift toward closed adoption occurred in a gradual continuing pattern without critical evaluation of the changes.

To understand the cultural context of giving adults artificial parenthood to the exclusion of the child's birthright, Baran et al (1976) contrast Western practice with the openness of traditional Hawaiian adoption where the adopted child belongs to both the birth family and the adoptive family. Hawaiian children are loyal to their adoptive families but take pride in the connection with their birth families. Baran et al (1976) suggest that in the past the United States adoption practices were more open, but that they have been passed off as irregular and unprofessional. They contend that the informal adoption practices worked well and that the adoptive parents could tell the child of his birth heritage convincingly with first hand knowledge and understanding. It is stated that the move toward closed and secretive adoptions took place in the U.S.A. because:
"To the Puritan settlers, illegitimacy was considered a sin of overwhelming proportions, to be hidden at any cost. Subsequent immigration created a melting pot notion in which genealogical lines became indistinct, and mobility and change were important. Pride was not based on family name and position, but on the achievement of success and wealth. People denied their origins rather than remain within a rigid social structure. They took on new names, new positions, and new responsibilities and their attitudes toward adoption reflected these changes."
(Baran et al 1976:90)

The benefits of open adoption include:

1) the decreased chance of a child feeling rejected by his birth parents, as with age the child can grow to understand the circumstances that led to the adoption decision;

2) the birth parent being less likely to have feelings of guilt, mourning and loss; and

3) the adoptive parents having a realistic picture of the birth parents instead of developing fantasies.

Ward (1986) considers the case of adoption of older children and states that the idea of adoption with access, or open adoption, is far from being universally accepted by either social workers
or the judiciary. He considers the difficulties in England of making legal provision for adoption with access and acknowledges the security advantages for older children of being adopted rather than remaining in long term foster care. Ward's preference for children in long term foster care to become legally adopted and for the natural parents to retain rights to access. Adoption has the advantage of giving the child placement security and cementing the bond between child and substitute parents. Ward believes that a more imaginative consideration of adoption with access will help adoption legislation adapt to the needs of children in care.

Curtis (1986) reviews the controversy concerning open versus closed adoption and, while admitting that further longitudinal research is needed, concludes that adoptive parents and biological parents should be given the option of participating in open or closed adoptions. His article is concerned with the adoption of infants rather than older children, as the continuing relationships carried by older children into adoptive placements is less controversial an issue. "Closed" adoption is the term preferred by Curtis rather than 'confidential', as open adoptions can be confidential with parties meeting without sharing identifying information. "Open" refers to sharing of information between adoptive and biological parents and continuing face to face contact after the adoption is legalised.
The arguments for open adoption are based on the belief that the knowledge of one's biological history constitutes an intimate human need. The denial of that need, as with closed adoptions, leads to emotional problems, particularly in relation to identity formation.

The argument for closed adoption is that secrecy ensures the non-interference necessary for bonding between adoptive parents and children. Curtis (1986) believes that the possibility exists that over time there may be no substantial difference in the eventual outcomes of the children placed through open versus closed adoption procedures.

The following dialectic is proposed by Curtis (1986:443):

"1. Open adoption allows biological mothers to mourn and work through the loss of their children because they do not have to worry (in fantasy) about the children's well being.

2. Closed adoption allows biological mothers to mourn and work through the loss of their children because they cannot rely upon unrealistic fantasies of reunion."

D. DIFFERENCES BETWEEN WESTERN AND TRADITIONAL ADOPTION:

Until twenty years ago Western adoption varied greatly from that
of traditional adoption practice. These differences can be highlighted under the following themes.

1) Ownership of the child

Whereas traditional adoption requires the consent of the wider extended family of the child to be adopted, as well as the consent of the natural parent. Western legal adoption requires the consent of both birth parents if they are legally married and, if not, then the consent of the birth mother. This highlights an important distinction between the two. Whereas a child from a traditional society belongs to a wide circle of extended family members, all of whom have some significance in the child's life, the modern Western child belongs first and foremost to his birth parents.

2) Relative and non-relative adoption

Most adoption practices carried out in traditional societies take place within the wider extended family. In traditional societies kinship has central importance, so for a child to be placed outside the web of kinship meant that social bonds were weakened.

In Western legal adoption, non relative adoption is more common with its role being to provide homes for orphans, illegitimate children and children of dysfunctional families.
3) Secrecy

The openness surrounding adoption in traditional societies is in contrast to the secrecy and confidentiality which characterises Western adoption. One of the aspects of traditional adoption is that the transaction be made public so that there are witnesses to the proceedings. Western legal adoption is bound by secrecy and is best expressed by Haines and Timms (1985) "...de jure adoption, that is, institutionally sanctioned adoption, has always been associated with the twin stigma of infertility and illegitimacy. Consequently, it has also been associated with secrecy, which has served to preserve certain social standards of morality and normality, as well as, within certain constraints, the reputations of individuals."

The message to the birth parent is to disappear from the life of the child and to try to resume a life as though the child was never born. The child was to take on a new identity and begin a new life as though the adoptive couple had given birth to the child. The rationale for the relinquishment and disappearance by the birth mother was that she would be given another chance in life and that her childlessness would reduce the stigmatisation of giving birth to an illegitimate child.

The secrecy also concealed the infertility of the adoptive parents from the outside world and helped create a family unit
which was as close to a 'natural' family as feasible. Once the adoption order was finalised, the adoptive parents were no longer answerable to an adoption agency and were able to present themselves to the world as the natural parents of the child.

4) Links with consanguineal kin - open or closed

In traditional adoption practice, existing parental ties were not usually broken and the transfer of major parental responsibility existed side by side with a continuing link with the child's biological kin. This can be understood by the following example of African traditional adoption:

"The kinship system is like a vast network stretching laterally (horizontally) in every direction, to embrace everybody in any given local group ... that means that everybody is related to everybody else... The kinship system also extends vertically to include the departed and those yet born. It is part of traditional education for children in many African societies to learn the genealogies of their descent. The genealogy gives a sense of depth, historical belongingness, a feeling of deep rootedness and a sense of Sacred obligation to extend the genealogical line." (Mbiti, 1969:105-106).

The legal and social links with natural parents in Western legal adoption are generally broken and the adopted child is totally
removed from his family of origin. This is understandable as the natural parents and adoptive parents are not related and because of Western possessive individualism and the need for the child to become an heir to the adoptive parents' name and property.

During the shortage of adoption applicants in many Western countries in the 1950's and 1960's, applicants needed to be assured of 'ownership' of the child in order to want to take on the responsibilities of caring for a stranger's child. In contrast to this, the retention of ties within traditional society is possible because the adoption transaction takes place between relatives and there is a shared sense of common identity.

5) Flexibility and rigidity in adoptions

Traditional adoption practice is flexible, varied and ambiguous. There exists a fluid boundary between adoption, with its implications of permanent and changed relationships, and fostering, where there occurs temporary or partial changes in parental rights and responsibilities. In contrast to the relatively flexible and decentralised traditional system of adoption/fostering, modern Western legal adoption is characterised by rigidity, standardisation, impersonality, uniformity and universality. The ultimate sanction to this is
adoption legislation where the rights of adoptive parents and natural parents are established and procedural guidelines standardise all adoption transactions.

6) **Relinquishment**

In traditional society the adoption transaction is both a personal and social transaction that takes place between the families concerned. The child is given as a gift to another family and a sense of obligation is established toward the giver. This obligation enhanced the relationship between the two families who were able to share an event (a person's life) in common.

Post-war Western legal adoption is an impersonal transaction arranged through an intermediary with no contact occurring between the giver and the recipients. The arrangements for adoption through an impersonal process have changed what is a 'gift relationship' in traditional societies to a 'relinquishment' in modern Western legal adoption. In traditional society, the birth parent 'gives to' the adoptive parents the gift of a child whereas in Western adoption the birth parent 'gives up' or 'gives away' her child.
E. SIMILARITIES BETWEEN WESTERN AND TRADITIONAL ADOPTION:

As a result of recent changes in Western adoption practice there has been a gradual shift of Western adoption toward developing features in common with traditional adoption. These can be briefly summarised:

1) Selection of adoptive parents by birth parents

This trend was covered in the review of a journal article by Howell and Ryburn (1987) in Christchurch, New Zealand. In Melbourne, Victoria, this practice has been incorporated by adoption agencies in various form.

2) The continuum of adoption ranging from partial parental transfer of rights to total transfer of rights - fluidity of boundaries:

This situation was reviewed by Verdier (1988) when considering limited adoption orders in France.

3) The development of open adoption in Western adoption

Open adoption is considered controversial in Western society and a debate exists as to the virtues of open adoption over closed adoption. This had been discussed by Baran et al (1976), Ward
(1986) and Curtis (1986). These similarities will be considered in Chapter Six when discussing options available to Torres Strait Islanders and the Queensland Government to help Islanders retain their traditional adoption practice.

F. INTERACTION OF WESTERN ADOPTION LAWS WITH TRADITIONAL ADOPTION PRACTICE:

Following the highlighting of the major differences between Western adoption and traditional adoption, and a brief review of changing trends in Western adoption that lead to similarities with traditional practices, this section considers what happens when the two come together.

Benet (1976) laments that as the West is wrestling with the problems of the nuclear family, other areas of the world are discovering Western adoption for the first time. As Westernisation has spread throughout the world, so also had Western style social problems. These problems are products of urbanisation and dislocation and lead to Western solutions such as non-relative adoption. Benet highlights the problems with traditional societies taking on Western customs in the belief that those customs are integral to economic development.

O'Collins is interested in the effect of Western adoption laws
on customary adoption in the Third World (in Bean ed. 1984). Modern Western adoption laws were formalised in the late nineteenth century and early twentieth century, at a time when many Western legal systems were introduced as part of colonial laws or as the majority law in settler-dominated countries. O'Collins (1984) is concerned with the effect these legal systems have had on the flexible, varied and ambiguous nature of customary adoption practices. O'Collins has had experience as an adoption worker and academic in the South Pacific region, and is particularly interested in the groupings of Micronesia, Polynesia, and Melanesia, all of which share a greater acceptance of adoption as a normal feature of social life.

Lowie reflected the position of adoption in 1930: "Oceania as a whole represents a main centre for adoption carried to unusual lengths." (Lowie 1930:460). Although adoption occurs frequently between extended families in the South Pacific region, there is no generalised rule to the adoption transactions that take place. In one society, "a conspiracy of silence surrounds the adoption and it is considered to be very bad taste to tell a child he is adopted." (Marshall 1976:35); in another, "the adoptee's continuing relationship with his natural parents may range from infrequent to almost daily contact." (Morton 1976:78); while for another, it has been observed that, "although young children are made aware at an early age who their adoptive parents are, that is, who
they 'belong to', they are never forced to reside with them against their will." (Tonkinson 1976:233).

O'Collins notes that when Western-style laws and attitudes converge with traditional more flexible approaches to adoption, those involved in an adoption transaction distrust the rigid procedures established by Western courts. The introduction of national written constitutions and political government serves to standardise the adoption through legislation, and Western style procedures lessen the ambiguities which have been a central feature of traditional adoption practice.

Adoptions in the Ellice Islands (now Tuvalu) consist now of both of a legal contract negotiated with the island government and registered in a court, and a customary contract where oral negotiations take place outside a court. Brady (1976:139) has noted that the introduced legal system is less acceptable to Islanders as "adoption legislation does not take traditionally ambiguous adoptions into account."

In Papua New Guinea, customary attitudes and practices have modified and influenced introduced Western style adoption laws. (O'Collins, 1984:297). The Adoption of Children (Customary Adoptions) Act 1969 provides a flexible arrangement where the period of adoption may be stated and property rights and other limitations or conditions recorded. Customary adoptions are
registered with the Courts and there is an attempt by the Papua New Guinea Child Welfare Council not to intervene in custom, although the nature of the custom should be declared.

The avoidance of Western style adoption procedures is evident in French Polynesia, where:

"Under the civil code it is possible to adopt a child legally through the offices of the French courts. However, this method is not generally used by Polynesians, in part because the criteria for legal acceptability of the parties involved (such as age of adoptive parents) differ from local norms but also because the court system is seen as foreign and capricious." (Brooks 1976:55)

Morton (1976:65) also notes that few applications for legal adoptions are made to the Courts in Tonga because the circumstances of traditional adoption do not fit with the meaning of adoption as applied by the courts.

The Maoris of New Zealand have similar difficulties with the interaction between traditional practice and the introduced legal system. However, the Maoris are a minority group under pressure from Western laws and attitudes. Hooker (1975:335) states:
"Prior to the Native Land Act of 1909, Maori adoptions were a matter of custom, and the courts relied upon this in establishing the validity and effect of any adoption... After 1909, all adoption by Maoris had to be effected by orders of adoption made by the Maori Land Court, and since the passing of the Adoption Act of 1955 the same law is applied to Maoris or to Europeans except that for Maoris the Maori Land Court has jurisdiction and not the Magistrate's Court... This legislation is in line with the increasing Europeanisation of Maori affairs in New Zealand."

O'Collins (1984:300) finds that the effect Western adoption laws have had on customary adoption is the development of a duality of approach. Where colonial interests were not threatened, customary adoptions were not greatly affected by the introduced legal system. However, the significance of adoption as it affects wills and inheritance, as well as property claims and succession, has meant that customary adoption came to be adjudicated by the formal and rigid system of the Western courts. Despite this, O'Collins states that customary adoption is still the preferred transaction in South Pacific societies.

The implications of the imposition of the Queensland Adoption Act 1964-1988 on the traditional adoption practice of Torres Strait Islanders will be discussed in Chapter 6.
As the interaction of Western adoption legislation and traditional adoption practice is considered a race relations issue, the concept of race relations and its relevance will be discussed in Chapter Three.
LITERATURE REVIEW - RACE RELATIONS

INTRODUCTION:

The purpose of this section is to set the conceptual background for understanding the difficulties Torres Strait Islanders experience in having their traditional custom of adoption recognised on an equal footing with white law. The situation of white Queenslanders in power, with legislative control over black Torres Strait Islanders is one of race relations. Power conflict theories are applicable to the Queensland setting, as Islanders and whites have different access to the power to make legal decisions over their lives. The researcher considers that institutional racism in Queensland allows the Queensland Government to legislate for adoption for whites and to either ignore, or expect conformity from Torres Strait Islanders who have a separate adoption practice.
A. THE CONCEPT OF RACE

John Rex (1970:36-38) looks at four approaches in the field of race relations studies that, taken separately, are to him inadequate but, taken together, help define the key variables of the race relations field.

The first approach is that there are in reality no race relations problems as such, and that what has been called race relations is actually problems of stratification. The belief is that once these problems are fully understood, their racial aspect disappears. Rex (1970) states, secondly, that there are, however, aspects of race-relations encounters which are not explained by stratification theory, and the factor of role ascription and stereotyping according to observable characteristics can add something new. However, he considers that these two approaches made by sociologists in the field of race relations are inadequate in themselves. Thirdly, regarding race relations problems occurring when groups distinguish themselves in terms of perceived physical differences, the difficulty exists of cases where the perception of physical differences does not lead to race relations problems.

Rex (1970) notes the existence of a fourth approach which he calls phenomenological. The approach recognises that social phenomena and mental phenomena are meaningful, and that
discriminating against any kind of structural situation must depend upon a consideration of 'definitions of the situation' used by those involved in the situation. This means that, if a person says that a situation is racial and the respondent agrees that 'racial' factors describe the interaction between the two, then by mutual consent a 'race relations' situation exists. Rex (1970) sees value in this approach when it is combined with the other three approaches. By combining all four approaches, Rex suggests the following definition (1970:39):

"We shall speak of a race relations structure or problem in so far as the inequalities and differentiation inherent in a social structure are related to physical and cultural criteria of an ascriptive kind and are rationalised in terms of deterministic belief systems, of which the most usual in recent years has made reference to biological science."

Watson (1984) examines the distinction between the 'biological facts' and the 'social facts' of race. According to biologists, 'pure races' (populations of genetically homogeneous human types) do not exist, and therefore the human population cannot simplistically be divided into racial types. Biological differences within virtually all given human populations are likely to be as great or greater than the differences between human populations. Watson (1984) claims that ideas about the 'facts of race' are not merely biological but also social and
that lay members of society believe that there are 'pure races' of human beings and that there exists a clear cut typology of races. This extends to believing there are clear cut typical psychological characteristics for each race. As these beliefs are social in nature, they are both held by groups of persons and transmitted from generation to generation. Watson (1984) is interested in the interconnection of the biological and social facts of race and what members of society make of the biological facts that shape social behaviour.

As society-held beliefs about race incorporate notions of 'race hierarchy', the outcome is the idea of superiority and inferiority between groups. People's beliefs about the facts of race can become entangled with moral judgements about race and members of society may begin to treat the race hierarchy as a natural order of things. Watson (1984: 45) makes the point that while a physically different group may be a 'minority group', other groups may find themselves in a minority position on a social hierarchy because they have a culture, language, national origin or religion which differs from the dominant groups in that society. While sociologists are concerned with the social facts of race and ethnicity, there are differing opinions on the characteristics of these phenomena. Watson (1984) believes the source of the differences comes down to differing views individuals have of society. Consequently, the analytic treatment sociologists give to racial and ethnic
relations depends on which model of society they promote. Watson (1984) outlines three sociological views of society which relate to racial and ethnic relations.

1) **The order-consensus approach** has, as its main feature, that social order is possible because most members share the same moral values. The values determine the 'way of life' of society. People are socialised into conformity with those values and external controls such as the police and public opinion serve to maintain the conformity. However, due to rapid social change socialisation practices break down and anomie or disorganisation takes place.

2) **Conflict theories or structuralist theories**, which characterise society as a whole, emphasise inter-group tension and conflict based largely on differential access to property or wealth. The social group with most of the wealth will have the power and seek to impose its values and culture on the subordinate group. Members of the dominant group will seek to institutionalise and legitimise their position of power over others through coercion and indoctrination. Consequently, social change can only occur with a shift in the distribution of power between the groups in conflict.
3) The social action and interaction model of racial and ethnic relations focuses on the way people act and fit their actions together with those of others to form interactions. A feature of this approach is that society's members are seen as active interpreters of their everyday world, and their interpretations or definitions are built into their actions. Consequently, people act in a certain way and define the situation according to their actions.

Watson (1904) acknowledges that each perspective selects from and simplifies the field of racial and ethnic relations, and it is not necessary to choose between the perspectives as each has its strengths and weaknesses.

McConnochie (1973) distinguishes between three current uses of the term 'race':

1) The cultural definition of race

This refers to groups who show clearly distinctive cultural traits and who identify and may be identified as belonging to separate cultures. McConnochie (1973) objects to this as a valid use of the term 'race' and states that the term 'ethnic group' should be used to refer to groups distinguished and classified on the basis of cultural traits.
2) The biological definition of race

Biological definitions of race usually refer to groups of people who are characterised by a common distinct gene pool, a history of in-group marriage, and some shared physical characteristic which serves to distinguish them from other races.

3) The social definition of race

The term 'race' is used to refer to groups which are classified by a referent group as belonging to some out-group, characterised by ethnic or cultural uniqueness and perceived biological traits. Neither of these traits may actually exist but they are part of the reality of the referent group's perceptions.

McConnochie (1973) is cautious of the limitations of using biological indices to determine the probability of an individual belonging to a given racial category. The concept of race can be abused as outlined by Eynsenck (1971:44):

"We are dealing with a continuum from white to black, not with two sharply distinguished populations, and serological and morphological analysis can tell us roughly where on this continuum a given person is located. Instead of this, we prefer to take one end of the continuum and call it 'white', every
person who is found to be (or suspected of being) anywhere else on the continuum we call 'black'."

Consequently the concept of a continuum can be lost and replaced by a discontinuous category system for which there is no biological justification.

McConnochie (1973) believes the roots of ethnocentrism and racism are deeply imbedded in the social and psychological constructs of life. He views ethnocentrism as a universal human trait on the basis that people consider themselves to be part of a high status 'in-group' which is reflected in people's beliefs in the rightness and propriety of the social customs of their group. McConnochie (1973) distinguishes between ethnocentrism and racism by noting that ethnocentrism is closely related to the concept of race. Racism extends the concept of ethnocentrism to include the biological concept of race. It occurs when the alleged inferiority of other cultural groups is perceived as being caused by some perceived biological inferiority of members of that group.

Racism can take the form of individual racism, where racist attitudes can be expressed in the behaviour of individuals in face-to-face situations, and institutional racism in which social institutions function to oppress and control minority groups within larger societies. Both individual and
institutional racism can be conceptualised along a continuum, with overt racists and societies that wish to subjugate racial groups to maintain control over them at one end and non-racists and societies in which all have equal access to benefits of society at the other end.

B. INTER-RACIAL AND INTER-ETHNIC CONTACT

This section intends to explore the theory of what happens when two distinct social groups come together in one society. It proves a framework for understanding the relationship of Torres Strait Islanders to white Queenslanders.

In defining a race relations situation, Rex (1982:199) suggests three necessary elements - harsh exploitation, coercion, and competition. This relationship between the groups should be such that an individual could not simply choose to move himself or his children from one group to another. The system should be justified by way of a deterministic theory, usually of a biological sort.

Rex (1982:199-200) believes that issues of race rise to consciousness only when there is conflict, and states that generally there are two types of situations in which race relations problems are thought to exist. The first is that of
colonial situations, particularly those arising from the expansion of European capitalist powers overseas. The second is situations in which poor migrants and refugees seek to enter the labour market in a capitalist metropolis. The result of colonial conquest was that a considerable amount of wealth was transferred from the colonies to the countries of the colonisers, with that the process leaving its mark on the social structure and system of intergroup and class relations in the colonies.

Rex (1982:218) asserts that racism is the product of colonialism and discusses the relations which prevail between groups under colonialism. In the high period of colonialism, racism was not essential or central to exploitation as racism existed as a justification for the use of force. Racism plays a more important role when the legal inequality through the use of force is withdrawn. In the modern world, migratory movements now take place according to the need of different economies for labour. A major movement of this type is the migration of men and women from post colonial to metropolitan societies. Where this happens, metropolitan labour movements and political parties try to establish barriers of a racist kind to such movements. Rex sees the maintenance of the division of the world into rich and poor nations as the development of racial discrimination on a world scale and the most important form of racism existing in the modern world.
Van den Berghe (1901:86) describes a 'colony' which is dependent on a 'mother country' as being that which is acquired by a process of either settlement or conquest. The concept of colony took on a special meaning that became widespread with the maritime expansion of Europe starting in the Fifteenth Century. He makes a distinction between 'colonies of settlement' and 'colonies of exploitation'. The term colonialism is generally associated with the latter.

Colonies of settlement, such as Australia, New Zealand and North America, were non-tropical territories with living conditions favourable to European settlement. The aboriginal populations were nomadic and sparse, and could easily be displaced or exterminated to make room for more powerful technologically-advanced European settlers. These colonies became extensions of Europe and, even though they became politically independent, retained economic, social and cultural ties.

Colonies of exploitation were meant to be exploited and the main constraints to this were "poverty and lack of resources of the colony, difficulties of access, inefficiency of administration, astuteness of natives in evading exactions and occasionally by long range considerations of depletion of colonial assets" (Van den Berghe 1901:87).
Feagin (1978:25-26) outlines the range of outcomes that exist when diverse human groups come into contact as a result of the migration process. The three alternatives at the initial stage of contact are:

1) exclusion or genocide;

2) egalitarian symbiosis; and

2) a hierarchy or stratification system.

The alternative stages of adaptation following the initial contact are:

1) continuing genocide;

2) continuing egalitarian symbiosis;

3) stratification replaced by inclusion along 'anglo-conformity' lines;

4) stratification replaced by inclusion along cultural pluralism lines; and

5) continuing stratification with some acculturation, ranging from moderate to extreme internal colonialism.
Explanatory theories and interpretative frameworks in the study of racial and ethnic relations have examined the patterns of migration and adaptation. The two categories in which most theories in this area can be divided are order or assimilation theories, and power conflict theories, an example of which is internal colonialism.

C. ASSIMILATION THEORIES:

Traditional assimilation theories work on the assumption that the migration is voluntary, and are based on analysis of the voluntary migration of European immigrants into the English colonies and the United States. Feagin (1978:27) defines 'assimilate' as coming from the Latin word 'assimulare' meaning to make similar.

Robert E Park (1950) developed one of the earliest theories of assimilative changes which took place after initial contact between two groups. He stated that intergroup relations originally stemmed from migration. The European outmigration of the last few centuries has been the most momentous migration in human history with the intergroup relations and encounters with indigenous people being associated with it. Park (1950:150) came up with the notion of the 'race relations cycle' which claimed that the cycle 'took the form of contacts,'
competition, accommodation, and eventual assimilation and that the cycle is progressive and irreversible.'

'Assimilation is a process of interpretation and fusion in which persons and groups acquire the memories, sentiments and attitudes of other persons or groups, and by sharing their experience and history, are incorporated with them in a common cultural life.' (Park & Burgess 1924:735)

The final stage of Park's processes was a melting pot stage where new amalgamated people came into existence.

Feagin (1978) sees M. M. Gordon as departing from Park's analysis by accenting the situation of white immigrants, whom he views primarily in terms of assimilation to the dominant culture and society. Gordon (1964) claims that Anglo-conformity has been substantially achieved in the United States in regard to cultural assimilation, and groups following after the English have adapted to the core culture. He distinguishes seven different assimilation processes which occur as the general adaptation of one group to the core society proceeds. (Gordon 1964:72-73). Gordon (1964:78) places an emphasis on generational changes and, from this point of view, substantial acculturation to the dominant Anglo-Saxon core culture, though partial in the first generation, can be completed in the second and third generation.
Feagin (1970:31) reviews a theoretical model of assimilation which has been labelled 'cultural pluralism' or 'ethnogenesis'. The argument is that immigrant groups ought not to be forced to assimilate completely. It is claimed that the distinctive cultural backgrounds of the groups have great value for individual dignity and identity as well as for the vitality of society. Gordon (1964) gave this argument attention by stating that cultural pluralism required an underpinning of essentially separate ethnic communities. However, he viewed cultural pluralism as being of no help in explaining the reality of future adaptive patterns in American society.

Feagin (1970:32) states that other social scientists have begun to explore models which depart from the Anglo-conformity model in the direction of the cultural pluralism model. "Ethnogenesis" has been applied to the notion of ethnic group persistence in later generations as part of the adaptive process. Persisting diversity is the theme of ethnogenesis and cultural pluralist analysts.

A criticism of the assimilation perspective is the difference in white and non-white experiences where non-whites have failed to parallel the assimilation experience of whites. Assimilation theories have also been criticised as having an establishment bias in not distinguishing clearly between what has happened to an immigrant group as compared with what should happen. (Feagin 1970).
D. POWER CONFLICT THEORIES

Power conflict alternatives to assimilation models have emerged out of criticism of the traditional assimilationist perspectives. They are mostly tied to issues of economic and political subordination and inequality, and at structural integration of the secondary group level. The model of internal colonialism has been developed in recent years to cope with the difficulty of applying an assimilation perspective to non-whites. The framework owes its intellectual origins to theorists of 'external' colonialism. External colonialism becomes internal colonialism when the control and exploitation of subordinate groups passes to dominant groups within the newly independent society. Consequently the white colonists and settlers take control of the management of those exploited.

Feagin (1978:38) views internal colonialism as a system whereby groups are brought into a new social system by force, including enslavement, incarceration and annexation. Internal colonialism theorists are concerned with the establishment and persistence of a racial stratification system and the social control processes which maintain subordination. While the economic dimension is the main focus, political exploitation through government processes and bureaucratic agencies can supplement economic exploitation. The self concept and culture of the oppressed group suffers through internal colonialism and a racist ideology dominates the society.
Some critics see that non-voluntary migration of non-white immigrant groups to the United States as an important factor but not as critical as to require an alternative to an assimilative framework. These critics indicate gains made by non-whites in the United States who migrated from Southern Europe. While acknowledging gains, colonialism theorists argue that generally non-white groups are affected by prejudice and discrimination, to a greater degree than are others, and the darker the colour of the skin or more noticeable the difference physically from the dominant society, the more intense the discrimination.

Feagin (1970:42) summarises the different emphases of assimilation and internal-colonialism theories that reinforce and perpetuate patterns of race and ethnic relations:

"Assimilationists tend to stress the forces for orderly structures and processes based on a value consensus and the slow adaptive changes in intergroup relations. Internal colonialists and power conflict analysts emphasise the forces for stabilisation based on ideology, physical force and coercive pressure to keep groups on the bottom rungs of the societal ladder."

R.A Shermerhorn (1970:65) discusses the conditions that foster or prevent the integration of ethnic groups into their host societies and focuses on a two group model with one group
dominant and the other subordinate. He takes a power-conflict point of view and is concerned with the situation where the adaptation goals of the dominant and subordinate groups are not in agreement.

Schermerhorn (1970:81-87) sets up a typology which cross-classifies centripetal (assimilationist) and centrifugal (separatist, segregationist, or pluralist) goals along the dimension of dominant - subordinate groups.
Congruent and incongruent orientations toward centripetal and centrifugal trends of subordinates as viewed by themselves and superordinates" (Schermerhorn 1970:83)

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From his viewpoint, each racial (or ethnic) group at a certain point in time has a prevailing centripetal or centrifugal tendency. The desires and goals of the dominant group and of the subordinate group are relevant to what the mode of adaptation becomes.

When both groups agree on centripetal goals, there exists peaceful incorporation and assimilation. In the case where both agree on a certain type of centrifugal goal, there exists the condition of separatism or cultural pluralism. Where the dominant group has centrifugal goals of a segregationist type and a major portion of the subordinate group has some centripetal goals there exists a situation of coerced segregation.

Where the dominant groups seeks centripetal goals and the subordinate group seeks centrifugal goals, there exists coerced assimilation with resistance.

Schermerhorn (1979:88) summarises by stating that empirical examples in Cell A could well be more numerous than those of B. Cell C displays the typical conflict of vertical racism and the tendency to conflict in Cell D has been connected with nationality and linguistic conflicts in Europe. Trends in Cell D are also evidenced by the resistance to new forms of national unity by tribal, regional and religious groups in Africa and Asia in recent years.
The intervening variable of the two parties perception of each other is consistent with the stance of symbolic interactionists who maintain that the outcome is provided by the participants themselves. Schermerhorn (1970:88) states that while social perception is a determinant of conflict and integration, on its own it is not sufficient to fully explain the interactions.

E. RACE RELATIONS IN AUSTRALIA REGARDING INDIGENOUS PEOPLES

Literature on the position of Australian Aboriginals in Australian society is considered relevant to the section as it provides the basis for understanding the attitude of white Australia to all indigenous peoples.

Howard (1982:83) argues that race relations in Australia do not take place in a vacuum, and that the dynamic is related to the dominant capitalist mode of production as it has evolved from the early colonial period to the present form of advanced capitalism. Also related is the process of cultural hegemony imposed by the ruling elite, and attempts by certain sectors to bring about a fundamental transformation of the political and economic order.

Howard contends that the Aboriginal situation in Australia has mirrored the state of hegemonic politics over the past two
hundred years. He argues that it was the incorporation of Aboriginal people into the Australian colonial order and the colonial economic order that transformed Aborigines into an underdeveloped people. The pattern of underdevelopment has varied historically, with the evolution of Australian capitalism, and situationally, depending on the manifestation of capitalism in a particular setting.

Hartwig (1978) argues that Wolpe's theory of internal colonialism, with some modification, has applications to the many conditions of racial discrimination experienced by Australian Aboriginals. Wolpe (1975:252) points out that the concept of internal colonialism has its origin in the view that there are close parallels between the external relationships established by colonial powers over colonised peoples in the era of capitalist expansion and the relationship between dominant and subordinate racial and ethnic groups within some Latin American countries, the U.S.A., Canada and South Africa. The difference between the two forms of colonialism is that in the 'internal' situation the colonising racial or ethnic group occupies the same territory whereas 'normal' colonialism defines the colony as a distinct territorial entity set apart from the mother country of the colonists. Hartwig (1978) maintains that the theory of internal colonialism helps to explain the terms in which ideological and political domination over Aborigines have been expressed. He believes the theory relates the domination
to specific modes of exploitation of Aboriginal society and is more successful in doing so than the functionalist mode of assimilation or integration or the theory of plural society. Middleton (1980:181) states that following the colonisation of the Australian continent from 1788 onwards, Aboriginal people were changed from self-determining, semi-nomadic hunters and gatherers into dependant, settled, unskilled labourers held in subjection by monopoly capitalism.

Aborigines were drawn into and exploited by the money-commodity economy of monopoly capitalism in Australia. Middleton (1980) explains that in the work force they were used as cheap labour or as a reserve pool of cheap labour. With the impact of racial discrimination, oppression, segregation and isolation they became the lowest stratum of Australian capitalist society.

Middleton (1980) outlines the national formation of Aboriginals from autonomous traditional hunter-gatherers to the unification into a wider social unit which remains distinct from the white Australian nation but is integrated into the Australian capitalist system. Aboriginals were subjected to ethnic assimilation following the Second World War, and this also resulted in ethnic consolidation which has set up a contradiction for Aboriginals integrated into monopoly capitalism. The process of assimilation into the white Australian nation, produced by integration of Aborigines into
the capitalist system, has been retarded by the factors of racial discrimination, exploitation, isolation and extreme poverty. Consequently, Aborigines are trying to retain and reinstitute many traits of their traditional way of life before they are totally lost. In addition, they have adapted elements of the Australian capitalist nation to their particular needs in their own distinctive form.

Middleton (1980:184) describes the Aboriginal situation:

"While factors such as the small numbers of Aborigines, their scattered distribution and the trend to urbanisation have accelerated the assimilation process, the imposed low economic and social standards Aborigines suffer, the degree of their cultural, linguistic, and religious differences from white society and particularly the prejudiced and discriminatory attitudes and practices of the dominant society have all held back ethnic assimilation."

F. RACE RELATIONS IN QUEENSLAND - TORRES STRAIT ISLANDERS

Jeremy Beckett (1982:131-155) is concerned with the position of Torres Strait Islanders in relation to the economic structure of mainland Australia, and explains that Islanders did not feel the catastrophic presence of Europeans to the same extent as
mainland Aborigines. The Europeans were more interested in exploiting the Torres Strait marine resources rather than claiming the land occupied by Islanders. The need for labour by the Europeans and the desire for Islanders to obtain money to buy goods established an exchange relationship which, according to Beckett, provides the key to an understanding of post-contact Torres Strait society and of that society's relationship with the rest of Australia.

Beckett views the Torres Strait, during the period pearling was an economic force, as an internal colony of Queensland and of Australia. He defines an internal colony as:

"...A region or enclave which is exploited and controlled from without through a set of distinctive institutions. One of these institutions is a body of doctrines stating the difference between the colonised and the colonisers, typically in terms of ethnicity or race, but also by reference to religion or cultivation." (1982:132)

Torres Strait Islanders were a cheap labour resource for the pearlers and a reserve labour pool when they were not needed. Islanders had to supplement their employment with subsistence activities such as hunting, fishing and gardening during the 'slack periods', and it was the role of the Queensland Government to regulate the employment market. It was in the interest of
the Queensland Government to have the Islander's self supporting so that they were not a burden financially on the state. Beckett (1982) believes the government's policies were consistent with the interests of the marine industry rather than the welfare of the Islanders.

Up to World War Two Islanders could not go to the mainland, so that the marine industry always had a steady supply of experienced labour and government officials ensured that Islanders went to work when they were needed. Following the Second World War and the opening up of the mainland labour market, Islanders began a steady movement to the mainland in search of regular employment.

Beckett explains that this undermined the colonial system of labour exploitation that existed, as those who remained behind were unwilling to work for small wages or be discriminated against in comparison to white workers. When Islanders became part of the mainland labour force, the 'colonial economy's need for a labour monopoly came into direct contradiction with the mainstream economy's need for a free labour flow'. (Beckett 1982:154)

Prior to World War Two, Beckett (1987:14) states that Torres Strait Islanders were integrated into Australian society through colonial structures. Generally they existed as the wards of
missions or government agencies that were especially assigned to their management. Citizenship for Torres Strait Islanders and Aborigines became an issue following World War Two and re-emerged as a political embarrassment during the Cold War when the Australian government was being accused by the non-aligned Third World of racism. The indigenous minorities throughout the world emerged at this time, often being referred to as the 'Fourth World'. (Beckett 1987:15). These groups found they had political leverage to embarrass their governments before national and international opinion. As explained by Gartrell (1986:11-12): "What power can a tiny minority wield? Unable to exert material control over the environment of the powerful, it can only challenge the self concepts of both bureaucratic and political office holders, and the citizens of the nation, and appeal to the legal rights institutionalised in an earlier phase. The resulting power is tenuous and fluctuating, for it is based on ideologies themselves changing, and it depends on the receptivity of some audience - elements in the wider society willing to listen to the message being sent by the dominated group."

Beckett indicates that the commitment of a government to grant citizenship to its indigenous minorities requires more than the passing of legislation or the provision of welfare benefits which is a right of all citizens. He sees the requirement of the state as to support a "comprehensive programme of
economic, social and cultural rehabilitation, in addition to the assistance provided through the regular channels of redistribution." (Beckett 1986:16) As a result of the move to make indigenous people citizens, the status of indigenous people takes on a new ideological significance and the old colonial administrative structures are revamped.

Gartrell (1986:11) notes that this formation, which is found in wealthy states with very small indigenous populations, is known as 'welfare colonialism'.

A new kind of politics emerges with the government operating within a transformed colonial apparatus and having to seek the consent of its clients.

Beckett (1987:17) sums up the situation: "Welfare colonialism, then, is the State's attempt to manage the political problem posed by the presence of a depressed and disenfranchised indigenous population in an affluent, liberal democratic society. At the practical level it meets the problem by economic expenditure well in excess of what the minority produces. At the ideological level the 'native', who once stood in opposition to the 'settler' and outside the pale of society, undergoes an apotheosis to emerge as its original citizen."

Although the concepts of colonialism and welfare colonialism
help explain the relationship of Torres Strait Islanders within Australian society, the Islander population is divided with over half the total population living on the mainland. The Islanders on the mainland operate more within the status of citizens, as welfare colonialism has less to offer them. In the Torres Strait, Islanders have been able to take advantage of the opportunities offered by welfare colonialism which has been highlighted by rivalry between the Queensland and Commonwealth Governments over what is 'best' for Islander people.

G. QUEENSLAND GOVERNMENT POLICY TOWARD ABORIGINALS AND TORRES STRAIT ISLANDERS

Nettheim (1982: 2) states that the Queensland Government maintains a clear and consistent policy for Aboriginals and Islanders known as 'assimilation'. Under this policy Nettheim (1981: 2) explains that "'special legislative measures' should be regarded as temporary, designed to assist Aboriginals and Islanders to make the transition to a more 'advanced stage of development.'" Aboriginal and Islander peoples' future lies in their total assimilation into the Australian way of life, and they are only a 'people' in the historical sense.

The Director of the Department of Aboriginal and Islander Advancement contrasted his own views with Commonwealth Government policy in the 1978 Annual Report:
"The Commonwealth policy increasingly allows for land rights, customary law and tribal language to be developed as goals in themselves. However grave apprehensions must be held for the future of the (Aboriginal) people as well as for the total future of Australia if ideologies, theories and propositions of social experimentation, now being pursued Australia-wide are allowed to endure. It is a matter of great regret that the Commonwealth pursues an Aboriginal policy based on 'differences' and yet states the policy objective is to build a united nation. More alarming, however, is the philosophy being enthusiastically promoted that Aboriginals are different, are a separate race and must be encouraged to retain a separate total identity."

Ryan (1985:14) gives three reasons for the fact that the Queensland Government policy of assimilation toward Aboriginals and Islanders has remained unchanged while other State Governments and the Commonwealth Government have responded to Aboriginal demands for self determination and land rights.

1) The Queensland Government ministers for Aboriginal and Islander Affairs have all maintained an ethnocentric belief that the government has given Aborigines and Islanders the opportunity to discard their culture and become part of white society. To do this, Aborigines and Islanders must relinquish claims to self determination and land rights.
2) The Government Department responsible for the administration of the assimilation policy has maintained an unchanging attitude towards Aborigines and Islanders since the early twentieth century. The Department's administration policy has been characterised by a combination of paternalism/protectionism and an outward manifestation of assimilation.

3) The policy of assimilation fits the Queensland Government's ideology of economic development. When bauxite was discovered on the Weipa Aboriginal reserve in Cape York, the Queensland Government leased land from the Weipa and Mappoon reserves to Comalco. The Aborigines were forced to leave their reserves under the guise of a movement toward assimilation into the wider society.

The Aborigines and Torres Strait Islander's Affairs Act of 1965 defined assimilation as:

"All persons of Aboriginal descent will choose to attain a similar manner and standard of living to that of other Australians and live as members of a single Australian community - enjoying the same rights and privileges, accepting the same responsibilities and influenced by the same hopes and loyalties as other Australians. Any special measures taken are regarded as temporary measures, not based on race, but intended to meet
their need for special care and assistance to make the transition from one stage to another in such a way as will be favourable to their social, economic and political advancement.”

However, Ryan (1985:117) states that in reality Aboriginals and Islanders were controlled by the Department and the Queensland Government in most aspects of their lives. Aboriginals and Islanders on reserves lived under total domination, controlled by managers who were appointed by the Director. Ryan (1985:117) states: "the only lifestyle that was acceptable to the Director was one of unquestioning obedience and gratitude, coupled with a hard working desire to become ‘just like white people.’" Consequently when an Aboriginal had reached a stage where the Director saw it fit, the person could leave the reserve to live in mainstream society.

The response of the Director of Aboriginal and Islander Affairs to the movement by Aboriginals and other State Governments toward self determination and land rights was one of contempt.

"Those who seek notoriety in advocating the cause of Aboriginal people, are generally speaking, notable when practical efforts is required, by their absence. It is believed that generally the Aboriginal Queenslander does not seek nor desire what can only be described as pressure and an extreme advocacy of their cause." (Director’s Comments, Annual Report 1960)
The Aboriginal and Torres Strait Islanders Act of 1971 marginally improved conditions for indigenous people by attempting to increase the role of Aboriginal and Islander Councils and significantly reducing the power of the Department of Aboriginal and Islander Affairs.

In 1984 the Community Services (Aborigines and Torres Strait) Act provided for Aboriginal and Islander land to be returned to the indigenous people via a "Deed of Grant in Trust." Most Deeds were issued in 1985 and 1986 with the legislation being known as the Community Services Act 1984 – 1986. According to the Under Secretary of the Department of Community Services:

"Aboriginals and Islanders are fellow Queenslanders and Australians - not a privileged or different group. The Queensland Legislation (Community Services Act) deals with economic and social needs of the communities - not the fact that they are Aborigine or Islander." (Department of Community Services, Annual Report, 1984).

The current (1988) policy for the Department of Community Services is for it to be gradually dismantled, but still to continue to act as the co-ordinating body on behalf of the Aboriginal and Islander Councils and other mainstream State Government Departments.
H. RELEVANCE OF RACE RELATIONS THEORY TO THE INTERACTION OF WESTERN AND TRADITIONAL ADOPTION

From the literature on race relations relevant to the situation of Torres Strait Islanders and the Queensland Government, the researcher has considered the theory of power conflict the most applicable.

The implications of this theoretical approach to the study are:

1) The Queensland Government will establish a means of racial stratification and social control which will maintain the subordination of Torres Strait Islanders.

2) The independence of Torres Strait Islanders will be exploited through government processes and bureaucratic agencies.

3) The self concept and culture of Torres Strait Islanders will suffer as the Queensland Government imposes its cultural definition of adoption on Torres Strait Islanders.

4) Problems resulting from the interaction of Western and Traditional adoption will tend toward conflict, providing the Queensland Government maintains its current adoption legislation and policy.
5) Torres Strait Islanders have a power as 'Fourth World' people to embarrass the Queensland Government.

6) The Queensland Government is likely to continue its stated policy of cultural assimilation of Torres Strait Islander adoption practice into that of white adoption practice.

CONCLUSION

The importance of this discussion of race relations is that the theories of power conflict tend to suggest that the Queensland Government is likely to continue to maintain control over Torres Strait Islander adoption practice and to seek the assimilation of Islander adoption with that of white adoption. The Queensland Government's policy of assimilation can be used as an effective strategy in assisting Torres Strait Islanders to legalise their traditional adoption practice by focusing attention on the changing nature of Western adoption practice and its implication for the Queensland legislation. This option will be discussed more fully in Chapter Six.
METHODOLOGY

INTRODUCTION:

The research methodology of this study is based on seeking answers to two specific research questions with two subsequent research questions being used to guide discussion.

Due to the research techniques used, the design of the study is exploratory/descriptive as it is the researcher's intention through description and exploration of issues, to identify trends and draw tentative conclusions. Research techniques used - participant observations, surveys, and case studies - were all relatively unstructured and consistent with a study at the exploratory level.
A. **RESEARCH QUESTIONS**

Questions 1 and 2 are the basis for the research methodologies used while 3 and 4 will be elaborated in the final two chapters.

**Q 1.** What is the nature of Torres Strait Island adoption practice, both past and current, as influenced by settlement in Queensland and more specifically Brisbane?

**Q 2.** What are the cultural assumptions underlining the Queensland Government's adoption legislation and practice, and do they reflect a particular attitude towards the place of indigenous minorities in Queensland society?

**Q 3.** What are the implications of applying the Queensland Adoption Act to the traditional adoption practice of Torres Strait Islanders?

**Q 4.** What options are available to Torres Strait Islanders and the Queensland Government to help them retain their traditional adoption practice and to have their practice legalised?

B. **KEY CONCEPTS:**

The key concepts used in this study are 'adoption' and 'race
relations'. Adoption is placed in the cultural context of Torres Strait Islanders and white Australian societies while race relations assists in the explanation of the interaction that occurs when different cultural contexts meet. From the review of concepts derived from the literature, the notion of adoption is not static but is culturally determined. Torres Strait Islander and white Australian adoption practices have different cultural intentions. However, changes that are happening within white adoption practice have produced similarities with the adoption practice of Torres Strait Islanders.

Race relations between nation-states such as Australia and indigenous people such as Torres Strait Islanders, are a product of the settlement of Europeans in a country where the original inhabitants were thought to be biologically and socially inferior. The treatment of traditional customs of the indigenous Torres Strait Islanders are reflected in the policies of the Queensland Government toward understanding and legally acknowledging the traditional adoption practice of Torres Strait Islanders.

C. NATURE OF TORRES STRAIT ISLANDER ADOPTION

1) Participant Observation

To develop an initial understanding of the nature of Islander
adoption, the researcher became a participant in the social environment to be studied in both the Torres Strait and Brisbane. The traditional customs of Torres Strait Islanders are not readily understood by outsiders and a participant observation methodology was considered essential to obtain an understanding of the scope and significance of traditional adoption in Islander life. Participant observation is a method by which descriptive and qualitative data can be gathered which provides the basis for utilizing additional research techniques.

iii) Torres Strait Islands:

The researcher's role as a participant in the Torres Strait was as a social worker working for the Department of Family Services based in Cairns. Regular trips were made to the Torres Strait Islands (approximately 4 times per year with each trip being of 2 weeks duration). During the 3 year period in which the researcher was a participant, Thursday Island was used as a base with most of the observations taking place there. Regular trips were made to Bamaga (approximately 6 visits) (an Islander community on the tip of Cape York), a week was spent at Boigu Island, one at Yorke Island, and almost all of the inhabited outer islands were visited on day trips. At the time of the researcher visiting these islands, the Department of Family Services did not have the responsibility for processing Torres Strait Islander adoption applications. The three year period,
1982 - 1984, was one when the Department of Aboriginal and Islander Affairs assumed responsibility for adoption, and it was the role of the researcher during this period to gather additional information for the Department of Family Services (formerly Children's Services) on traditional adoption practice to supplement a previous study conducted by the Department. When on Thursday Island, the researcher was based at the Islander Legal Service and was referred cases by the field workers where custody disputes arose over children who had been promised or placed under a traditional adoption arrangement. On visits to outer islands by the researcher, Island Chairman and councillors would refer cases involving traditional adoptions where difficulties had arisen.

Participant observation of traditional adoption practice in the Torres Strait occurred in a non-planned manner and it was not the researcher's intention in the initial stages to proceed with a study on this topic.

The information and experiences to which the researcher was exposed were as a direct result of Islander's perception of the professional role undertaken by the researcher. Islanders were aware that the researcher was employed by a Government Department that had the responsibility for administering the Queensland Adoption Act.
Consequently, during the researcher's time in the Torres Strait, information obtained was noted by the researcher in a subjective manner and most of the information to be documented is retrospective. Following an information sharing trip to Thursday Island and the outer islands over a two week period, the researcher prepared a report for the Department of Children's Services which included a section on traditional adoption practice.

Brisbane:

The researcher was employed by the Department of Family Services in Brisbane but was not in a capacity that brought him in direct contact with Torres Strait Islanders or their adoption practice.

Consequently, the researcher had to gain entry into the Torres Strait Islander community in Brisbane and engage their interest in participating in a study involving their traditional custom. After leaving the Torres Strait and Cairns, there was a two year gap before commencing participant observation in Brisbane. However, as the researcher could not assume entry into the Island community, a lengthy and slow process of gaining the acceptance and trust of Islanders was necessary.

A Torres Strait Islander organisation by the name of 'IINA' was used as the point of entry to the Island community. This
organisation was established to promote Islander cultural identity and represented approximately 120 Islander families in Brisbane who were registered members and participated in activities organised by IINA.

When the researcher initially approached IINA for support and assistance with the study, he was treated with some suspicion by IINA staff. The researcher was told that time would need to be spent to become acquainted with the Islander community in Brisbane. During that time the Islander people would be assessing the researcher and his motives before making a commitment to support his research. The period from initial contact with IINA until the researcher received the full support of the IINA committee was 8 months. During that time the researcher attended Torres Strait Islander social functions, church services, general community meetings, and became friendly with Islanders who were to become key informants on Islander traditional practices and customs in Brisbane.

After being given permission by IINA to undertake the study and assurance of their support, the researcher made a commitment to the Committee that information obtained would be continuously monitored by IINA staff to ensure the researcher's understanding of that information.

2) Surveys

A survey approach was used to obtain information from key
informants following the initial 8 month period where trust and acceptance were being established. Although the researcher did not overtly present himself as a social worker employed by the Department of Family Services, it became apparent that the acceptance and trust shown were the result of the Islander's perception of authority attached to that position. Islanders expressed the opinion that the researcher's interest and study was to be supported as he was in a professional role and might be able to influence Queensland Government policy and adoption legislation in relation to Torres Strait Islanders. It was explained to Islanders that his intention was to act on the information received from them in the manner that they considered was most appropriate for their needs.

i) Leaders Survey

(a) IINA

The decision to interview IINA staff was based on the fact that IINA is a community based Islander organisation and that it has as its goals the promotion and retention of Islander cultural practices within Australia. IINA was the agency decided on as the initial point of contact in Brisbane by the researcher and, in the process of gaining trust and support from Committee members, relationships were established with IINA staff. The survey with IINA staff took the form of unstructured interviews,
with the interviews taking place over a period of three months. The researcher was based at the IINA office one half day per week and engaged the staff in unstructured interviews as much as possible on the nature of Torres Strait Islander adoption practice in Brisbane. The staff numbered 6 and the researcher was continually checking back with them for further information or for them to clarify information received elsewhere.

(b) Torres Strait Islander Queensland University Students

The selection of this particular group for unstructured interviews was based on the fact that they were able to articulate Islander traditional practices in a manner more easily understood by the researcher. However, this did not presume that this group had a more 'solid' grasp of traditional customs as opposed to non-tertiary educated Islanders. The group was used because of their willingness to assist in a research project concerning traditional custom and grasp of the researcher's role in the research process. The researcher found he did not experience difficulty by being perceived as an intruder into the cultural lives of Islanders with this group as the group was able to empathise with the researcher's aims. The Islander University students exhibited a commitment to tertiary education as a way of gaining access to employment which could service and assist their people. They showed acceptance of a white researcher employed in a Queensland Government Department.
which provided an adoption service as being consistent with their aims of using education to develop appropriate services and enhance an understanding of Islander people by the wider community.

Four Queensland University students were interviewed using unstructured interviews which took place over a period of 12 months. Interviews with the students varied from 30 minutes to 90 minutes and information from two of the students was used as the basis for obtaining acceptance by the IINA Committee to conduct the study on behalf of the Islander community in Brisbane. One student was about to complete a social work degree, and was relied upon as a key informant due to her understanding of government service delivery issues regarding the provision of family and child welfare services. Another student was completing an anthropology degree and intending to enrol in a law degree. This student was also a key informant and was the researcher's initial point of contact with the Queensland University Torres Strait Islander students. As this student was a mature age student, she was considered an 'aunt' by two of the Islander students and held in a position of respect due to her age and life experience. The remaining two students were completing Arts Degrees in anthropology and government and provided the researcher with information by way of being a crosscheck on information obtained by the two key informants. The four students maintained regular contact with
each other when at University through an Aboriginal and Islander support group, and the researcher found that after being accepted by one member of the group and using snowball sampling, he was accepted by all members of the group. The researcher did not have to seek out the other members of the group after initial contact as he was introduced over a period of time to the remaining members.

The University students were also involved with IINA and there was some overlap with the participant observation process of slowly gaining entry into the group that the researcher wished to observe. Contact made with the Queensland University students assisted the researcher's entry into the group and provided a framework for unstructured interviews with IINA leaders.

(c) Anglican Church

Torres Strait Islanders are involved with Church organisations to a much greater degree than white Queenslanders and the role of the Church is predominant in Islander life both in the Torres Strait and in Brisbane. The researcher did not attempt to sample the range of Churches to which Islanders attended, but instead chose to interview a minister of an Anglican Church in the inner city of Brisbane which has an almost exclusive congregation of Torres Strait Islanders.
The minister of the Anglican Church was related to one of the key informant Queensland University students and the researcher was introduced to the minister by the student through the snowball sampling method. An unstructured interview was conducted with the minister which took 30 minutes. The minister was responsible for an Islander congregation of approximately 100 people and he had intimate dealings with the congregation on a regular basis of weekly visiting and family support. He was considered by the researcher to be representative and in a position where his views were supported by the congregation.

### Survey of Torres Strait Islanders Engaged in Adoption

After gaining acceptance by the IINA Committee to undertake a study of traditional Torres Strait Islander adoption practice, the Committee told the researcher that he would be based at the IINA office one half day per week for as long as it took to obtain the necessary information.

The Committee members informed the Island Community in Brisbane as to the purpose of the study and requested that families involved with adoption come to the IINA office to speak to the researcher. Following the lack of response by community members, the Committee decided that the researcher undertake a written questionnaire survey to be mailed out to all IINA members. IINA membership was by way of membership fees and
names and addresses were recorded in a book maintained by the IINA office secretary. The researcher did not wish to mail out a survey form to Islander families not involved with traditional adoption as the sampling for information was intended to be only from participants in the adoption process. To achieve the goal of mailing questionnaires to adoption participants only, the researcher obtained assistance of IINA staff who advised which families had children who may have been adopted. As the Islander community is closely knit in Brisbane, the IINA staff were able to make informed decisions on the appropriateness of mailing questionnaires to particular families.

Advice was sought from IINA staff as to the design of the questionnaires for the survey. The staff felt that the questionnaires should be kept very short and simple and that a letter signed by the IINA president endorsing the survey should accompany the questionnaires. The researcher developed five questions which encompassed the purpose of the study. IINA staff advised the researcher of the reluctance of Islanders to answer written questionnaires, particularly a questionnaire on a personal matter such as adoption. The researcher was aware of the possible intrusive nature of such a questionnaire but was advised by IINA staff that the accompanying explanatory letter signed by the IINA president would help them see the value in completing the questionnaire. Due to difficulties that some of the Islanders have with the English language, the five questions
were translated into the Western Island language group (maubiaq) and into creole which is a form of pidgin English understood by all Islanders. The Western language of maubiaq is understood by Islanders from the top Western Islands but not by Central and Eastern Islands, and was selected on its own because of the inability to obtain a translation for the Central and Eastern language group.

Sixty survey questionnaires with accompanying letters were sent to IINA families, and, at the time of the sending of the questionnaires, the researcher spoke to approximately 20 Islander adults who were attending a meeting, on the purpose of the survey. The researcher was advised by IINA staff that the community would be informed of the purpose of survey should community members contact them with enquiries.

Due to contacts the researcher had made with an Anglican Islander minister of an inner city Islander church, the researcher decided to broaden the target group by including Islander church members who were involved with adoption. The researcher consulted a key informant who was a Queensland University student, member of IINA and a member of the inner city Anglican Church for assistance. The key informant spoke to a group of Islanders at a church social gathering at which the researcher was present and introduced by the informant.
Approximately 30 Islanders were present at the meeting where the key informant explained the purpose of the study and requested the Church Community to participate in answering the questionnaire. Fifty survey questionnaires were given to the key informant to mail out to relevant church members along with the church newsletter which had an explanation of the purpose of the study.

The researcher initially believed that families involved with IINA would be families who had a commitment to the preservation and promotion of traditional Torres Strait Islander values and customs. However IINA is a relatively new organisation, being two years old, and Islanders involved with IINA explained that it takes a while for the Island community in Brisbane to accept a new organisation.

The researcher selected the Anglican community as a balance against the possibility of the IINA community having a commitment to the preservation of traditional Islander practices, including adoption.

IINA staff anticipated that approximately 25% of Islander families with children were directly involved with the traditional adoption of a child. Of the 60 questionnaires sent, IINA staff believed the researcher would receive approximately 12 - 15 returns.
The researcher received only three returns from the IINA community and no returns from the Anglican community. Following the mailing of the questionnaires the researcher was informed that there was interest shown in the purpose of the study from both the Anglican and IINA communities. Enquiries were made to community leaders regarding the survey but the interest was not converted to a written response. The outcome of the written survey was to raise awareness in the Torres Strait Islander community of the difficulties their traditional adoption practice faced in attempting to become legalised under the Adoption Act 1964 - 1988.

The researcher was not surprised by the negligible return rate as advice was given by IINA staff that Islanders are reluctant to complete written questionnaires and to explain personal experiences on paper.

Case Studies

The decision by the researcher to select a number of case studies of families involved with the adoption of children was based on the in-depth perspective provided by case studies.

The researcher intended to use case studies as a method of recording in detail the process of an Islander adoption as well as the feelings of the participants in the process. The survey
approach of unstructured interviewing yielded information from Islanders who had indirect experiences with adoption. Almost all Islanders have contact with adoption through their extended families and consequently have opinions about adoption based on experience and observation. The intention of a case study methodology was to conduct in-depth interviews with Islanders who had directly adopted a child to understand the motivation and outcome of the transaction. The previous methodologies of participant observation and surveys with informants enabled the researcher to be in a position of trust in the Islander community; hence individuals involved with adoption did not feel they were approaching a total stranger.

The original intention of the researcher was to undertake 30 case studies divided into three categories of:

a) grandparent adoption,

b) adoption by non-relatives as defined by the Adoption Act 1964 - 1988 (extended family) and;

c) adoption by relatives as defined by the Adoption Act 1964-1988 (immediate family).

The researcher then wished to categorise the adoptions into successful and unsuccessful, based on previous experience of
participant observation in the Torres Strait where the researcher was referred cases of breakdown in traditional adoption arrangements.

However, the researcher found that because of his professional position of social worker within a Queensland Government Department which provides an adoption service, an unintentional purposive sampling took place. The researcher was based at IINA and the IINA staff alerted the Islanders community of the intention of the study. The Islander families who wished to be interviewed by the researcher were those having difficulties with the legal insecurity of their traditional adoption and believed that the researcher was in a position to help alleviate their insecurity. Islanders who were not aware of legal insecurity and who felt their traditional adoption was successful did not have the same motivation to contact the researcher.

Consequently, four families experiencing difficulty were interviewed by the researcher as well as two families who had chosen to adopt Islander children through the white legal process. The latter two families were aware of the legal insecurity of traditional adoption and preferred the legal security of an adoption legalised by the Queensland Adoption Act. These families adopted a child each through the Department of Family Services from birth parents whose identities were unknown and confidential.
The case studies could be better described as case examples, and took the form of in-depth interviews with the families both at the IINA office and at the family homes. In all cases but one, both the husband and wife were interviewed and the entire family was observed. There were variations in the composition of the families: three involved an Islander wife and husband, two involved white Australian husbands and Islander wives, and one an Aboriginal husband and Islander wife. The three Islander couples and one Islander woman with an Australian husband maintained traditional customs to a significant degree, while the remaining two couples were less inclined to follow Islander customs. Variation also existed in the number of children adopted and how the adoptions were made, with the extreme of one family traditionally adopting an Aboriginal child from a non-relative.

In all cases the children were babies at the time of the adoption, although at the time of the case studies the children's ages varied from teenagers to babies.

Although the number of cases was smaller than the researcher initially intended, the information obtained presented consistent themes which were validated by the unstructured interviews with key informants, including IINA staff. The researcher was able to consult with IINA staff and the IINA Committee after obtaining results from the case examples and
confirm the consistency of the information. The IINA staff did not think the researcher would obtain any further information from additional case examples and considered that those interviewed by the researcher were representative of Islanders involved with adoption of children in Brisbane.

D Queensland Government Policy and Practice:

1) Participant Observation

Participation observation was used as a method of data collection to understand Queensland Government policy and practice in relation to adoption. The researcher had spent 10 years employed by the Department of Family Services, the Queensland Government Department which has sole responsibility for the delivery of adoption service in Queensland. By being a participant in the process of providing an adoption service, the researcher was able to develop an understanding of Government policy and practice through 'inside information'. Queensland Government policy and practice may be stated publicly but the unique position of a participant creates opportunities to observe unstated assumptions which underlie public statements of policy and practice.

i) Cairns and Torres Strait

During the three years the researcher spend as a participant
observer in Cairns and the Torres Strait Islands he was employed as a Supervisor of the Department of Family Services office based in Cairns. The Cairns office of the Department had the responsibility for service delivery of adoption in Cairns, Cape York and the Torres Strait Islands. The researcher supervised staff who conducted adoption assessments as well as the researcher undertaking a small caseload of adoption assessments.

During the time the researcher was a Supervisor in Cairns, the Department of Aboriginal and Island Affairs assumed primary responsibility for processing adoption applications by Torres Strait Islanders resident in the Torres Strait. The Department of Family Services retained responsibility for adoption applications by Torres Strait Islanders living outside the Torres Strait. The researcher's professional role in relation to adoption applications in the Torres Strait was to act as a resource person to D.A.I.A. staff and to develop policy as to the suitability of non-qualified personnel processing Torres Strait Islander adoption applications. The D.A.I.A. in the Torres Strait did not employ social workers and did not have a working knowledge of the Adoption Act 1964 - 1988.

The researcher was an active participant in the delivery of an adoption service to Torres Strait Islanders in Cairns and surrounding areas and a participant observer of the delivery of adoption service in the Torres Strait. Twelve visits of
approximately two weeks duration were made to the Torres Strait over a period of three years. The researcher was based on Thursday Island for most of the visits and conducted two trips of two weeks duration to all but two of the outer Torres Strait Islands. During one of the researcher's two week trips to the outer islands the researcher had the specific intention of documenting observations and conversations regarding Islander traditional adoption practice and the interaction of that practice with the adoption service being provided. The researcher prepared a report on the servicing of Islander adoption in the Torres Strait which was influential in developing the current Department of Family Services' adoption policy throughout Queensland regarding Torres Strait Islanders.

2) Survey of Key Workers

A survey of key workers within the Department of Family Services was able to provide the perspective of those who develop and administer the adoption policy and practice of the Queensland Government. The development and interpretation of policy and practice is dependent on the attitudes of Department staff. While adoption policy is influenced by political factors, the role of professionals has been to modify those factors and to develop policy which reflects the needs of those serviced within the context of the social environment.
A survey of key professional workers provides a perspective on the participant observation methodology used by the researcher and serves as a check to any subjectivity in the interpretation of policy and practice by the researcher.

As the researcher was employed as a professional worker within the Department of Family Services, access to key professional workers in the field of adoption was simplified by the researcher being a colleague.

Information obtained from the key workers began with an understanding between researcher and interviewee of the nature of adoption practice in Queensland and the difficulty of adequately servicing indigenous people with inappropriate legislation. This understanding allowed for a more complete sharing of information by those interviewed as there was mutual consent on the complexity of the issues. As the researcher was a participant in the workings of the Department of Family Services, there was a trust established which allowed the professional workers to be honest and open in their statements regarding policy and practice.

The researcher made a decision to purposively sample the key workers and to interview ten individuals who represented the range of staff who had some understanding of Departmental adoption policy and practice relating to Torres Strait
Islanders. The current manager and two former managers of the Department's adoption section based in Brisbane were interviewed face to face. Telephone interviews were conducted with the Supervisors of the Cairns office and Townsville office of the Department, and phone interviews conducted with three front-line social workers in Brisbane, Mackay and Cairns. The manager of the Policy Section of the Department based in Brisbane was interviewed as was the Supervisor of the Brisbane-based Department's Special Needs Adoption Section.

The interviews were unstructured, face to face and approximately of one hour's duration. They were conducted within office hours with all but one of those interviewed employed in their positions at the time of the interview. One former adoption manager relied on hindsight as to the issues that were relevant during his period as manager from 1983 to 1985.

The telephone interviews were of approximately 20 minutes duration and were unstructured. The researcher interviewed the North Queensland Supervisors to ascertain current policy and practice in assessing Torres Strait Islander adoption applications. Policy developed in North Queensland regarding Islander adoption has been accepted as State-wide policy because the majority of the Torres Strait Islander population resided in North Queensland. The researcher interviewed by telephone the front line social workers for approximately 20 minutes each,
using an unstructured approach. As the workers selected from Brisbane, Mackay and Cairns had dealt with Islander adoption application, the researcher endeavoured to establish whether there was consistency in handling Islander adoption applications throughout the State.

3) Policy Document Analysis

Policy Document Analysis was used as a research methodology to support the accuracy of information obtained from participant observation and the survey of key workers. Department of Family Services policy files on Torres Strait Islander adoption began in 1978 and included correspondence from the Ministers of Aboriginal and Island Affairs and Welfare Services as well as inter-Departmental correspondence from the Directors of Family Services and Aboriginal and Islander Affairs. The files were not available to the general public. An analysis of these documents enabled the researcher to confirm the political influence the Queensland Government exerts on the delivery of services of Torres Strait Islanders.

The researcher was given permission to access confidential policy documents as he was employed by the Department of Family Services and, for the main period of the research, was based in Brisbane where the documents are held. The Department of Family Services have produced public documents on adoption policy in
general and policy in relation to the fostering and adoption of Aboriginal and Islander children. The researcher had access to a manual of practice and procedures which outlines guidelines for social work staff to implement Departmental policy on all areas of work, including adoption. While there were few public documents on the Department of Family Service's policy and practice toward Aboriginals and Islanders, there were no public documents on the policy of the Department toward the traditional adoption practice of Torres Strait Islanders.

The confidential documents contained correspondence and reports in which the Department of Family Services indicates the difficulty which existed in formulating appropriate policy. The researcher was able to read the two policy files on Torres Strait Islander adoption, which each contained approximately 200 folios, and purposively sampled documents by selecting the most relevant 50 folios which contained information on the professional and political difficulties in developing appropriate policy. The researcher photocopied what he considered to be the relevant documents and examined the condensed version of the policy documents, noting the historical development and debates over policy.

As the material obtained from the confidential documents is not intended to be available to the public, the researcher is only able to reflect on the general nature of the documents and not
provide direct quotations. The public documents can be quoted but contain no direct reference to the Department of Family Services’ policy to the traditional adoption practice of Torres Strait Islanders. The researcher acknowledges that the methodology of policy document analysis under these circumstances is subjective. The validity of this approach is assisted by it being one of three methods of data collection on Queensland Government policy and practice.

A comparison of the existing State Adoption Laws in both Queensland and Victoria has been undertaken by the researcher. The purpose of this analysis was to understand the implications of each State’s adoption policy as reflected in legislation. Victorian adoption law was chosen as it served as a contrast to Queensland laws when discussing the changing trends in Western adoption.

Moreover, the researcher considered that Victorian adoption legislation contained sections relevant to Torres Strait Islanders and to the purpose of the study.
FINDINGS

INTRODUCTION:

This chapter outlines the findings to the first two Research Questions and provides the basis for answering Research Questions Three and Four. The first section of the Chapter will focus on the nature of Torres Strait Islander adoption and the second on the cultural assumptions of the Queensland adoption legislation and their effect on Torres Strait Islanders. The findings will be summarised according to themes, with the methodologies used to gather data presented as sub-headings.
A. NATURE OF TORRES STRAIT ISLANDER TRADITIONAL ADOPTION PRACTICE

The findings on the nature of Islander adoption are recorded under central themes which draw together information obtained from the various data sources. The seven themes presented in the section serve as a summary of the nature of Islander adoption and will be considered with the literature on Islander adoption in Chapter Six. The discussion chapter will reveal whether the findings on Islander adoption are consistent with the literature and draw together some conclusions based on the two sources.

The researcher has included six case examples of Islander adoption to strengthen the material and to highlight aspects of the seven themes. Each case example is represented by a genogram followed by an account of the adoption process. A summary is made at the end of each case example to draw together the main points and make reference to the seven themes.

1) Islander adoption reflects the societal values of reciprocal obligation

1) Participant observation in the Torres Strait

The researcher spent periods of time on outer Torres Strait
Islands varying from one day to two weeks over a three year period. During that time the researcher interacted with families and community leaders in his capacity as a Queensland Government social worker.

Most islands numbered 200 - 300 in population and the village housing reflected a sense of ownership and belonging while retaining an informal openness which allowed adults and children to freely move from house to house. Islanders commented on the fact that most people in the village were related to each other in some way, and that it was important to give each relative individual attention no matter how distant the relationship. The researcher observed that children on the outer islands see the adults as being related to them or having an intimate connection with their relatives. It was observed that children moved freely about the village, playing in groups and being supervised by whichever adult was nearest the children at a particular point in time. At night time children would go to the homes of their parents/caregivers to be bathed, fed and be put to sleep. Islanders frequently commented on the sense of obligation and reciprocity that exists between family members. A sense of mutual obligation existed where individuals frequently 'go out of their way' to do something for another if they have been requested. The individual is assured that when they are in need or make a request of another there will always be someone available to help.
iii) Survey of Leaders - I.I.N.A. Torres Strait Islander Organisation

The notion of reciprocity obligation was confirmed by three separate members of IINA during separate interviews. It was stated that if adoption occurs from one family to another then reciprocity should occur with the child being replaced somewhere throughout the extended family lineage. One Islander described the situation as 'taking a jar of jam from the shelf... you have to replace that jam jar with a fresh jam jar.'

iii) Islander Anglican Church Leader

The church leader stated that if a child is adopted from one extended family to another, it is expected that the adopting family will adopt a child back to the original family. The leader believed that adoption entails a reciprocal exchange of children between families and that, if the exchange occurs the adoption arrangement is permanent and the adoptions should be legalised.

If a child is adopted from one family to another and no child is returned then it is possible the child may return to the birth parents. The church leader felt that in this situation the adoption should not be legalised.
CHAPTER FIVE

2) Adoption means Permanent Care as Opposed to Temporary Care

i) Participant observation in the Torres Strait.

During the researcher's periods of time in the Torres Strait, various discussions were held with Islander Chairman and Councillors regarding the intention of their traditional adoption practice. It was explained that adoption was a permanent placement of a child with another family and that the adoptive family was in debt and obligated to the birth parents and their family. Adopted children took on the name of their adoptive parents and were known in the community as having an identity with their adoptive family. From discussions with Islanders it became clear that Islanders had a system of permanent placement of infants with adoptive families as well as a system of fostering or 'growing up' an older child with the intention that the child would return to his natural parents at some time.

ii) Survey of leaders - IINA Torres Strait Islander Organisation

All Islanders interviewed agreed that traditional adoption had the intention of permanence of placement of the child and that, if a birth parent attempted to reclaim an adopted child, there
would be strong community pressure against the intended action of the birth parent. One Islander interviewed stated that she believed it was very rare for a birth parent to take back an adopted child. Her experience was of birth parents who on occasions signified their feeling that they should have kept a particular child but did not translate this feeling into action. Another Islander stated that if a birth mother gave a child to another Islander with the intention of adoption, and then took the child back, 'you turn around and walk away from that person (in disgust)'. Information obtained from a further Islander was that the power of intense community pressure prevents a birth mother from attempting to take her child back. If the mother takes the child and tries to move away, 'the island grapevine travels fast' and the woman would be shunned by the Islander community wherever she went.

3) Adoption Occurs Frequently in Islander Society

i) Participant observation in the Torres Strait

The researcher found that most families on the outer islands were involved in adoption in some way. All families interviewed by the researcher in his social work role had adopted a child or had given a child to relatives in adoption. The researcher made contact with approximately one quarter of the population of each outer island. On Thursday Island the researcher spent most of
his time as a social worker dealing with cases involving traditional adoption. As the researcher was employed by the Department of Community Services, he was able to become professionally involved in the large number of adoption applications for legalisation continuously made to the Department.

iii) Survey of leaders - Queensland University Students

The University students were unsure of the percentage of Islander families involved with adoption and estimates ranged from 25% to 50%. There was widespread agreement that adoption occurred frequently and that most Islanders grew up with the concept of adoption as a regular aspect of Islander life. All of the University students were involved personally with adoption in varying roles.

iii) Survey of leaders - IINA Torres Strait Islander Organisation

All of the six IINA staff interviewed had personal family involvement with adoption and stated that adoption touches most Islander families. The IINA leaders stated that all Islander families had an interest in adoption and that it affects every extended family member.
4) There exists a reluctance to tell the child of his/her adoptive status

i) Participant observation in the Torres Strait

The researcher observed through interaction with Islanders that children were not told of their adoptive status. Islanders stated that the placement became unstable if a child were told and that, if the child found out accidentally when a teenager, the matter is acknowledged but not discussed.

The researcher was told of situations where an individual would become initially distressed at finding out the truth but then accept it, as adoption would not stand out as being 'too different' to the rest of the Islander community.

Islanders living on the outer islands believed it was bad manners to acknowledge a child as being adopted and that the fact of adoption should not be treated with overdue attention.

ii) Survey of leaders - Queensland University students

A generation ago Islanders in Brisbane and the Torres Strait were not told at all by their adoptive parents whether they were adopted. While the students agreed that Islanders in Brisbane are now more likely to tell children of their adoptive status
when the children reach adolescence, there are still many Islanders who find out they were adopted when they apply for a birth certificate. If the adoption was not legally processed and approved then the adoptive person discovers their birth family name by accident, and this can cause distress. This was the personal experience of one of the University students who was traditionally adopted but not legally adopted. After discovering that a close Aunt was really her birth mother, the student was initially shocked but did not develop any emotional problems. The student's adoptive parents and birth parents lived side by side in a village on an outer Torres Strait island and the student was raised with both her natural siblings and adoptive siblings.

Another student spoke of situations where Islanders were told during their childhood of their adoptive status and were made to feel that they were permanent members of their adoptive families. These Islanders had contact with their birth parents and understood the significance of their adoptions within the extended families. This student stated that the Islanders assumed their adoptions had been legalised and their surnames had been changed. When the adopted Islanders went to obtain birth certificates they were shocked to discover their original family names were still on the birth certificates. According to the student interviewed, some of the adopted Islanders believed they had been cheated by their adoptive parents and experienced an identity crisis and poor relationships with their adoptive parents.
There was general agreement amongst the Islanders interviewed that a child is not normally told of his adoptive status. The child may work it out for himself and the matter is not one for discussion with the adoptive parents. An Islander stated that the reason for this is that sex and adoption are private matters and they talked about if there is some necessity. If a child is told of his adoptive status, as is beginning to occur within Brisbane based Islander families, it is thought that the best age when a child begins to have some understanding is pre-adolescence and early adolescence.

Islanders indicated a possible insecurity over telling a child of their adoptive status with a general fear that the child may not wish to remain living with the adoptive parents. A badly handled adoption and poorly conducted telling of a child may cause instability and insecurity for both the child and the adoptive parents. One Islander told of the situation where an adopted teenage daughter, after being told of her adoptive status, wanted to live with her natural mother and change her surname. Another Islander told of a teenager who was adopted by parents in the Torres Strait with the birth parents now living in Brisbane. The teenage girl wanted to see city life and was using a return to her birth parents as an excuse. The majority
of Islanders interviewed were aware of situations where individuals were not told of their birth adoptive status and, after receiving their birth certificates, were shocked to find that they were legally known by a different surname.

5) There exists a variety of people who can adopt a child

i) Survey of leaders - Queensland University students

The students interviewed gave examples of three types of traditional adoption; grandparents, singles and couples.

Grandparents were particularly mentioned as the occurrence of adoption is high, especially on Thursday Island where young single girls become pregnant. Also girls wishing to leave home will become pregnant and give the child to its grandparent as a replacement for themselves.

Single people can adopt children. If a single person adopts a child, there is not the same pressure for that person to legally adopt the child. The single adopter is part of his/her own extended family and is able to share the parenting responsibility of the child with other members of the family. Couples who adopt children are generally extended family members. However, couples who are friends with the birth parents have been offered children to adopt. If a couple adopt
a child, whether they have children of their own or not, there is a desire to legally ensure that the adopted child is cemented into the adoptive family on a permanent basis.

iii) Survey of leaders - IINA Torres Strait Islander organisation

IINA leaders spoke of the variety of people who can adopt, and made specific mention of the role of grandparents in adoption. Grandparents traditionally play a significant role in deciding who is the most appropriate to raise the child as their own. Grandparents also frequently adopt children themselves, generally in situations where the birth mother is young, single and not in a position to care for the child on her own. Thursday Island has a high rate of teenage pregnancies and grandparent adoption is common as an appropriate method of ensuring care for the children.

6) Adoption is the same in Brisbane as in the Torres Strait

i) Survey of leaders - IINA Torres Strait Islander organisation

Islanders living in Brisbane have close contact with Islanders in the Torres Strait and there is continual movement through family visiting which keeps all Islanders in touch with Islander
customs and traditions. An Islander leader at IINA explained that there is no difference between Islander culture in Brisbane and the Torres Strait, and that traditional customs are essentially the same. The only difference between the customs is that 'in the Torres Strait Islanders carry water in a bucket for them to drink, in Brisbane Islanders drink it from a tap'. The meaning is that while the act is still the same (drinking of water) the means of bringing about the act have varied (a bucket as opposed to a tap).

7) There exists fragility in traditional adoption which can lead to custody disputes and the desire for legal security

1) Participant observation in the Torres Strait

Due to the involvement of the researcher with the Torres Strait Island Legal Service established on Thursday Island, contact was made with Islanders who made traditional adoption arrangements and had subsequently been distressed by requests from the birth parents for the child to be returned to them. On occasions children had been removed from the adoptive parents by force leading to the adoptive parents approaching the Legal Service for assistance to regain the child. Grandparent traditional adoption occurred frequently on Thursday Island due to the high proportion of teenage girls who become pregnant. The Legal
Service and the researcher dealt with cases where the birth mother had moved into a defacto relationship or marriage and was threatening to remove a child that was initially given to the Grandmother to raise. The researcher was unable to determine the proportion of cases of traditional adoption that led to insecurity and custody disputes, as he was exposed to a biased sample of unstable adoptions due to the nature of his professional position.

iii Survey of leaders - Queensland University students

One of the students interviewed stated that the reason for the instability of traditional adoptions was due to the weakening of respect for oral law. She stated that traditionally Islanders have relied on oral law which made clear which family an adopted child belonged to and where the child's identity lay.

Islanders on the mainland are more aware of the implications of Western written law than Islanders in the Torres Strait. The student interviewed explained that Islanders on the mainland and in the Torres Strait are aware of the legal security of a white adoption order and are also aware that an adoption order and accompanying new birth certificate gains formal recognition from white society. This recognition comes from employers, Social Security, sporting clubs and generally any white institution which requires an individual to prove one's identity by way of a birth certificate.
Consensus among Islanders interviewed was that Islander adoption is good for birth parent access and identity formation for the child but is becoming unreliable and insecure. There is a fear that the birth parent may wish to claim the child back after an adoption has been made.

Islanders wish to retain their traditional adoption practice and to use white law if needed to secure their practice. The reason for needing white law may be legal security and a change of name through the issuing of a new birth certificate. There is a strong desire by Islanders to have their traditional adoption practice legalised as 'adoption' rather than as a guardianship or custody arrangement. An Islander leader explained that the intention of traditional adoption was for the adoptive family to receive the child with the 'full spirit' and that the child become a permanent member of the adoptive family. He stated that to receive a child traditionally and be given a guardianship order was like receiving the child with 'half a spirit', while to be given a custody order was like 'an empty bottle.' An Islander woman who wishes to adopt a child stated that the 'act of adoption' signifies to others (white community and Islander community) that the child has become part of another family. Her attitude to legal guardianship was
negative, stating that guardianship meant 'just caring and providing' while 'in adoption the child is really yours.'

Other Islanders interviewed agreed that guardianship orders were not the same as receiving the wider society's sanction of an adoption order. Some believed that if a guardianship order was made and the birth parents did not like the way the adoptive parents were caring for the child, they may try and take the child back. The parents who had the child in their care through traditional adoption would not go to a Court to fight for custody or guardianship if a birth parent wanted the child back. Islanders believe it is bad to fight for a child and would reluctantly let the child go. While there was some uncertainty about whether Islanders in Brisbane would not fight to keep a child they had traditionally adopted, it was stated that in the Torres Strait parents who were given legal guardianship would return a child to the birth parents if bickering arose. This would be because the birth parent is perceived as being the 'real parent' and guardianship meant that the caregivers were 'only caring and providing for the child'.

Islanders interviewed conceded that legal guardianship may be a possible option for grandparents caring for grandchildren as it provided them with legal security. However, the grandparents would know that the child 'was not really theirs'.
In general, Islanders view adoption as providing security and permanency while legal guardianship is not secure and the care of a child could be challenged. An adopted child is felt to be truly a part of the adoptive family. However, if the order is legal guardianship, then the child is only a part of the adoptive family. An Islander woman stated that a child may think 'you are only my guardian, not my parent'. Islanders living on the mainland are aware of the legal security and community perception of an adoption order and want the compromise of obtaining a child through traditional custom with the provision of the security of an adoption order.

Islanders in the Torres Strait are experiencing continual insecurity with their traditional adoption. A Islander woman interviewed told the researcher 'you will become a saint in the Torres Strait if you can stop this insecurity.'
B. CASE EXAMPLES:

The six case examples each highlight various aspects of Islander traditional adoption practice. Following the case example is a summary of the major aspects of the adoption process. Four of the case examples involve more than one adoption and the final two case examples are of Islanders who have rejected traditional adoption in favour of white adoption.

1) CASE ONE:

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<td>M ———— D</td>
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Female

□ Male

D Adopted
Motive for Adoption

D and N are an Islander couple who had three girls and no boys. They believed their family was completed and were not seeking to adopt a boy from their relatives.

The birth mother, M heard that N would have liked a boy and when M became pregnant she surprised them by showing them the baby boy when she came to visit. She then told them the baby was theirs.

Relationships

M is a second cousin to D, 27 years of age, and not married. She lives in the Torres Strait but frequently visits her relatives who live in Brisbane.

Process of the adoption

After telling D and N that the baby boy was theirs, M returned to the Torres Strait. D and N were very excited, bought baby clothes and equipment in Brisbane and paid for M and the baby to come to Brisbane. M kept the baby in her room and fed him for the last night. D went into the room to pick up the baby showing by agreement that from that day onwards the baby was hers.
iv) Legal security

A couple of days after receiving the baby, D and N went with M to the Aboriginal and Islander Child Care Agency to inquire as to the process of legalising the traditional adoption. N had worked for the Aboriginal Legal Service as a field officer and was aware of the necessity for legal sanction of their adoption. N's brother was adopted from the S family and grew up thinking he was a G. He went to obtain his birth certificate when he was to be married and found out his surname was still S and not G. He subsequently became very upset and there was an argument between the families. N did not want this situation to arise and were told by AICCA to wait 2 years before they were eligible to apply for adoption.

After 2 years had passed, N and D went to the Department of Family Services to apply for adoption thinking the process would be a formality. They were told that the white Adoption Act was not appropriate for Islanders as it would be imposing white standards on them. D and N were sent to see a Solicitor to apply for legal guardianship or legal custody. They did not proceed with this as it was an adoption order which they desired. They were confused as to why their traditional adoption was not legalised as an adoption.
CASE ONE SUMMARY

a) Child was given to the adoptive family by an extended family member who was a single mother.

b) Child was given to balance the sexes in the adoptive family.

c) The adoptive parents and birth parent sought legalisation of the adoption.

d) The adoptive couple were advised to seek a legal guardianship and custody order.

2) CASE TWO:

2.a Situation One:

Islander | Islander | White
-----------|----------|--------
(1) cousins (adopted)
(2) half sisters (biological)

[Diagram showing family relationships]

Male
Female
2.b Situation Two:

Islander (1) Niece/Aunt
(2) Adoptive Mother/Daughter

Islander White

2.c Situation Three:

Aboriginal Friends Islander White
Aboriginal B J

adopted C
Motive for Adoption

F is an Islander woman married to P who is white Australian of European descent. F and P are unable to have children and have adopted 3 boys all through differing circumstances. F did not seek to find children to adopt and had two babies offered to her to keep as her own. The third baby was born to a 15 year old Islander girl related to F, and F assumed the care of the baby due to the mother's inexperience.

Relationships:

a) Situation One

The birth mother N was traditionally adopted by F's Aunt, L and her husband T. Consequently, F and N were cousins through traditional adoption and F discovered that biologically they were half sisters as they had the same father but different mothers.

b) Situation Two

The birth mother M was a niece of F and was given to F when F was 18 years, unmarried and living at home with her parents. M's birth parents were F's brother and his wife who offered the child to F saying, 'this baby is yours.' F's parents helped raise M but M 'belonged' to F.
c) Situation Three

The birth mother J was an Aboriginal and not related to F. J and F were friends who lived in a close proximity to each other.

iii) Process of Adoption

a) N had given her first child to her adoptive mother L and L had informed her that she did not wish to adopt any more of N's children. F was living on Thursday Island and took N in as she was having difficulties. F was married to P and N was very grateful for the care she received from F and P. When N became pregnant again she wished to thank F and P by offering them her child. F stated that she 'supported the child in the stomach' while N was pregnant and F took the baby from the hospital. F discovered that N's adoptive mother, L had arranged for other relatives to take the baby. After a family meeting with all parties concerned, it was decided that F and P were to keep the baby.

b) F and P moved to Brisbane with the adopted baby from N and were told by F's parents that F's 15 year old adopted daughter was pregnant on Thursday Island. F went to Thursday Island and brought M back to Brisbane to care for her until the baby was born. When M became pregnant, F's parents contacted M's birth parents who were F's brother and his wife. The birth
parents stated that M belongs to F and that F should be notified of the situation. F decided that she would keep the baby when it was born and obtained consent from her mother and M. M remained with F and P for a few years as a boarder while attending business college. She was paid to help care for the young children and to help with housekeeping. No disputes arose over who was the 'real mother' of M's baby.

c) F and G were friends living in close proximity to each other. J told F that she was pregnant and that her husband B did not want anything to do with the child. After giving birth to the child, J cared for him for 3 days before being told to 'get him out' and 'leave him on the street'.

J asked F is she would like to have the baby. F told J that 'if I take this child he's mine - he can't go back.' F was concerned that J was not an Islander or a relative and that she may return one day to claim the child. After giving the baby to F, J would visit as an Aunt and then leave.

iv) Legal Security

a) At the time of the traditional adoption F and N did not think of legalising the outcome. It has only been recently that the child L, who is now 18 years, wished to obtain a drivers licence and discovered his surname on the birth certificate was
not the same as F's. Consequently F has explained to L the circumstances of the adoption and wishes to legally adopt L so that he can truly feel part of the family. F did not see the need to tell L about the adoption when he was younger. L wants his surname changed on his birth certificate.

b) At the time of the traditional adoption of B, M and F did not consider legalising the adoption. B is currently aware of the legal predicament and insecurity of L and asked F if he was adopted. F explained the circumstances to B who is now 16 years old and B also wishes to have a new birth certificate issued with his legal surname representing his psychological identity. Also B perceives legal adoption as a way of F and P showing that he really is a part of their family. F has contacted M who stated she is prepared to sign adoption papers.

c) As L and B were becoming aware of their legal identity and wishing to change it to their perceived identity, C, who is 16 years old asked if he was adopted as he was aware that he had different physical features to his brothers. F explained each boy's circumstances to them as a group and the boys all share the same desire, that they want F and P to legally adopt them and they want their birth certificates changed.
CASE TWO SUMMARY

a) Situation One

1. Child offered to adoptive couple by birth parent.

2. Birth parent and adoptive parents were related within the extended family.

3. Adoptive child was not told of his status when growing up.

4. Adoptive couple desire to legally formalise the adoption to provide a sense of security and belonging.

b) Situation Two

1. Child was taken by the adoptive grandmother.

2. Consent was given to the taking of the child by the birth mother and the extended family.

3. The birth parent and adoptive mother were related biologically and through traditional adoption.

4. Adoptive child was not told of his status when growing up.
5. The adoptive child requested that his traditional adoption be legalised when he was an adolescent and discovered his status.

6. The adoptive parents and birth parent both desire to legally formalise the adoption.

c) Situation Three

1. Child was offered to the adoptive couple by an Aboriginal birth parent who was a family friend.

2. The adoptive parents accepted the child on the condition that the placement was permanent.

3. The adopted child was not told of his status when growing up.

4. The adopted child requested that his adoption be legalised upon discovering the truth of his status.
3) **CASE THREE:**

3.a **Situation One:**

3.b **Situation Two:**
Motive for Adoption

S was not married and was offered a child to raise when she was 21 years of age. The child P was two years old at the time S received the child. S did not know that she was unable to have children. S received her second child a 8 years later when she was married to L. She was offered the child when the child was 1 year old as the birth mother knew S could not have children.

Relationships

a) The birth mother R is an older sister to S and they were in regular contact with each other. At the time of the adoption R was living in Townsville and S was living in the Torres Strait.

b) The birth mother B is the youngest sister to S and maintained ongoing contact with S. At the time of the adoption S was living in Brisbane and B in the Torres Strait.

Process

a) R was married to Z and had four children to the marriage. When Z died R had a relationship with another man and became pregnant with P. R gave her four children away through traditional adoption when she was having the relationship. She gave the first child to her mother, the second to an Aunt and
Uncle and the remaining two were given to Z's parents to raise. R became pregnant in the short term relationship before entering a permanent relationship with T. T did not want the baby, P as he was not the father.

Consequently, R asked her younger sister S if she would like to permanently care for P.

b) B was 18 years of age, not married and living on Thursday Island when she gave birth to A. At the time B had another child and was finding it difficult to cope with two. B asked her mother to tell S when she next saw her that she could go to Thursday Island go to collect A. B knew that S wanted a baby, preferably a boy, but B decided to keep her boy and give her girl to S. S went to Thursday Island to collect A, stayed a couple of weeks and brought A back to Brisbane.

iv) Legal Security

a) At the time of the adoption S did not think about formal legalisation as she felt confident that a child from her sister would not become the subject of a dispute. The adopted child P is now 21 years of age and sees R as an Aunt and S as her real mother. P found out she was adopted when at High School on Thursday Island. She was living for a time with her grandparents and R's oldest child, who was traditionally adopted by the grandparents, told P he had recently found out that he
was adopted. P was hurt at first but did not dwell on it and did not hold any resentment towards S for not telling her.

P has changed her name by Deed Poll to S's maiden name, which she believed was her's psychologically while she was growing up. P has not used L's surname as he married S when P was 12 years of age.

b) S and B did not formally legalise the traditional adoption of A at the time of the handing over of the child. S has not told A she is adopted and is waiting to tell A 'when the time is right'. A is now 12 years of age. B would like A to go to Thursday Island for a holiday and S is concerned that B will tell her of the adoption. A and B have had contact with each other in Brisbane and the Torres Strait and A sees B as an Aunt. S is also concerned that someone on Thursday Island will tell A the truth as happened with P, and S is feeling insecure about A's reaction to the knowledge of her adoption and is regretting that she did not legally adopt A.

CASE THREE SUMMARY

a) Situation One

1. The adoptive parent was single.
2. The child was offered to the adoptive parent by a relative.

3. The child was not told of her status by the adoptive parents and found out accidentally when an adolescent.

4. When the child became an adult she changed her name to the 'psychological name' she had when growing up.

5. The adoptive parents did not initially legalise the adoption as they felt the child would not be subjected to custody disputes.

b) Situation Two

1. The child was offered to the adoptive parents by a relative who was aware of their infertility.

2. The child has not been told of her adoptive status.

3. The adoptive parents desire legalisation of the adoption to feel secure enough to tell the child of her adoptive status.
4. CASE FOUR:

4.a Situation One:

Aboriginal  Islander  Cousins  Islander  Islander

M  D  A  W

Female

Adopted

4.b Situation Two:

Islander cousins  Islander  Islander

T  A  W

Adopted.
i) Motive for Adoption

A and W are not able to have children of their own and were offered a child by a couple, (Aboriginal woman and Islander man) who were staying with them. The birth mother knew that A could not have children and gave the baby to A and L as a gift. A and W adopted a second child after intending initially to foster the child to help out the birth parent who was having difficulties coping. The birth parent T was aware that her child had become attached to A and W and decided it was best to offer the child E for adoption to A and W.

iii) Relationships

a) The birth mother M is an Aborigine who was in a relationship with D who is a Torres Strait Islander. D is a cousin to A and both D and M were sharing a house with A and W.

b) The birth mother T is a Torres Strait Islander and a cousin to A's mother. T was not living in a marital or de facto relationship and lived for a while in the same block of flats in Mt Isa as A and W.

iii) Process of the Adoption

a) M was living with A and W and had two children of her own. During the time she was staying with A and W she became
pregnant and said to A, 'the baby I am carrying is yours.' A was aware that M was not a relative but trusted M and felt she would not take the baby back. The baby was offered when M was six months pregnant. A and W brought clothes for the baby and M was happy to see them preparing for the child.

b) A and W took E from T after they realised T was having difficulties and offered to 'grow E up' saying that 'she will still be yours' to T. A and W felt sorry for E and thought they could care for her for about six months. T did not provide any financial assistance for E's care and, when she saw the strong relationship later on that E had developed with A and W, she decided to let E be adopted permanently. Subsequently T offered her eldest child for adoption to P and E. E is a cousin to A.

iv) Legal Security

a) Following the adoption of S, D and M moved to Brisbane. D subsequently left M when M was pregnant and she is now living in another defacto relationship. M has very little contact with S and S refers to M as Aunty. S is now 12 year old and is not aware of her adoption. M has asked A and W if S's birth certificate has been changed. After the adoption took place, M went to the Department of Children's Services with A and W to fill in an adoption application and consent. They understood that their traditional adoption would be legalised but nothing
CHAPTER FIVE

happened. A and W stated that they 'want to be S's real legal parents, not just guardians.'

b) After T decided to allow A and W to adopt E she agreed to fill out paper work for adoption but the promise was not carried through. E is now 8 years of age and aware that T is her birth mother but she does not want to live with her. A and W are convinced that E is 'their' child after observing E's reactions to T and wish to legalise their adoption of E to make her feel secure.

CASE SUMMARY FOUR

a) Situation One

1. The child was offered to adoptive couple due to their infertility.

2. The birth father and adoptive mother were related.

3. The child had not been told of her adoptive status.

4. There existed a desire by the adoptive parents and birth mother to legalise the adoption.
b) Situation Two

1. The child was initially fostered by the adoptive parents with the consent of the birth mother.

2. The birth mother decided to offer the child to the adoptive parents on a permanent basis.

3. The birth mother agreed to legalise the adoption but did not follow through.

4. The adoptive parents desire the adoption to be legalised to provide them and the child with a sense of security.

G. CASE FIVE - (Rejection of Traditional Adoption):

- Male
- Female

[Diagram showing relationships]
Motive for Adoption

T is a Torres Strait Islander woman married to D who is an Aborigine. T and D are unable to have children of their own and have chosen to adopt a child through the formal channels provided by the Department of Family Services.

Relationships

The birth parents of baby D lived in Mackay with the father being a Torres Strait Islander and the mother Australian. Under the Queensland Adoption Act T and D were given non-identifying information on the birth parents of D. They may eventually meet the birth parents once D turns 18 years of age. A contact register exists in Queensland where the adoptive parents, birth parents and adopted child must all consent to reunion.

Process of the Adoption

The Department of Family Services finds it difficult to place infants of Aboriginal or Torres Strait Islander background with adoption applicants of similar heritage. Aboriginal and Torres Strait Islander infants who have been the subject of adoption consents are considered children with 'special needs.' An attempt is made by the Department of Family Services to find an Aboriginal or Islander family who are suitable adoption
applicants. Once an adoption consent was signed for D the researcher, acting in his professional capacity, approached IINA, a Torres Strait Islander organisation, and asked if there were families who would be prepared to adopt a child of Torres Strait Islander background. T and D were nominated by IINA and an assessment was undertaken by the researcher on behalf of the Department as to the suitability of T and D to meet the criteria to become adoptive parents.

Approval was given following a written assessment by both the social worker and the applicants' satisfactory medical reports, character references, and a police record check.

T and D travelled to Mackay to collect baby D from a white foster mother who was temporarily the caregiver. Twelve months after receiving baby D an adoption order will be made giving T and D the legal rights to care for D as though she had been born as a product of T and D's marriage.

ivl Legal Security

T and D chose to adopt a child through the white legal system rather than a traditional adoption from a relative or a close friend due to the legal insecurity inherent in the traditional practice.
T has cousins who have traditionally adopted children and is aware that they feel some insecurity when the birth mothers are around. T is aware of the process of Islander adoption but chose the white method for confidentiality and legal security. She is accepting of the anonymous nature of white legal adoption in Queensland and feels that the baby will be 'more like hers' than if she was given a baby by a relative. T is not sure how she will tell her child D that she is adopted. Although culturally it is not the practice, she has had to make a commitment to the Department of Family Services to tell the child as young as possible, which is in keeping with the Department's policy. However, T knows that when D is told she will not know the identity of her birth mother and, more importantly, that the birth mother will not interfere with the placement. T stated that she preferred the security of a 'closed' adoption over the insecurity of a traditional 'open' Islander adoption.

CASE SUMMARY FIVE

a) There was no identifying knowledge as to the identity of the birth parents.

b) The couple applied to a Queensland Government Department to adopt due to their infertility.
c) The adoptive couple received legal security to their adoption and were issued with a new birth certificate for the child.

d) The adoptive couple preferred the security of white adoption to the insecurity of traditional adoption.

6. CASE SIX - (Examples of failed traditional adoption arrangements)

6.a Situation One:

6.b Situation Two:
6.c Situation Three:

Aborigine  Acquaintance  Islander  White

| D | ----------- |
| C | G |

i) Motive for Adoption

C is a Torres Strait Islander woman married to G a white Australian. C and G have two teenage children of their own and wish to have more children. However, for medical reasons C is not able to fall pregnant. After a series of disappointments with promised traditional adoptions that did not eventuate, C and G have applied to the Department of Family Services to adopt a child of Islander background.

ii) Relationships

C and G have been in three situations where they thought they would be receiving a child.

a) A was a 16 year old single girl living in Mackay who became pregnant. A's father and C were first cousins.

b) B was a 20 year old single girl living on Thursday Island. The father of the child was W who is a cousin to C.
c) D was an Aboriginal living in Brisbane who became pregnant and wanted to give the baby to C's sister. D was sharing a flat with C's sister and they were good friends.

C and G are aware that adopting through the white legal process means that they will not know the identity of the birth parents. G is happy with this but C believes that the birth parents should be involved in selecting who will raise the child. C stated that if identities and relationships were not clear and kept confidential, then an adopted child may end up accidentally marrying a cousin which is undesirable.

iii) Process

a) When A became pregnant, her father, L said she was too young to keep the child. He wanted the child to be adopted and to be kept within the extended family.

C and G were offered the baby as L stated he and his wife could not afford to take the child. C and G agreed to the adoption and A was satisfied with the decision saying she would like to visit the child on occasions. However L died suddenly not long before A gave birth to a baby boy. C and G had bought baby clothes and prepared a room in anticipation of receiving the child. When C went to visit A in hospital she saw her breast
feeding the baby and knew that A had changed her mind since the death of L. A's family did not force her to proceed with the adoption and A's grandmother thanked C for not pressuring A to hand over the baby. C gave all her baby clothes to A and they have kept in touch since with no bitter feelings.

b) When B became pregnant on Thursday Island, C and G were living in Brisbane and C was told by her mother that B wanted to give the baby to someone for adoption. C contacted B and an agreement was made for C and G to adopt the baby. However, C's cousin was the father of the baby and he was married to someone else. His wife beat up B out of jealousy and B decided not to give the baby to someone on the baby's father's side of the family. The baby was subsequently adopted to B's cousin living on an outer Island in the Torres Strait.

c) After D gave birth she offered the child to C's sister M to raise. M did not wish to raise the child and suggested C. C and D met and D agreed for C to have the child. However when C insisted that the adoption be legalised D did not agree and wanted C to just look after the child. C could not agree to an open-ended arrangement.

iv) Legal Security

C and G have had three disappointments with traditional adoption
and are aware of the insecurities of the Islander customary practice. C stated that the Islander method of adoptive parent selection is good but that the receiving of a child places the adoptive parents in a legally insecure position. C stated that unless Islanders are able to legally secure their traditional adoption, adoptive parents cannot feel an adopted child is really theirs to keep. C believes that all through the child's life the adoptive parents would worry that the birth mother may cause problems if there was a disagreement or change in circumstances. C explained that as Islanders continue to move to the mainland of Australia they are exposed to the legal security and community understanding of the outcome of white adoption laws. C would like to adopt through the Island custom as she believes the truth about identities of the birth family should be known. However, she is forced to seek adoption through the Department of Family Services as there is a guarantee of legal security and a certainty that the child is perceived by others as belonging to the adoptive family.

CASE SIX SUMMARY

a) Situation One

1. There existed the intention of traditional adoption by the offering of the child by an extended family member.
2. The decision to adopt the child was reversed by the birth mother due to a change in circumstances.

b) Situation Two

1. There existed the intention of traditional adoption by the offering of a child through the extended family network.

2. The decision to adopt the child was reversed by the birth mother due to a change in circumstances.

c) Situation Three

1. The adoptive couple stated their intention of permanence to the proposed traditional arrangement.

2. The adoptive couple stated their desire for legal security over the proposed traditional arrangement.

7. Summary of findings on the nature of Torres Strait Islander adoption

Islander adoption reflects the societal values of reciprocal obligation.
ii) Adoption means permanent care as opposed to temporary care.

iii) Adoption occurs frequently in Islander society.

iv) There exists a reluctance to tell a child of his/her adoptive status.

v) There exist a variety of people who can adopt a child.

vi) Adoption is the same in Brisbane as in the Torres Strait.

vii) There exists fragility in tradition adoption which can lead to custody disputes and the desire for legal security.

viii) Case examples One to Four highlight

a) Children offered for adoption are within the extended family on most occasions.

b) A reluctance to tell the child of his/her adoptive status.

c) A desire for legal security of traditional adoption through Queensland adoption legislation.
ix) Case examples Five and Six highlight a move away from the insecurity of traditional adoption to the security of Queensland legal adoption.

C. THE CULTURAL ASSUMPTIONS AND IMPACT OF THE QUEENSLAND ADOPTION LEGISLATION REGARDING TORRES STRAIT ISLANDERS

This section will begin with the Queensland Government policy toward Islander adoption. The implications of the Queensland adoption legislation for Torres Strait Islander will be covered under five theme headings. Legal alternatives to adoption will be briefly covered. The conclusion to the Section is a comparison of the Queensland and Victorian adoption legislation considering the sections that make special reference to Torres Strait Islanders and the outcome of an adoption order.

1) Queensland Government Policy Toward Islander Adoption

ii) Confidentiality Policy Files

The researcher obtained information from Departmental files while working as a member of the Department of Family Services. Permission was given to the researcher by a senior member of the Department. The policy files on Torres Strait Islander adoption contained documentation of ten years of Departmental correspondence on Islander adoption.
The Department of Childrens Services (now Family Services) had decided in the late 1970's to withdraw their adoption service to Torres Strait Islanders until an appropriate understanding could be gained of the Islanders' traditional practice. By 1980 there was a backlog of 2000 Islander adoption applications in the Torres Strait. The Department of Aboriginal and Islander Advancement had had an office on Thursday Island with full administrative responsibility of all Islander matters for the past 70 years. This Department claimed that the Department of Childrens Services were practising racial discrimination by deciding not to process Islander adoption applications. The Department of Childrens Services argued that legal adoption orders under the Queensland Adoption Act may not meet the needs of Island people.

Senior members of the Department of Childrens Services visited the Torres Strait in the early 1980's and stated that the lack of knowledge of Islander culture was the reason for the delay in the assessment and processing of their adoption applications. Correspondence and memos on file indicated that the Department wished to increase its awareness of Aboriginal and Islander cultures. A senior member of the Department, after a trip to the Torres Strait, wrote that he believed that 'Islanders wanted the permanency of adoption rather than legal guardianship.' Further documentation stated that each application for adoption should be considered within its cultural context to see if it is
appropriate for an adoption order. It was further stated that adoption orders were required to prevent intra-family feuding over custody disputes of children when they became older. A report on file indicated the permanency of an Islander adoption and the intention that the adopted child becomes the child of the adoptive parents and does not return to the birth parents.

A recommendation was made to not assess Islander applicants by white criteria but rather within the context of the society in which their traditional adoption occurs. It was stated that a new policy needed to be formulated on Islander adoption incorporating what Islanders understand by adoption and what they want from the Department of Childrens Services. A letter from the Department of Aboriginal and Islander Advancement to the Department of Childrens Services explained that Torres Strait Island Councils were aware of the implications of adoption and that this was the form in which they wished to obtain legal support for their practice.

In the early 1980's the Department of Childrens Services raised the possibility of developing an Aboriginal and Islander specialist unit which could help develop knowledge leading to appropriate policies for servicing Aboriginal and Islander people. It was decided that the best long term solution to the difficulties with Islander adoption applications is for staff to receive specialist training in Islander cultural matters.
Pressure was still being applied to the Department of Childrens Services from the Department of Aboriginal and Islands Advancement with the statement that unless all adoption applications were assessed and processed, Islanders were being discriminated against.

In 1985, the responsibility for handling Islander adoptions was regionalised to the Department of Family Services, North Queensland. The Department of Aboriginal and Islander Advancement was renamed the Department of Community Services and was slowly being dismantled. A policy decision was made in North Queensland that the goal for Islander adoptions was that no adoption orders be made unless an appropriate assessment be undertaken. In 1986 a further policy decision was made that Islander adoption applications were to be treated no differently to any white adoption application by a relative or non-relative except for 'modified procedures suitable to Islander culture.'

iii Public Policy Document

The Department of Family Services produced a policy document available to the public in 1987 which outlined the Queensland government's attitude to Aboriginal and Islander fostering and adoption.
Queensland Government stated policy is that one law applies to all and this is described as 'legislative equality'. There is an acknowledgement of customary practices of indigenous people, but a distinction is made between an acknowledgement and the legal relationship an individual has with the State. The Queensland policy supports adoption legislation which ensures indigenous factors atypical of the State norm are taken into account when placing a child. The document also states that the Queensland Government supports and strengthens the variety of cultural characteristics which constitute family life. The purpose of the public document is to prevent the movement of black children into white families and the overall goal is to prevent black children from entering the formal welfare system. There is no distinction in the document of cultural differences between Aboriginals and Islanders in relation to fostering and adoption. A commitment exists to training staff in the Department of Family Services on Aboriginal and Islander culture, family networks and 'customary law.'

Survey of Key Workers

The key workers interviewed made comments on the Queensland Government policy towards Islander adoption. They agreed that Islanders should retain their traditional adoption practice and that, within their roles as Queensland Government workers, they did not wish to interfere with Islander customs. One of the
workers stated that 'there is one law for all in Queensland' and that 'the Government intended to treat everyone equally within the law.' He supported the Queensland Government's policy of applying the criteria of the Queensland adoption legislation to Torres Strait Islanders. Another worker could see the difficulty in applying the white criteria of adoption to Torres Strait Islanders, but explained that the Queensland Government had to be consistent in its treatment of indigenous matters. She felt that if Torres Strait Islanders were given special legal consideration over their adoption practice, it would be the 'thin edge of the wedge' in setting precedence for recognition of traditional law. She stated the Queensland Government did not want to establish a process by which indigenous people could make claims for 'separatist' legal status. A particular concern of the government is indigenous claims for land rights.

iv) Summary of Queensland Government Policy Toward Islander Adoption

a) The Department of Family Services intended to service Islander adoption within its cultural context and indicated a willingness to be flexible regarding Islander needs.

b) The policy decision to treat Islander adoptions the same
as whites was inconsistent with the Department's original intention.

c) The Queensland Government is prepared to consider cultural and indigenous factors in supporting family life.

d) The Queensland Government workers believed Islanders should retain their traditional adoption.

e) The Queensland Government considers that Islanders should not receive special legal consideration.

D. IMPLICATIONS OF THE QUEENSLAND ADOPTION LEGISLATION FOR TORRES STRAIT ISLANDERS

1. Professionals are necessary to assess adoption applications

1) Participant Observation in Cairns and the Torres Strait

When the researcher worked in Cairns and the Torres Strait as a professional who administered the Adoptions Act, there existed the assumption that all adoptions in Queensland were the legal responsibility of the Department of Children's Services.
Incorporated within this responsibility was the belief that the adoption applications were to be assessed by professional social workers who had specific training in adoption issues. At the time the researcher was a participant observer, a dispute existed between the Department of Children's Services and the Department of Aboriginal and Islanders Advancement as to the 'assessment' of Torres Strait Islander adoption applications. The D.A.I.A. were processing all Islander applications for adoption in an administrative manner and staff from that Department believed that the white notion of 'assessment' did not apply to Islanders. Professionals within the Department of Children's Services believed that Islanders were receiving a 'second rate service' from the Queensland Government by having members of a Department which had no expertise in adoption processing their applications. The D.A.I.A. claimed that they were concerned with the outcome, which was an adoption order, rather than with the process, while D.C.S. were concerned that Islander adoption applications were not being properly processed.

iii) Survey of Key Workers

The key workers interviewed stated that 'assessment' is necessary for all adoptions. The Adoption Act states that the Director-General of the Department of Family Services must be satisfied that the adoption applicants meet certain standards
which are determined by the Department. The key workers felt that as professionals they had developed 'standards' which should not be compromised and that it was their responsibility that these standards were maintained when processing adoption applications. Before people could become adoption applicants they had to meet 'eligibility criteria' which were the entry point to the concept of standards. As the key workers interviewed had dealings with Islander adoption, they believed that appropriate assessments should be made of all applications to adopt.

The key workers who had involvement at a policy level with the Department of Aboriginal and Islander Advancement stated that there was a debate over whether white professional assessments and requirements were appropriate for Islanders. The purpose of the key workers adhering to professional standards was stated as being the most appropriate method of selecting the best applicants for an adoptive child.

2. Adoptions in Queensland are closed and confidential

1) Participant observation in Cairns and the Torres Strait

The researcher was involved in his professional capacity in assisting the Queensland Government process Torres Strait Islander adoption applications. At the time of the researcher's
involvement there was a dispute between the Department of Childrens Services and the Department of Aboriginal and Islander Advancement over the handling of the applications.

Part of the processing of Islander adoptions was to ensure that confidentiality existed so that members of the Islander community could adopt a child without the rest of the community knowing. However, as Islanders were adopting children from relatives and close friends, there was a general awareness by the different Island communities in the Torres Strait as to which Islander received a child from which relative and why the adoption took place. The Adoption Act does not have any provision for open adoptions and there was concern among professionals from D.C.S. that Islanders were breaking the secrecy provisions of the Adoption Act. Staff from the D.A.I.A. were aware of the openness of Islander adoption and made no attempt to provide a confidential adoption service.

III Survey of Key Workers

The notion of confidentiality is integral to the Queensland Adoption Act and all of the key workers interviewed saw it as their legal responsibility to ensure that confidentiality was maintained. Key workers were concerned that Islanders were conducting 'illegal' adoptions when they broke the confidentiality of closed adoption to choose the adoptive parents and retain access.
Analysis of Queensland adoption legislation

"Within the confines of current confidentiality requirements, adopted persons, adoptive parents and birth parents have a right to expect non-identifying and written information about the social and medical background of the adopted child. Under current legislation, contact may occur between all parties once the child has reached the age of 18 years and all parties have placed their names on the Adoption Contact Register." (The Adoption Programme, Department of Family Services document; 1986) Section 59(4) (d) of the Adoption of Children Act 1964 - 1986 provides the authority for the disclosure of non-identifying information. Where the Director-General is satisfied that the disclosure is for a reasonable purpose in the circumstances, and will not lead to the identification of the party to an adoption in respect of whom the disclosure is made, certain members of the Department of Family Services are authorised to disclose that information.

The only concession to identifying information in the Adoption Act is in 'extraordinary circumstances.' On application by the Director-General of the Department of Family Services, the Supreme Court may make an order authorising disclosure of identifying information if this is necessary for medical purposes.
3. Adoption is to be 'in the best interests of the child'

il Participant observation in Cairns and the Torres Strait

During the researcher's period of time in Cairns and the Torres Strait conflict existed between two Queensland Government departments over Islander adoptions.

While the Department of Childrens Services believed that a central concept to adoption is to ensure the 'best interests of the child,' the Department of Aboriginal and Islander Advancement operated on a basis that adoption orders were essential for the community as a whole. The D.A.I.A. was based on Thursday Island and under community pressure to continue processing the Islanders' adoption applications. Up until the mid 1970's, Islanders had been receiving an administrative service, having their adoptions legalised as a matter of routine.

Staff from D.C.S. were aware that on occasions there had been problems with an Islander adoption, and adopted children were sometimes allegedly treated differently to natural children. The concept of 'best interest of the child' was not being addressed by processing adoption applications at the request of the adult Islander community. However, D.C.S. staff were faced with a cultural gap of not knowing on what basis they were to assess the child's best interests.
iii) Survey of Key Workers

The notion of 'best interests of the child' is tied to the responsibility key workers felt when ensuring that professional standards of eligibility and assessment of applicants were maintained. One key worker stated that professional assessments were needed to determine the best interests of the child. She stated that 'if assessments are good enough for whites, then they are good enough for blacks' and that one should 'forget the argument of culture' when applying standards. The key worker believed that all children being placed apart from their birth parents required a mediator to act on their behalf to ensure they received the best possible placement. Key workers were in agreement that it is in the child's best interest to be told of their adoptive status as young as possible. Concern was expressed that Islanders were reluctant to tell their adoptive children of their status. A worker stated that this reluctance was 'not good enough' and that the children's need for the truth was being ignored.

iii) Analysis of Queensland adoption legislation

The Department of Family Services is the sole adoption agency in Queensland and outlined are some of the selected principles and values of the Department's adoption programme:
a) The State has a responsibility to protect children who cannot be cared for by their own families, thereby ensuring their maximum opportunity for development and self realisation in society. All adoption processes should therefore be regulated and monitored by means of appropriate legislation.

b) Children need to be told of their adoption, and to be given non-identifying information about their birth parents, so as to develop a trusting relationship with their adoptive parents and to assist in the resolution of the identity crisis which often occurs in adolescence.

c) Adoption is a process which engages the needs of three parties:

- the child
- the birth parents; and
- the adoptive parents.

Care must be taken to balance the interests of these parties and where conflict occurs, the well being and interests of the child must be of paramount consideration.
4. Adoption destroys old legal ties and recreates new ones

i) Participant observation in Cairns and the Torres Strait

As Islanders were applying to adopt children from a wide range of relatives, the D.C.S. believed that Islanders were not aware that the legal relationships between the parties involved were permanently altered. Concern existed that this change in legal relationships would cause confusion amongst Islanders. The birth parents had no legal right to the child once a Queensland Adoption Order was made and there was no provision legally for access visiting by the birth parents to the child. Staff from D.C.S. were aware that access visits took place throughout the child's life and were concerned that this was 'illegal'.

iii) Analysis of Queensland adoption legislation

Adoption is defined as a process which provides a permanent family for a child who can no longer live with his birth family and provides for the child legally, socially, and psychologically within the adoptive family. Section 28 of the Act states that the effect of adoption is that:

a) the adopted child becomes a child of the adopter or adopters, and the adopter or adopters become the parent or parents of the child as if the child had been born to the adopter or adopters in lawful wedlock; and
b) the adopted child ceases to be a child of any person who was a parent (whether natural or adoptive) of the child before the making of the adoption order, and any such person ceases to be a parent of the child.

5. Adoption by a relative is to be discouraged

i) Survey of key workers

Islander adoptions occur between relatives and close friends. Islanders have a wide definition of 'relative' which includes distant cousins and close friends who take on the status of a relative. The Adoption act defines 'relative' as being the immediate kin and extends the definition to include grandparents, aunts and uncles, sisters and brothers. The key workers interviewed who were involved in policy development in servicing Islanders stated that a decision was made that 'relative adoption' was to be according to the white definition of 'relative'. The workers believed that Islanders should be treated 'the same as whites' and no special consideration be given to their cultural difference. The white definition of relative is based on the nuclear family while the Islander definition is based on the extended family. The key workers stated that the Department of Family Services was discouraging relative adoption from the white and black community as adoption alters natural family legal relationships. The workers were
concerned that Islanders were adopting children from birth parents who were not defined as 'relatives' under the Adoption Act, and so were conducting illegal private adoptions. A worker described this as 'the back door method' to adoption and that 'as it is not approved for whites, the same should apply to Islanders.'

6. **SUMMARY OF THE IMPLICATIONS OF THE QUEENSLAND ADOPTION LEGISLATION FOR TORRES STRAIT ISLANDERS**

i) Professionals are necessary to assess adoption applicants.

ii) Adoptions in Queensland are closed and confidential.

iii) Adoption is to be 'in the best interests of the child.'

iv) Adoption destroys old legal ties and recreates new ones.

v) Adoption by a relative is to be discouraged.

E. **LEGAL ALTERNATIVES TO ADOPTION**

i) Survey of key workers
The key workers interviewed were all in agreement that Torres Strait Islanders should not contravene the legal implications of the Queensland Adoption Act. The workers did not wish the Islanders to change their traditional adoption practice and one worker stated that she 'did not want to impose a white concept of adoption on a black way of life.' The attitude of key workers was that 'adoption' has a legal definition and that Islander adoption fell outside the legal definition. The workers believed that legal guardianship and custody orders were not as restrictive as the white Adoption Act and that Islanders should secure their traditional practice by applying for these orders. Key workers in North Queensland have begun an active campaign in the Torres Strait to convince Islanders that guardianship and custody are more appropriate to their adoption custom than an adoption order approved under the Queensland Adoption Act. The workers state that Islanders want legal security to prevent custody disputes and this can be arranged without utilising the adoption process. Once the restrictions of legal white adoption in Queensland have been explained to Islanders, key workers in North Queensland stated that the Islanders realised that 'legal adoption' was not appropriate to their situation.

F. COMPARISON OF VICTORIAN AND QUEENSLAND ADOPTION LEGISLATION RELEVANT TO TORRES STRAIT ISLANDER ADOPTION:

The purpose of this section is to consider the status of
Islander adoption within both the Queensland and Victorian adoption legislation. The findings have indicated that key workers surveyed within the Queensland Government consider the existing adoption legislation is inappropriate to Islanders. Participant observation by the researcher and an analysis of public and confidential documents confirmed this.

The researcher believes that the Victorian adoption legislation is a model for Queensland to follow. The legislation makes particular reference to Torres Strait Islanders (defined as Aborigine) and provides legitimacy for open adoption with access provisions by the birth parents.

The comparison will comprise a review of the references in legislation to Torres Strait Islanders as requiring unique treatment and a review of the legal outcomes of an adoption order.

1) Reference to Torres Strait Islanders

i) Victorian legislation

Section 4 of the Adoption Act 1984 defines the term 'Aborigine' as being a person who:

a) is descended from an Aborigine or Torres Strait Islander;
b) identifies as an Aborigine or Torres Strait Islander;

c) is accepted as an Aborigine or Torres Strait Islander by an Aborigine or Torres Strait Islander community.

Reference is made throughout the legislation to 'Aborigine' which can also be read 'Torres Strait Islander.'

Section 11 (1) (b) states that the traditional marriage of Torres Strait Islanders for no less than two years is a requirement for the making of an adoption order. The order may be made providing that the traditional marriage is recognised by the Torres Strait Islander community.

Section 37 (1) describes the conditions of the signing of a consent for a Torres Strait Islander child. The child may be adopted within the Islander community under the condition that the parents, relatives and other members of the Islander community have a right of access to the child.

Section 59 states that where the consent of a parent to the adoption of an Islander child was given subject to Section 37, the adoption order may be subject to the condition that parents, relatives and members of the Islander community have a right of access to the child.
ii) Queensland Legislation

The Adoption of Children Act 1964 - 1988 does not make reference to Aborigines or Torres Strait Islanders in particular.

The only general reference is in Section 18 A regarding the placement of children of indigenous or ethnic backgrounds. The Section states that the Director shall consider the indigenous, ethnic and cultural background of the child to be adopted and attempt to place the child with an adoptive couple of similar background. The Director has the discretion not to do so if this decision is considered in the best interests of the child.

2) **Legal Outcome of an Adoption Order**

i) Victorian Legislation

Section 53 (1) states that the effect of an adoption order is that the child becomes, in law, the child of the adopter and not the child of the natural parents when the adoption is legalised. The adoptive parents have full parental rights of guardianship and custody and those rights have precedence over the natural parent's rights.

Section 59 A provides for adoption orders with two conditions.
The first condition is that parents or relatives as specified in the adoption order have the right to access to the child and the second is that adoptive parents provide information on the adopted child to the parents though an adoption agency.

ii) Queensland Legislation

Section 28 states that the effect of adoption is that the adopted child becomes a child of the adopter and the adopters becomes the parents to the child. The outcome of an adoption order is to consider that the child had been born to the adopters as a product of their marriage. The adopted child ceases to be a child of the birth parents and the birth parents cease to be the parents of the child.

The legislation does not provide for access between the birth parents and the child. Identifying information can be given in extraordinary circumstances based on medical grounds and must be authorised by the Supreme Court. Section 59 (4) (d) provides the authority for the disclosure of non-identifying information where the disclosure is considered 'for reasonable purpose in the circumstances'.

3. Summary of Differences in Adoption Legislation

The Queensland adoption legislation does not refer to Torres
Strait Islanders whereas the Victorian adoption legislation makes specific reference to them regarding traditional marriage, conditions in signing an adoption consent and the outcome of an adoption order. The Victorian legislation considers that an adopted child legally becomes part of the adoptive family and that information and access is available to the birth parents and extended family. This openness relates to Torres Strait Islanders and all others who utilise the adoption legislation.

In contrast, the Queensland legislation provides for non-identifying information exchange and for identifying information to be exchanged in exceptional circumstances. The Queensland legislation considers the adopted child as being fully and legally a part of the adoptive family, similar to the Victorian legislation. The closed and confidential nature of Queensland adoption applies to all Citizens of Queensland.

The comparison of legislation indicates that Torres Strait Islanders would be better served under adoption laws similar to Victorian rather than the present Queensland adoption laws. This information will be considered in Chapter Six as an option for the Queensland Government to consider to help Islanders retain their traditional adoption practice.
CONCLUSION

The findings have shown that Torres Strait Islanders maintain a traditional open adoption practice that is felt to be under threat due to legal insecurity. The Queensland Government has inadequately responded to the Islanders' desire for legal security. A contributing factor toward the Queensland Government's response has been the unsuitability of present adoption legislation to meet Islander needs. This factor has occurred within a political environment which encourages the assimilation of indigenous people.
INTRODUCTION

This chapter addresses all four research questions raised throughout the study. The discussion draws on the literature reviewed in Chapters Two and Three and findings in Chapter Five. The findings suggest that Torres Strait Islander's traditional adoption may benefit from legal recognition and that the Queensland Government has provided an inadequate response to meet this need.

The purpose of this Chapter is to discuss the issues faced by both Islanders and the Queensland Government in providing legal security to Islander traditional adoption. Research Questions One and Two clarify the current situation for Islanders and the Queensland Government while Research Question Three considers the problems of maintaining the status quo. Research Question Four summarises possible options available to both parties for resolving current issues revealed in the findings. The options are discussed and their advantages and disadvantages are considered.
A. RESEARCH QUESTION ONE

What is the nature of Torres Strait Islander adoption practice, both past and current, as influenced by settlement in Queensland and more specifically, Brisbane?

Literature on Torres Strait Islander traditional adoption has stated that:

[1] adoption provides stability to the social order of Islander society;

[2] adoption is characterised by reciprocity and obligation;

[3] adoption occurs frequently in Islander society;

[4] adoption is a fragile social arrangement and can sometimes be dissolved;

[5] adoption generally occurs within the extended family;

[6] the intention of adoption is one of permanence of care rather than temporary care; and

[7] adoption occurs on one end of a continuum of child care ranging from temporary to permanent care.
Literature on traditional adoption practice generally has stated that:

1. Adoption occurs frequently between family members;

2. Adoption occurs on the permanent care end of a continuum ranging from temporary to permanent care; and

3. Adoption is characterised by reciprocity and obligation.

Fieldwork conducted by the researcher has confirmed the literature on the following points in so far as Torres Strait Islanders are concerned:

1. Adoption occurs as part of a societal phenomenon of reciprocity and obligation. This was supported by participant observation in the Torres Strait, information received from the church leader, and Islander leaders from the HNA Torres Strait Islander organisation.

2. Adoption occurs on the permanent care end of a continuum from temporary foster care to permanent adoption. Participant observation in the Torres Strait supported this along with the findings of the surveys of Islander leaders and Islanders attending Queensland University. Both groups supported the statement that adoption means
permanent care as opposed to temporary care.

[3] There is a high frequency of adoption with most Islander families being involved in some way. Participant observation in the Torres Strait revealed this and was supported by both IINA leaders and the Islanders attending Queensland University.

[4] Children adopted within Islander society are from within the extended family on most occasions. This was supported in Case Examples One to Four, where seven of the eight adoptions were from relatives, as well as by observation and interviews.

[5] There is a fragility with adoption arrangements which sometimes has led to custody disputes over the adopted child. The insecurity of traditional adoptions for the adoptive family has led some Islanders to seek legal security from the Queensland adoption legislation. The researcher observed these custody disputes as a participant observer in the Torres Strait. Information received from Islander Leaders at IINA and those attending Queensland University stated that Islanders are often requesting legal support for their traditional adoption practice. The leaders consider that their adoption practice is experiencing difficulty by not receiving wider legal recognition.
Case Examples One to Four indicate the desire of the adoptive parents to seek legal security for their traditional adoption through white adoption legislation. Case Examples Five and Six indicate that the fear of an insecure traditional adoption is sufficiently great for Islanders to forsake traditional adoption in favour of white legal adoption. The three situations in Case Example Six highlight the tenuous nature of traditional adoption promises.

The following information was obtained from the fieldwork but not discussed in the literature.

[1] There are a variety of people who can adopt. An adoptive parent can be single or married and does not have to be infertile. This was confirmed by Islander leaders at IINA and those attending Queensland University while Case Examples One to Four provide further indications of the variability.

[2] There exists a reluctance to tell the child about his/her adoptive status. The researcher noted this in the Torres Strait as a participant observer and it was confirmed by Islander leaders at IINA and those attending Queensland University. Case Examples Two, Three, and Situation One in Case Example Four are all evidence of this reluctance.
The fact that these families were unable to tell their child of his/her adoptive status is directly related to their desire to seek legal security.

Adoption practice among Islanders is similar in Brisbane and the Torres Strait. Data on the consistency of traditional adoption practice regardless of geographic mobility were provided by Islander leaders from IIN organisation.

The findings from the fieldwork suggest that although Islanders are maintaining their traditional adoption practice, they are discovering the need to legalise that practice. Islanders perceive that in white society 'adoption' provides adopters with legal security to raise a child as though that child were born to the adoptive family. They consider that their concept of permanence in traditional adoption also means that the adopted child becomes fully a member of the adoptive family; therefore they consider white adoption legislation is the most appropriate avenue by which to apply for recognition of their traditional practice. However, most Islanders are not aware of the confidential and closed nature of white adoption in Queensland and are seeking the outcome of an adoption order without understanding the other legal implications of it. These implications include a severing of all ties between birth parent and the adopted child and the restrictions on private adoptions
which have not been assessed and approved by social workers.

The concern for legal security regarding traditional adoptions is of such significance that some Islanders (Case Examples Five and Six) are prepared to reject traditional adoption for the security of white legal adoption (of an Islander child). The Islanders in the two case examples were willing to receive the placement of an Islander child without knowing the identity of the birth parents, which is in contradiction to traditional adoption in which the birth parents and adoptive parents are usually related. The researcher contends that in these cases the processes of adoption were child focused rather than extended family focused, and that these Islanders were moving towards a Western approach to adoption.

The findings have indicated that a number of Islander adoptive couples no longer consider that their society has sufficient protective mechanisms to secure the permanent placement of a child. Islanders desire that their traditional adoption practice be reinforced by a white adoption law that is recognised by both the white and Islander community.

B. RESEARCH QUESTION TWO

What are the cultural assumptions underlining the Queensland
Government's adoption legislation and practice, and how do they reflect a particular attitude towards the place of indigenous minorities in Queensland Society?

The literature has indicated that, following the interaction between Western adoption legislation and traditional adoption practice, there has been a tendency for traditional adoption practice to be maintained. Traditional people have tended to avoid the Western Court systems and have continued their adoption practice apart from the Western legal system. Traditional people are forced to adapt to the Western legal system when property and inheritances are in dispute. In general, Western adoption legislation dominates the authority of traditional adoption when the two come into contact, which is typical of the outcome of interaction between races. Race relations literature has indicated that when Western society and traditional people meet traditional people are subordinated, their cultural practice oppressed and there is a tendency toward conflict.

Within the Queensland situation, literature has shown that the Queensland Government is likely to maintain a system of stratification and societal control that will subordinate the wishes of Torres Strait Islanders. The independence of Islanders will be taken away by bureaucratic government processes and the self concept and cultural practices of
Islanders will suffer as the Queensland Government imposes its cultural definition of adoption on Islanders. Should the Queensland Government maintain its policy of cultural assimilation regarding adoption legislation, Islanders will remain subjected to a system over which they have little power.

The literature suggests that the only power they do have is as Fourth World People who may embarrass the Queensland Government to bring about change.

The findings have shown that the Queensland Government intends imposing its concept of adoption on Torres Strait Islanders.

The Queensland Government intends treating Islanders as similar to other Queenslanders wishing to utilise the adoption legislation. While acknowledgement is made that Islanders are culturally distinct from other Queenslanders, the Queensland Government does not extend the acknowledgement of the difference to legislation. The only concession is in the policy that cultural factors must be considered when placing an Islander child into a family apart from its family of origin.

Key workers from the Department of Family Services considered that Islanders would be disadvantaged by utilising a closed system of adoption to legalise their open adoption practice. Despite this view, Islanders have been considered eligible for
legalisation under the current adoption legislation if they conform to the implications of the Adoption of Children Act 1964 - 1988. These implications, as outlined in the findings, are:

[1] adoption is closed and confidential;

[2] adoptions are to be assessed by professionals;

[3] adoptions are to be 'in the best interest of the child';

[4] adoption severs and recreates legal relationship; and

[5] relative adoptions occur in exceptional circumstances with 'relative' being defined according to a nuclear family model.

The Queensland Government, through the Department of Family Services, states that Islanders seek an alternative legal order if they cannot conform to the criteria which form the basis for 'white adoption'. The current adoption legislation is considered by the Government to be suitable to all citizens of Queensland, and Islanders are not excluded from the legislation. It is expected that Islanders will assimilate their adoption to white practice if they are in need of legal adoption assistance.
Islanders who choose to retain their traditional adoption practice are permitted to do so but are not given any legal support in doing so. However, the findings of this study indicate that Islanders both wish to maintain their traditional practice and are seeking legal support through current adoption legislation. Islanders have been offered by the Queensland Government the option of seeking guardianship and custody orders, as this offer is consistent with the option offered to white Queenslanders who wish to adopt a relative. The Queensland Government considers that relative adoption is appropriate only in special circumstances and has decided that Islander adoptions should be treated as relative adoptions. The offer of guardianship and custody orders through either the Supreme or Magistrates Court has been rejected by Islanders interviewed in this study. Islanders consider that the orders do not provide the legal security they are seeking and have not pursued guardianship and custody as an alternative to adoption.

C. RESEARCH QUESTION THREE

What are the implications of applying the Queensland Adoption of Children Act 1964 - 1998 to the traditional adoption practice of Torres Strait Islanders?

The result of the Queensland Adoption Act being applied to
Torres Strait Islanders is that Islanders do not receive recognition for their traditional adoption practice. Therefore Islanders do not receive an adoption service as their adoption practices are not considered eligible under the Adoption Act. If the Queensland Government considers some Islander adoptions to occur between relatives as defined by the Act, then those situations are discouraged to seek adoption and are requested to seek guardianship and custody orders. If the Queensland Government considers the remainder of Islander adoptions to occur between non-relatives, then those situations are considered to be private arrangements which are not eligible for adoption legalisation within the white community. The Queensland Government applies the same criteria to Islanders as it does to whites and considers private adoptions to contain inherent problems as they have not been assessed and approved by social workers.

The researcher believes that Islander traditional adoption practice will continue despite the absence of an adoption service, because traditional adoption performs a wider social function of reciprocity and obligation between family groups. This was confirmed by the literature and the findings.

It is likely that the insecurity regarding traditional adoptive arrangements will increase within the Islander community. The findings have indicated this both in the Torres Strait and on
the mainland. The policy to treat Islander adoptions according to the same criteria as white adoptions was made by the Department of Family Services in 1985. Since that time there has been a continual build up of frustration in the Islander community as cases have continued to arise where Islanders have felt insecure with traditional adoption practices resulting in custody disputes.

Islanders may have to reconsider their reaction to guardianship and custody orders as the legal insecurity continues to increase. If significant numbers of traditional adoptions are being threatened by inadequate legal protection, and the Queensland Government maintains its present policy, Islanders may be forced to accept a different legal option. The findings indicated that Islanders considered guardianship and custody as not being 'complete' orders and that they only guaranteed partial security. Islanders stated that 'guardianship' does not mean that the child was really theirs but that they were 'guarding' the child on behalf of someone else. There are problems for the Queensland Government in convincing Islanders that guardianship and custody orders provide adequate legal protection and that children will feel secure in a family where their caregivers are 'guardians' and not adoptive parents.

Guardianship and custody orders are intended to have a higher profile in the white Australian context. It is anticipated that
guardianship orders will increase as the general community becomes more familiar with the term. However, Islanders at this stage have observed that guardianship orders are not widely accepted and commonly used in the white community. As traditional adoption occurs frequently in Islander society, it is anticipated by the Queensland Government that Islanders will be making frequent guardianship and custody applications to the Supreme or Magistrates Court. Situations involving guardianship in the white community are far less frequent as whites still have the option of the Adoption Act. The outcome of this difference in frequency is that Islanders would be expected to accept and use a new legal order on a regular basis, whereas the white community would have time to gradually become accustomed to the order. The researcher contends that the main reason Islanders are seeking legal security through adoption legislation is that the outcome of adoptions is widely understood by the total Australian community. Islanders are unlikely to seek a legal order such as guardianship and custody if it is not understood and accepted by the wider Australian community.

The researcher believes that Islanders are likely to develop an increased sense of frustration and powerlessness at not receiving the legal support they consider they need to support their traditional adoption practice. The literature has shown that Islanders in Queensland are likely to experience
powerlessness as a result of the Queensland Government maintaining social control through government agencies and bureaucratic processes. The assimilationist stance taken by the Queensland Government regarding adoption legislation is likely to lead to tension and conflict between the two groups. Schermerhorn (1970) confirms the tendency toward conflict if any Government pursues a policy of assimilation while a minority resists that policy.

Beckett (1987) has considered Torres Strait Islanders as 'Fourth World' people who have the political leverage to embarrass the Queensland Government before national and international opinion. Gartrell (1986) believes that a minority group such as Torres Strait Islanders have the power to challenge the policies of government and political leaders. This challenge can be effective in bringing about change if the national and international audience are receptive. Consequently, as a situation of conflict builds between Islanders and the Queensland Government, Islanders who are powerless to prevent the insecurity developing in their adoption practice may develop strategies to embarrass the Queensland Government. The literature indicates that some powerless minorities are able to utilise this strategy when their identity and cultural survival is under threat, and the findings have shown that Islanders who participated in this study consider that traditional adoption, an integral part of Islander culture, is under threat.
Another implication of the Queensland Government's present assimilationist position is that some Islanders may decide to abandon traditional adoption altogether in favour of white adoption processes due to the inherent risks of insecurity. This possibility was evidenced in the findings through Case Examples Five and Six where the motive of Islanders rejecting traditional adoption was to obtain sufficient legal security.

However, if Islanders choose to adopt an Islander child through the processes under the Queensland adoption legislation, they cannot organise their own adoption arrangement and have it legalised. Islanders adopting through this method have to be assessed as being suitable applicants by a social worker and rely on the Department of Family Services placing an Islander child with them.

An Islander child would become available for adoption if the birth parents signed an adoption consent and did not wish to have contact or a relationship with the adoptee and the adoptive parents. Although this situation has occurred, as in Case Example Five, it happens rarely and the researcher believes that very few Islanders would be willing to abandon traditional adoption for the white adoption process.

D. RESEARCH QUESTION FOUR

What are the options available to Torres Strait Islanders and
the Queensland Government to help Islanders retain their traditional adoption practice and to have their practice legalised?

1. Options for Torres Strait Islanders

i) Accept the present situation

Torres Strait Islanders may choose to accept the present situation offered them by the Queensland Government. That situation is one of accepting that Islanders are eligible to apply for legalisation of adoption if they comply with the conditions of white adoption. The implications of this have been outlined in considering Research Question Three. The likelihood of Islanders abandoning their traditional adoption in favour of white adoption procedure was considered possible for a minority of people.

An outcome of accepting the present situation, which leaves most Islanders ineligible to use the adoption legislation, is an increase in legal insecurity over traditional adoption arrangements. The discussion from Research Question Three indicated that Islanders may have to reconsider their objection to using guardianship and custody orders. However the difficulty in accepting these orders was discussed as being that Islanders were reluctant to accept legal orders that were not
used or widely understood by the total community. The most likely outcome discussed in Research Question Three was that the sense of insecurity felt by Islanders involved with adoption would increase. This increase is likely to lead to conflict with the Queensland Government.

The literature regarding indigenous people who are facing the same sense of powerlessness and frustration as Islanders, indicates that the Islanders may attempt to embarrass the Queensland Government publicly to bring about change. To be effective, Islanders would need to ensure that their situation was understood on both a national and international level. They would need to present their case in a manner that could be sympathetically received and recommend action national and international bodies could take.

iii Pursue a Separatist Service

The rationale for Islanders to seek a separatist service for their traditional adoption is that under the current situation Islanders have no power to make decisions regarding legalising their practice. Literature on the impact of Western adoption legislation on traditional adoption practice indicates that traditional adoption is subordinated by Western adoption legislation. Torres Strait Islanders are consequently subject to a welfare system over which they have no control or power.
Islanders would find it difficult to pursue a totally separate service as currently there is an existing structure which has not been fully utilised. The Commonwealth Government funds a number of Aboriginal and Islander Child Care Agencies (A.I.C.C.A.) throughout Australia. In addition, there exists a co-ordinating national body funded by the Commonwealth Government called the Secretariat for National Aboriginal and Islander Child Care (S.N.A.I.C.C.). A.I.C.C.A. is an organisation concerned with child care practice issues while S.N.A.I.C.C. is a co-ordinating body involved in policy development.

A.I.C.C.A. must be consulted by the Department of Family Services on all cases involving Aboriginal and Islander children according to the Department's public policy statement. However, legislative control over all child care matters, including adoption, remains with a white Queensland government department.

The implications of this for Torres Strait Islanders is that Islanders need control over the decision making process for adoption legalisation and that Islanders will not obtain that control under the present structure of A.I.C.C.A.

Professional staff within the Department of Family Services retain legislative control and the ultimate decision making power over white and indigenous child care matters. The reality
is that A.I.C.C.A. can make program based case management
decisions on indigenous families and that A.I.C.C.A. can only
make recommendations to the Department of Family Services
regarding legal outcomes.

Islanders face an obstacle in using A.I.C.C.A. as a separatist
agency to begin to lobby for change in the control and
management of Islander adoptions. Aborigines do not have the
same concept or practice of traditional adoption as Torres
Strait Islanders. The researcher's practice experience has been
that Aborigines have a relatively low level of understanding of
Islander traditional adoption. The A.I.C.C.A. in Brisbane has
always been staffed predominately by Aborigines and the
Co-ordinator has always been an Aborigine. While there are many
cultural similarities between the extended family systems of
support. between both groups, there are also major differences in
traditional custom. Aborigines and Torres Strait Islanders have
been considered by the Queensland Government and by the general
community as being one group. The reasoning has been that both
groups are black and indigenous Australians, and it is more
convenient to treat them as one minority group instead of two.
An effect of this categorisation by the white community has been
the strengthening of ties between the two groups. However,
significant traditional differences, such as the Islander custom
of traditional adoption, have been ignored.
The decision to pursue a separatist service for Islanders is unlikely to occur as Aborigines and Islanders have relied on each others' support when dealing with the white community. The isolation of Islander issues from Aboriginal issues has the potential to undermine the solidarity of the black community as a whole. If the A.I.C.C.A. takes up the challenge of lobbying for legal recognition of Islander traditional adoption there is likely to be pressure from the Aboriginal community to receive support for their own issues of power and control. Aborigines are entitled to promote their own issues, and the researcher believes that as a consequence the specific issue of legal recognition of Islander adoption may become submerged under competing issues.

Islanders combine with Whites to pursue legislative change to Queensland Adoption

This strategy implies that the difficulties faced by Islanders in having their traditional adoption practice legalised can be overcome by changing the Queensland adoption legislation. It changes the focus of the problem from recognition of indigenous people's traditional customs to one of changing adoption legislation to be consistent with changes happening elsewhere in Western adoption legislation.

Torres Strait Islanders are aware that 'open' adoption
legislation which exists in Victoria has the flexibility to incorporate their traditional adoption practice. The literature considering adoption legislation in Queensland and Victoria has discussed the differences between 'closed' adoption in Queensland as compared with 'open' adoption in Victoria. Literature reviewed on the changing nature of Western adoption over the past twenty years has shown that Western adoption is developing similar practices to that of traditional adoption.

Islanders require a sound understanding of the workings of the Victorian and Queensland Adoption Acts to pursue this outcome. They need to understand the differences in the legislation and be able to highlight the specific areas in which the Queensland adoption legislation inadequately meets their needs.

The advantage for Islanders in following this strategy is that their desire for legal security of their adoption practice will not be presented as a race relations issue but rather one of progressive developments in adoption legislation. The combination with whites to present a unified force for adoption legislation change assumes there is a significant group of whites in Queensland who wish to change the closed adoption legislation. The researcher is aware that adoption legislation is currently being reviewed in New South Wales, Australian Capital Territory and Western Australia. Review committees in each of these areas have indicated that the international
changes in Western adoption and the changes to Victorian adoption legislation have prompted the reviews. In addition there has been lobbying by members of the adoption triangle, particularly relinquishing parents and adoptees. The researcher believes that there are significant numbers of professionals and members of adoption self help groups in Queensland who are aware of the advantages of open adoption.

The combination of political pressure from white adoption self help groups, social workers and Torres Strait Islanders increases the likelihood of the Queensland Government reviewing and changing its adoption legislation.

There are two major difficulties with this outcome. The first is that Islanders tend to remain separate from the white community when living on the mainland. Islanders prefer to maintain aspects of their traditional customs that define their separateness from white Queenslanders and Aborigines. The researcher has found that Islanders retain a strong traditional perspective on life even though the majority are living on mainland Australia. It was difficult for the researcher to grasp concepts expressed by the Islanders, and in many cases the problem of language was evident.

The difficulty with the marked difference between Islander and white Queensland culture is that it reduces the likelihood of
understanding each others' perspective. Effective lobbying for legislative change requires communication and solidarity between the pressure groups. The researcher believes that although this would be difficult to achieve, there would be a shared goal in achieving the outcome of open adoption.

The second major difficulty is that Islanders regard their traditional adoption practice as a part of their overall traditional customs and may find difficulty separating adoption from other aspects of their life. Some Islanders interviewed considered that all their traditional customs should be legally recognised and view their adoption practice as being integrated with other aspects of cultural life.

The researcher believes that the outcome of Islanders combining with whites to change Queensland adoption legislation has potential for fulfilling Islanders' wishes. If the barrier of communication between the groups can be overcome, this option could have the greatest success for Islanders.

2. **Outcome Options for the Queensland Government**

   i) **Maintain the Status Quo**

   This is the current option favoured by the Queensland Government. The findings from the survey of key workers in the Department of Family Services indicated that Western adoption
legislation should not be 'imposed' on Torres Strait Islanders. Key workers interviewed acknowledged that Islander adoption and Western adoption were different, and decided that Islanders were disadvantaged by having the Queensland Adoption of Children Act 1964 - 1988 applied to them.

Findings from confidential policy documents and from the researcher's participant observation revealed that the Department of Family Services was under pressure to formulate a policy of appropriate management of Torres Strait Islander adoption applications.

Confidential policy documents showed that there was discussion regarding obtaining a more indepth understanding of the problem. However, the researcher believes that the final decision to treat Islander and white adoption applications the same, which was inconsistent with the discussion that had occurred, was made hastily under the pressure of a growing number of Islander applications. Pressure was also applied to the Department of Family Services by the Department of Community Services (formerly Aboriginal and Islander Advancement) as outlined in Chapter One.

The decision to advise Islanders to seek guardianship and custody orders was consistent with the decision to not allow special consideration for Islanders. Discussion arising from
Research Question Three on the implications of applying the Queensland Adoption Act to Torres Strait Islanders was based on the fact that Islanders did not receive an adoption service as they were ineligible. White Queenslanders who had made private child rearing arrangements, either as relatives or non-relatives, are ineligible for an adoption service.

The current policy of sending Islanders to seek legal advice regarding guardianship and custody has not been taken up by the Islanders. The researcher believes that Islanders are wary of the legal implications of guardianship and custody and do not believe the orders are as legally secure as an adoption order.

If the Queensland Government wishes to continue with this option, it needs to develop an education campaign on the legal security of guardianship and custody orders in comparison with adoption orders. A successful campaign would relieve the concerns held by Islanders and overcome confusion regarding the outcomes of the legal orders. Islanders may be unsure of a legal concept that has not been widely embraced by the white community, and consequently have no reference point to understand the effectiveness of the order.

The advantage of this option for the Queensland Government is that it does not have to develop an indepth understanding of Islander adoption. The Queensland Government can acknowledge
that a difference exists but does not have to deal with the implications of two culturally different interpretations of adoption.

Through maintaining a definition of adoption that excludes Islanders, the Queensland Government can avoid further involvement by redefining the situation as being one more appropriate for guardianship and custody. The disadvantage of this outcome for the Queensland Government is that if Islanders do not accept guardianship and custody, there will be a growing resentment among Islanders that the Government is ignoring an important issue concerning the stability of Islander life.

Queensland Government Retains Existing Adoption Legislation and Develops Flexibility Toward Torres Strait Islanders

The researcher believes that the Queensland Government will not consider flexibility in policy toward Islanders (or any of the following outcomes in this Chapter) if Islanders accept guardianship and custody orders as being applicable to their adoption practice. Consequently, the discussion of this and following outcomes assumes that Islanders do not take up the legal alternatives and the Queensland Government has to consider other options.
The public policy documents reviewed have shown that the Queensland Government supports the placement of indigenous children within indigenous families and the variety of cultural characteristics which constitute family life. This policy stance is supported by Section 18 A of the Adoption of Children Act 1964 - 1988 which states that the indigenous or ethnic background of an adoptive child should be considered when matching the child with an appropriate family. The researcher considers that the adoption legislation and policy statements reflect the potential for greater flexibility to occur when dealing with Torres Strait Islanders. The current policy and legislation are based on ensuring that indigenous children are not placed with white families when unable to live with their natural parents. They assume that children should be raised within families where their cultural heritage can be maintained. The background to the policy comes from a history of breakdown of placements of indigenous children in white adoptive families.

While it is recognised that indigenous people, such as Torres Strait Islanders, should not lose children from their community, there has been no recognition of the need to strengthen traditional indigenous family structures. The researcher believes the strengthening of traditional structures, such as Islander traditional adoption practice, acts as a preventative function in minimising the likelihood of family breakdown. The
Queensland Government has stated its commitment to supporting the variety of cultural characteristics which constitute family life and the Department of Family Services can honour this commitment policy by considering that Islander traditional adoption practice is integral to Islander family life. It could operationalise the commitment by stating that 'open' adoption is a component of Islander family life and that special consideration be given to Islanders to continue this practice.

It could be argued that if the policy of supporting indigenous family structures is not implemented, then insufficient attention has been paid to the consideration of 'indigenous factors' in the placement of a child. The researcher believes that the Queensland Government may be able to accept any special consideration given to Islanders if that consideration does not disadvantage the wider community.

The findings showed that key professional workers did not want to impose Western adoption legislation on Torres Strait Islanders and that the current solution was considered to disadvantage Islanders. The decision reached by professionals was based on the consideration of not interfering with a traditional custom which whites did not understand. Race relations literature indicated that assimilationist trends in Queensland may continue if the previous policies toward indigenous people are maintained. The findings from the policy
statements show that there is some flexibility occurring toward indigenous people in that policy tends to take into account relevant cultural factors when dealing with indigenous children.

The advantage of this outcome is that the Queensland Government can maintain outwardly its policy of legal assimilation for all Queenslanders. Within the practice and policy context the Government can continue to promote its statements supporting the consideration of indigenous factors in securing placements for children. The researcher believes that the potential exists for special consideration to be given to Islander adoption practice because important indigenous and cultural factors must be considered and acted upon.

The disadvantage of this outcome for the Queensland Government is that, as practice and policy become more flexible toward Islander 'open' adoption practice, there will be an increase in pressure for legislative change. Islanders are seeking legal security and would not consider 'special consideration' enough unless there were amendments made to the Adoption of Children Act 1964 - 1988.

Queensland Government to Consider Legislative Amendments to Adoption of Children Act 1964 - 1988 in Favour of Torres Strait Islanders
The Queensland Government has maintained a policy of legal assimilation which was reflected in the findings. A key worker interviewed stated that all Queenslanders are subject to the same law and that no preferential treatment is given to any group of people, and the consequence of this is assimilation.

The development of the assimilationist stance in Queensland was discussed in Chapter Three and was particularly influenced by the Director of the Department of Aboriginal and Islander Advancement (now Community Affairs) for 25 years.

While the Queensland Government maintains its current opposition to legal pluralism, the researcher points to the existence of separate legislation for indigenous Queenslanders dating back to the turn of the century. These include:

a) Aborigines Protection and Restriction of the Sale of Opium Act 1897 - 1939;

b) Aboriginal Preservation and Protection Acts 1939 - 1946;

c) Aborigines Act 1971 - 1978; and

d) Torres Strait Islanders Act 1971 - 1979.

These pieces of legislation were passed when it was considered
necessary to highlight particular issues that pertained to indigenous people. The researcher states that particular cultural issues currently relate to the needs of Torres Strait Islanders and that there are State legislative precedents to be considered. The difference in the two situations is that separate legislation for indigenous people was passed when it served the interests of the Queensland Government.

The advantage of legislative amendment is that the Queensland Government would be consistent in following through its policy of special consideration of indigenous issues.

The disadvantage for the Queensland Government is that separate laws for Islanders in relation to adoption can be considered the 'thin edge of the wedge' of legislative reform for indigenous people. A key worker interviewed in (see Chapter Five) stated that if Islanders were given legal recognition of their adoption practice then the Government would have to consider other forms of legal recognition to indigenous people. The form of most concern to the Queensland Government is land rights which poses a threat to the Government's control over resources.

Queensland Government gives Responsibility for Aboriginal and Islander Matters to the Commonwealth Government

The Queensland Government has been the only Australian State
since the referendum of 1967 which has retained its control over Aboriginal and Islander affairs. The remaining States referred their powers to the Commonwealth Government according to the wishes of the majority of Australians at the referendum.

This outcome proposes that the Queensland Government refers its powers of control over Aboriginal and Islander affairs to the Commonwealth Government.

The advantage of this option is that the Queensland Government does not have to create separate legislation or amendments to its adoption legislation. However, the likelihood of the Queensland Government giving responsibility for indigenous people to the Commonwealth Government is low. The Queensland Government has resisted 'interference' by the Commonwealth Government in Aboriginal and Islander matters within Queensland for 20 years. The race relations Chapter indicates that the Queensland Government does not agree with the Commonwealth Government policy of separatism and consequently has continued its opposing policy of assimilation.

The disadvantage of the option is a loss of power by the Queensland Government and the reversal of a policy of assimilation that has been staunchly defended since the referendum.
If the Commonwealth Government were to be given control over Aboriginal and Islander matters in Queensland, negotiation would have to be made with the Queensland Government as adoption is covered by State legislation. In any case, the history of a poor working relationship between the Queensland and Commonwealth Government over Aboriginal and Islander matters indicates that Islanders would continue to be disadvantaged in their desire for legal security.

v) Queensland Government Changes its Adoption Legislation to that of Open Adoption

The Queensland Government has reviewed its adoption legislation in the early 1980's and the resultant Adoption of Children Act 1964 - 1988 maintains most of the concepts of the 1964 legislation. The most significant is that of retaining closed and confidential adoption while changes are occurring contrary to this in the Western world. The literature in Chapter Two stated that Western adoption over the past twenty years has begun to break down the myth of secrecy and confidentiality and that Western adoption legislation has begun to embrace the notion of open adoption. Chapter Two highlighted the fact that the changes in Western adoption have brought about a bridging of the gap in practice between Western adoption and traditional adoption.
The Queensland adoption legislation is liable to be subject to review again as three Australian States are considering altering their adoption legislation in favour of open adoption, following the example set by Victoria.

The advantage of this option for the Queensland Government is that the provision of open adoption legislation for all Queenslanders includes serving the needs of Torres Strait Islanders. The traditional adoption practice of Islanders can be considered by white Queenslanders as an example of the success of open adoption. The sharing of a common experience in which Islanders have established a precedent could help develop a positive understanding between the two groups of people. Open adoption legislation would not be considered separatist legislation as it would provide benefits to both whites and Islanders.

The disadvantage of this option for the Queensland Government is that it would have to conduct a major review into adoption reform when it has recently completed a review. The decision to retain closed and confidential adoption was made with political consideration given to the rights of adoptive parents over the other parties in the adoption triangle (adoptees and relinquishing parents).

The researcher believes that the Queensland Government will be
forced to reconsider its adoption legislation if enough lobbying is carried out by pressure groups, including the Torres Strait Islanders.

CONCLUSION

This study has shown that Torres Strait Islanders have maintained their traditional adoption practice and that they consider their adoption practice to be under threat. In addition, this study has revealed that the Queensland Government’s current policy toward Islander adoptions has contributed to legal insecurity rather than addressing the problem. The researcher concludes from the findings that the Queensland Government does not intend to threaten Islander adoption practice, and that it believes that its current policy is relevant and constructive in helping Islanders retain their adoption practice. It is clear from the study that Torres Strait Islanders were not consulted regarding the Queensland Government’s policy and that there has been little communication and understanding between the two parties.

The researcher has outlined the various options available to Islanders and the Queensland Government to redress the sense of legal insecurity and the threat to traditional adoption practice.
The most likely option in the researcher's view is that Islanders will choose to accept the current situation, leading to further insecurities in maintaining traditional adoption. The researcher believes that the Queensland Government is likely to continue with its present policy unless it comes under pressure from Islanders to reconsider its position. The study suggests that if Islander frustration builds up to significant proportions, Islanders may use their power as a Fourth World minority group to embarrass the Queensland Government into change. To avoid such a situation, the Queensland Government needs to maintain its policy of educating Islanders and the general community regarding the appropriateness of legal guardianship and custody orders. However, the Queensland Government would need to be prepared for the negative response that Islanders have already shown, and to be willing to discuss the concerns that Islanders have raised. The current situation of potential conflict has developed as a result of the Queensland Government imposing its policy rather than negotiating with Islanders.

The researcher considers that the ideal outcome for Torres Strait Islanders and the Queensland Government is for adoption legislation to be reviewed and new legislation enacted which incorporates the principles of open adoption. This study has shown that open adoption is being considered by many Western countries as a more desirable form of practice than closed and
confidential adoption. Torres Strait Islanders operate an open adoption practice and their particular needs could be met if Queensland legislated for open adoption.

Both Islanders and the Queensland Government would benefit from dealing with legal insecurity over traditional adoption as a matter for adoption reforms rather than a race relations issue. The use of an adoption reform approach is supported by the adoption literature which indicates that Western adoption and traditional adoption are moving closer together. On the other hand, perceiving the situation as a race relations one and acting accordingly would, on the basis of the most race relations theory, result in conflict as Torres Strait Islanders seek access to power.

The study has acknowledged the interaction of race relations and adoption as the key concepts to consider when answering the research questions.

The conclusion of the researcher is that legal recognition of Islander adoption can be incorporated into broader reforms of adoption legislation which affect the whole community. This outcome is preferable to considering legal recognition of Islander adoption as a race relations issue which may readily lead to conflict.
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