# Factsheet: Overview of the Act

## Background

The *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020* (the Act) was passed in Queensland Parliament in September 2020 and came into force 1 July 2021. The Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships is responsible for administering the Act.

## The purpose of the Act

The purpose of the Act is to:

* recognise Ailan Kastom child rearing practice
* establish a process for making applications for, and decisions about, the legal recognition of the cultural practice.

## The Commissioner and Office

The Act establishes the new role of the Commissioner (Meriba Omasker Kaziw Kazipa) and the Office of the Commissioner (the Office). The Commissioner (Meriba Omasker Kaziw Kazipa) must be an appropriately qualified senior Torres Strait Islander person with an understanding of the cultural practice.

The Commissioner (Meriba Omasker Kaziw Kazipa) is an independent statutory officer whose functions include:

* consider and decide applications for cultural recognition orders made under the Act
* promote community awareness and understanding
* advise the Registrar of Births, Deaths and Marriages of each cultural recognition order
* advise and report to the Minister on matters in relation to the administration of the Act
* manage the effective and efficient operation of the Office.

Mr C’Zarke Maza commence duties as the inaugural Commissioner (Meriba Omasker Kaziw Kazipa) on 12 July 2021.

## Making of a cultural recognition order and its effect

A cultural recognition order made by the Commissioner (Meriba Omasker Kaziw Kazipa) will permanently transfer a person’s parentage from the birth parents to the cultural parents.

Furthermore, a cultural recognition order will have effect in relation to dispositions of property by will or otherwise, and will also apply to devolutions of property when a person dies intestate.

The Act also clarifies the relationship with the *Adoption Act 2009* and other laws by providing that on the making of a cultural recognition order about a child, the order has effect as if the order were a final adoption order made under the *Adoption Act 2009*.

## Key elements

## The framework for legal recognition has been designed so that it is affordable, accessible, culturally appropriate and confidential. The framework is opt-in, consent based and voluntary.

## The key elements of the Act are outlined below:

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| **Eligibility** | There are preliminary eligibility criteria including that:   * one or both of the birth parents and one or both of the cultural parents are of Torres Strait Islander descent * the child’s birth was registered in Queensland * the cultural practice has occurred. |
| **Application** | In making an application:   * for a child, the application is made by the birth and cultural parents * for an adult, the application is made by the adult.   The application is required to include:   * statements from the birth parents, cultural parents (and where an adult the subject of an application for an order is the applicant, a statement by the adult) * that the applicants understand the permanent and lasting effect of making an order for legal recognition * if applicable, the informed consent of an ‘other carer’ (a person with legal decision-making responsibility for the child) to the application being made * statements from persons with knowledge and understanding of the cultural practice (informed persons) nominated by each of the birth parents and cultural parents to verify that the cultural practice occurred.   Parties will be given the opportunity to seek legal advice on the consequences of legal recognition. |
| Consideration by the Commissioner | The Commissioner considers the application and must be satisfied that the following requirements have been met before granting legal recognition:   * full, free and informed consent to legal recognition has been provided by the birth and cultural parents and, if applicable, the other carers * that the making of the order is for the wellbeing and best interests of  the child * that the transfer of parentage occurred in accordance with Ailan Kastom child rearing practice * that each applicant was entitled to apply * that the requirements for the application are met * that each applicant has provided the required information or statement.   In deciding what is for the wellbeing and best interest of a person who is the subject of an application, the Act sets out a number of other principles the Commissioner must have regard to. For example:   * the need to ensure appropriate recognition and preservation of Ailan Kastom in general and Ailan Kastom child rearing practice in particular: * the need to perform the powers and functions under this Act having regard to the sensitivity and cultural practices associated with Ailan Kastom child rearing practice; * the legal and cultural benefits for the child if the cultural recognition order is made recognising Ailan Kastom child rearing practice; * recognition of the birth parents’ assessment of the suitability of the cultural parents; * decisions must be made in a fair, timely and consistent manner; and * any other matter that is directly related to the child’s wellbeing and best interests. |
| **Decision** | The Commissioner considers the application and must be satisfied that the following requirements have been met before granting legal recognition:   * full, free and informed consent to legal recognition has been provided by the birth and cultural parents and, if applicable, the other carers * that the making of the order is for the wellbeing and best interests of  the child * that the transfer of parentage occurred in accordance with Ailan Kastom child rearing practice * that each applicant was entitled to apply * that the requirements for the application are met * that each applicant has provided the required information or statement. |
| **Notice of intention** | Before deciding not to make a cultural recognition order, the Commissioner must give the applicants an opportunity to respond to a notice of intention.  The notice is to include the proposed decision, the reasons for the proposed decision and that the applicants may provide further information to the Commissioner in support of the making of an order. |
| **Right of review** | If the applicants are not satisfied with the Commissioner’s decision not to make a cultural recognition order, the Act provides that an applicant may seek an internal review of the decision.  The Minister appoints a review officer to consider the application, review the Commissioner’s decision and make a decision to:   * confirm the Commissioner’s decision; or * revoke the Commissioner’s decision and make a cultural recognition order.   Applicants may also be able to seek a judicial review of the Commissioner’s decision. An application for judicial review is made under the *Judicial Review Act 1991*. |
| **New record** | Following the making of a cultural recognition order, the Commissioner notifies the Registrar of Births, Deaths and Marriages, as soon as practicable.  Once received, the Registrar of Births, Deaths and Marriages will register the transfer of parentage issuing a new record for the child and the original birth record is closed.  The Registrar will close the original birth entry, reflective of the child’s birth identity, and note a reference regarding the transfer of parentage registration on the birth entry, and a reference regarding the closed birth entry on the cultural recognition register.  There will be no notation about the closed entry on the new birth certificate to ensure consistency with the sacred nature of the custom. |

## Other elements of the Act

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| **Dispensation of consent** | There may be circumstances where consent cannot be established, for example:   * applicants cannot locate the relevant parent after making all reasonable enquiries * there would be an unacceptable risk of harm to the birth mother if the relevant parent was made aware of the application for legal recognition.   To address this, the Act provides an avenue for an applicant to make an application to the Childrens Court to dispense with a person’s consent. |
| **Impaired capacity** | There may be circumstances where a parent or adult is the subject of the application and has impaired capacity. The Act provides that a decision maker must ensure that an adult with impaired capacity is given the support and access to information necessary to participate, to the greatest extent practicable, in the decision-making process. |
| **Discretion to seek criminal history** | As a safeguard, the Act provides:   * for cultural parents to consent to a criminal history check as part of their statement, and * gives the Commissioner discretion to ask the Queensland Police Service for a written report about a cultural parent’s criminal history including recorded convictions and spent convictions. |
| **Discharge orders** | The Act provides that a birth parent, cultural parent or the adult applicant may apply to the Childrens Court for an order to discharge a cultural recognition order (discharge order). If the court makes the discharge order, the effect would be as if the cultural recognition order had not been made.  Under the Act the grounds for a discharge order may be that the order was made:   * because of a false or misleading document or representation * because a person acted fraudulently or used undue influence * because a person did not provide full, free and informed consent * the order was made on some other improper basis, or * if there are other exceptional circumstances that warrant the discharge. |

## Contact us

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