



Queensland

Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020

Act No. 33 of 2020

An Act to provide for the recognition and acceptance of traditional child rearing practice in the Torres Strait community, and to amend this Act, the Adoption Act 2009, the Births, Deaths and Marriages Registration Act 2003, the Criminal Code, the Domestic and Family Violence Protection Act 2012, the Domicile Act 1981, the Evidence Act 1971, the Quardianship and Administration Act 2000, the Industrial Relations Act 2016, the Integrity Act 2009, the Payroll Tax Act 1971, the Powers of Attorney Act 1998, the Public Service Act 2008 and the Right to Information Act 2009 for particular purposes

[Assented to 14 September 2020]

THE MERIBA OMASKER KAZIW KAZIPA (TORRES STRAIT ISLANDER TRADITIONAL CHILD REARING PRACTICE) ACT 2020

The Act's purpose:

- The Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020 (the Act) was passed in September 2020.
- The Act provides a process for families to seek legal recognition of traditional child rearing practices.
- States applications for legal recognition will be considered by the Commissioner (Meriba Omasker Kaziw Kazipa) who will decide if a Cultural Recognition Order should be made.
- A Cultural Recognition Order will permanently transfer a person's parentage from the Birth Parents to the Cultural Parents. Following this, a new birth certificate can be applied for from Births, Deaths and Marriages.

AILAN KASTOM CHILD REARING PRACTICE (TORRES STRAIT ISLANDER TRADITIONAL CHILD REARING PRACTICE)

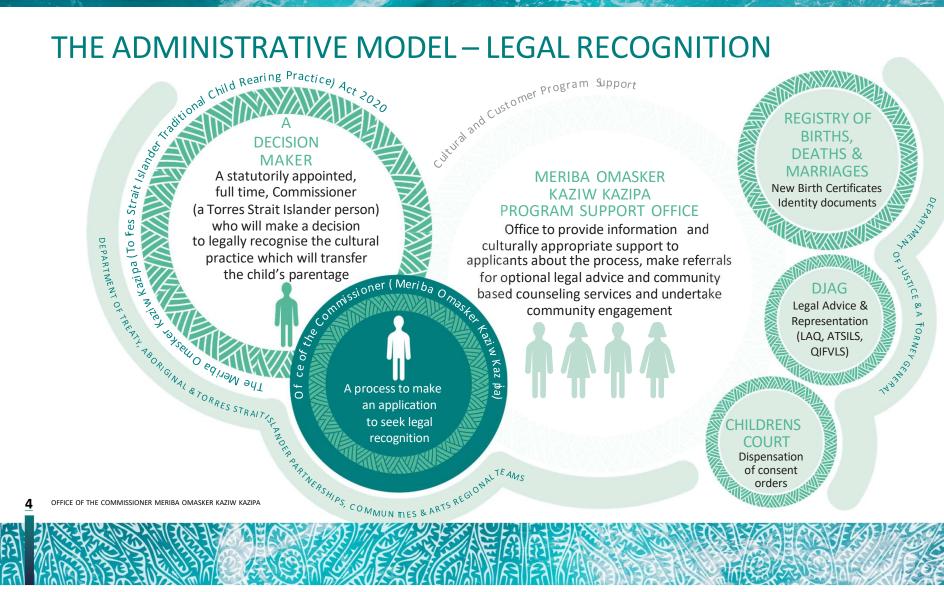
The Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020 says

"Ailan Kastom child rearing practice is the practice recognised by Ailan Kastom under which a child's birth parents and the child's cultural parents agree in accordance with Ailan Kastom that the parental rights and responsibility for the child are permanently transferred from the birth parents to the cultural parents" (s 8)

- Ailan Kastom child rearing practice is an integral part of Torres Strait Islander community and family life. It is connected to wider aspects of customary law and gives a sense of stability and social order of Torres Strait Islander societies.
- Ailan Kastom child rearing practice is integral to keeping Torres Strait Islanders spiritually and socially connected to the land and sea and assuring the survival of their culture.



THE ADMINISTRATIVE MODEL – LEGAL RECOGNITION







MERIBA OMASKER KAZIW KAZIPA PROGRAM SUPPORT OFFICE

- Pictured left: Elsie Seriat, Cultural Support Ofcer.
- Meriba Omasker Kaziw Kazipa Program Support Office (8 FTE) are co-located with the Office of the Commissioner, in Cairns and on Thursday Island and provide support to community members such as:
 - Providing information and assistance to people considering making an application for a Cultural Recognition Order
 - Providing information on the documentation required to submit an application,
 - Advising applicants of the availability of legal, counseling or interpreter services
 - Undertaking communication and engagement activities to promote awareness and understanding of the cultural recognition order process

MERIBA OMASKER KAZIW KAZIPA ADVISORY GROUP

As part of the governance and operating arrangements of OCMOKK, a Meriba Omasker Kaziw Kazipa Advisory Group (Advisory Group) was also established when the legislation was passed. The Advisory Group is comprised mainly of members of the Kupai Omasker Working Party who advocated for over 30 years to obtain the legal recognition of the Torres Strait Islander child rearing practice.

The purpose of the Advisory Group (as per Terms of reference attached) is to:

Maintain the cultural integrity of the application process for legal recognition.

Ensure Torres Strait Islander people are aware of the Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020 (the Act) and communications and messaging about the Act are culturally appropriate.

Provide advice on ensuring the application process is confidential, affordable, and accessible to Torres Strait Islander families and communities.

Ensure community expertise and guidance is maintained throughout the next steps in implementation.





THE JOURNEY TOWARDS LEGAL RECOGNITION

1970s Adoption of Children Act 1964 (Qld) repealed

1985 Queensland Government ceased registering adoptions

1988 Surrogate Parenthood Act 1988 (Qld) passed

1990 Working Party Established

1993 Consultancy commissioned by Queensland Government

1994 'Tree of Life' Report

1997 State-wide workshop

1998 Working Party Consultation

1999 Queensland Government discussion paper recommends full and proper consultation

2001 Family Law Advisory Group recommends amending Family Law Act 1975 (C'wlth)

2004 Family Law Council recommends amendments to Family *Law Act 1975* (C'wlth)

2008 Altruistic

Surrogacy Committee recommends developing options for recognising the practice

2009 Adoption Act 2009 (Qld)

> 2010 Queensland Government consults on mainland

2010

Surrogacy

Act 2010

(Qld)

2011

Queensland Government consults in **Torres Strait** Islands

2012

Queensland Government consults on mainland

2017 Election campaign: Introduce laws for legal recognition of practice

2018 Eminent Persons engaged with **DATSIP** coordinating more than 30 consultation meetings

2019

DATSIP seeks legal advices given complexities of law that is a first for Australia

2019 Engagement with Hon Alistair Nicholson AO, RDF, QC and Aunty Ivy Trevallion regarding the model

2020

Draft Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practices) Bill 2020 developed and introduced to Queensland Parliament in July

Commissioner (Meriba

2021

Inaugural

Omasker Kaziw Kazipa) commences

2020

Queensland Parliament passed the Bill. Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practices) Act 2020 (Qld) granted royal assent on 14 September 2020

OFFICE OF THE COMMISSIONER MERIBA OMASKER KAZIW KAZIPA

QUEENSLAND CULTURAL RECOGNITION ORDER

Meriba Omasker Kaziw Kazipa (Torres Strait Islander Child Rearing Practice) Act 2020

Order No:

This Cultural Recognition Order is made under section 59 of the Meriba Omasker Kaziw Kaziya (Torres Strat Islander Traditional Child Rearing) Act 2020 in recognition of Allan Kastorn and in the best interest and wellbeing of the Subject Person.

This order recognises and confirms that parents to the Cultural Parents in accordance with Allan Kastorn child rearing practice.

This order will continue in force indefinitely unless it is discharged by a court.

Existing birth entry

Registered name of Subject Person this order relates to:

Date of Birth

Birth Mother:

Birth Father:

Cultural Mother:

L C'Zarke Maza, Commissioner, (Meriba Omasker)



Level 3, CIICentral Building, 66-67 Spence Stre PO Box 7576 CAIRNS CLD 4870 Email: office@comok.gld.gov.su Telephone: 1500 571 102 (fine cult) Websitz: www.comok.gld.gov.su



WHAT IS A CULTURAL RECOGNITION ORDER?

The making of a Cultural Recognition Order:

- Provides nation-leading legal recognition for our Torres Strait Islander (Ailan Kastom) child rearing practice.
- Permanently transfers parentage to the Cultural Parents
- The birth parents do not retain any powers or responsibilities ordinarily afforded to biological parents.
- Allows for the child's or adult's legal identity to reflect that of their cultural identity and lived experience.
- Facilitates a process and enables a person to apply for a new birth certificate that reflects their cultural identity.
- Has effect as if the order were a final adoption order made under the Adoption Act 2009

QUEENSLAND CULTURAL RECOGNITION ORDER

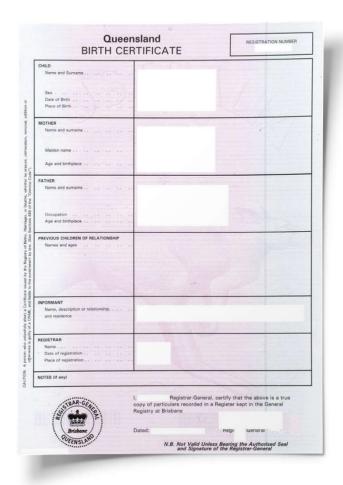
Meriba Omasker Kaziw Kazipa (Torres Strait Islander Child Rearing Practice) Act 2020

This Cultural Recognition Order is made under section 59 of the Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing) Act 2020 in recognition of Ailan Kastom and in the best interest and wellbeing of the Subject Person. This order recognises and confirms that parentage is transferred from the named Birth Parents to the Cultural Parents in accordance with Ailan Kastom child rearing practice. This order will continue in force indefinitely unless it is discharged by a court. Existing birth entry New birth entry Name to be registered for the Subject Person ame of Subject Person this order Birth Moth I, C'Zarke Maza, Commissioner, (Meriba Omasker Kaziw Kazipa), certify I am satisfied that the applicant have complied with Parts 4 and 5 of the Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing) Act 2020 ("the Act") in making this Cultural Recognition Order under section 59 of the Act. C'Zarke Mazer ner (Meriba Omasker Kaziw Kazipa) COMMISSIONER

WHAT IS A **CULTURAL RECOGNITION ORDER?**

The making of a Cultural Recognition Order:

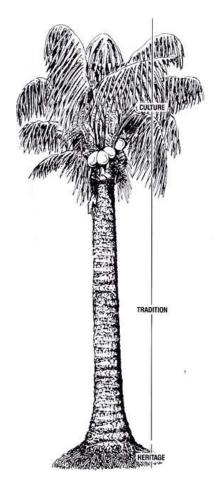
- Addresses participation barriers created by Queensland laws based on specific constructs of family and parenting, such as
 - Child's birth certificate maintaining the name of the birth parents which created multiple practical implications for the child and their cultural family
 - The need to disclose a confidential cultural practice inadvertently and/or repeatedly
 - Barriers when accessing their inheritance
 - Birth parents remain liable for child support



A CULTURAL RECOGNITION ORDER FACILITATES THE PROCESS FOR THE ISSUING OF A NEW BIRTH CERTIFICATE

The effect of a cultural recognition order will:

- Essentially provide for a new birth certificate that will reflect the names of the cultural parents and the names of the older siblings of the cultural parents.
- No notations on birth certificate respects sacred and taboo nature of Ailan Kastom, i.e. no notation like the word "ADOPTION" written on birth certificate



THE PROCESS

Is an opt-in administrative application process.

All parties to the application must consent to the application being submitted.

Culturally competent and affordable.

Parties to an application where the subject is a child must include both Birth Parents and both Cultural Parents.

Application process includes retrospective applications, i.e. adult applicants

FREE LEGAL ADVICE

For those applicants who are considering applying for legal recognition we strongly encouraged them to seek independent legal advice.

This is due to the significant legal impacts and permanent nature of a Cultural Recognition Order.

Free legal advice is provided by Legal Aid Queensland, the Aboriginal and Torres Strait Islander Legal Services and the Queensland Indigenous Family Violence Legal Services for those seeking further information on legal recognition and Cultural Recognition Orders







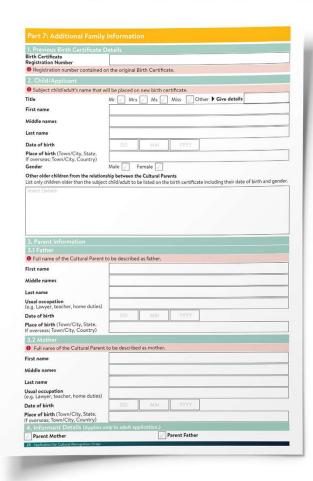
THE APPLICATION PROCESS CONSIDERS...



Consent statements from birth and cultural parent/s are required to apply Commissioner has discretion to seek criminal history for cultural parents Order can be discharged if false and misleading information has been provided

OTHER DECISION-MAKING CONSIDERATIONS

Under the Act, the Commissioner... regard to the legal and cultural Must Must make benefits for the decisions for the person if the Cultural confidentiality wellbeing and best **Recognition Order is** interests of the person made recognising who is the subject of an Ailan Kastom child application for a rearing practice Cultural Recognition Order Will make Must act i Decisions in a way that a fair, timely is fair and Will and consistent Will ensure reasonable consider manner appropriate that information recognition and about the practice is preservation of Ailan sacred and secret Kastom in general and according to Ailan Must Ailan Kastom child rearing practice in comply with natural particular iustice



ADDENDUM

The information collected on the addendum form will allow the Registrar to make a complete birth entry and ensure that when an application is made for the new birth certificate all relevant information is available to action the request.

The information collected for inclusion on the new birth certificate includes:

- The place of birth of the subject person
- The desired name of the subject person following the making of a Cultural Recognition Order
- The place of birth of the Cultural Parents
- The occupation of the Cultural Parents
- Any relevant maiden name of a Cultural Parent
- The informant of the birth

Queensland Courts Guide to Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020

The Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020 provides for the legal recognition of Ailan Kastom (Torres Strait Islander) child rearing practice. A Cultural Recognition Order permanently transfers the parentage from the biological (birth) parents to the cultural parents and allows the child's legal identity to align with their cultural identity. Applications for a Cultural Recognition Order are received and decided by the Commissioner (Meriba Omasker Kaziw Kazipa).

Under the Act there are certain decisions which can only be made by the Court and cannot be made by the Commissioner. Legal advice is available to individuals who apply for a Cultural Recognition Order and this includes advice about whether an application should be made to the Court. Anyone who needs to make an application to the Court should get legal advice first, which includes assistance completing the forms required. There are fees associated with making an application to court. You may apply for a reduced fee and should speak to a legal advisor

Application	Court	Starting Document	Filing Fee Payable?
Application to dispense with parental consent (s.52)	Childrens Court of Queensland (CCQ)	UCPR Form 5	Yes
Application to discharge dispensation of parental consent (s.55)	CCQ	UCPR Form 9	No
Application to discharge cultural recognition order (s.77)	CCQ	UCPR Form 5	Yes
Application to access court records (s.98)	CCQ	UCPR Form 9	No
Application for judicial review of Commissioner's decision under <i>Judicial Review Act</i> 1991	Supreme Court	UCPR Form 54	Yes
Appeals from Childrens Court (Judge) and Supreme Court decisions (s.92)	Court of Appeal	UCPR Form 64	Yes
Application for reduction of fees by an individual	All	UCPR Form 131	No

When filing an application with the courthouse registry, please bring the original and at least two copies of each document. The Registry will keep one copy and return a sealed copy to you. There may also be filing fees payable when you file an application with the Court. Please speak to your lawyer about how you can apply for reduced fees.

The following services provide legal advice and assistance with the Cultural Recognition Order process:

Legal Aid Queensland - Ailan Kastom information 1300 650 143 (Indigenous Hotline)	Commissioner (Meriba Omasker Kaziw Kazipa) § 1800 571 102	
Aboriginal and Torres Strait Islander Legal Service (ATSILS) 1800 012 255 (Toll free 24hrs 7 days)	Queensland Indigenous Family Violence Legal Service (QIFVLS) 1800 88 77 00	



DISPENSATION OF CONSENT

This is a legal process where a Court may declare that the consent of a particular party is not required for a Cultural Recognition Order to be considered



Court Fees



Legal Advice

WITHDRAWING AN APPLICATION

Consent to an application can be withdrawn at any stage as long as the Cultural Recognition Order has not yet been made.

Any party to an application may withdraw their consent, this includes Birth Parents, Cultural Parents and adult applicants.



NOT ELIGIBLE FOR LEGAL RECOGNITION

Some applicants are not eligible to apply for legal recognition under this legislation

- If both Birth Parents or both Cultural Parents are deceased, an application cannot be made.
- If the birth of the child or adult subject to the application is not registered or not registered in Queensland an application cannot be made.
- If an none of the Birth Parents and/or Cultural Parents are of Torres Strait Islander descent.
- It is important to note that this is only very new legislation and will be reviewed within the first two years of operation.
- Suggestions about improvements to the Act or processes can be made to: office@ocmokk.qld.gov.au or via the Advisory Group



