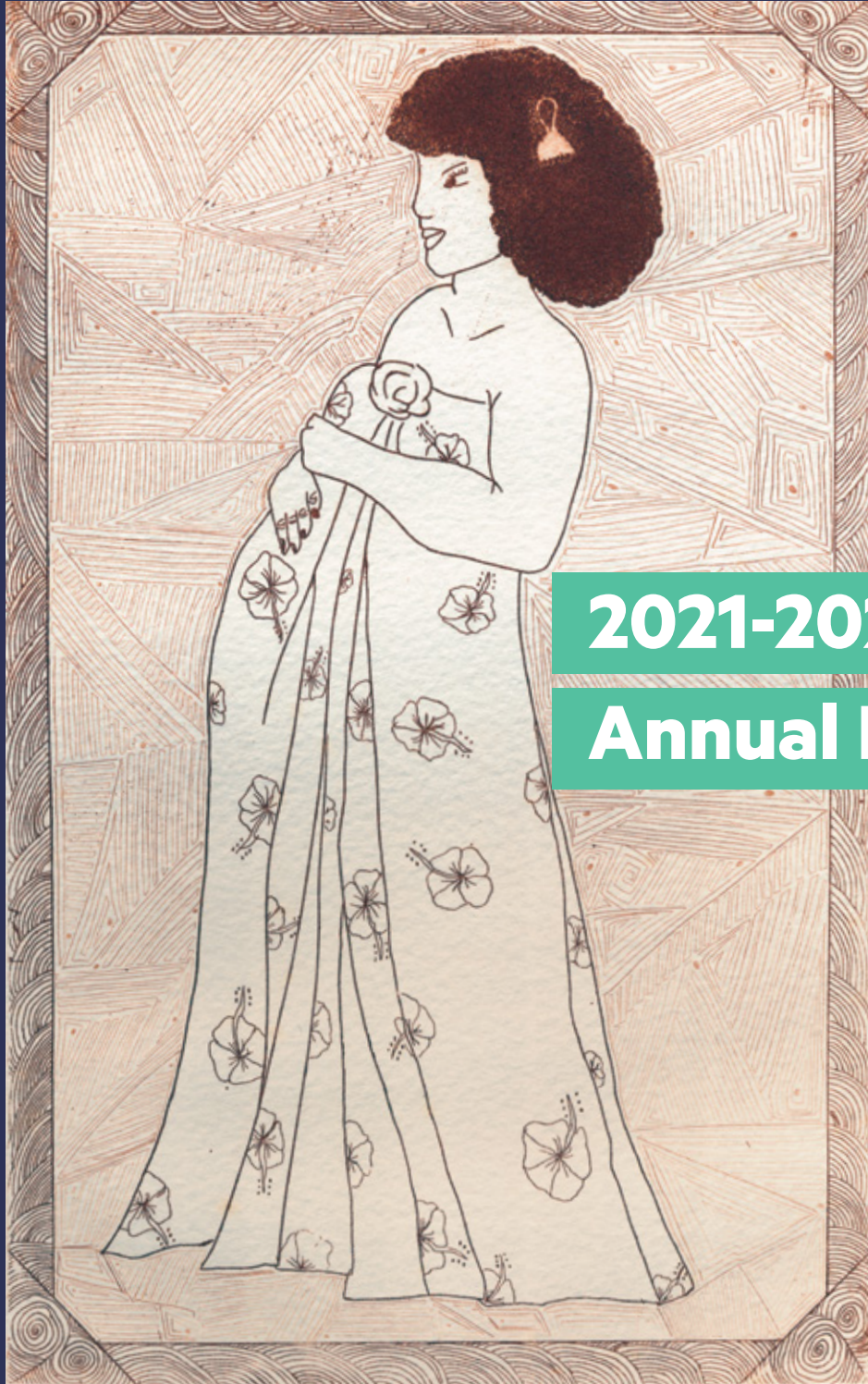


# Meriba Omasker Kaziw Kazipa



**2021-2022**

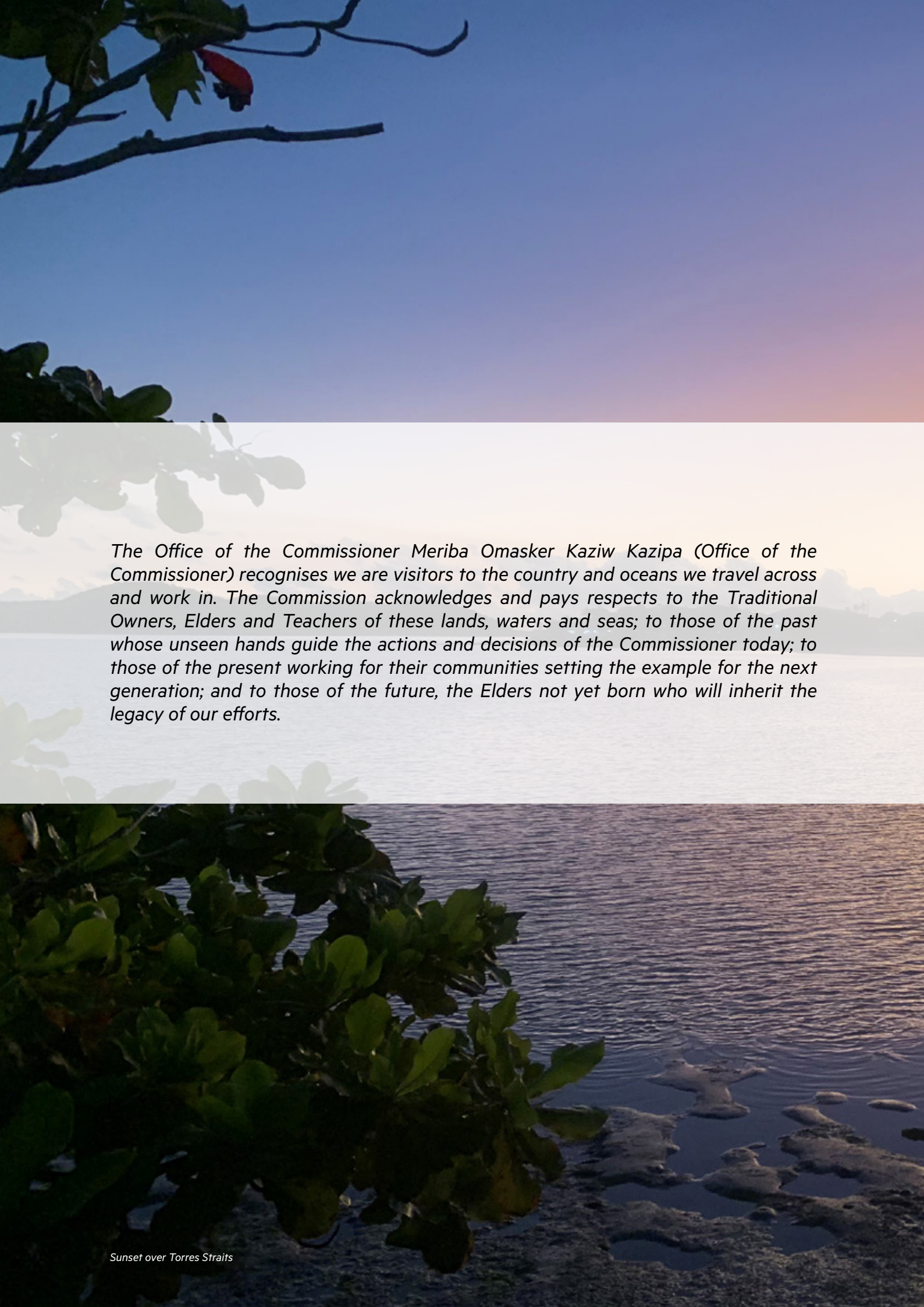
**Annual Report**

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*‘for our children’s children’*

OFFICE OF THE  
**COMMISSIONER**

*Meriba Omasker Kaziw Kazipa*



*The Office of the Commissioner Meriba Omasker Kaziw Kazipa (Office of the Commissioner) recognises we are visitors to the country and oceans we travel across and work in. The Commission acknowledges and pays respects to the Traditional Owners, Elders and Teachers of these lands, waters and seas; to those of the past whose unseen hands guide the actions and decisions of the Commissioner today; to those of the present working for their communities setting the example for the next generation; and to those of the future, the Elders not yet born who will inherit the legacy of our efforts.*



The Office of the Commissioner is proud to provide its inaugural Annual Report for 2021-2022, following the passing of the Act and commencement of the operating office of the Meriba Omasker Kaziw Kazipa program in July 2021.

This inaugural annual report of the Office of the Commissioner summarises the Commission and its financial and corporate performance for the period 1 July 2021 to 30 June 2022.

#### DISCLAIMER

Every effort has been made to ensure this document is accurate, reliable, and up to date at time of publication. The Office of the Commissioner Meriba Omasker Kaziw Kazipa will not accept any responsibility for loss caused by reliance on this information and makes no representation or warranty regarding the quality or appropriateness of the data or information.

An electronic copy of this Annual Report is available from the Office of the Commissioner's website at [www.ocmokk.qld.gov.au](http://www.ocmokk.qld.gov.au)



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The Honourable Craig Crawford MP  
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Aboriginal and Torres Strait Islander Partnerships  
PO Box 15457  
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Dear Minister Crawford

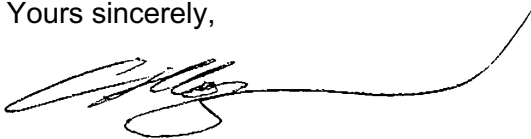
### INAUGURAL ANNUAL REPORT

I am pleased to present our inaugural 2021 – 2022 Annual Report of the Office of the Commissioner Meriba Omasker Kaziw Kazipa. This report is made in accordance with section 110 of the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Child Rearing Practice) Act 2020* (QLD) (the Act).

The Annual Report provides information on the statutory responsibilities and key activities of the Office of the Commissioner Meriba Omasker Kaziw Kazipa from 1 July 2021 to 30 June 2022. Specifically, this report outlines the function and a review of the operation of the Office of the Commissioner Meriba Omasker Kaziw Kazipa and its compliance with the relevant legislative provisions, governance and administration as contained in the Act. This report will also highlight proposals for improving the operation of, and forecasts of the workload of, the office in the present financial year

In accordance with the Act this Annual Report does not contain confidential information or any other information that identifies or is likely to lead to the identification of a child and adult who was the subject of an application, an applicant or a person who was required to give a statement for the application for a Cultural Recognition Order.

Yours sincerely,



**Mr C'Zarke Maza**  
Commissioner, Meriba Omasker Kaziw Kazipa

21 October 2022

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# 01

## INTRODUCTION

### Overview

#### Meriba Omasker Kaziw Kazipa

*(Pronounced 'Merry-bah Oh-mus-ker Kah-zeew-Kah-zipper')*

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 (on an auspicious day known to people of the Torres Strait Islands as 'the Coming of the Light'). The Office of the Commissioner Meriba Omasker Kaziw Kazipa including the Commissioner and the office staff are responsible for administering the Act. The Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships is responsible for providing administrative support services and facilities to the Office of the Commissioner to perform its functions effectively.

In historic legislation, a first of its kind, the Act recognises Torres Strait Islander Law in Western Law and establishes a process for the legal recognition of Torres Strait Islander traditional child rearing practice.

'Meriba Omasker' and 'Kaziw Kazipa' is made up of language terms from Eastern island language and Top Western island languages of the Torres Strait and collectively is translated to mean 'for our children's children'. The Act recognises Ailan Kastom child rearing practice in which a child's birth and cultural parents mutually agree, in accordance with Ailan Kastom, that the parental rights and responsibilities for the child are permanently transferred from the birth parents to the cultural parents.

In view of the very sensitive and taboo nature of openly discussing these Ailan Kastom child rearing practices, there are provisions in the Act to ensure details of these personal family arrangements are generally kept confidential. Ailan Kastom child rearing has been practised for a millennia and takes place in an intricate, extended family setting. The Torres Strait Islander peoples' concept of 'family' is considerably broader than that of Western society. Under Ailan Kastom the practice is an agreement or 'promise' between families about a child that results in the permanent transfer of parentage to the cultural parents. The child's birth parents continue to have a relationship with the child, for example as an aunt or uncle. This rich and living Ailan Kastom continues to be strongly practiced by Torres Strait Island families to this day.

Prior to the Act, the cultural parents had no legal relationship with the child. The child's legal identity did not reflect their cultural identity and lived experience, and the lack of documentation resulted in a number of barriers including difficulties obtaining passports and drivers licences, access to education, health, banking and housing services.

After more than three decades of tirelessly advocating by the Kupai Omasker Working Party, extensive community consultations across Queensland and the work of the Eminent Persons Panel (former Chief Justice of the Family Court of Australia, the Honourable Alastair Nicholson, Ms Ivy Trevallion and Mr Charles Passi), the Queensland Government in fulfilling an election promise, formally and legally recognised the Ailan Kastom traditional child rearing practice on 8th September 2020.

After much deliberations over the naming of the Act during the consultation process, the term Meriba Omasker and Kaziw Kazipa were agreed upon to describe in Torres Strait Islander languages.





With the passing of the Act, the Queensland Government has shown it's unequivocally committed to working in partnership with Aboriginal and Torres Strait Islander people as we journey on the Path to Treaty. The Act is the first of its kind, where it brings Torres Strait Islander and Western laws together, and is the first Act to use traditional Islander language in Queensland. It is especially meaningful that this legislation was introduced by the Member for Cook, Cynthia Lui MP, the first Torres Strait Islander person elected to any Australian parliament. This is a world-first outcome and is one of the strongest acts of reconciliation in Queensland's history.

The Act appoints a Commissioner who is a decision maker with powers to make Cultural Recognition Order (CROs) to permanently transfer parentage to cultural parents. The Act also establishes a process for making applications for, and decisions about, the legal recognition of the cultural practice.

Mr C'Zarke Maza LL.M, a descendant of the Meriam people of Mer (Murray Island) in the Torres Strait Islands and Yidinjdji people from Cairns was appointed as the inaugural Commissioner and commenced his duties in mid-July 2021. C'Zarke was first admitted as a solicitor and barrister in 2002 and takes up the role after 10 years with the Aboriginal and Torres Strait Islander Legal Service (ATSILS) as the Regional Manager and Legal Practitioner on Thursday Island.



## Role of the Commissioner

*The Commissioner is appointed by the Governor in Council on the recommendation of the Minister. The Minister may recommend an appointment to the Commissioner role only if the person is a Torres Strait Islander and the Minister is satisfied the person is appropriately qualified.*

*The Commissioner's role is to independently consider applications for cultural recognition and determine whether a CRO should be made.*

The Act established a Commissioner who is an appropriately qualified Torres Strait Islander person with statutory powers to independently consider applications for legal recognition of Torres Strait Islander traditional child rearing practices and make CROs.

A CRO permanently transfers parentage to the cultural parents and allows for the child's or adult's legal identity to reflect that of their cultural identity and lived experience. The making of a CRO has the same effect as if the order were a final adoption order made under the *Adoption Act 2009* (Qld).

Although a CRO does not result in the issuing of a new birth certificate, it does facilitate the process and enables a person to apply for a birth certificate that reflects their cultural identity.

### **The Commissioner's functions include:**

- independent consideration and decision making on applications for CROs
- ensure the proper, efficient and effective performance of the Office of the Commissioner
- provide advice and make recommendations to the Minister about the operation of the Act
- promote public awareness of the Commissioner's functions and the Office of the Commissioner
- advise the Registrar of Births, Deaths and Marriages of each CRO made
- any other functions conferred under the Act such as requesting further information from applicants.

### **The following are not part of the Commissioner's role:**

- determine the appropriateness of the arrangements made between *birth parents* and cultural parents
- assess the suitability of the cultural parents to care for the subject person as a parent
- assist in dispute or conflict resolution between parties to an application, or
- provide legal advice to parties to an application.



## Message from the Commissioner

It was a significant milestone in Queensland's history when the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020* (the Act), was passed in Queensland Parliament in September 2020 with bipartisan support. Following extensive community consultation, the Act formally acknowledged the importance of the culture that underpins traditional Torres Strait Islander family structures known as Ailan Kastom. The Act came into effect on 1 July 2021 and whilst it may have signalled the end of a long journey for some, for all Torres Strait Islanders in Queensland, it epitomised the start of a meaningful healing process and a more just, fair and inclusive future for all generations of Torres Strait Islander children and families.

This landmark legislation is a testament to the enduring strength of Torres Strait Island culture and to all the years of hard work of many who were so critical in bringing about this process that allows for the legal recognition of Torres Strait Islander families' use of traditional child rearing practices. Being a Torres Strait Islander myself, with Meriam (Murray Island) descent and knowing what this historic and world-first legislation means for Torres Strait Islander people, I was truly humbled and honoured in my appointment as the inaugural Commissioner (Meriba Omasker Kaziw Kazipa).

This year has been an exciting year but not without its challenges. It has been pleasing to oversee the development and establishment of the operating Office of the Commissioner and ensuring the application process is accessible, affordable and culturally appropriate for all Torres Strait Island families seeking legal recognition of their sacred Ailan Kastom. It has also been the greatest pleasure to have granted the first of many CROs in November 2021 and bear witness to the life-changing joy and hope it gave to that Torres Strait Island family.

### **Office of the Commissioner staff**

With no blueprint existing for an office of this type, the wonderful staff within this office have played a crucial role in achieving each milestone. The heavy workload of our small Cairns and Thursday Island based staff has continued with their enthusiastic support and I thank the team for their valued commitment in maintaining the high standards we have set for ourselves.

### **Torres Strait Islander child rearing tradition is recognised in Queensland in world-first achievement**

The Act is the first of its kind, where it brings Torres Strait Islander law and Western laws together and is the first Act to use traditional Islander language in Queensland. Since coming into effect, this Act has been positively changing the lives of Torres Strait Islander families forever and I am pleased to report that hundreds of Torres Strait Islander people have made and been assisted with their enquiries by the Office of the Commissioner staff.

This Act is a testament to the Queensland Government's commitment to reframing its relationship with Aboriginal and Torres Strait Islander people and I am proud that the government recognises the outcomes of this secret and sacred customary practice and now has the mechanisms in place to reflect this for Torres Strait Islander peoples in Western law. Indeed, legal recognition of Torres Strait Islander traditional child rearing practice is among the strongest acts of reconciliation in our state's history.

The Office of the Commissioner Meriba Omasker Kaziw Kazipa, Cairns, officially opened in August 2021 and had a full complement of staff from January 2022. From its commencement, the office experienced an impaired start due to COVID-19 restrictions impacting how the office could operate, and engage with vulnerable communities. The Office has been instrumental in the development of the application process and its information management system which is currently being used to process applications. The Office was also influential with key stakeholders and government bodies in making improvements in service delivery for Torres Strait Islander Queenslanders.

**Some of our key achievements include:**

- Establishing, staffing and opening an office in Cairns and Thursday Island to facilitate the application process and creating a culturally safe place where Torres Strait Islander children and families can come to make applications for CROs.
- Assisting 372 Torres Strait Islander people with enquires, granting four CROs, processing six additional applications and assisting with preparation for lodgement of another four applications.

I genuinely acknowledge the efforts of our staff, for the professional way they responded to the rapidly changing operating environment. Our community engagement activities to Torres Strait Island families in the Zenadth Kes (Torres Strait Islands) and to other areas throughout Queensland were able to be undertaken after the relaxation of COVID-19 restrictions in early March 2022. The office could then begin, in earnest visiting vulnerable communities promoting and raising awareness of our service. This engagement resulted in a momentous increase in enquiries from Torres Strait Islander families seeking to make life changing applications for CROs.

**The Commission's future**

On 21 June 2022 the Honourable Craig Crawford MP, Minister for Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, confirmed in a state budget announcement, the extension of funding for the Office of the Commissioner Meriba Omasker Kaziw Kazipa to 30 June 2024. We look forward to continuing and expanding our work with Queensland Torres Strait Islanders.

To ensure the Act is operating as originally intended, and to provide opportunity for process and implementation improvements, the government has committed to a review of the operations and efficacy of the legislation within two years after its commencement. We also look forward to working in partnership with government and service providers to continue building on our successes and work determinedly and proactively in the areas where improvements can be made.

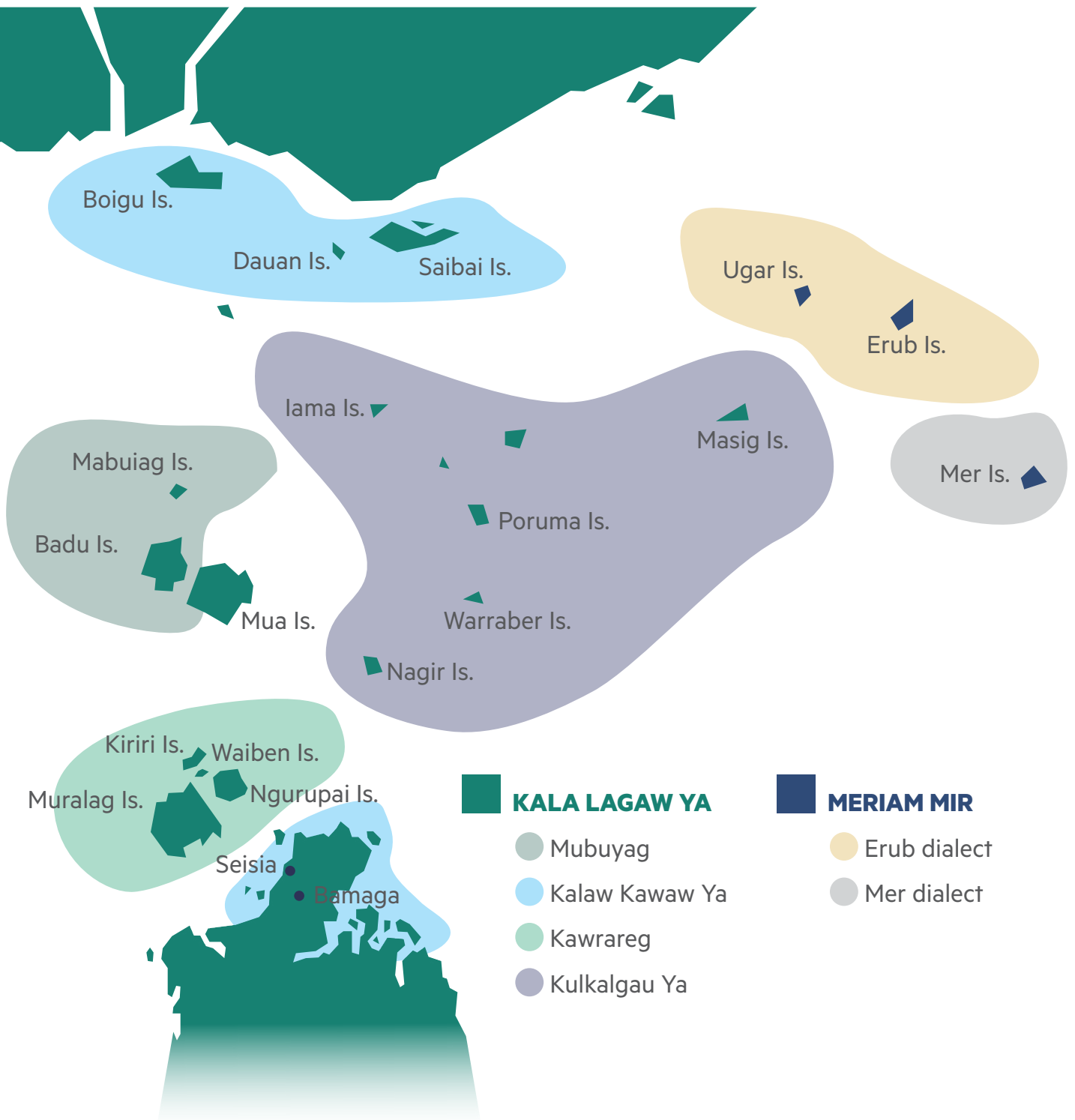
I am pleased to submit the Office of the Commissioner inaugural Annual Report recording its activities for the financial year ending 30 June 2022.



# 02

## BACKGROUND AND HISTORY

### Torres Strait Traditional Languages Map



# Torres Strait Islanders

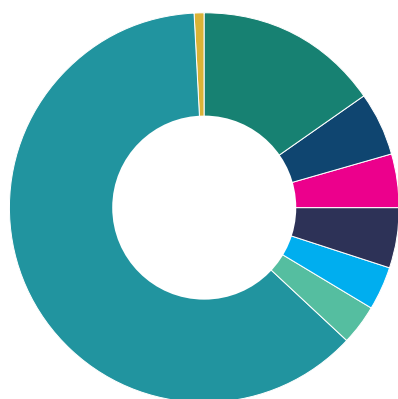
Torres Strait Islanders are of Melanesian background and have their homeland in the Torres Strait Islands, which is situated between the tip of Cape York Peninsula and Papua New Guinea. The Torres Strait Islands (known as ‘Zenadth Kes’ to the Torres Strait Islanders) was named after a Spanish captain, Torres, who sailed through the strait in 1606 on his way to Manila in the Philippines. Torres Strait Islanders number approximately 70,000, with the majority of Islanders living on the mainland of Australia, particularly in North Queensland. [Aboriginal and Torres Strait Islander people: Census, 2021 | Australian Bureau of Statistics \(abs.gov.au\)](https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/census-population-and-housing-counts-aboriginal-and-torres-strait-islander-australians/2021/Queensland.xlsx) Of the estimated 5900 Islanders living in the Torres Strait, approximately 2000 live on Thursday Island, the commercial centre of the Torres Straits Pie, and the remaining population are distributed between the 18 inhabited islands throughout the region <https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/census-population-and-housing-counts-aboriginal-and-torres-strait-islander-australians/2021/Queensland.xlsx>.

Following European contact, initially by explorers and then by the London Missionary Society in 1871, Torres Strait Islanders have largely remained on their homelands and their culture and traditions have continued relatively intact. Torres Strait Islanders were able to incorporate Christianity into their existing social organisations, with island chiefs becoming church leaders. The hierarchical structures that controlled social and religious life adapted their pre-contact mode of operating to the new influences brought by European contact. The overall effect of these two factors has meant that Islanders, whilst experiencing negative impacts from colonisation, were arguably not experienced to the same extent as suffered by many Aboriginal people in Australia. These negative impacts were largely attributed to the forced dislocation from their traditional lands and the attempted extermination of their race, language and culture. The Islands of the Torres Strait are divided into the following five main regions: the Eastern Islands, which are volcanic in origin, have rich soil and rise sharply from the sea; the Central Islands, which are flat sandy coral cays; the top Western Islands, situated next to the coast of Papua New Guinea, which are low-lying mangrove islands; and the Western Islands, which are remnants of the Australian Great Dividing Range and consist of old volcanic rock and have scrub vegetation.

Eastern Islanders speak their own traditional language known as Meriam Mer, while Western Islanders speak Kala Lagau Ya. Islanders use Torres Strait Creole (or Kriol), also known as [Ailan Tok](#), Yumplatok or Broken (Brokin), is a mixture of Standard Australian English and traditional languages. It developed from pidgin English while missionaries were on the islands in the 1850s. It has its own distinctive sound system, grammar, vocabulary, usage and meaning.

Most Torres Strait Islanders speak Creole, as it helps speakers of the other languages communicate with each other, and each island has its own flavour. Islanders speak Creole in daily life and on some local and regional radio programs. Creole also spread to the Cape York Peninsula with the Islanders’ migration to the mainland.

While English is widely understood and taught in the Torres Strait, most Islanders use English as a second or third language.



**People Identified as Torres Strait Islander and Identified as both Aboriginal and Torres Strait Islander**

NSW	10,842	TAS	2,460
VIC	3,828	NT	2,501
SA	3,036	QLD	43,845
WA	3,649	ACT	540

Ref. 2021 census data



# Ailan Kastom

## An explanation of traditional child rearing practices

Definition: the meaning of Ailan Kastom child rearing practice in accordance with the Act.

***Ailan Kastom child rearing practice** is the practice recognised by Island customs 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.*

The underlying principle of Torres Strait Islander child rearing practices is that giving birth to a child is not necessarily a reason to be raising the child. The issue of who rears the child is dependent on a number of social factors, and is a matter of individual consideration by the families involved. Children are never lost to the family of origin, as they have usually been placed with relatives somewhere in the family network.

### Variation in Ailan Kastom child rearing practice

With over 130 islands, sandy cays and rocky outcrops of which 18 are inhabited in the Torres Strait, the Ailan Kastom child rearing practices can differ greatly depending on the Island and family involved. That means there is no one, exact practice that covers all of the Torres Straits. What may be practiced on Mer (Murray Island) will vary significantly from Saibai Island. Whilst the above definition of Ailan Kastom child rearing practice encapsulates the essence or common thread in each Island practice, the definition was intentionally left broad enough to encompass these variations in practice.

### An explanation of traditional child rearing practises by Paul Bann, Member of the Meriba Omasker Kaziw Kazipa Advisory Group [\(Ref. pg 71\)](#)

Paul Bann, Member of the Meriba Omasker Kaziw Kazipa Advisory Group explains that Ailan Kastom child rearing practice 'is a widespread practice that involves all Torres Strait Islander extended families in some way, either as direct participants or as kin' to child given under this practice.

He continues by stating that Ailan Kastom child rearing practice 'takes place between relatives and close friends where bonds of trust have already been established.

Describing the practice of permanently transferring a child from one extended family member to another as 'adoption' was originally applied by anthropologists to differentiate between permanent care and temporary care. The practice is now referred to as Ailan Kastom child rearing practice.

### Some of the reasons for the widespread nature of Traditional 'child rearing practices' include:

- To maintain the family bloodline by giving a male child to a relative. This is linked to the inheritance of traditional land in the islands.
- To keep the family name by giving a male child from a relative or close friend into the family.
- To give a family who cannot have a child due to infertility the joy of raising a child. A married couple may give a child to either a single person or another couple. 'Relinquishment' is not restricted to single parents.
- To strengthen alliances and bonds between the two families concerned.
- To distribute boys and girls more evenly between families who may only have children of one sex.
- To replace a child who had been given out to another family – this may occur within extended families.
- To replace a child into the family once a woman has left home so that the grandparents would still have someone to care for.



**Torres Strait Island community members described the differences in child rearing practice within the Torres Strait community:**

“

**Aunty Ivy Trevallion, explained to the committee that in the western islands of the Torres Strait it is custom:**

*... particularly with women, if we marry out we have to replace ourselves back in the family. So the eldest child usually is the one that we place with the family. Another one is that if you have a child out of wedlock the family would raise the child for you. Women in particular are not subjected to any sort of domestic violence or jealousy of any sort. The woman can then walk her life knowing that this child is safe with the family group who would look after it.*

*... The eastern islanders practise mainly through the blood lines, so you have to be related to that person or family for them to give you a child.*

*With the western islands, you can transfer the child.*”

“

**An eastern islander, Uncle Francis Tapim explained:**

*In Mer culture it [the giving of a child] is through the blood line. When we say 'blood line', if I am the brother, Mrs A is the sister and Leo is the child and Mrs A as my sibling has no children, we agree—brother and sister agree—to adopt Leo. That is what we mean by through blood line, because we are related through blood. We are siblings. We are first cousins. Cousins are recorded in that with siblings.*”

“

**Mr Ezra Anu, from Saibai Island, shared a west islander view of Torres Strait child rearing practice:**

*From a western island perspective in regards to island adoption, we hold the family circle as very important. In non-Indigenous family circles there is a mother, a father and two or three children. With our family it extends out to uncles, aunties and grandparents.*

*For our community, the waku, the mat that we play on and sit on, is regarded as an analogy of family and community. The strands are woven together which holds our family together. Our relationship with each other and other clan groups is very important and vital. This legislation will legitimise that lore in regards to our recognition of island adoption. I am a product of that.*

*That means that we adopt inside of our totems.*”





# The Woven Mat

*For Torres Strait Islanders, the mat signifies life's journey from cradle to grave. It is used for housing material, sleeping, conceiving, birthing, initiation, education, marriage, welcoming, meeting, transport, hunting, ceremonies, shelter and to our final journey. The interwoven pattern and the weaving of our mat signifies our strength and our unity in any challenges we face, but most importantly in this context it signifies the interconnection of all Torres Strait Islanders, regardless of which island or community we may originate from. We are all interconnected, and the residents of our community are all interrelated.*

*Philemon Mosby, Mayor, Poruma Island*

“For our community, the waku, the mat that we play on and sit on, is regarded as an analogy of family and community. The strands are woven together which holds our family together. Our relationship with each other and other clan groups is very important and vital. This legislation will legitimise that lore in regard to our recognition of island adoption. I am a product of that. That means that we adopt inside of our totems.”

**Ms Cynthia Lui MP, Yam Island**

“When we talk about the interconnectedness of our people with each other, it represents that mat because, unlike the westernised society, we are all connected either through blood or simply because of our very existence in these communities. Each of us are related to each other. That is important for us to understand. That is why we are supporting this, and that is why people could not understand before. We are all cousins, mothers, fathers, grandfathers.”

**Ms Cynthia Lui MP, Yam Island**

**When introducing the Bill, Ms Cynthia Lui, the Member for Cook, described the practice as:**

... an ancient, sacred and enduring child-rearing practice, an integral part of Torres Strait Islander cultural fabric since time immemorial. This practice sits on the foundations of Torres Strait Islander culture and cultural decision-making processes in Torres Strait Islander community and family life. It promotes inclusiveness by allowing children the ability to grow into their full potential without doubt or questions about their identity.

**The Torres Strait Island Regional Council Mayor Philemon Mosby, stated:**

This is not about being recognised in our communities, that recognition already existed, this is more so for our children to reaffirm their identity and place in a Western Society. As Torres Strait Islanders, we are all interconnected and residents of our communities are all inter-related. Because of our interconnectedness, adoption for Torres Strait Islanders takes on a different context to that in the Western World. So too does extended family and kinship.

Traditionally an agreement is usually made between the families and once the transference has occurred (i.e. giving of the child), the ‘mat is closed’ (meaning the matter is closed ... permanently). It is important to be aware that discussions around Ailan Kastom and details of the practice itself is considered taboo and are highly sensitive. Any decision to disclose this Ailan Kastom to the subject person, is fundamentally left to the cultural parents.



# The Coconut Palm Tree

## **The coconut palm tree: a metaphor for Islander family life** [\(Ref. pg 71\)](#)

by Steve Mam, McRose Elu, Ivy Trevallion and Allan G. Reid

*This is the presentation on Islander family life given to the National Family Court Conference in Sydney in July 2021. The use of known physical objects as metaphors for describing abstract concepts is a common Islander method of expression.*

### **STAGE 1 THE ROOTS OF THE COCONUT TREE**

The roots of the coconut tree represent the basis of existence for Torres Strait Islanders, out of which arise the seed (refer Stage 9) of future generations. In the same way that the coconut tree depends on its roots to provide stability and an anchor in time and place, Torres Strait Islanders depend on their ancestral roots to 'fix' their existence in humanity through their particular traditions and customs.

**The principle: foundation and heritage.** The past, present, and future parents of Torres Strait Islander existence are embodied in the roots of the coconut tree.

### **STAGE 2 THE TRUNK OF THE COCONUT TREE**

Provided that the roots of the coconut tree are strong, the trunk of the tree shall also be strong and be the conduit for the sap - or 'spiritual energy' - to pass back and forward between the upper and lower parts of the tree. The trunk is the vital channel connecting the upper and lower parts of the tree together.

**The principle: intimate union of male and female - husband and wife.** In a 'fundamental' sense, the union of opposites gives rise to offspring and is a continual process underlying the spiritual existence of Torres Strait Islanders.

### **STAGE 3 THE LEAVES OF THE COCONUT TREE**

As with most indigenous peoples throughout the world, the extended family is an environment enjoyed, having a clearly defined structure. The key-word is relationships and in a defined structure has prominence. Relationships between members of the extended family (the microcosm of economy) are subject to strict rules, with 'place' having jurisdiction.

As with the leaves of the coconut tree which are on display to all, relationships between the extended family, according to tradition, custom and practice, are on display to all and in this sense are exposed without shame.

**The principle: the extended family.** The extended family environment of Torres Strait Islanders is rich with the practice of Traditional Child Rearing.

### **STAGE 4 THE NEW SHOOT OF THE COCONUT TREE**

At the apex of the coconut tree the new shoot grows, and when matured fans out into new leaves. The new leaves when encased in the shoot itself is akin to the embryonic state of childbearing, and, when sprouting, is akin to the birth process.

**The principle: siblings.** Siblings are an important factor in the lifestyle and culture of Torres Strait Islanders.

**STAGE 5 THE FIRST TIER OF LEAVES AROUND THE NEW SHOOT**

Surrounding the new shoot are tiers of leaves whose geometry is different from that of the main body of leaves on the tree. These leaves grow vertically and in a circular pattern around the new shoot. In that sense they are seen by Torres Strait Islanders to be sentinels of the new shoot, though one can only speculate on their actual function in relation to the rest of the tree.

**The principle: the teachers.** This tier of leaves are the aunts and uncles of the siblings. In the traditional moiety system of Torres Strait Islanders, there is a special person for each child who functions as the 'external teacher' as distinct from the biological parents who function as the 'internal teachers'.

**STAGE 6 THE SECOND TIER OF LEAVES AROUND THE NEW SHOOT**

Surrounding the first tier of leaves, which are arranged in a circular pattern around the new shoot, is a second tier of leaves.

**The principle: guardians of knowledge and culture.** This second tier of leaves functions more remotely in relation to the growth of the siblings than does the first tier of leaves surrounding the new shoot. They are the Elders of the community, one of whom is chosen as the principal Elder, known as the Mamoos (pronounced mah-moose). By virtue of their age, the Elders are considered the wise ones of the community whose collective wisdom oversees the everyday existence of Torres Strait Islanders.

**STAGE 7 THE BUNCHES OF COCONUTS**

Coconuts are the result of fertilisation of the flower which produces the fruit and, in whose existence is also the seed of new coconut trees. In the cycle of life, they bear the physical evidence of the sap of the tree.

**The principle: the individual and people.** The simile employed here is that the fruit of the tree (the individual and the people) is the material evidence of the transformation of sap (spiritual energy) via the effect gained through channelling the trunk along the strictures of 'household rule'.

**STAGE 8 THE DEAD LEAVES OF THE COCONUT TREE**

The leaves of the coconut tree having completed their function of photosynthesis for their host (viewed from the perspective of the individual) simply fall to the ground and are strewn around the trunk.

**The principle: old people (ancestors/lineage).** Reproduction after rejuvenation old people having realised their function of maturity (refer Stage 6) pass on from this physical life and join their ancestors in their spiritual life hereafter.

**STAGE 9 THE FALLING COCONUTS**

Once the coconuts have reached prime maturity they simply fall off the tree to the ground below and assimilate into seed form for new growth.

**The principle: offspring/new generation.** The falling coconuts represent offspring and new generation and the perpetuation of tradition, custom, culture and practice.

**STAGE 10 THE GROWTH RINGS AROUND THE TRUNK**

Around the trunk of the coconut tree are growth rings which are easily seen.

**The principle: recording of history (visual and aural).** Torres Strait Islanders use the individual growth rings, or collections of them, to fix a record of an event into place. They are visual records seen and understood by those having the 'key' to read the records.

## The journey towards legal recognition

Even though Torres Strait Islander people have practiced this most sacred Ailan Kastom child rearing practice since time immemorial, it is important to understand that it has been an extremely long and arduous road towards the legal recognition of this Ailan Kastom.

“ In Queensland, whilst we have attained legal recognition of Torres Strait Islander traditional child rearing practices, the real driving force behind this world first achievement was a small band of Torres Strait Islanders and a handful of philanthropists who formed the Kupai Omasker Working Party. In their extraordinary story they tell us of a journey - an epic struggle of setbacks, renewed hope and ultimate triumph.

Their story and their work, is a testament of what can be achieved when two cultures work together towards an ultimate goal to address a social wrong and structural injustice.

**Commissioner Maza**



Members of the Advisory Group with Hon Craig Crawford MP and Commissioner C'Zarke Maza

## Consultations that informed the Act

The Act was developed in response to many years of advocacy by Torres Strait Islander peoples and builds on previous consultations held in 1993 and from 2011 to 2013.

Three Eminent Persons were engaged to provide legal, cultural and gender expertise during the complex and culturally sensitive consultations. The Eminent Persons worked closely with the Queensland Government and Torres Strait Islander communities to ensure the voices of Torres Strait Islander people were reflected in the development of the Act.

### Ms Ivy Trevallion

First Torres Strait Islander social worker, having graduated from Queensland University in 1986 and current Chair of the Kupai Omasker Working Party.

### Honourable Alastair Nicholson AO RFD QC

Former Chief Justice of the Family Court with extensive knowledge and experience of traditional Torres Strait Islander childrearing practices including previous assistance with consultations and advisory to the Kupai Omasker Working Party since 2010.

### Mr Charles Passi

Torres Strait Islander member of the Queensland Centre for Domestic and Family Violence Aboriginal and Torres Strait Islander Advisory Group and former Chair of the National Aboriginal and Torres Strait Islander Healing Foundation (2013-2015).

In 2018, with the support of a panel of Eminent Persons, the Queensland Government led a series of community meetings.

More than 350 Queenslanders participated in meetings held in communities across the state—including Thursday Island, Cairns, Bamaga, Townsville, Mackay, Badu Island, Mer Island, Caboolture, Goodna, Brisbane City and Carindale—in response to ‘Akuar Thoeridhay Kazi’ – For Our Children’s Children’ Consultation Paper.

In 2019, the former Department of Aboriginal and Torres Strait Islander Partnerships facilitated a series of targeted consultations with the Eminent Persons on the draft legislative framework that would guide the introduction of the Bill.

The department held a consultation workshop to discuss the Bill with the Kupai Omasker Working Party, Eminent Persons and Judge Josephine Willis AM, Cairns Federal Circuit Court Judge, with representatives from the former Department of Child, Safety, Youth and Women and Department of Justice and Attorney-General in attendance.

Other organisations were also consulted on the draft Bill including the Queensland Human Rights Commission, the Queensland Family and Child Commission, the Queensland Civil and Administrative Tribunal, the Office of the Public Advocate, the Office of the Public Guardian, the Public Trustee, Queensland Law Society, the Bar Association of Queensland, Legal Aid Queensland, Aboriginal and Torres Strait Islander Legal Services and relevant heads of the judiciary.

### Key findings

#### Some of the key findings from the consultation sessions were:

- All Torres Strait Islander children should be able to obtain a birth certificate that reflects their cultural identity and lived experience.
- Cultural law and protocols dictate that discussion about traditional child rearing practices outside of the family (particularly those directly involved) is ‘taboo’, prohibited and regarded as highly inappropriate.
- Any process for Torres Strait Islander people to obtain legal recognition should be affordable, accessible, culturally appropriate and confidential.



Commissioner C'Zarke Maza visits Badu Island

## A timeline of the process

**During the 1950s to 1970s, forced adoptions were widespread in Australia and the emotional damage caused to all those affected, remains prevalent to this day.**

- 1970s** — Torres Strait Islander child-rearing practices whilst not legally recognised, were able to be registered as adoptions under the now repealed Adoption of Children Act 1964 (Qld).
- 1985** — The Queensland government ceased registration of traditional Torres Strait Islander adoptions and issuing new birth certificates to adoptive parents.
- 1986** — Australian Law Reform Commission report *Recognition of Aboriginal Customary Laws*, highlighted that the kinship relationships and child-rearing practices of Aboriginal and Torres Strait Islander peoples are of fundamental importance in bringing up children in their societies, however recommended against specific recognition of such customary adoption. It was the Commission's view that sufficient protection was already provided by the placement principle, which in essence provided that if and when the need arose, to place Aboriginal and Torres Strait Islander children outside their family homes, the Aboriginal Child Placement Principle outlined a preference for these children to be placed with other Aboriginal and Torres Strait Islander people.
- 1988** — Surrogate Parenthood Act 1988 (Qld) passed (now repealed), which prohibited not only commercial surrogacies but also those carried out on an altruistic basis (non-commercialised surrogacy). Basically this Act resulted in some forms of Torres Strait Islander traditional child rearing practices being criminalised.
- 1990** — Family Court commences the Kupai Omasker program led by the Hon. Alistair Nicholson then Chief Justice of the Family Court of Australia. The Hon. Alistair Nicholson continues his important work as a member of the Meriba Omasker Kaziw Kazipa Advisory Group.
- The Kupai Omasker Working Party formally established. With the Working Party, the Queensland Government authorised consultations with Torres Strait Islander people living on the Islands and on the Australian mainland.
- 1993** — A consultation was commissioned by the Queensland Government in 1993 and Torres Strait Islanders were interviewed together with attending community meetings at major towns on the coast of Queensland and six islands in the Torres Strait. This consultation process led to the 1994 'The Tree of Life' Report. The Report found that due to lack of legal recognition of customary adoption, Torres Strait Islander children were being raised in adoptive families and finding out inadvertently that their adoptive name was not the name on their birth certificate.
- 1994** — In June 1994, a report titled 'The Tree of Life', was presented to the Minister for Family Services and Aboriginal and Islander Affairs by the IINA Torres Strait Islander Corporation. The report was developed as a result of the 1993 consultations which outlined the problems Torres Strait Islander people were facing trying to maintain customary adoption without appropriate legal recognition.
- Following representation by the late Chair of the Working Party and a visit to the Torres Strait by the Hon Alastair Nicholson, the Family Court adapted its practices to enable parenting orders to be made in favour of receiving parents. The Family Court remained however unable to correct the birth certificate.
- 1997** — State-wide workshop on Customary Adoption was conducted, funded by the Queensland Government's Office of Aboriginal and Torres Strait Islander Affairs and the Department of Family Youth and Community Care, and was held in Townsville.
- The Office of Aboriginal and Torres Strait Islander Affairs and Department of Families, Youth and Community Care report 'The Legal Recognition of Torres Strait Islander Traditional Adoption' confirmed previous findings on the high frequency of customary adoption within the community, and provided direction to the Queensland Government regarding legislative and non-legislative change, including that legislative recognition of this issue be considered by both the Commonwealth and the Queensland Governments.
- The report was endorsed by the Torres Strait Islander community at their Seventh National Conference in Rockhampton in late September 1997.



**1998** — Further consultation conducted by the Working party with Torres Strait Islander people in Queensland as a result of the 1997 National Conference on the legal recognition of customary adoption.

**1999** — A discussion paper was issued by the Queensland Government's Department of Aboriginal and Torres Strait Islander Policy Development which recommended 'full and proper' consultation take place with the Torres Strait Islander community over proposed ways in which customary adoption could be incorporated legally into existing adoption legislation.

**2001** — Family Law Pathways Advisory Group noted in their 2001 report titled 'Out of the Maze' that there needed to be meaningful consideration given to amending the Family Law Act 1975 (C'wlth) to incorporate Indigenous child rearing practices.

**2004** — Kupai Omasker subject to review by the Family Law Council, made recommendations that the Family Law Act 1975 (C'wlth) be amended to acknowledge that children of Indigenous origins have a right, in community with other members of their group, to enjoy their own culture and to recognise traditional adoption practices of Torres Strait Islander people.

**2008** — Investigation into Altruistic Surrogacy committee recommended developing options for recognising traditional Torres Strait Islander adoptions.

**2009** — Introduction of Adoption Act 2009 (Qld) which recognised that Island custom includes a customary child rearing practice that is similar to adoption, in so far as parental responsibility for a child is permanently transferred to someone other than the child's parents.

**2010** — Queensland Government commences consultation in the Torres Strait and on the mainland of Queensland.

Commencement of Surrogacy Act 2010 (Qld) to decriminalise non-commercial and altruistic surrogacy.

**2011** — The Department of Aboriginal and Torres Strait Islander and Multicultural Affairs consults with Torres Strait Islander people in the Torres Strait.

**2012** — The Department of Aboriginal and Torres Strait Islander and Multicultural Affairs have consultations with Torres Strait Islander people on the mainland.

The Family Court of Australia in 2012 highlighted its limitations when dealing with Torres Strait Islander child rearing practices and advocated for the Federal and State governments to introduce new laws that respect this practice. As noted by Watts J in *Beck and Anor & Whitby and Anor* [2012] FamCA 129 at 75:

"...the first Respondent is recorded on the birth certificate as the child's father and the second Respondent is recorded on the birth certificate as the child's mother. There is currently no power under the Family Law Act to make any order that would rectify that situation. Notwithstanding the orders I make today, under the Family Law Act, the Respondents remain the child's parents and the Applicants do not become the child's parents. The difficulty with the birth certificate is an example of a practical problem that flows from the lack of formal recognition of the Applicants as the parents of the child. The problem has been discussed for more than 25 years in various significant Government reports. The Federal Government has the power to amend the Family Law Act to enable a court to declare persons in the positions of the Applicants in this case as parents. Alternatively, the states have power to amend State legislation to allow full recognition of traditional Torres Strait Islander child rearing practices. Maybe one day the law will be changed."

**2017** — During the 2017 Queensland election campaign, the Queensland Government made commitments to:

*Introduce new laws that legally recognise the outcomes achieved by Torres Strait Islander families' continued use of traditional 'adoption' (GEC 580);*

*Appoint an eminent person who will help consult with Queensland's Torres Strait Islander community on the laws to recognise Torres Strait Islander adoption (GEC 581); and*

*The government further committed to allocate \$1 million to implement the legislation.*

- 2018** — Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) engaged three Eminent Persons, Ms Ivy Trevallion, Mr Charles Passi and the Hon. Alistair Nicholson to provide legal, cultural and gender expertise during the complex and culturally sensitive consultations with Queensland's Torres Strait Islander community.
- The Eminent Persons met for the first time on 12 June 2018 together with representatives from DATSIP, Department of Child Safety, Youth and Women (DCSYW), Department of the Premier and Cabinet (DPC) and the Department of Justice and Attorney-General (DJAG); and then again on the 28 June 2018.
- DATSIP coordinated more than 30 consultation meetings (including community, small group and individual meetings) held in the Torres Strait and across Queensland in November and December 2018. This included: Thursday Island, Murray Island, Badu Island, Cairns, Bamaga, Townsville, Mackay, Goodna, Caboolture, and Brisbane. Over 350 Queenslanders participated in these meetings.
- 2019** — DATSIP engaged with Alistair Nicholson and Ivy Trevallion regarding the model.
- DATSIP worked with colleagues across the Queensland Government, including Births, Deaths and Marriages Registry, Queensland Civil and Administrative Tribunal and Right to Information Unit to develop a framework that will legally recognise Torres Strait Islander traditional child rearing practices.
- 2020** — Queensland's first Torres Strait Islander Member of Parliament Cynthia Lui, Member for Cook, introduced the draft Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practices) Bill 2020.
- The Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practices) Act 2020 (Qld) was granted royal assent on 14 September 2020.
- Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP) works to establish the Office of the Commissioner.
- This includes engagement with relevant agencies across the Queensland Government including Births, Deaths and Marriages Registry, Queensland Police Service, Department of Justice and Attorney-General (DJAG) and the Department of Children, Youth Justice and Multicultural Affairs (DCYMA).
- 2021**
- 1 April 2021** — Proclamation of some provisions of the Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practices) Act 2020.
  - 1 July 2021** — Proclamation of remaining provisions of the Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practices) Act 2020.
  - 12 July 2021** — C'Zarke Maza commences duties as inaugural Commissioner.
  - August 2021** — Office of the Commissioner officially opened.
  - 1 September 2021** — Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practices) Regulation 2021 commenced.
  - 7 September 2021** — Meriba Omasker Kaziw Kazipa application process opened.  
Meriba Omasker Information Management System (MOIMS) goes live to undertake record keeping and uploading of information relating to the application process.
  - 22 November 2021** — First CRO was granted

# The Bill



On **16 July 2020**, Ms Cynthia Lui MP, Member for Cook, introduced a private members Bill, the **Meriba Omasker Kaziw Kazipa** (Torres Strait Islander Traditional Child Rearing Practice) into State Parliament (the Bill). The Bill was introduced with the full support of the Queensland Parliament and was adopted by the Queensland Government and referred to the relevant portfolio committee (the committee) to prepare their report on the Bill.

**The objectives of the Bill were to:**

- recognise Ailan Kastom child rearing practice
- establish a process for applications to be made for the legal recognition of the practice
- provide for a decision making process that will establish the legal effect of the practice

**An integration of traditional law into modern law**

The Bill proposed a framework that will formally recognise traditional Torres Strait Islander Ailan Kastom into law. According to the Torres Strait Island Regional Council, the Bill carried ‘specific and important significance as a new nexus between LORE and LAW’.

The committee noted the historic nature of this Bill, the first legislation in any Australian Parliament to include Torres Strait Islander languages, and the ‘first legal framework of its kind in Australia’.

As stated during the departmental briefing by Ms Kathy Parton, Deputy Director-General (DDG), Policy and Corporate Services, DATSIP:

*“Legally recognising Torres Strait Islander traditional child rearing practice is an important step forward in the Queensland Government’s journey to a reframed relationship with First Nations people and acknowledges the strength of Torres Strait Islander culture.”*

*“ I think it is great that this has been put forward because this is literally closing the gap of understanding—for those like my little son, who is traditionally adopted, to know that he is loved under the lore umbrella but also under law. ”* Mabuiag Islander father



L to R: Hon Leeanne Enoch MP, Tomisina Ahwang, Ms Cynthia Lui MP and Hon Shannon Fentiman MP at the introduction of the Bill, 16 July 2020.

## Parliamentary Committee recommendations of the Bill

### Recommendation 1

The committee recommends the Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Bill 2020 be passed.

### Recommendation 2

The committee recommends that the Department of Aboriginal and Torres Strait Islander Partnerships prioritise the implementation of education programs that are culturally appropriate, independent and supportive, as well as mindful of the sensitive nature of the Ailan Kastom process.

The committee recommends that the department explore opportunities for the provision of independent counselling and support to be made available to people who may experience trauma as a result of their interaction with the legal recognition process.

### Recommendation 3

To uphold the independence of the Commissioner, the committee recommends that the Department of Aboriginal and Torres Strait Islander Partnerships establish the offices for the Office of the Commissioner, in both Cairns and Thursday Island, in facilities separate to departmental offices.

### Recommendation 4

The committee recommends that the clause 124 of the Bill be amended so that section 44 of the *Births, Deaths and Marriages Registration Act 2003* is further amended to explicitly instruct the Registrar to remove the names of the birth parents from the new birth certificate.

### Recommendation 5

The committee recommends that clause 124 of the Bill be amended so that section 44 of the *Births, Deaths and Marriages Registration Act 2003* is further amended to ensure that the Registrar may give requested information relating to a closed entry for a person (who is the subject of the traditional recognition order, and while still a child) only with the consent of one or more of the cultural parents (and/or guardian).

### Recommendation 6

That proposed section 45 of the Bill be amended to ensure the destruction of any criminal history information received by the Commissioner under that section occurs as soon as practicable after the information is no longer needed for the purpose for which it was requested, similar to other relevant Queensland Acts.



The Hon Craig Crawford MP, Commissioner C'Zarke Maza and Cynthia Lui MP

## Inquiry process of the Bill



On 17 July 2020, the committee invited stakeholders and subscribers to make written submissions on the Bill. Nineteen submissions were received. The committee received written advice from the Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) in response to matters raised in submissions.

The committee received a public briefing about the Bill from DATSIP; Aunty Ivy Trevallion, Chair of the Kupai Omasker Working Party; and the Queensland Human Rights Commission on 22 July 2020. A second public briefing about the Bill was received from DATSIP in Brisbane on 10 August 2020.

The committee held six public hearings and three private hearings for the inquiry and heard evidence from 78 witnesses. As well as the public hearing held in Brisbane on 10 August 2020, the committee held public hearings and private hearings in Townsville, Cairns, Bamaga, Thursday Island and Saibai Island from 3 to 7 August 2020.

The Bill also made consequential amendments to: 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 1977, the Guardianship 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*.

## Establishment and appointment

The Bill proposed the establishment of a new Commissioner and their office. The Commissioner will be an appropriately qualified senior Torres Strait Islander person with a deep understanding and knowledge of traditional child rearing practice.

It is proposed officers employed in the Office of the Commissioner would be appointed under the *Public Service Act 2008*.



Consultation in TI during the enquiry process for the Bill, 8 August 2020

# The Act

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



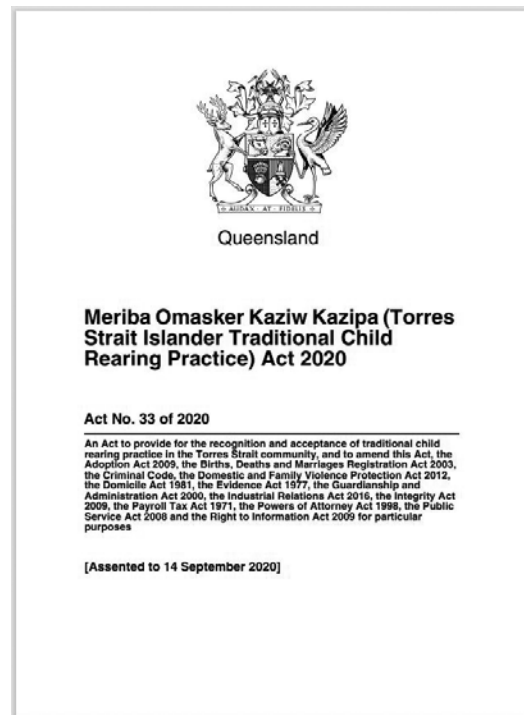
On **8 September 2020**, the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020* (the Act) was passed in the Legislative Assembly and received assent on **14 September 2020**.

The Act commenced on 1 July 2021 (apart from sections relating to the appointment of the Commissioner and establishment of their office, which commenced on 1 April 2021).

The Act provides for the legal recognition of Ailan Kastom traditional child rearing practice, through the making of a CRO, for Torres Strait Islander people.

The Act is the first legislation of its kind in Australia, reconciling traditional law with western law and recognises the strength and enduring Torres Strait Islander culture. It is also the first Act to use traditional language in its title.

As well as the process for applying for legal recognition, the Act also established a Commissioner and an Office of the Commissioner. The Commissioner makes CROs that permanently transfer parentage to the cultural parents.



**A Significant day – Passing of the Act in Parliament, 8 September 2021**

*L to R: The Hon. Anastacia Palaszczuk, Premier, Aunty McRose Elu, Mr Craig Crawford MP, Aunty Ivy Trevallion, Belzah Lowah, Ezra Tom, Hon Dianne (Di) Farmer MP, Hon Shannon Fentiman MP*

### 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.*

Applications for legal recognition are considered by the Commissioner who decides if a CRO should be made.

A CRO 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.

It is important to highlight the very sensitive and taboo nature of these Ailan Kastom child rearing practices. Details regarding the actual practice are not required to be disclosed as part of the application process. Further there are confidentiality measures in place within the Act to ensure that information that is secret or sacred in nature cannot be released or shared (see section 102 of the Act).



L to R: Hon Leeanne Enoch MP, Ms Cynthia Lui MP and Mr Lance McCallum MP with the Act

## Key elements of the Act

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:

<b>Eligibility</b>	<p>There are preliminary eligibility criteria including that:</p> <ul style="list-style-type: none"> <li>• one or both of the birth parents and one or both of the cultural parents are of Torres Strait Islander descent</li> <li>• the child's birth was registered in Queensland</li> <li>• the cultural practice has occurred.</li> </ul>
<b>Application</b>	<p>In making an application:</p> <ul style="list-style-type: none"> <li>• for a child, the application is made by the birth and cultural parents</li> <li>• for an adult, the application is made by the adult.</li> </ul> <p>The application is required to include:</p> <ul style="list-style-type: none"> <li>• 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)</li> <li>• that the applicants understand the permanent and lasting effect of making an order for legal recognition</li> <li>• if applicable, the informed consent of an 'other carer' (a person with legal decision-making responsibility for the child) to the application being made</li> <li>• 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.</li> </ul> <p>Parties will be given the opportunity to seek legal advice on the consequences of legal recognition.</p>
<b>Consideration by the Commissioner</b>	<p>The Commissioner considers the application and must be satisfied that the following requirements have been met before granting legal recognition:</p> <ul style="list-style-type: none"> <li>• full, free and informed consent to legal recognition has been provided by the birth and cultural parents and, if applicable, the other carers</li> <li>• that the making of the order is for the wellbeing and best interests of the child</li> <li>• that the transfer of parentage occurred in accordance with Ailan Kastom child rearing practice</li> <li>• that each applicant was entitled to apply</li> <li>• that the requirements for the application are met</li> <li>• that each applicant has provided the required information or statement.</li> </ul> <p>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:</p> <ul style="list-style-type: none"> <li>• the need to ensure appropriate recognition and preservation of Ailan Kastom in general and Ailan Kastom child rearing practice in particular:             <ul style="list-style-type: none"> <li>- 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;</li> <li>- the legal and cultural benefits for the child if the CRO is made recognising Ailan Kastom child rearing practice;</li> <li>- recognition of the birth parents' assessment of the suitability of the cultural parents;</li> <li>- decisions must be made in a fair, timely and consistent manner; and</li> <li>- any other matter that is directly related to the child's wellbeing and best interests.</li> </ul> </li> </ul>
<b>Decision</b>	<p>The Commissioner considers the application and must be satisfied that the following requirements have been met before granting legal recognition:</p> <ul style="list-style-type: none"> <li>• full, free and informed consent to legal recognition has been provided by the birth and cultural parents and, if applicable, the other carers</li> <li>• that the making of the order is for the wellbeing and best interests of the child</li> <li>• that the transfer of parentage occurred in accordance with Ailan Kastom child rearing practice</li> <li>• that each applicant was entitled to apply</li> <li>• that the requirements for the application are met</li> <li>• that each applicant has provided the required information or statement.</li> </ul>



<b>Notice of intention</b>	<p>Before deciding not to make a CRO, the Commissioner must give the applicants an opportunity to respond to a notice of intention.</p> <p>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.</p>
<b>Right of review</b>	<p>If the applicants are not satisfied with the Commissioner’s decision not to make a CRO, the Act provides that an applicant may seek an internal review of the decision.</p> <p>The Minister appoints a review officer to consider the application, review the Commissioner’s decision and make a decision to:</p> <ul style="list-style-type: none"> <li>• confirm the Commissioner’s decision; or</li> <li>• revoke the Commissioner’s decision and make a CRO.</li> </ul> <p>Applicants may also be able to seek a judicial review of the Commissioner’s decision. An application for judicial review is made under the <i>Judicial Review Act 1991</i>.</p>
<b>New record</b>	<p>Following the making of a CRO, the Commissioner notifies the Registrar of Births, Deaths and Marriages, as soon as practicable.</p> <p>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.</p> <p>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.</p> <p>There will be no notation about the closed entry on the new birth certificate to ensure consistency with the sacred nature of the custom.</p>
<b>Other elements of the Act</b>	
<b>Dispensation of consent</b>	<p>There may be circumstances where consent cannot be established, for example:</p> <ul style="list-style-type: none"> <li>• applicants cannot locate the relevant parent after making all reasonable enquiries</li> <li>• 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.</li> </ul> <p>To address this, the Act provides an avenue for an applicant to make an application to the Children’s Court to dispense with a person’s consent.</p>
<b>Impaired capacity</b>	<p>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.</p>
<b>Discretion to seek criminal history</b>	<p>As a safeguard, the Act provides:</p> <ul style="list-style-type: none"> <li>• for cultural parents to consent to a criminal history check as part of their statement, and</li> <li>• 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.</li> </ul>
<b>Discharge orders</b>	<p>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 CRO (discharge order). If the court makes the discharge order, the effect would be as if the CRO had not been made.</p> <p>Under the Act the grounds for a discharge order may be that the order was made:</p> <ul style="list-style-type: none"> <li>• because of a false or misleading document or representation</li> <li>• because a person acted fraudulently or used undue influence</li> <li>• because a person did not provide full, free and informed consent</li> <li>• the order was made on some other improper basis, or</li> <li>• if there are other exceptional circumstances that warrant the discharge.</li> </ul>

# The Regulation (commenced 1 September 2021)

## Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Regulation 2021

Section 112 of the Act provides that the Governor in Council may make regulations under the Act.

The Act further provides the following can be prescribed by regulation:

- information to accompany an application for a CRO for a child (section 33(1)(b)(vi));
- what a CRO must state (section 59(f)); and
- information to be included in a discharge order (section 77(3)(d))

The objectives of *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Regulation 2021* (the Regulation) are to provide safeguards against the potential for fraud and undue influence in the making of an application for a CRO for a child and a request for confidential information; and to support the commissioner in being satisfied that each birth parent and cultural parent gave free consent by requiring the following:

- evidence to accompany an application for CRO for a child and a request for confidential information as proof of a person's identity; and
- statements made as part of an application for a CRO be witnessed in the presence of an authorised witness.

### Achievement of policy objectives

To achieve its policy objectives, the Regulation prescribes the following operational and procedural matters:

#### Evidence of identity

The following persons are required to provide evidence of their identity:

- A person signing a statement to accompany an application for a CRO under sections 35, 36, 38 and 39 of the Act;
- A person who requests authorisation from the Commissioner to obtain a certificate, information, source documents or a copy of the CRO under section 64 of the Act;
- A person who applies to the Commissioner for a copy of restricted information under section 103 of the Act;

Evidence of a person's identity in the above cases will be satisfied when a person provides a certified copy of two of the documents listed in Schedule 1 of the Regulation.

This will provide an effective method of identity verification, to ensure that there are safeguards in place to minimise fraud and protect access to confidential information.

#### Witness supporting statements

A person signing a statement in an application for a CRO (under sections 35, 36, 37, 38 and 39) must sign it in the presence of an authorised witness. To minimise potential risks of fraud, the Regulation provides that an authorised witness is limited to certain people such as a solicitor, justice of the peace, or a person who has known the person signing the statement for at least 1 year and who has no other involvement in the application for the CRO.

Giving consent to a CRO is significant, and it is important that the Commissioner be satisfied that consent was freely given (as required under section 56(a) of the Act).

The requirements set out in the Regulation to provide certified proof of identification and witnessed documentation are therefore considered reasonable and appropriate.

The prescribed identity documents and authorised witnesses are considered accessible and consistent with similar regulatory requirements pertaining to the re-registration of life events on the Births, Deaths and Marriages Registry such as the *Civil Partnerships Regulation 2012* and the *Births, Deaths and Marriages Registration Regulation 2015*.

#### Consistency with policy objectives of authorising law

The Regulation is consistent with the objective of the Act, that is, to provide for the legal recognition of Ailan Kastom traditional child rearing practice by providing a voluntary application process, and decision making framework by an independent statutory Commissioner.

The Regulation ensures the Commissioner is satisfied with veracity of the provided information and documents in order to make a decision on a request for an application for a CRO and requests for authorisation to access closed entries or source documents and requests for access to restricted information, both providing access to confidential information likely to contain that of secret and sacred nature.

It is necessary or convenient to prescribe a requirement for consenting statements to be witnessed because it will facilitate the proper operation of the Act.

# 03

## OFFICE OF THE COMMISSIONER MERIBA OMASKER KAZIW KAZIPA

### Office of the Commissioner



The Office of the Commissioner was opened on 17 August 2021, but due to COVID-19 restrictions, this significant milestone could only be celebrated by a small group of people including some members of the Kupai Omasker Working Party. The Office of the Commissioner has office's located in Cairns and Thursday Island.

The Office of the Commissioner consists of the Commissioner and the support officers of the office. The Office of the Commissioner was fully complemented with staff on 4 January 2022. The Office of the Commissioner staff's function is to help the Commissioner perform the Commissioner's functions that includes providing support to potential applicants to navigate the application process. This includes providing access to legal advice, counseling services and assist with interpreter costs if required. The Office of the Commissioner's staff are appointed under the Public Service Act 2008 (Qld). To ensure the independence of the office, the Office of the Commissioner staff are not subject to direction by any person, other than from within the Office of the Commissioner, about the way the Commissioner's functions or powers under this Act are performed or exercised.



The Office of the Commissioner includes **two Cultural Support Officers** (one based in Cairns and one based on Thursday Island).



The Cultural Support Officers will **respond to enquiries about CROs and assist with applications.**

In the Office of the Commissioner in 2021-22

**67%**

of staff were **proficient in Torres Strait Creole** (Yumplatok)

**34%**

of staff were proficient in **Kalaw Lagaw Ya**

**67%**

of staff were of **Torres Strait Islander** descent

#### The role of the Office of the Commissioner is to

Provide information and culturally appropriate support to applicants about the application process

Make referrals to legal services for advice and to community-based counselling and wellbeing services

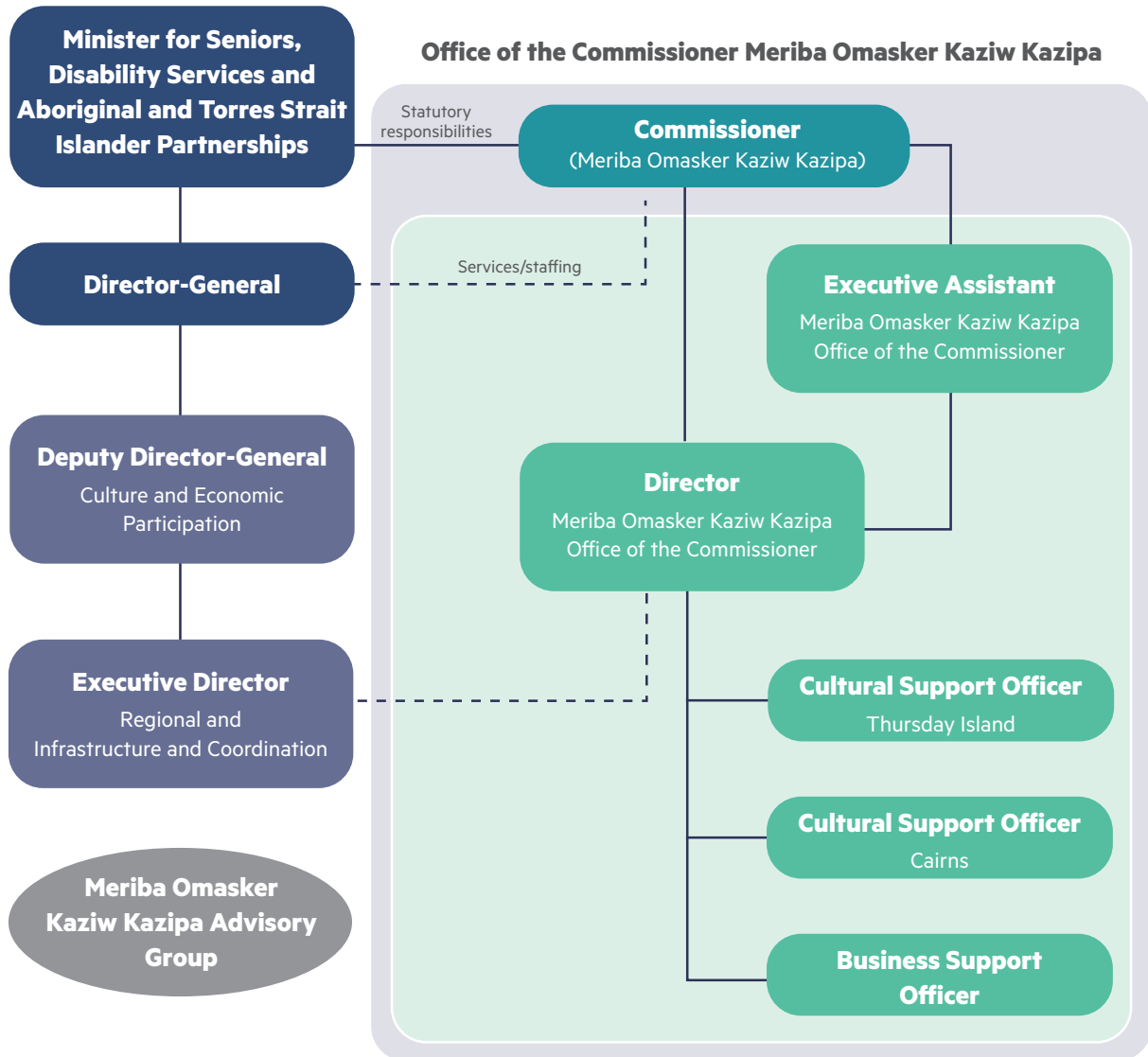
Provide business support to the Office of the Commissioner

Undertake record keeping and uploading of information into the Meriba Omasker Information Management System

Undertake community engagement regarding the Act and application process

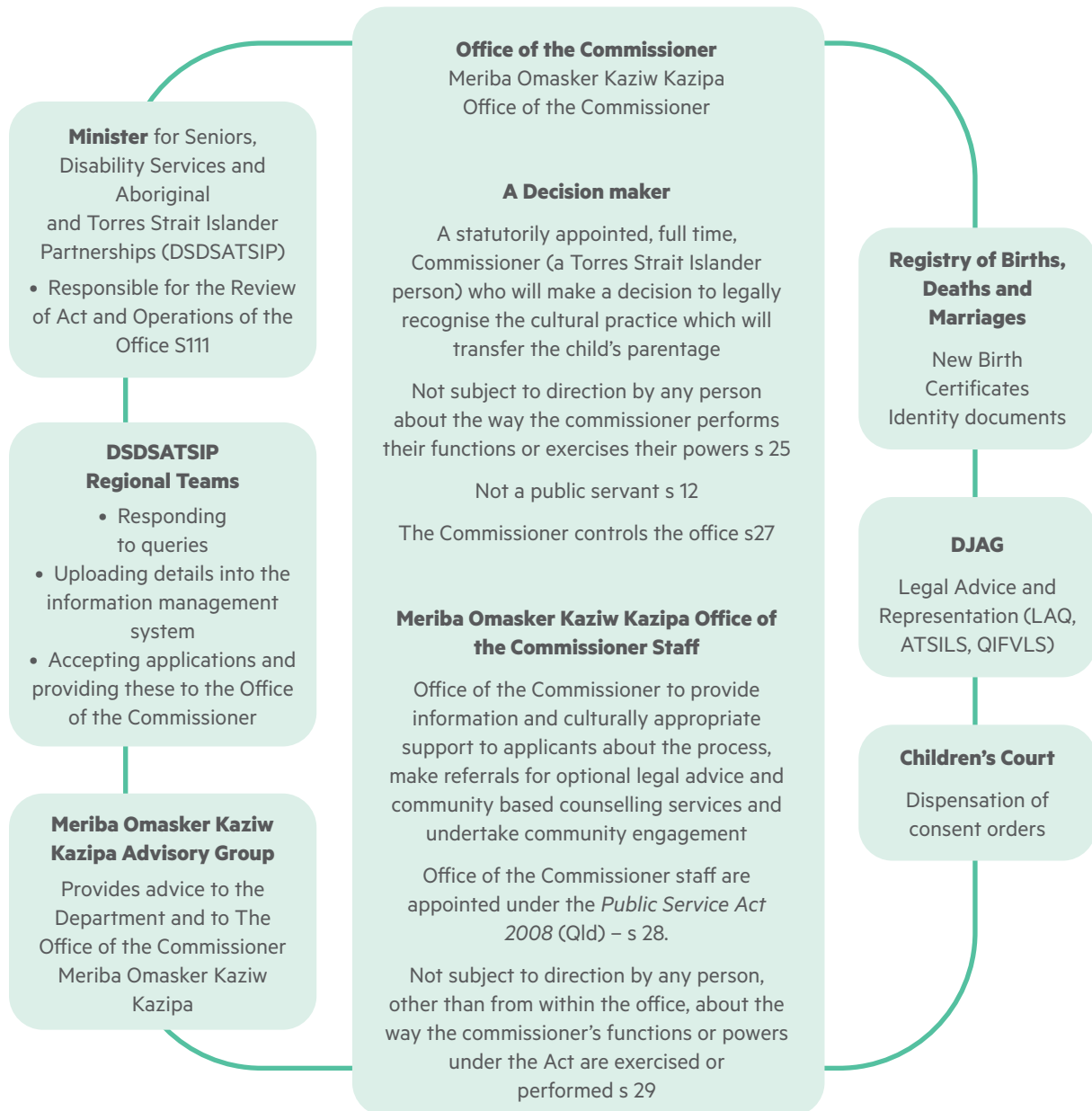
Respond to enquires that have been flagged by regional staff for further follow-up

# Organisational Chart



# The Administrative Service Model - Legal Recognition

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



## Governance

Section 108 of the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020* (the Act) allows the Commissioner to make guidelines for matters within the scope of the Act to assist with fair, timely and consistent compliance with the Act.

The Act is the main authority in relation to applications for CROs. It sets out the laws which govern and effect the process to make an application for and determine the outcome of a CRO. ([Ref. pg 65](#))

The Commissioner uses the Guidelines in relation to the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*. These guidelines are designed to assist the Commissioner in making their decisions as well as provide for transparent decision making for applicants and others affected by the Act.

### Meriba Omasker Information Management System (MOIMS)

The Meriba Omasker Information Management System (MOIMS) is the system which supports the Meriba Omasker Kaziw Kazipa work. MOIMS is an information management system that allows for enquiries and applications for CROs to be managed and recorded. The system also has the ability to create individual 'person' profiles which is useful when the Commissioner is reviewing an application and needs specific information from one party to the application.

MOIMS has been designed around Meriba Omasker Kaziw Kazipa flowcharts that identify key decision points that must be actioned prior to moving through to the next phase of the consideration of an application.

Access to MOIMS is restricted to Office of the Commissioner staff who are specifically assigned a role within the Meriba Omasker Kaziw Kazipa body of work. This encompasses Office of the Commissioner staff who are working on enquiry management and processing applications including associated tasks.

To accommodate for different components of work that staff may be responsible for, special access has been arranged for DSDSATSIP Regional Office staff, so that these users are only able to view and enter enquiries and create a person record with information limited to contact details.

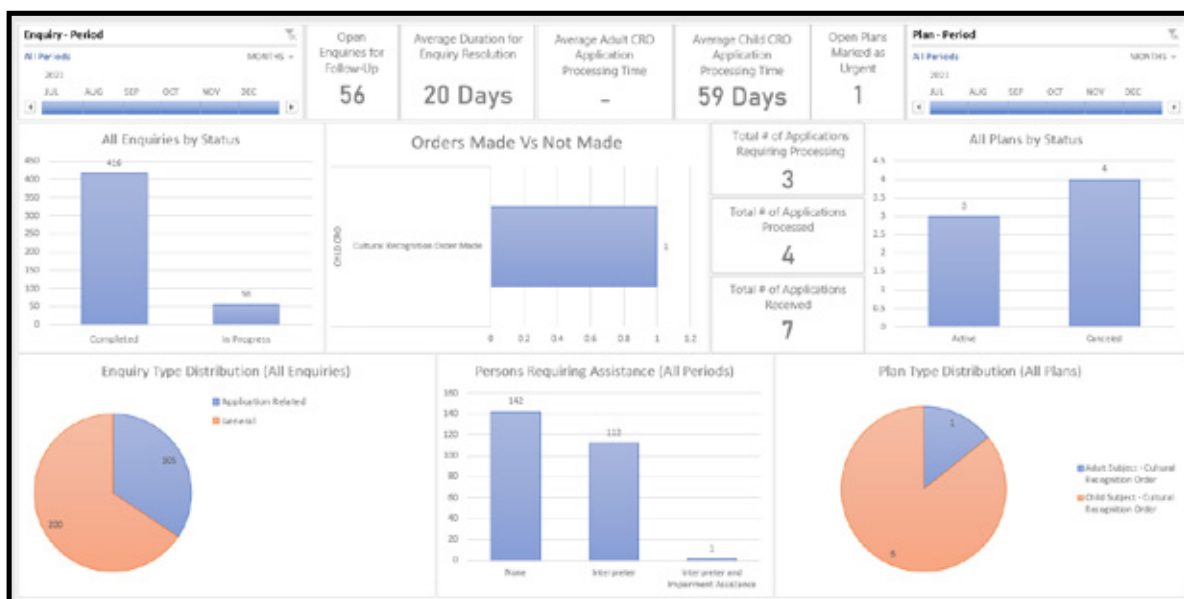
MOIMS has been designed with the Departmental Code of Conduct, the Information Privacy Act 2009 and associated privacy principles in mind. Risks of any violation of the above governance mechanisms are kept to an absolute minimum by employing good system use and user management practices and only capturing information that is strictly necessary for the management of enquiries, CROs, and associated applications.

Sharing of stored personal information is governed by the Information Privacy Act 2009 and the Act.

### MOIMS dashboard reports

The system can also provide dashboard reports via an excel workbook. There are two products that can be created:

- **Quick Stats** – Provides a snapshot of key data around enquiries, plans and persons, by type, status, average processing time and by date range\period.
- **Plan Summaries** – Lists all plans and shows their current position in the overall process. The plans can be filtered by the received date, plan status and\or approver.



## The Meriba Omasker Kaziw Kazipa Advisory Group



The Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships continues to work with the Kupai Omasker Working Party members as an Advisory Group.

To support the establishment phase, the Meriba Omasker Kaziw Kazipa Advisory Group, comprising members of the Kupai Omasker Working Party, have been engaged to inform the implementation process and work in partnership with the Department. The Advisory Group continues connection between community expertise and advice and the Act's implementation process.

**The purpose of the Advisory Group is to:**

- Maintain the cultural integrity of the application process for legal recognition.
- Ensure Torres Strait Islander people are aware of the Act, and communications 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.



### **Aunty Ivy Trevallion - Co-Chair**

Aunty Ivy Trevallion is a Torres Strait Islander woman born on Thursday Island where she resides with her husband and three children. A descendent of Dhoeybaw, Saibai Keodal, Sui Baidam, Samu, Burum Thabu Clans of Dauan and Saibai Islands. In 1986 Aunty Ivy graduated from the University of Queensland with a Bachelor of Social Work. Aunty Ivy has extensive work experience with the Department of Native Affairs. Over the last forty plus years, Aunty Ivy has held numerous positions in community organisations as well as government departments.



### **Bill (Belza) Lowah - Member**

Born on Thursday Island and resided in Brisbane for the majority of his professional career. He continues to work in social justice and community organisations in the areas of Indigenous health, housing and education. Bill was a member of the Council for Aboriginal Reconciliation from start to finish and worked with the Royal Commission into Aboriginal Deaths in Custody. Bill was also a previous member of the Indigenous Advisory Council to the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families and a member of the Anti-Discrimination Commission, Queensland.



### **The Hon Alastair Nicholson - Member**

The Honourable Alastair Nicholson graduated Melbourne University Law School in 1960 and was admitted as a Barrister and Solicitor of the Supreme Court of Victoria in 1961 and signed the Roll of Counsel of the Victorian Bar in 1963. He was appointed Queens Counsel in 1979, a Justice of the Supreme Court of Victoria from 1982-88, Chief Justice of the Family Court of Australia and a Justice of the Federal Court of Australia from 1988 until his retirement in 2004. He was Judge Advocate General of the Defence Force from 1987-91 and held the rank of Air Vice Marshal in the Royal Australian Air Force and is an Officer of the Order of Australia. Alastair has long been a children's rights campaigner. He has chaired several international conferences on child protection and child justice systems, and served as a consultant to the Royal Children's Hospital International Vietnam, and to United Nations Children's Fund (UNICEF) Vietnam. He has also been a consultant to the Queensland Government on legal recognition of Torres Strait Islander traditional child rearing practices. He was the recipient of the Human Rights Award at the Fifth World Congress on Family Law and Children's Rights held in Canada in 2009. He has been an Honorary Professorial Fellow of the University of Melbourne since 2003 and is currently Chair of Children's Rights International. Alastair has been a long time opponent of the policies of both major political parties' of holding asylum-seekers in detention and otherwise persecuting them, and also the policies underlying the Northern Territory Intervention (Northern Territory Emergency Response (NTER)). He joined the former Prime Minister, the late Malcolm Fraser, together with the Melbourne group 'Concerned Australians' in conducting and speaking at Seminars over many years and writing critical articles on these subjects



### **Aunty McRose Elu - Member**

Born Saibai Island and lives in Brisbane. McRose has a Bachelor of Arts Degree (PHD) (Anthropology and Political Science) from University of Queensland, a Diploma in Counselling, and Cultural Advisor for Child Protection issues for the Magistrate Court. In 1995 she received an Overseas Study Award to undertake research in traditional Hawaiian child rearing practices at the University of Hawaii. She also received the Queensland Senior Australian of the Year Award 2021. Aunty McRose has worked for the Queensland Government in Aboriginal and Torres Strait Islander policy development for 20 years and 15 years with Relationships Australia Queensland. She has also been an active leader of Torres Strait Islander Anglican Ministry, focussing on pastoral care and sitting on various committees in the Anglican Church of Australia.





### **Francis Tapim - Member**

Born on Mer (Murray Island) and lives in Townsville. Francis has a Bachelor of Social Work from James Cook University. Francis was the former CEO of Magani Malu Kes, an organisation that promotes Torres Strait Islander culture and resource information in Townsville and former Chair of the Queensland Aboriginal and Torres Strait Islander Health Advisory Board and former Chair of the National Secretariat of Torres Strait Islander Organisations Ltd. Currently Francis is an Aboriginal and Torres Strait Islander Community Advisory Council member for the Townsville Hospital Health Service, which provides advice to the Health Service Board on health issues relating to Aboriginal and Torres Strait Islander peoples in community. Francis is also co-chair of the Townsville Aboriginal and Torres Strait Islander Elders council.



### **Dana Ober - Member**

Dana lives in Townsville and has worked in Aboriginal and Islander affairs for State and Commonwealth Governments for over 20 years. He has worked in the higher education sector at James Cook University, Batchelor Institute Northern Territory and University of Queensland. Dana has served on a number of boards and committees including Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) board, FATSIL (now First Languages Australia), and a State Government working party to develop Aboriginal and Torres Strait Islander language policy for Queensland. He was also involved in setting up an language program at Tagai State College in Torres Strait.



### **Paul Bann - Member**

Paul Bann was born in Tasmania, has Hungarian and English parents and has previously worked for the Department of Childrens Services from 1977 to 1988, spending four years in the Cairns office. He has been working in private practice in Melbourne since 1995. Paul has a Bachelor of Social Work, Graduate Diploma in Aboriginal Studies, Master of Social Work, Master of Arts in Aboriginal Studies and a Master of Conflict Resolution. He has been a resource person to the Kupai Omasker Torres Strait Islander Child Rearing Practices Working Party since its inception in 1990 after the completion of his Master of Social Work thesis 'Traditional Adoption Practice of Torres Strait Islanders and Queensland Adoption Legislation' in 1989. Inspired by his relationships with the Torres Strait Islander community, Paul was instrumental in introducing family group conferencing, a process of engaging extended family in child protection decision making, into Australia in the early 1990s. He became part of an international network of people interested in promoting the practice and has trained people in a number of countries. The origins of the practice came from the Maori community in New Zealand.



### **Rolf Nilsson - Member**

Rolf Nilsson is of Danish background but grew up in Australia, moving to the Northern Territory in 2008. He's worked across various government departments, private enterprises and remote Aboriginal and Torres Strait Islander corporations. Rolf understands the common issues the Territory and Queensland first people face, having previously been the state manager for adoptions and working with the Chief Justice to make change for Torres Strait Islander peoples. His position on this Advisory Committee has allowed Nilsson to continue his work to see the Act and its direct outcomes.



### **Greg Anderson - Co Chair**

Executive Director, Regional and Infrastructure Coordination  
Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships.

# Terms of Reference for Advisory Group

## Purpose

### The purpose of the Advisory Group 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 in the implementation and the day-to-day operations of the Act.

## Principles

- **Respect** – for Torres Strait Islander customs and the Act.
- **Openness** – sharing information to enable members to make informed decisions and provide frank advice.
- **Family-centered** – placing Torres Strait Islander children and family at the centre of the initiative.

## Objectives

### The objectives of the Advisory Group are to:

- Provide advice and guidance to the DSDSATSIP on the implementation and day-to-day operations of the Act.
- Provide advice and guidance to the Commissioner when required and upon the Commissioner's request.
- Provide feedback to Torres Strait Islander communities on implementation of the Act and its progress.
- Provide guidance on engagement planning and building community awareness of the Act to aid implementation and day-to-day operations.
- Support informed discussions with:
  - Torres Strait Islander people, communities and their representatives;
  - Government agencies to:
    - Co-consider implementation matters;
    - Build a respectful implementation of the legal recognition of the cultural practice
    - Build government/relevant agency knowledge of CROs
- Provide advice on the operation of the Act for inclusion into the review of the Act which is required within two years of its operation.

## Membership

### Co Chairs

- Greg Anderson, Executive Director, Regional and Infrastructure Coordination, DSDSATSIP
- Ivy Trevallion

### Members

- McRose Elu
- Belza (Bill) Lowah
- Dana Ober
- Frances Tapim
- Paul Bann
- The Honourable Alastair Nicholson
- Rolf Nilsson

### Contact officers

- The Co-Chair and Chairperson of Kupai Omasker Working Party (KOWP) is the primary point of contact for the department
- The Director, Office of the Commissioner Meriba Omasker Kaziw Kazipa is the primary point of contact for the Advisory Group.

### Meetings and support

- Meetings will be Co-Chaired by Ms Ivy Trevallion and the Executive Director, Regional Coordination and Infrastructure.
- The department will provide logistical and administrative support for the meetings of the Advisory Group.
- Meetings are expected at minimum to occur on a quarterly basis for a half day during the appointment period and may include two face to face meetings and two virtual meetings.
- No delegates or proxies for members will be accepted and members have no financial delegation.

### Reporting

- Decisions and actions confirmed at Advisory Group meetings will be directed by the departmental Co-Chair to the Commissioner, relevant workgroups of the department or its partner agencies for appropriate action.
- The Advisory Group may determine other reporting required to advance the purpose of the Group.

### Code of Conduct and confidentiality

Members will be required to comply with the Code of Conduct for the Queensland Public Service, sign a confidentiality agreement and identify any potential conflicts of interest.

### Term and review

The Advisory Group is appointed until 30 June 2023.



Torres Straits

# 04

## PERFORMANCE AND OPERATIONS

### Our highlights - key achievements of the 2021/2022 financial year

The Act commenced on 1 April 2021 initiating the establishment of a Commissioner and office, with the remaining provisions commencing on 1 July 2021. Following the implementation of the operational requirements of the Act, eligible Torres Strait Islander families are able to make applications to seek legal recognition of the traditional child rearing practice through a CRO.



**12 July 2021**

Appointed inaugural Commissioner Meriba Omasker Kaziw Kazipa commences duties.



**17 August 2021**

Cairns office opening, a major milestone



**7 September 2021**

Queensland achieves nation-leading recognition of Torres Strait Islander traditional child rearing practice - Opening of applications to recognise Torres Strait Islander traditional child rearing practice -



**22 November 2021**

First CRO granted in Queensland and the world



**8 March 2022**

Meriba Omasker Kaziw Kazipa Advisory Group formally established



**6-27 May 2022**

Zenadth Kes Communities welcome Commissioner Maza



**16 June 2022**

Minister Crawford, Minister for Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, Commissioner Meriba Omasker Kaziw Kazipa and members of the Advisory Group

# Key Organisational Outcomes



## Cultural Recognition Order (CRO) outcomes

Prior to the Act, Torres Strait Islander family relationships have never been fully recognised in law. On **7 September 2021**, the application process for CROs established by the Act, was officially opened.

This Act is so important, as it enables Torres Strait Islander families to enjoy the same basic rights and recognition as other Queensland families.

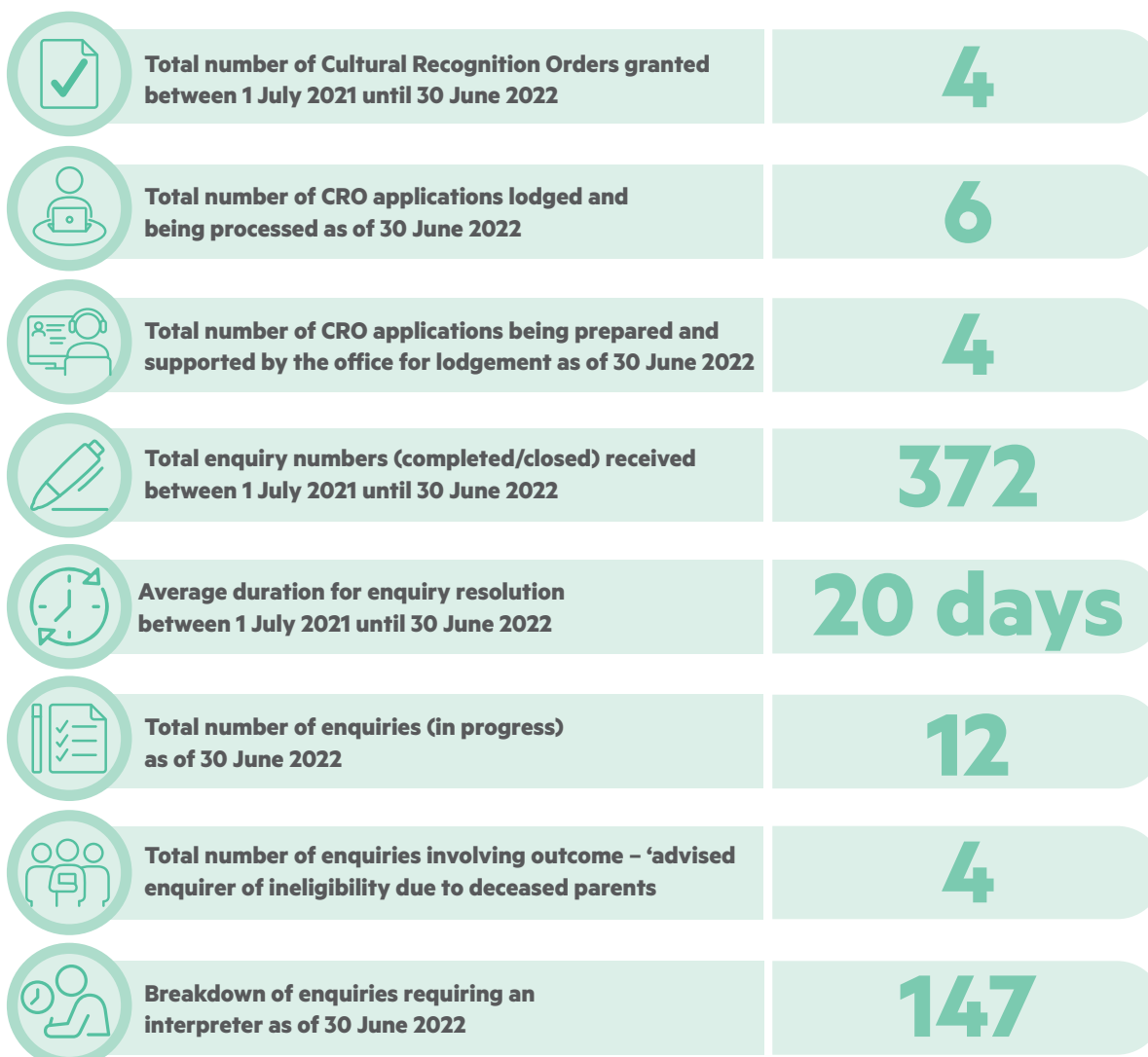
It means children and adults who were raised under Ailan Kastom child rearing practice will now finally have their identity match their cultural identity and their lived experience.

A CRO's legal effect is the permanent transfer of parentage to the cultural parents, which is reflected in the records of the Registry of Births, Deaths and Marriages.

Once a CRO has been granted, a new Birth Certificate can be issued and the transfer of parentage of the subject person to cultural parents is legally recognised in western law. This process is life changing for Torres Strait Islander families and their children.

This Act means children and adults who've grown up under Ailan Kastom with their cultural parents will finally have their legal identity match their cultural identity.

As community awareness and confidence in the scheme grows it is anticipated that applications will steadily increase.



## Enquiry outcomes

With the Office of the Commissioner Meriba Omasker Kaiziw Kazipa only being fully staffed in January of this year and the impact of restrictions with the global COVID-19 pandemic, the office experienced an impaired start. COVID-19 restrictions fundamentally shifted the way the office could operate and engage with vulnerable communities. Community engagement activities were able to be undertaken after the relaxation of COVID-19 restrictions. The office then began in earnest visiting vulnerable communities promoting and raising awareness of the service.

Much work has been undertaken by the Commissioner and the Office of the Commissioner staff establishing operational processes for the implementation of the Act, which was essential to ensure culturally appropriate, affordable, and accessible quality of service to Torres Strait Islander children and families.

To date, hundreds of Torres Strait Islander people have been assisted with their enquiries by the Office of the Commissioner Meriba Omasker Kaziw Kazipa.

### Breakdown of enquiry outcomes as of 30 June 2022

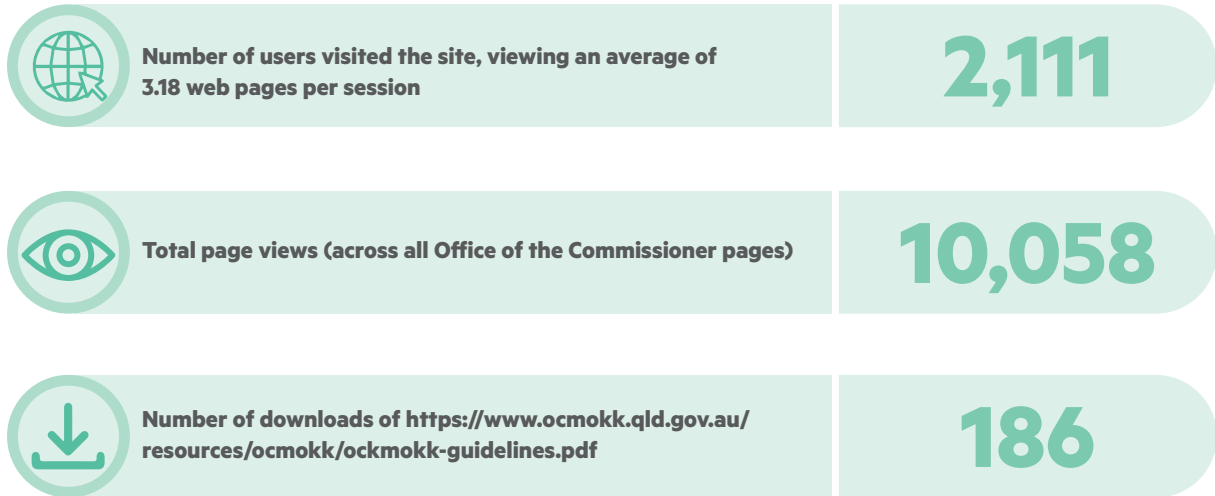
Enquiry outcome	Number of enquiries
Other	47
Advised enquirer of ineligibility for CRO due to deceased parents	6
Application materials emailed to enquirer	159
Application materials posted to enquirer	13
Enquirer advised that only a complete application can be submitted	1
Enquirer provided general information verbally	114
Enquirer referred to website for further information on traditional adoptions	6
Enquirer referred to website for general information on Meriba Omasker Kaziw Kazipa	6
Procedure for accessing information explained	7
Process for accessing new Birth Certificate explained	4
Process for responding to a request for further information explained	1
Referral to Aboriginal and Torres Strait Islander Legal Services made	2
Referral to Legal Aid Queensland made	4
Referral to Queensland Indigenous Family Violence Legal Service made	2
<b>Grand total</b>	<b>372</b>

### Breakdown of enquiry types\* as of 30 June 2022

Enquiry types	Number of enquiries
Application related	135
Application withdrawal	19
Births, Deaths and Marriages related	29
General	339
Internal review related	19
Legal advice related	48
Post decision information access related	19
Response to further information\response request	19
Submission of supporting documents without application	19
<b>Grand total</b>	<b>646</b>

\*There may be more than one enquiry type related to each enquiry.

**Google Analytics data for the Office of the Commissioner website from 1 July 2021 to 30 June 2022:**

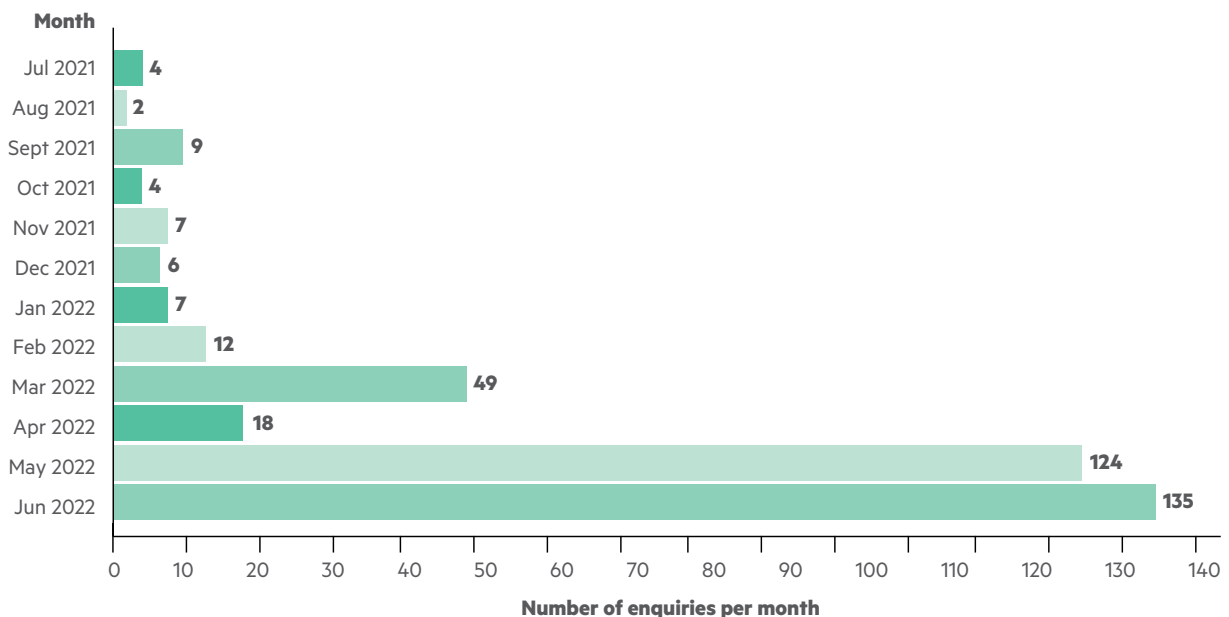


**1800 number enquiries**



Between November 2021 until the end of February 2022 the Office of the Commissioner staff were unable to visit remote communities due to COVID-19 restrictions. It wasn't until early March 2022 when COVID-19 restrictions relaxed, were the Office of the Commissioner staff able to ramp up the community engagement activities. This engagement has resulted in an 729% increase in enquiries from Torres Strait Islander families seeking to make life changing applications for CROs.

**Total number of enquiry numbers (completed/closed) received between 1 July 2021 until 30 June 2022**







## Who can apply for a CRO?

- Torres Strait Islander families who are raising a child, and a Torres Strait Islander person over 18 year of age who has been raised under Ailan Kastom child rearing practice, can apply for a CRO, if:
  - the person's birth (the child or adult) was registered in Queensland, and
  - at least one birth parent is a Torres Strait Islander person, and
  - at least one cultural parent is a Torres Strait Islander person.
- Where the application is about a person who is a child, it can only be made:
  - by the child's birth parents and the cultural parents, (unless a dispensation of consent order is granted by the court), and
  - if both the birth and cultural parents are at least 18 years of age, and
  - 30 days, or more, after the child's birth is registered.
- For adult applications, the adult must make the application and the birth and cultural parents must consent.
- Consent must be provided by all living parents, unless a dispensation of consent order has been granted by the court.
- Nothing prevents an application from being made if a birth parent or cultural parent is deceased, however at least one birth parent and one cultural parent must be living at the time of the application.

### The application process

#### Involves

- The appointed Commissioner to consider and decide application for a CRO.
- the main principle is to ensure the wellbeing and best interests of the person
- the Office of the Commissioner to help the Commissioner perform their functions.

#### Considers

- At least one birth and one cultural parent must be Torres Strait Islander
- practice must have occurred before applying
- applications can be received from persons living interstate as long as birth was registered in Queensland
- 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.

#### Under the Act, the Commissioner

- Must make decisions for the wellbeing and best interests of the person who is the subject of an application for a CRO
- will consider that information about the practice is sacred and secret according to Ailan Kastom
- will ensure appropriate recognition and preservation of Ailan Kastom in general and Ailan Kastom child rearing practice in particular
- must maintain confidentiality and will make decisions in a fair, timely and consistent manner
- will have regard to the legal and cultural benefits for the person if the CRO is made recognising Ailan Kastom child rearing practice
- must act in a way that is fair and reasonable.

#### In making decisions under the Act, the Commissioner does not

- Mediate family matters
- determine whether the cultural practice should or should not have occurred
- arrange for a new birth certificate to be sent to applicants
- make decisions about where a child is being raised
- negotiate between birth parents and cultural parents.

## How to Apply for a CRO

A CRO is an order made by the Commissioner that transfers a child's parentage from their birth parents to their cultural parents. You must [apply for a CRO](#) to have Ailan Kastom child rearing practice legally recognised.

Applying for a CRO is voluntary and consent based. Choosing not to apply for a CRO will not affect what has happened at a cultural level.

### How to apply

There are two types of applications – an application for a child, and an application for an adult.

In order to apply for a CRO, there are a number of eligibility criteria and other items that applicants must consider.

[Find out more about eligibility criteria and how to apply.](#)

### Applicant support

Support is available if applicants need more information about CROs or help submitting an application.

### Interpreter Services

The Queensland Government is committed to providing accessible services to Queenslanders from all culturally and linguistically diverse backgrounds. If applicants have difficulty in understanding the application, they can contact the Office of the Commissioner or 13 QGOV (13 74 68) and arrange an interpreter to effectively communicate the application.

### Office of the Commissioner Meriba Omasker Kaziw Kazipa

The [Office of the Commissioner](#) is available to provide information and culturally appropriate support to applicants about the application process and make referrals for optional legal advice and community-based counselling services.

### Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships Regional Service Centres

[Regional Service Centre](#) staff are available to provide information and support to applicants about the application process and make referrals for optional legal advice and community-based counselling services.

### Legal services

The Office of the Commissioner recommends all applicants considering a CRO should seek legal advice – given the permanent nature of a CRO. This advice can be sought from any legal practitioner; however, the following legal service providers have received funding to provide free advice to clients regarding CROs:

- [Legal Aid Queensland](#)
- [Aboriginal and Torres Strait Islander Legal Services \(ATSILS\)](#)
- [Queensland Indigenous Family Violence Legal Services \(QIFVLS\)](#).

These legal services can also provide advice about dispensation of consent and help applicants apply for a dispensation order if required.

### Counselling and support services

There are counselling and support services available to applicants if they require additional support, including: [Aboriginal and Torres Strait Islander Family Wellbeing Services](#).

**Addendum Form**

- Applicants are encouraged to fill out an addendum form to an application for a CRO and provide this when submitting both child and adult applications.
- The information collected on this form will only be shared by the Commissioner to the Registrar of Births, Deaths and Marriages if a CRO is made.
- The completion of this form will allow for the Registrar to make a complete birth entry and new birth certificate.

**The addendum form will not result in a new birth certificate being issued to the applicant; it does however ensure that if a new birth certificate is requested all information is available.**

**What happens after a CRO is made?**

- The Commissioner writes to all parties to the application, provides a statement of reasons for the decision and provides all parties with a CRO where applicable.
- The Commissioner provides the CRO to the Registrar of Births, Deaths and Marriages ([BDM.CRO@justice.qld.gov.au](mailto:BDM.CRO@justice.qld.gov.au)).
- The Registrar of Births, Deaths and Marriages registers the transfer of parentage as stated by the CRO and closes the previous birth entry of the person.
- For a new birth certificate to be issued to the cultural parent or adult applicant, an application will need to be submitted to the Registry of Births, Deaths and Marriages.

The image shows a Queensland Birth Certificate form. It includes sections for 'CHILD' (Name and surname, Sex, Date of Birth, Place of Birth) and 'MOTHER' (Name and surname, Maiden name, Age and occupation). There are also fields for 'MARRIAGE' and 'REGISTRATION NUMBER'. At the bottom, there is a section for the Registrar General to certify the document and a space for the Registrar's signature and stamp.

**Queensland Courts Guide to Meriba Omasker Kazipka (Torres Strait Islander Traditional Child Rearing Practice) Act 2020 Applications**

The *Meriba Omasker Kazipka (Torres Strait Islander Traditional Child Rearing Practice) Act 2020* provides for the legal recognition of Alan Kaslon (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 Kazipka).

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 about this.

Application	Court	Starting Document	Filing Fee Payable?
Application to dispense with parental consent (s.52)	Childrens Court of Queensland (CCQ)	<a href="#">LJCPR Form 6</a>	Yes
Application to discharge dispensation of parental consent (s.55)	CCQ	<a href="#">LJCPR Form 9</a>	No
Application to discharge cultural recognition order (s.77)	CCQ	<a href="#">LJCPR Form 4</a>	Yes
Application to access court records (s.98)	CCQ	<a href="#">LJCPR Form 9</a>	No
Application for judicial review of Commissioner's decision under <i>Judicial Review Act 1991</i>	Supreme Court	<a href="#">LJCPR Form 14</a>	Yes
Appeals from Childrens Court (Judge) and Supreme Court decisions (s.92)	Court of Appeal	<a href="#">LJCPR Form 16</a>	Yes
Application for reduction of fees by an individual	All	<a href="#">LJCPR Form 131</a>	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.

**Need Help?**

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

<b>Legal Aid Queensland - <a href="#">Alan Kaslon information</a></b> 1800 650 140 (Ingenious Hotline) <b>Aboriginal and Torres Strait Islander Legal Service (ATILS)</b> 1800 012 255 (Toll free 24hrs 7 days)	<b>Commissioner (Meriba Omasker Kazipka)</b> 1800 971 102 <b>Queensland Indigenous Family Violence Legal Service (QIFVLS)</b> 1800 88 77 00
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**QUEENSLAND CULTURAL RECOGNITION ORDER**  
*Meriba Omasker Kazipka (Torres Strait Islander Child Rearing Practice) Act 2020*

Order No: [REDACTED]

This Cultural Recognition Order is made under section 58 of the *Meriba Omasker Kazipka (Torres Strait Islander Traditional Child Rearing Practice) Act 2020* in recognition of Alan Kaslon and in the best interest and wellbeing of the Subject Person.

This order recognises and confirms that [REDACTED] parentage is transferred from the named Birth Parents to the Cultural Parents in accordance with Alan Kaslon child rearing practice.

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

Existing birth entry	New birth entry
Registered legal ID issued Person this order relates to: [REDACTED]	Name to be registered for the Subject Person under the making of the Cultural Recognition Order: [REDACTED]
Date of Birth: [REDACTED]	Cultural Mother: [REDACTED]
Birth Mother: [REDACTED]	Cultural Father: [REDACTED]
Birth Father: [REDACTED]	

I, [REDACTED] Commissioner (Meriba Omasker Kazipka), certify that the above is a true and correct copy of the Cultural Recognition Order made under section 58 of the Act.

**Commissioner (Meriba Omasker Kazipka)**  
Date of Issuance: [REDACTED]  
Place of Issuance: [REDACTED]

Legal Aid Queensland, 1800 650 140  
Queensland Indigenous Family Violence Legal Service, 1800 88 77 00

OFFICE OF THE COMMISSIONER  
1800 971 102



# Key communications and engagement

## Promoting community awareness and education of the process outcomes

In total, from early 2022, once COVID-19 restrictions lifted, the Commissioner has been involved in **60** community meetings, public forums and information sessions.

The Commissioner and Office of the Commissioner staff held sessions for two weeks across the Torres Strait Islands; and also participated and delivered sessions in Mackay, Rockhampton, Townsville, Zillmere (greater Brisbane) and Cairns.

Information sessions have also been delivered on-line and in-person with staff from Department of Education, Department of Children, Youth Justice and Multicultural Affairs, Queensland Health workers and various Indigenous Liaison Officers.

The Commissioner and Office of the Commissioner staff have also been actively involved in promoting the Act at significant events recently run across Queensland such as 30th Mabo Day celebrations. The Office of the Commissioner was represented in four separate locations on Mabo Day.

Engagement type	Number of engagements	Number of attendees
Community event presentation	10	1291
Meriba Omasker specific presentation	50	439
<b>Grand total</b>	<b>60</b>	<b>1730</b>

### Breakdown of enquiry numbers by region as of 30 June 2022

Region	Number of enquiries
Brisbane	10
Burdekin	1
Cairns	108
Cassowary Coast	1
Fraser Coast	1
Hinchinbrook	1
Kowanyama	1
Mackay	3
Northern Peninsula Area	71
Outside Queensland (within Australia)	4
Rockhampton	2
Torres	13
Torres Strait Island	134
Townsville	16
Weipa	1
Other	5
<b>Grand total</b>	<b>372</b>

Over **1700** people have been directly engaged with and the word is steadily spreading amongst the Torres Strait Islander community that the Queensland Government is now able to support families in traditional child rearing practices to ensure they fully enjoy the same rights as other Queensland families.

# Communications/Operations Strategy 2021-2022

## Communications and Operations Objectives

- To raise awareness of the Act and increase understanding about its implementation
- To inform a high proportion of Torres Strait Islander people born in Queensland about the legal recognition of Torres Strait Islander child rearing practice and promote applications under the Act.
- To raise awareness about the establishment of the Act 2020 with all Queenslanders, and importantly with Torres Strait Islander peoples born in Queensland.
- To inform and deepen understanding with relevant stakeholders about the legal recognition of Torres Strait Islander traditional child rearing practice and the process for making applications under the Act.
- To encourage CRO applications from eligible Torres Strait Islander peoples under the Act.

### Key messaging

- The Queensland Government is committed to reframing the relationship with Aboriginal and Torres Strait Islander peoples.
- The *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020* provides the legislative framework for Torres Strait Islander people to apply for legal recognition of traditional child rearing practice, assisting better access to support and services.
- The Act acknowledges the strength and diversity of Torres Strait Islander families by formally recognising in law traditional Torres Strait Islander child rearing practises.
- Torres Strait Islander families can now enjoy the same rights and recognition as other Queensland families.
- This historic, world-first legislation realises more than 30 years of community advocacy by the Kupai Omasker Working Party and successive governments, to provide legal recognition of the traditional practice for Torres Strait Islander families and communities.

### Target audiences

#### Primary target audience:

- Prospective Torres Strait Islander applicants, born in Queensland, seeking legal recognition of Ailan Kastom child rearing practice.

#### Secondary audience:

- Torres Strait Islander individuals, families, communities and their networks – no matter where they live.

### Stakeholders

- All government agencies providing services to Torres Strait Islander people and their families.
- The legal sector including the Queensland Courts, Family Court of Australia, legal representatives and officers, and advocates.
- Australian Government Attorney-General's Department; National Indigenous Australians Agency.
- Legal service and social support providers.
- Religious organisations.

### **Communication Strategies**

Communication about Meriba Omasker Kaziw Kazipa will be consistent and extensive to ensure all Torres Strait Islander Queenslanders are aware of the legislation and its benefits. Importantly communication strategies will seek to encourage prospective/eligible individuals to make an application.

Communications strategies to promote Meriba Omasker Kaziw Kazipa will include:

#### **Engage Champions and advocates as ambassadors:**

- Engage Torres Strait Islander Queenslanders, community members and key stakeholders to raise the visibility of key initiatives.
- Engage prominent Torres Strait Islander peoples as well as the Advisory Group as advocates and champions to expand the reach into new audiences and other jurisdictions.
- Enhance information being communicated more broadly about Meriba Omasker Kaziw Kazipa and the importance of Ailan Kastom through trusted third parties.
- Develop resources to facilitate engagement and to ensure consistency of messages and approach.

#### **Activate stakeholder engagement**

- Establish a visual identity and positioning for the Office of the Commissioner and build recognition with audiences and stakeholders.
- Establish a website as a channel for information and resources for the community.
- Directly engage with communities and individuals at key celebrations and events and through planned visits to locations within the Torres Strait Islands, Cairns and other areas of Queensland.
- Undertake research into other key population groupings outside Queensland and develop targeted consultation and engagement approaches.

#### **Maximise media exposure**

- Develop a strategic media plan for each implementation stage.
- Facilitate proactive media opportunities including interviews and print media.
- Work with First Nations and general media outlets to raise awareness, increase engagement, reach new audiences and encourage applications.

#### **Leverage digital and social media**

- Develop promotional materials suitable for social and other media channels.
- Monitor social media channels and respond to issues using approved key messages, as required.

#### **Activate government communications**

- Maximise information sharing and engagement opportunities within DSDSATSIP and more broadly within the Queensland Government.
- Facilitate relationships and information sharing with key partner agencies such as Queensland Health, the Registry of Births, Deaths and Marriages, and Federal and Local Government agencies



# Media and publicity achieved

## Torres Strait child rearing practices to be enshrined in law

Published Friday, 12 October, 2018 at 12:53 PM

Deputy Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships

The Honourable Jackie Trad

Torres Strait Islander Queenslanders will help to develop new legislation that officially recognises traditional Torres Strait Islander child rearing practices. Deputy Premier and Minister for Aboriginal and Torres Strait Islander Partnerships Jackie Trad said that this was history-making.

"Developing legislation to recognise traditional child rearing practices will be a historic step, not only for the Torres Strait but for Queensland and Australia," Ms Trad said. "This is a true step towards bridging the gap between Torres Strait Islander culture and Queensland law."

Member for Cook Cynthia Lui today announced the start of community consultation and release of the public discussion paper, *'Akuar Thoeidhaz Kazi - For our children's children'*.

"Generations of Torres Strait Islander children have been raised in supportive and loving extended family environments.

"Legal recognition of this ancient and enduring cultural practice will acknowledge the importance of Torres Strait Islander culture and cultural decision-making processes in Torres Strait Islander community and family life.

"Queensland families are wonderfully diverse and it's important our legal system evolves to recognise this. It makes common tasks such as enrolling in school and opening a bank account much easier for families.

"The Palaszczuk Government has invested \$1 million over three years to support the community to shape new laws with the help of legal and cultural experts, including Ms Ivy Trevallion, Mr Charles Passi and the Honourable Alastair Nicholson AO RFD QC.

"We recognise there are many legal complexities to explore, but the aim of any new legislation will be for Torres Strait Islander children and their families' cultural practices to be recognised, particularly around cultural and legal identity, so these families are able to enjoy the same rights as other Queensland families.

"This includes giving consideration to rights enshrined in the *United Nations Declaration on the Rights of Indigenous Peoples and with the United Nations Convention on the Rights of the Child*.

"Since the 1990s, Torres Strait Islanders and in particular the Kupai Omasker Working Party have lobbied the Queensland Government for legal recognition of this common traditional practice.

"We are continuing the legacy of many passionate advocates past and present to ensure these practices are recognised and strengthened for Torres Strait Islander families raising the leaders of tomorrow for future generations."

Ministerial Champion for Torres Strait Islander parenting approaches.

"These practices have many family relationships have Western Adoption," Ms Trad said. "This has meant Torres Strait Islander parents have been unable to raise their own name."

"This historic piece of legislation will have been part of their birth certificate."

The Queensland Government

Ms Ivy Trevallion

First Torres Strait Islander

1986 and current Chair

Honourable Alastair Nicholson

Former Chief Justice of

traditional Torres Strait

consultations and

Mr Charles Passi

Torres Strait Islander

Aboriginal and Torres

Aboriginal and Torres

Community meeting

late October to

Community feed

For more information

ENDS

Media contact:

## Thirty years on from Mabo, truth telling recognises Torres Strait Islander traditions

Published Friday, 03 June, 2022 at 07:17 AM

Minister for Seniors and Disability Services and Minister for Aboriginal and Torres Strait Islander Partnerships

The Honourable Craig Crawford



The late Eddie Koiki Mabo - his High Court win "dispelled a myth, acknowledged the truth of the nation's history, gave us native title laws and inspires us all to embrace reconciliation".

Today (3 June 2022) marks the 30th anniversary of the Mabo decision - a key milestone in the reconciliation journey of our nation.

Minister for Aboriginal and Torres Strait Islander Partnerships Craig Crawford said truth-telling was fundamental to progressing a Path to Treaty in Queensland.

"Today marks 30 years since the fiction of Terra Nullius was overturned, when the law recognised the truth that Aboriginal and Torres Strait Islander peoples' connection to Country and Culture is continuous and enduring."

"For ten years, Eddie Koiki Mabo pursued a case in the High Court of Australia to establish legal recognition of his family's ownership of their lands on the island of Mer in the Torres Strait.

"Ultimately, his claim was successful when on 3 June 1992, the High Court ruled in his favour, though sadly he did not live to see the result of his advocacy.

"Significantly it dispelled a myth, acknowledged the truth of the nation's history, gave us native title laws, and inspires us all to embrace reconciliation.

"But his case almost didn't reach that point.

"In 1990, a judge determined that Mabo had no claim of inheritance on the land he had grown up on, as he hadn't been formally adopted under Queensland law by his Uncle Benny."

Eddie Koiki Mabo was born Eddie Koiki Sambo to parents Robert Zesou Sambo and Poipe Mabo.

His mother died shortly after he was born, and he was raised by his uncle Benny Mabo under *Ailan Kastom* (Torres Strait Island custom) child rearing practice.

Meriba Omasker Kaziw Kazipa Commissioner C'Zarke Maza said while these family relationships have always been recognised within Torres Strait Islander communities, under Queensland laws these children's legal identities did not align with their cultural and family identities.

"The ideal start to life for any child is to be nurtured in a loving family, and for generations, Torres Strait Islander children have been cared for in strong, loving families under traditional child-raising practice," Mr Maza said.

"Meriba Omasker Kaziw Kazipa, which means 'for our children's children', became law in Queensland last year, and this historic milestone is thanks to the passion and continued advocacy of Torres Strait Islander families.

"Meriba Omasker Kaziw Kazipa means that children and adults who have grown up under *Ailan Kastom* will finally have their legal identity match their cultural identity, which supports and strengthens connections to community and culture."

Member for Cook Cynthia Lui said legal recognition of customary practices in the present will enable a new future where Aboriginal, Torres Strait Islander and non-Indigenous peoples walk together as equals.

"Milestones like Meriba Omasker Kaziw Kazipa and the Mabo decision are important markers of our progress as a nation," Ms Lui said.

"I am so proud to have introduced the Meriba Omasker Kaziw Kazipa legislation to Parliament, to bring together traditional lore and Queensland law.

"While we celebrate these milestones, we must also recognise there is still more to do.

"The Queensland Government is committed to walking the journey of reconciliation with Aboriginal and Torres Strait Islander peoples."

For more information on Meriba Omasker Kaziw Kazipa visit <https://www.ocmok.qld.gov.au/>

ENDS  
Media contact: Peter Michael 0477 948 091

**Queensland achieves nation-leading recognition of Torres Strait Islander traditional child rearing practice**

Published Tuesday, 07 September, 2021 at 05:00 AM

Minister for Seniors and Disability Services and Minister for Aboriginal and Torres Strait Islander Partnerships  
**The Honourable Craig Crawford**

Queensland today (Tuesday, September 7) marks the historic milestone of the opening of applications to recognise Torres Strait Islander traditional child rearing practice under new law that translates as "for our children's children". It follows more than 30 years of advocacy by Kupai Omasker Elders to allow Torres Strait Islanders raised by extended family to transfer their legal identity from birth parents to cultural parents.

Minister for Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships Craig Crawford will today officially open applications for *Meriba Omasker Kaziw Kazipa* CROs at a ceremony in Cairns.

"This is a living act of reconciliation," Mr Crawford said.

"It will enable more Torres Strait Islander people to experience and access the same basic rights to identity as every other Queenslanders."

In September last year, The *Meriba Omasker Kaziw Kazipa* (Torres Strait Islander Traditional Child Rearing Practice) Act 2020 became the first piece of legislation to use traditional Islander languages in Queensland.

It was introduced by Member for Cook Cynthia Lui, the first Torres Strait Islander person elected to any Australian parliament.

"This is a symbolic milestone on our path to re-writing the narrative of reconciliation in Queensland," Ms Lui said.

*Meriba Omasker Kaziw Kazipa* Commissioner C'Zarke Maza will oversee the application process with powers to make a CRO, which if granted, will enable a new birth certificate to be issued, and will transfer parentage of a child or adult to cultural parents.

"No longer will our Allan Kastom be a reason for us, as Torres Strait Islander people to be marginalised in society," Mr Maza said.

"Torres Strait Islander families will now have an application process that will remove the many legal barriers and allow their cultural identity to reflect their legal identity and lived experience."

"Our priority now is to help individuals and families navigate the application process, so Torres Strait Islanders of all ages raised in extended families can access the same opportunities to enrol in school, access government support, pursue new opportunities and thrive."

The *Meriba Omasker Kaziw Kazipa* program support offices are located at:

- Level 3 CitiCentral Building, 46-48 Sheridan Street, Cairns Old
- Level 1 Torres Haus, 46 Victoria Parade, Thursday Island Old

For more information, free call 1800 571 102, email [office@ocmck.qld.gov.au](mailto:office@ocmck.qld.gov.au) or visit [www.ocmck.qld.gov.au](http://www.ocmck.qld.gov.au)



**THURSDAY 17 MARCH 2022 TORRES NEWS**

**04 NEWS**

**Group to provide advice on Meriba Omasker Kaziw Kazipa**

A formally established advisory group will work to provide advice and guidance to the Queensland Government on the implementation of the *Meriba Omasker Kaziw Kazipa* (Torres Strait Islander Traditional Child Rearing Practice) Act 2020.

**ORCA 1990-1991:** Ivy Invention at the 1990-91 National Torres Strait Islander Conference in Brisbane is the formative stage of the *Meriba Omasker Kaziw Kazipa* Working Party, who advocated for legal recognition of Torres Strait Islander traditional child rearing practices. Pic supplied by Paul Ban.

**Meriba Omasker Kaziw Kazipa Commissioner C'Zarke Maza** said the Department of Seniors, Disability Services and Aboriginal & Torres Strait Islander Partnerships (DSDSATSIP) - formerly DASSIP - will work in partnership with the advisory group.

"The *Meriba Omasker Kaziw Kazipa* Advisory Group has been formally established and consists of members of the Kupai Omasker Working Party," Commissioner Maza said.

"The group will play an important role, working to provide advice and guidance on the implementation of the Act.

"Their role is to also ensure DSDSATSIP maintains the cultural integrity of the application process for legal recognition, while ensuring the application and related processes are confidential, affordable, and accessible to Torres Strait Islander families and communities."

Co-chair Ivy Trevillion said they met with DSDSATSIP for their first meeting in early March at the Pullman Hotel in Cairns.

"The meeting was a success," she said.

"It was also a wonderful opportunity for the members to meet the team from the Office of the Commissioner and the *Meriba Omasker Kaziw Kazipa* Program Support Office."

She said members of the new group included the Honourable Alexzair Nicholson, Mr Ross Ellis, Belva Lowish, Doug Chen, Francis Taplin, Paul Ban and Brad Nelson.

Commissioner Maza said the *Meriba Omasker Kaziw Kazipa* Program Support Office was now fully staffed in Cairns and Walton.

"The Program Support Office can also provide information and culturally appropriate support to applicants about the application process," he said.

"All regional DSDSATSIP offices across Queensland can also assist with information."

All enquiries about the application process are welcome and can be made in person, or by email: [office@ocmck.qld.gov.au](mailto:office@ocmck.qld.gov.au) or by calling 1800 571 102 (free calls between 9am-5pm Monday to Friday).

More information and relevant forms can also be found at [www.ocmck.qld.gov.au](http://www.ocmck.qld.gov.au).

**ADVISORY GROUP MEMBERS:** L-R: Belva Lowish, Paul Ban, Francis Taplin & Alexzair Nicholson.

**LEADING THE WAY:** Co-chair Ivy Invention & Commissioner C'Zarke Maza. Pics by Aaron Smith.

The Office of the *Meriba Omasker Kaziw Kazipa* was officially opened 7 September 2021 and Commissioner C'Zarke Maza has since been accepting applications for Cultural Recognition Orders. These applications are individually considered and decided by Commissioner Maza.

The *Meriba Omasker Kaziw Kazipa* (Torres Strait Islander Traditional Child Rearing Practice) Act 2020 (the Act) was the first of its kind. The Act recognised Torres Strait Islander law in Western Law and established a process for the legal recognition of Torres Strait Islander traditional child rearing practice.

This ground-breaking Act legally recognised the Allan Kastom child rearing practice where a child's birth and cultural parents agree, in accordance with Allan Kastom, that the parental rights and responsibilities for the child are permanently transferred from the child's birth parents to the child's cultural parents.

**THURSDAY ISLAND TIDE TIMES**

<http://www.bom.gov.au/torres/forecast/forecast.shtml>

DATE	LOW	HIGH	LOW	HIGH
THURSDAY 17	06:50	16:00	07:10	15:50
FRIDAY 18	07:10	15:40	07:30	15:30
SATURDAY 19	07:30	15:20	07:50	15:10
SUNDAY 20	07:50	15:00	08:10	14:50
MONDAY 21	08:10	14:40	08:30	14:30
TUESDAY 22	08:30	14:20	08:50	14:10
WEDNESDAY 23	08:50	14:00	09:10	13:50
THURSDAY 24	09:10	13:40	09:30	13:30
FRIDAY 25	09:30	13:20	09:50	13:10
SATURDAY 26	09:50	13:00	10:10	12:50
SUNDAY 27	10:10	12:40	10:30	12:30
MONDAY 28	10:30	12:20	10:50	12:10
TUESDAY 29	10:50	12:00	11:10	11:50
WEDNESDAY 30	11:10	11:40	11:30	11:30
THURSDAY 31	11:30	11:20	11:50	11:10

**ROCK TIDE SPEED**

DATE	LOW	HIGH	LOW	HIGH
THURSDAY 17	06:50	16:00	07:10	15:50
FRIDAY 18	07:10	15:40	07:30	15:30
SATURDAY 19	07:30	15:20	07:50	15:10
SUNDAY 20	07:50	15:00	08:10	14:50
MONDAY 21	08:10	14:40	08:30	14:30
TUESDAY 22	08:30	14:20	08:50	14:10
WEDNESDAY 23	08:50	14:00	09:10	13:50
THURSDAY 24	09:10	13:40	09:30	13:30
FRIDAY 25	09:30	13:20	09:50	13:10
SATURDAY 26	09:50	13:00	10:10	12:50
SUNDAY 27	10:10	12:40	10:30	12:30
MONDAY 28	10:30	12:20	10:50	12:10
TUESDAY 29	10:50	12:00	11:10	11:50
WEDNESDAY 30	11:10	11:40	11:30	11:30
THURSDAY 31	11:30	11:20	11:50	11:10

# 05

## FINANCIALS

### Overview

- Total funding over 2022-23 and 2023-24 is now **\$4.621 million** which continues to support the implementation of these historic reforms.
- The original 2021-22 operational budget allocation was **\$2.46 million** which includes **\$0.098 million** deferred from 2020-21. In addition, an allocation of **\$0.57 million** was deferred for capital works from 2020-21 into 2021-22.
- In 2022-23 Queensland Government has provided a further **\$2.95 million over two years** (to 30 June 2024) to the department to support continued implementation of these historic legislative reforms. This is inclusive of deferred funds of **\$0.9 million** from 2021-22.
- In addition, **\$0.932 million** has been provided by the Queensland Government to enable the provision of birth certificates and access to independent legal advice for potential applicants through the Department of Justice and Attorney-General. This is inclusive of deferred funds of **\$0.143 million** from 2021-22
- **\$0.747 million** was provided to Department of Justice and Attorney General in 2021-22.
- Actual expenditure incurred by the department in 2021-22 was **\$1.088 million**. **\$0.9 million** of the budget was deferred as part of the budget outcomes into 2022-23 and 2023-24.
- This leaves a residual underspend of **\$0.476 million in 2021-22**. The \$0.476 million underspend can be attributed to the fact that the Office of the Commissioner was only fully staffed from January 2022 (with six months into the financial year already passed).
- It was also an impaired start due to COVID-19 restrictions and how the office could operate, visit and engage with vulnerable communities. The Office of the Commissioner staff, and Commissioner, were directly affected by COVID-19, which as a small team, further impacted upon program activities in the 2021-22 financial year.

# Meriba Omasker Kaziw Kazipa - 2021-22 Year End Result

Financial transactions in relation to Meriba Omasker Kaziw Kazipa are contained within the certified annual financial statements of the 2021-22 Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships Annual Report which is available at <https://www.dsdsatsip.qld.gov.au/resources/dsdsatsip/about/publications/annual-report/2022/financial-performance.pdf>

# 06

## WHERE TO FROM HERE?

### Priorities for 2022-2023

## Meriba Omasker implementation and improvement opportunity

The Office of the Commissioner has now completed its first year of operation. With the Act merging two cultural paradigms into Queensland law, it was inevitable that the Office of the Commissioner would experience teething issues. Despite there being no blueprint for how an office of this type should operate, significant milestones have been reached. These achievements were gained through the tenacity and hard work of the Commissioner, Office of the Commissioner staff and the collaborative support from the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships. The Office of the Commissioner faced many challenges in the year, but each challenge has presented itself as an opportunity for improvement.

More families will be seeking legal recognition which may increase the number of enquiries and applications for CROs moving forward. The Act has changed the way we think about birth registrations and parentage – not just in Queensland but across Australia. The Act and its office must be reviewed within two years of commencement, which will enable us to see whether the balance to reflect cultural identity as well as ensure sufficient safeguards are met.

**Section 111 of the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020* states that:**

- (1) The Minister must review the operation and efficacy of this Act within 2 years after its commencement.
- (2) The Minister must table in the Legislative Assembly a report on the outcome of the review as soon as practicable after the review is completed.

This review is currently being led by the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships with assistance from an independent consultant and the Office of the Commissioner staff. The review provides an opportunity to identify and consider any issues that can arise with the introduction and implementation of new legislation.








The Office of the Commissioner's challenges, leading into the present financial year, relate to improving processes and working collaboratively with partner agencies, as part of a linked service system to engage, empower and enable Torres Strait Islander individuals, families and the wider community to make positive and lasting change through the CRO process.

**Improvement opportunities:**

- Ongoing direct client engagement
  - Responding to enquiries, providing information and undertaking eligibility checks
  - Enhancing support services for Torres Strait Islander families through the CRO application processes
- Further simplifying the application process for CROs
- Development of a revised Communication and Engagement Plan to 31 December 2023
- Continued community and stakeholder engagement to increase and promote awareness of the Act and the Office of the Commissioner including:
  - Marketing collateral including brochures and postcards
  - Upgrade of current factsheets and resources
  - Increasing social media presence and website content upgrade
  - Additional materials prepared, and manual guide revamped, for departmental Regional Officers assisting on Meriba Omasker Kaziw Kazipa work
  - Continued community meetings and outreach (e.g. an information session at Logan)
  - Celebrations of significant dates (such as the passing of the Act)
  - Involvement in other long-standing events such as NAIDOC week
  - To enhance greater accessibility to the application process, particularly for remote living Torres Strait Island families. This can be achieved by Cultural Support Officers travelling more regularly to remote Torres Strait islands and to families in remote locations to assist with raising community awareness, taking enquiries and advising on the preparation of CRO applications
  - Regular liaison with the department's Communications and Media teams
- MOIMS (Meriba Omasker Information Management System) upgrades
- Planning and undertaking of quarterly Advisory Group meetings and undertaking additional Advisory Group liaison and engagement when required to seek expert cultural advice
- Management of the fit-out of the Thursday Island office
- Regular meetings and liaison with approved legal service providers to strengthen the Meriba Omasker Kaziw Kazipa program of work and associated legal support for clients
- Build an alliance with Queensland Health to raise awareness within the department
- Continue to foster the working relationship with Birth Deaths and Marriages
- Ongoing training of stakeholder groups such as departmental Regional Officers and Court staff
- Oversee the development of an official logo and branding for the Office of Commissioner
- Financial management
- Human Resource management
- General office administration and Meriba Omasker Kaziw Kazipa input into Ministerial Briefs and departmental documents.

# Identified challenges for future consideration







A review of the Act is the responsibility of the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships which will consult other government agencies for implications across comparative and complementary legislation. The Commissioner’s feedback will be considered through the Improvement Opportunity Working Group.

Section of the Act	Short title	Issue	Category	Commissioner feedback for consideration in review	Status
11	<b>Commissioner appointment</b>	Act states the Commissioner must be an appropriately qualified Torres Strait Islander person, but does not state specific suitability checks required.		Consider if appropriate to specify what suitability checks are required.	Consider as part of the review of the Act
19	<b>Appointed person appointment</b>	Act states an Appointed Person must be an appropriately qualified person, but does not state specific suitability checks required and does not say that they must be a Torres Strait Islander.		Consider if appropriate to specify what suitability checks are required and further consider if appropriate to specify that Appointed Person must be a Torres Strait Islander.	Consider as part of the review of the Act
32	<b>Eligibility and Criteria</b>	Child has lived with cultural parents for 16 years, however both cultural parents died 11 years ago and child was provided a transfer through family court process however child requires valid documentation for passport application and family law court paperwork needs further valid identity. Child is unaware of the birth parents and only the elders are aware of the situation.		Section 32 outlines the current eligibility criteria which includes that at least one cultural and one birth parent must be living in order to consent to the process. Consider if consent of the cultural parents can be sought via a family member ie sister, brother or parents of the cultural parents or a dispensation of consent made with the support of these parties - using the Family Court Order and application material.	Consider as part of the review of the Act
32	<b>Deceased parents</b>	Currently where both cultural or birth parents are deceased, a person is not eligible to apply for a CRO - there have been a number of community enquires from people in this situation.		Consider analysing as part of the review - are there any avenues to explore that could indicate support of the application - Family Court applications, multiple informed persons, family member statements.	Consider as part of the review of the Act
32	<b>Deceased parents</b>	An application can be made where one birth parent and one cultural is living. However there is no requirement to provide proof of death of any parents who have passed away		Consider whether proof of death should be required as part of the application process.	Consider as part of the review of the Act
32	<b>Surviving cultural parent is not a Torres Strait Islander</b>	Child has lived with cultural parents for 10 years, but their Torres Strait Islander cultural parent died three years ago, leaving a non-Indigenous cultural parent as sole parent. Birth parents and an informed person have provided statements, documentation and consent. Surviving parent is not a Torres Strait Islander. Can a CRO be made naming a non-Torres Strait Islander as the cultural parent?		According to the Act: - at the time person's parentage is transferred at least one cultural parent is a Torres Strait Islander - at least one birth and one cultural parent are living.  Consider if this needs to be clearer in the Act.	Consider as part of the review of the Act
37	<b>Age of consent</b>	Cultural parents have raised the child and the child is unaware of the Ailan Kastom child rearing practice. At the time of making the application the child has turned 18 (adult) and in accordance with Ailan Kastom continues to remain unaware of the Ailan Kastom child rearing practice. In terms of preserving the Ailan Kastom, can the cultural parents make the application for a CRO on behalf of the adult who is the person subject to the application? Accordingly, it means that no consent is required from the adult who is the person subject to the application.		According to the Act: - at the time the person subject to the application turns 18 they must make an adult application and provide their consent  - at least one birth and one cultural parent are living.  Consider if there can be an exception to this rule whereby cultural parents can provide consent on behalf of the person subject to the application.	Consider as part of the review of the Act

 <b>Technical change</b>	 <b>Definition</b>	 <b>Scenario</b>	 <b>Major change</b>	 <b>Process</b>	 <b>Clarify Intention</b>
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## 06 Where to from here?

Identified challenges for future consideration

Section of the Act	Short title	Issue	Category	Commissioner feedback for consideration in review	Status
37	<b>Adult application</b>	Questions raised about the validity and method of the current process of an adult child making their own application. The practice occurred as a secret and sacred arrangement between the birth parents and cultural parents. It is not an arrangement made with the child and the child may never know of the intricacies of this arrangement.		<p>According to the Act:</p> <ul style="list-style-type: none"> <li>- an application for a CRO about a person who is an adult at the time of the application must include a signed statement from the person addressing how the person was made aware that they were the subject of Ailan Kastom child rearing practice.</li> </ul> <p>Consider if the adult applicant should be required or not to address how they were made aware that they were the subject of Ailan Kastom child rearing practice. Consider if this provision in the Act should be optional.</p>	Consider as part of the review of the Act
38	<b>Informed person</b>	Informed person does not identify as a Torres Strait Islander person. Can their statement be accepted as evidence that the cultural practice occurred in the case of the parties named in the application?		<p>The Act does not state that an informed person must be Torres Strait Islander, however their statement must:</p> <ul style="list-style-type: none"> <li>- address their understanding of the Ailan Kastom child rearing practice that occurred</li> <li>- address whether the child rearing practice occurred in accordance with Ailan Kastom.</li> </ul> <p>Consider if this needs to be clearer in the Act.</p>	Consider as part of the review of the Act
45-46	<b>Information to assist Commissioner</b>	Sections 45 and 46 of Division 2 only relates to what actions occur after the Commissioner receives a written report about a cultural parent's criminal history but remains silent as to the course of action that takes place when the Police Commissioner has no written report to disclose.		Consider including a provision for the Commissioner to proceed with considering application for CRO without any written report about a cultural parent's criminal history.	Consider as part of the review of the Act
45-46	<b>Information to assist Commissioner</b>	Sections 45 and 46 of Division 2 only specifies that the Commissioner may ask for a cultural parent's criminal history however, there is no express provision for the Commissioner to ask for a cultural parent's "domestic violence" history which might be more relevant in determining decision.		Consider including a provision for the Commissioner to ask for a cultural parent's domestic violence history.	Consider as part of the review of the Act
48-55	<b>Discharge dispensation order</b>	Under s55 the Court can, under certain circumstances, discharge a dispensation order, however there is no provision within the Act for the Commissioner to be notified of a discharge of a dispensation order. Whereas under s53 if the Court dispenses with consent, the applicant must give a copy of the order to the Commissioner. (NB discharge order cannot be made if a CRO has already been made, so would the Court seek confirmation from the Commissioner that a CRO has not been made?)"		<p>Explore including a provision that the applicant must provide a copy of the discharge of the dispensation order to the Commissioner.</p> <p>Consider adding section 55 to Dictionary definition of 'discharge order'.</p>	Consider as part of the review of the Act
57	<b>Notice of intention</b>	Re notifying 'notice of intention' and advising 'each party' to the application the reason, if the reason Commissioner is considering not making a CRO is due to a cultural parent's criminal history record, will this be disclosed to other applicants/parties?		Under s102(3) of the Act, the Commissioner may disclose information that is contained in a person's criminal history if the disclosure is made in a notice of intention or statement of reasons.	Resolved

 <b>Technical change</b>	 <b>Definition</b>	 <b>Scenario</b>	 <b>Major change</b>	 <b>Process</b>	 <b>Clarify intention</b>
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Section of the Act	Short title	Issue	Category	Commissioner feedback for consideration in review	Status
58	Reasons for decision	Commissioner must advise 'each party' of reasons for the decision whether to make a CRO. Is an informed person a 'party'? There is no definition of 'party' and the term 'applicant' is often used; are these terms interchangeable? Q I think I can see the difference: in the case of a 'parents' application, the parents are the 'applicants'; in the case of an adult child application, the adult child is the applicant and the adult child's parents are the 'parties'. Is that correct? Who are the 'parties' in a 'parents' application? And would the 'parties' to a 'parents' application need to be informed of the decision and the reasons?		Informed person is not a party to an application. As per s58 of the Act: Applicants include: - adult applicant Parties to an application include: - cultural parents (for child application only) - birth parents (for child application only) Parents include: - cultural parents - birth parents Consider adding definitions to Dictionary for applicants, party to an application.	Consider as part of the review of the Act
60	Internal review	A request for an internal review must be made by all parties in the 'approved form' within 20 business days of statement of reasons for decision given to the parties (however Minister may extend timeframe). Therefore, all requests for internal review should be referred to the Minister even if the timeframe of 20 business days has not been met.		Applicants should be encouraged to submit an application for an Internal Review to the Minister within 20 business days after the statement of reasons was provided. However, given the Minister can at any time extend the period in which such an application should be made any applications for an Internal Review should be forwarded to the Minister for response.	Resolved
60	Internal review	Section 60(3) states that the Minister may extend the timeframe (20 business days) for applicants to apply for internal review. Do applicants need to apply to the Minister directly or do they apply through the Commissioner's Office? What is the exact process? And does the process need to be captured in MOIMS?		Applicants should apply to the Minister directly - an Approved Application Form has been developed and is available online with instructions on submission. Following the receipt of the application the Minister, where requirements have been met, will appoint a Review Officer who will review the Commissioner's decision. The Review Officer will assess the application with 'fresh eyes' and this assessment and consideration will be recorded in MOIMS like all other application considerations.	Resolved
61	Review Officer appointment	Act states a Review Officer must be an appropriately qualified person, but does not state specific suitability checks required and does not say that they must be a Torres Strait Islander.		Consider if appropriate to specify what suitability checks are required and further consider if appropriate to specify that Appointed Person must be a Torres Strait Islander.	Consider as part of the review of the Act
64	Entitlement to certificate, information relating to particular entries	Issues around disclosure - should it be Registry of Births, Deaths and Marriages that disclose all information relating to a CRO or should it be Commissioner?		Under s64 a person who was an applicant for a CRO or an adult who was the child subject can apply to Births, Deaths and Marriages to access previous certificates or source documents. Commissioner authorisation is required prior to submission to Births, Deaths and Marriages. Where an adult who was a child subject applies to the Commissioner for authorisation and authorisation is granted - does the granting of the authorisation confirm the practice occurred? Are there additional steps not outlined in the Act that the Commissioner should consider when giving authorisation?	Consider as part of the review of the Act

 <b>Technical change</b>	 <b>Definition</b>	 <b>Scenario</b>	 <b>Major change</b>	 <b>Process</b>	 <b>Clarify Intention</b>
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## 06 Where to from here?

Identified challenges for future consideration

Section of the Act	Short title	Issue	Category	Commissioner feedback for consideration in review	Status
67	Wills	This clause mentions a will which distinguishes between a person who is the subject of a CRO and one who is not. Can a 'cultural child' be barred from inheriting from both birth and cultural parents? Would a 'cultural child' distinguished in a will have the same right to contest a will as a natural child/dependent?		A CRO permanently transfer the parentage to the cultural parents, meaning the subject is recognised as their child and has the same rights as any other children of the cultural parents.	Resolved
72-79	Discharge CRO	ss.72-79 (Act) A 'relevant person' = a birth or cultural parent of a child the subject of an order; an adult subject of an order can apply to the Court to discharge the order if: s.73 (Act) grounds for discharging - false statement, fraud or undue influence, not full, free and informed consent, other improper making of the order; or other exceptional circumstances. S.74(3)(b) requires an applicant for a discharge order to give a copy of their application to the Commissioner (as well as other parties - s.74(3)(a), and if a discharge order is made, S.79 requires the applicant to give a copy of the order to the Commissioner and the Registrar of Births, Deaths and Marriages. So, presumably the Commissioner will ensure the database records the discharge order against the application. Is there any further action the Commissioner should take?		Following the receipt of a discharge of a CRO, the Office of the Commissioner will upload in and update the Meriba Omasker Information Management System accordingly.	Resolved
92-96	Appeals	Under SS. 92-93 a party who applied for a dispensation order that was not made; or a party whose consent was dispensed with; or an applicant for a discharge order which was not made can appeal a decision and must serve a copy of their appeal to all other persons entitled to appeal the decision (NB there is no provision within the Act for the Commissioner to be notified of an appeal application or an appeal decision). How will the Commissioner be notified that an appeal is lodged? There is no mechanism in the Act to provide for the Commissioner to receive notice of an application for an appeal. There is a need for a trigger for the Commissioner to ensure appropriate action if: a. an appeal against a dispensation order (or no dispensation granted) is lodged and the appeal is heard and decided; b. an appeal against the Court not making a discharge order (or a CRO) is lodged and the appeal is heard and decided.		Consider including a provision that the Commissioner be notified (by the courts or the appellant) when an appeal is lodged and when an appeal is decided.	Consider as part of the review of the Act



Technical change



Definition



Scenario








Major change



Process



Clarify intention

Section of the Act	Short title	Issue	Category	Commissioner feedback for consideration in review	Status
94	Appeals - stay of decision	s.94 (Act) appellate court may stay a decision appealed against but only until court decides the appeal. There is no mechanism in the Act for the Commissioner to receive a notice that a decision is stayed. Could the Court stay a decision on an application for a CRO, and if so, will a notice be sent to the Commissioner?		Consider including a provision that the Commissioner be notified when a decision is stayed.	Consider as part of the review of the Act
100	Offence proceedings	Proceedings for offences against the Act must start within 1 year after the offence was allegedly committed, or 6 months after the offence comes to the complainant's knowledge but within 2 years of the alleged offence occurring; proceedings will be heard and decided summarily.  There is no mention in the Act of where a complainant can lodge their complaint and where the complaint will be heard and decided. Does the Commissioner need to know if a complaint is made?		It was agreed with the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, Corporate Services that the complaint process should be managed by way of the department's complaint handling process.  Proceedings for offences against the Act to be brought forward by the Commissioner. Process to be developed in conjunction with Corporate Services.	Outstanding
103	Access to information	One party to an unsuccessful application seeks access to information about the application. If the Commissioner grants access to the information requested, is there an obligation on the Commissioner to: a. advise the other parties to the application and/or; b. provide the same information to the other parties to the application?		Applicants/parties to a CRO application can apply under s103 to access information related to the CRO application. There is no requirement for the Commissioner to advise other parties and if another party wished to access information they would need to apply separately.	Resolved
Schedule 1	Chief Executive	There is no definition of chief executive. Does there need to be one? See section 33(11) of the Acts Interpretation Act 1954.		Consider whether definition of chief executive is needed to make clear which chief executive is being referred to.	Consider as part of the review of the Act
Schedule 1	Discharge order	In the definition of 'discharge order' in the Dictionary, only one relevant section is noted (73(1) - re discharging a CRO), however an application can also be made to discharge a dispensation of consent order (55)		Consider adding section 55 to Dictionary definition of 'discharge order'.	Consider as part of the review of the Act
Regulation	Authorised witness	Currently there is no requirement under the Regulation for an authorised witness when submitting applications for information under s64 and s103.		Consider including the requirement for authorised witnesses for these applications given the sensitive nature of the information being sought for release.	Consider as part of the review of the Act
Other	Change of name	If a CRO is granted, it transfers parentage to the cultural parents. It doesn't however seem to change the legal name of the child. So it may not align legal and cultural identity. Cultural parents may then need to change the child's name so their legal and cultural identity are aligned.		Could consider a change in legislation. Current change of name provisions of the Births, Deaths and Marriages do not apply to CROs. Some subjects may have to access copies of their previous birth certificate (process available under s64) and new birth certificate to support changing their name with particular entities.  Currently the department has worked with Births, Deaths and Marriages to create a solution - the Addendum form. Applicants are encouraged to fill this form out. Information included on this form is the name that will be included on the new birth entry and other information normally found on a birth certificate. The Commissioner will forward this form along with the CRO to Births, Deaths and Marriages to ensure the new entry and any new birth certificates issued are as fulsome as possible.	Consider as part of the review of the Act

 <b>Technical change</b>	 <b>Definition</b>	 <b>Scenario</b>	 <b>Major change</b>	 <b>Process</b>	 <b>Clarify Intention</b>
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## 06 Where to from here?

Identified challenges for future consideration

Section of the Act	Short title	Issue	Category	Commissioner feedback for consideration in review	Status
Other	Accessing information	Accessing certificates or information about a birth parent at a registry that is not Births, Deaths and Marriages. How is this monitored? How is Commissioner authorisation to accessing the information maintained.		A CRO will result in a new birth entry in Queensland's Births, Deaths and Marriages not any other registry. A subject of a CRO may apply to other registry's seeking family member information as long as they meet the eligibility requirements - this could mean they use a post CRO birth certificate to satisfy identity checks. The Commissioner has no authorisation in relation to subjects or applicants accessing information held in another registry.	Resolved
Other	Deceased child	Is there a possibility that a birth entry can be changed after death where legal recognition is sought but subject child has passed away		<p>Currently eligibility requirements do not state that a child subject of a CRO must be living at the time of the application.</p> <p>Consider if an application was submitted relating to a deceased child could the Commissioner consider it? If yes and a CRO was made what certificates (if any can be updated)? Suggest discussing further with Births, Deaths and Marriages.</p>	Consider as part of the review of the Act
Other	Court fees	<p>Under the Act a number of applications can be made to the court - such as dispensation of consent, discharge of a dispensation and discharge of a CRO. There are administration fees associated with these applications (\$911). This cost can be subsidised to \$136.50 with a cover letter from a legal service attached to an application.</p> <p>Note the intention was that legal recognition would not cost participants money to participate in.</p>		<p>There is currently no waiver provision in the Uniform Civil Procedure Rules 1999 (UCPR), which means the Court has no ability to waive the application fee altogether.</p> <p>DJAG (through Courts Services Queensland - Reform and Support Services) has suggested that the review of the Act consider the application of court fees for matters under the Act as this can remove the need for an administration fee.</p>	Consider as part of the review of the Act
Other	Sibling birth certificates	Following the approval of a CRO the subject person can apply for a new birth certificate that lists cultural parents as parents. Where a person had siblings registered at time of birth (these may be biological siblings who are not recognised by each other as siblings) the removal of the subject person as a sibling on a birth certificate will not happen automatically. Correction application will need to be made.		<p>Births, Deaths and Marriages are investigating system capacities with these corrections, also what changes can be done under the current Act/ framework.</p> <p>This work could be further considered as part of the Review.</p>	Consider as part of the review of the Act

**Technical change**

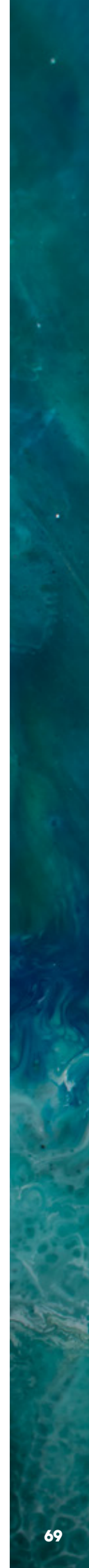
**Definition**

**Scenario**

**Major change**

**Process**

**Clarify Intention**



# Appendix A

## References from the Act

### Terms with specific meaning under the Act

The Act uses several key terms which have specific meaning under the Act. The terms are:

- **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.
- Birth parent is a person who is recognised at law as being a parent of the child at the time the child is born.
- Cultural parent is a person who, in accordance with Ailan Kastom child rearing practice, agrees to accept the permanent transfer of the parental rights and responsibility for a child from the child's birth parents to the person.
- Informed person is a person who has knowledge and understanding of the specific Ailan Kastom child rearing practice that occurred in relation to the application and can verify that the transfer of parentage in relation to the subject child occurred in accordance with Ailan Kastom. This could be a family member such as a grandparent.
- **Customary Adoption** has been used as an explanation to describe the practice of permanently transferring a child from one extended family member to another. The term 'customary adoption' is not a term used in Torres Strait Islander culture, but initially used by Queensland Government as a term that could be understood within modern day terminology. The practice is now referred to as Ailan Kastom child rearing practice.
- **Other Carer** is a person other than the child's birth parent or cultural parent who has the right and responsibility to make decisions about the child's daily care under legislation other than this Act or the Child Protection Act 1999. An example of an other carer may be someone who is not a birth or cultural parent but has parental rights such as a grandparent of the subject child that may have family law orders providing for parental responsibility or contact. This is to ensure that person who holds those rights is also informed of and consents to the application.
- **Review Officer** is a person (other than the Commissioner) appointed by the Minister to review an application under s61 of the Act for a review of a decision decided by the Commissioner.
- **Appointed Person** is a person (other than the Commissioner) appointed by the Minister to consider an application instead of the Commissioner under s19 of the Act where a conflict of interest has been identified.
- **Administrator** is a person who is or was:
  - the Commissioner
  - an officer of the Office of the Commissioner
  - a Review Officer
  - an Appointed Person or
  - an officer or employee of the department whose services are made available to the Commissioner under s30(2).
- **The Minister** The Minister referred to in the Act is the Minister for Seniors, Disability Services and Minister for Aboriginal and Torres Strait Islander Partnerships under the Administrative Arrangements Order (No. 2) 2021 and s33 of the *Acts Interpretation Act 1954* (Qld).
- Schedule 1 of the Act has definitions of other terms used within the Act

# Appendix B

## FOR FURTHER INFORMATION

Office of the Commissioner Meriba Omasker Kaziw Kazipa

[www.ocmokk.qld.gov.au](http://www.ocmokk.qld.gov.au)

### The Bill

Meriba Omasker Kaziw Kazipa – The Bill, Report No 40, August 2020 tabled by Cynthia Lui MP, Member for Cook, Queensland Parliament

<https://documents.parliament.qld.gov.au/tableOffice/TabledPapers/2020/5620T1395.pdf>

### The Act

<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2020-033>

<https://www.legislation.qld.gov.au/view/html/asmade/act-2020-033>

### The Regulation

<https://www.legislation.qld.gov.au/view/html/inforce/current/sl-2021-0120>

### The Guidelines

<https://www.ocmokk.qld.gov.au/resources/ocmokk/ockmokk-guidelines.pdf>

### Media Releases

<https://www.ocmokk.qld.gov.au/news-updates>

## OTHER INFORMATION

### DSDSATSIP

<https://www.qld.gov.au/firstnations/family-social-support/torres-strait-islander-traditional-child-rearing-practice>

Paul Bann, 'Customary 'Adoption' in the Torres Strait Islands towards Legal Recognition', *Aboriginal LawBulletin*, 1994, 3(66), p 2.

[Torres Strait Islander family life | Australian Institute of Family Studies \(aifs.gov.au\)](http://www.aifs.gov.au/torres-strait-islander-family-life)

The coconut palm tree: a metaphor for Islander family life

<https://www.creativespirits.info/aboriginalculture/people/torres-strait-islander-culture>

Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Bill 2020 – paper by Alastair Nicholson

<https://documents.parliament.qld.gov.au/tableOffice/TabledPapers/2020/5620T1395.pdf>

Beck & Whitby – Kupai Omasker Case Submission

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCA/2012/129.html?stem=0&synonyms=0&query=beck>







Continuing the legacy of advocates past and present will help ensure these practices are recognised and strengthened for Torres Strait Islander families raising future generations and leaders of tomorrow.

In doing so, we acknowledge the importance of culture, family, connection and self-determination for Torres Strait Islander children, individuals and their families now and into the future.

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