



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

**Current as at 1 March 2023**

© State of Queensland 2023



This work is licensed under a Creative Commons Attribution 4.0 International License.



Queensland

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

## Contents

---

		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title .....	8
2	Commencement .....	8
3	Act binds all persons .....	8
4	Main purpose of Act .....	8
5	How purpose is achieved .....	8
6	Main principle .....	8
<b>Part 2</b>	<b>Interpretation</b>	
7	Definitions .....	10
8	Meaning of Ailan Kastom child rearing practice .....	10
9	Meaning of birth parent .....	10
10	Meaning of cultural parent .....	10
<b>Part 3</b>	<b>Commissioner and office of commissioner</b>	
<b>Division 1</b>	<b>Commissioner</b>	
<b>Subdivision 1</b>	<b>Appointment</b>	
11	Commissioner .....	11
12	Commissioner appointed under this Act .....	11
13	Term of appointment .....	11
14	Conditions of appointment .....	12
15	Preservation of rights of commissioner .....	12
16	Leave of absence .....	12
17	Resignation .....	12
18	Disclosure of conflict of interests .....	13
19	Effect of disclosure notice .....	13

Contents

---

20	Vacancy in office . . . . .	14
21	Acting commissioner . . . . .	15
<b>Subdivision 2</b>	<b>Functions and powers</b>	
22	Functions . . . . .	15
23	Obligation in performing functions . . . . .	16
24	Powers . . . . .	16
25	Commissioner not subject to direction . . . . .	16
<b>Division 2</b>	<b>Office of the commissioner</b>	
26	Office of the commissioner . . . . .	16
27	Control of the office . . . . .	17
28	Officers . . . . .	17
29	Officers not subject to outside direction . . . . .	17
30	Staffing arrangements and administrative support . . . . .	17
31	Office not a statutory body for particular Acts . . . . .	18
<b>Part 4</b>	<b>Applications for cultural recognition orders</b>	
<b>Division 1</b>	<b>Eligibility and criteria</b>	
32	Preliminary criteria for making application for cultural recognition order 18	
33	Making an application . . . . .	19
<b>Division 2</b>	<b>Documents and signed statements</b>	
34	Application to include particular documents and information . . . . .	20
35	Birth parent's statement . . . . .	21
36	Cultural parent's statement . . . . .	23
37	Signed statement of adult who was subject to Ailan Kastom child rearing practice . . . . .	24
38	Informed person's signed statement . . . . .	25
39	Other carer's statement . . . . .	25
<b>Part 5</b>	<b>Cultural recognition orders</b>	
<b>Division 1</b>	<b>Applications for cultural recognition order</b>	
40	Commissioner must deal with applications . . . . .	26
41	Commissioner may request additional information . . . . .	26
42	Withdrawal of application . . . . .	27
43	Duty of parties to application . . . . .	27
44	Consideration procedure . . . . .	27
<b>Division 2</b>	<b>Information to assist commissioner</b>	
45	Criminal history report . . . . .	28

46	Dealing with criminal history report . . . . .	28
<b>Division 3</b>	<b>Dispensing with a person’s consent</b>	
47	Application of division . . . . .	29
48	Application for dispensation . . . . .	29
49	Notice of application . . . . .	30
50	Respondent . . . . .	31
51	Hearing of application in absence of stated party . . . . .	31
52	Court may dispense with need for consent . . . . .	31
53	Notice of court order . . . . .	32
54	Effect of order . . . . .	32
<b>Division 4</b>	<b>Discharge of dispensation order</b>	
55	Discharge of dispensation order if stated party not served with application . . . . .	32
<b>Division 5</b>	<b>Deciding whether to make cultural recognition orders</b>	
56	Considerations before making decision . . . . .	33
57	Notice of intention before deciding not to make cultural recognition order 34	
58	Deciding about cultural recognition order . . . . .	34
59	What cultural recognition order must state . . . . .	35
<b>Division 6</b>	<b>Internal review</b>	
60	Application for internal review . . . . .	35
61	Internal review . . . . .	36
62	Effect of review officer’s decision to make a cultural recognition order 36	
<b>Part 6</b>	<b>Registration of cultural recognition orders</b>	
63	Commissioner must notify registrar . . . . .	37
64	Entitlement to certificate, information relating to particular entries	37
<b>Part 7</b>	<b>Effect of cultural recognition orders</b>	
65	Application of part . . . . .	39
66	Effect on relationships . . . . .	39
67	Effect on disposal of property . . . . .	39
68	Public trustee to make inquiries if bequest to unlocatable person	40
69	Public trustee is trustee if bequest to unlocatable person . . . . .	41
70	Public trustee’s fees for involvement . . . . .	42
71	Transfer or distribution of property by trustee . . . . .	42
<b>Part 8</b>	<b>Discharge of cultural recognition order</b>	
72	Definition for part . . . . .	43

Contents

---

73	Grounds for discharge . . . . .	43
74	Application for discharge order . . . . .	44
75	Respondent . . . . .	45
76	Hearing of application in absence of party . . . . .	45
77	Court may make a discharge order . . . . .	45
78	Effect of discharge order . . . . .	46
79	Applicant must give copy of order . . . . .	47
<b>Part 9</b>	<b>Court proceedings</b>	
<b>Division 1</b>	<b>Preliminary</b>	
80	Application of part 9 . . . . .	47
<b>Division 2</b>	<b>Constitution of court and procedural provisions</b>	
81	Court's constitution . . . . .	48
82	Court rules . . . . .	48
83	Court fees . . . . .	48
84	Court's paramount consideration . . . . .	48
85	Evidence . . . . .	48
86	Court to ensure parties understand proceeding . . . . .	49
87	Expert help . . . . .	49
88	Right of appearance and representation . . . . .	49
89	Child can not be compelled to give evidence . . . . .	49
90	Court may hear submissions from non-parties to proceeding . . . . .	50
91	Costs . . . . .	50
<b>Division 3</b>	<b>Appeals</b>	
92	Who may appeal . . . . .	50
93	How to start appeal . . . . .	51
94	Stay of decision . . . . .	51
95	Hearing procedures . . . . .	52
96	Powers of appellate court . . . . .	52
<b>Division 4</b>	<b>General</b>	
97	Court hearings not public . . . . .	52
98	Access to court records . . . . .	53
<b>Division 5</b>	<b>Offences and legal proceedings</b>	
99	False or misleading information . . . . .	54
100	Offences against this Act . . . . .	54
<b>Part 10</b>	<b>Confidentiality and access to information</b>	
101	Definitions for part . . . . .	54

---

102	Confidentiality of information . . . . .	55
103	Access to particular information . . . . .	56
104	Publishing identifying material . . . . .	56
<b>Part 11</b>	<b>Civil liability</b>	
105	Administrator not civilly liable . . . . .	57
<b>Part 12</b>	<b>Miscellaneous</b>	
106	Relationship with Adoption Act 2009 and other laws . . . . .	58
107	Decisions and persons with impaired capacity . . . . .	59
108	Commissioner may make guidelines . . . . .	59
109	Approved forms . . . . .	60
110	Annual report on office . . . . .	60
111	Review of Act and operations of office . . . . .	61
112	Regulation-making power . . . . .	61
<b>Schedule 1</b>	<b>Dictionary . . . . .</b>	<b>62</b>





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

**An Act to provide for the recognition and acceptance of traditional child rearing practice in the Torres Strait community**

## **Preamble**

In enacting this Act, the Parliament of Queensland recognises—

- 1 Ailan Kastom is important and significant for Torres Strait Islanders.
- 2 Ailan Kastom includes Ailan Kastom child rearing practice that is part of the unique, ancient, integral and enduring culture that exists within the Torres Strait Islander community.
- 3 Ailan Kastom child rearing practice has always been practised in the Torres Strait.
- 4 Ailan Kastom child rearing practice is integral to keeping Torres Strait Islanders spiritually and socially connected to the land and sea and assuring the survival of their culture.
- 5 As part of the recognition and preservation of Ailan Kastom it is necessary that the laws of Queensland protect the rights, interests and responsibilities of Torres Strait Islanders who are affected by Ailan Kastom child rearing practice.
- 6 The recognition of Ailan Kastom child rearing practice ensures that a child who has been raised in accordance with the practice will benefit by having their legal identity reflect their cultural identity.

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*.

### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

### **3 Act binds all persons**

- (1) This Act binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) However, the State, the Commonwealth or another State can not be prosecuted for an offence against this Act.

### **4 Main purpose of Act**

The purpose of this Act is to—

- (a) recognise Ailan Kastom child rearing practice; and
- (b) establish a process for making applications for, and decisions about, the legal recognition of the practice.

### **5 How purpose is achieved**

The purpose is to be achieved by providing for the appointment of a commissioner to consider and decide applications for cultural recognition orders.

### **6 Main principle**

- (1) The main principle for administering this Act is that any decision made under this Act in relation to a person who is the

subject of an application for a cultural recognition order must be for the wellbeing and best interests of the person.

- (2) Without limiting subsection (1)—
- (a) in deciding what is for the wellbeing and best interests of a child who is the subject of an application for a cultural recognition order, the decision-maker must have regard to the following matters—
- (i) the need to ensure appropriate recognition and preservation of Ailan Kastom in general and Ailan Kastom child rearing practice in particular;
  - (ii) 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;
  - (iii) the legal and cultural benefits for the child if the cultural recognition order is made recognising Ailan Kastom child rearing practice;
  - (iv) recognition of the birth parents' assessment of the suitability of the cultural parents;
  - (v) decisions must be made in a fair, timely and consistent manner;
  - (vi) any other matter that is directly related to the child's wellbeing and best interests; and
- (b) in deciding what is for the wellbeing and best interests of an adult who is the subject of an application for a cultural recognition order, the decision-maker must have regard to—
- (i) the matters mentioned in paragraph (a)(i), (ii), and (v); and
  - (ii) the legal and cultural benefits for the adult if the cultural recognition order is made recognising Ailan Kastom child rearing practice.

## Part 2 Interpretation

### 7 Definitions

The dictionary in schedule 1 defines particular words used in this Act.

### 8 Meaning of *Ailan Kastom child rearing practice*

*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.

### 9 Meaning of *birth parent*

A *birth parent* of a child, means a person who is recognised at law as being a parent of the child at the time the child is born.

### 10 Meaning of *cultural parent*

A *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.

## **Part 3 Commissioner and office of commissioner**

### **Division 1 Commissioner**

#### **Subdivision 1 Appointment**

##### **11 Commissioner**

- (1) There is to be a commissioner (Meriba Omasker Kaziw Kazipa).
- (2) The commissioner is appointed by the Governor in Council on the recommendation of the Minister.
- (3) The Minister may recommend a person for appointment only if—
  - (a) the person is a Torres Strait Islander; and
  - (b) the Minister is satisfied the person is appropriately qualified.

##### **12 Commissioner appointed under this Act**

The commissioner is appointed under this Act and not the *Public Sector Act 2022*.

##### **13 Term of appointment**

- (1) The commissioner holds office for the term stated in the commissioner's instrument of appointment.
- (2) The term must not be more than 3 years.
- (3) The commissioner may be reappointed.

## **14 Conditions of appointment**

- (1) The commissioner is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) The commissioner holds office on the terms and conditions, not otherwise provided by this Act, that are decided by the Governor in Council.

## **15 Preservation of rights of commissioner**

- (1) This section applies if a public service officer is appointed as the commissioner.
- (2) The person keeps all rights accrued or accruing to the person as a public service officer as if service as the commissioner were a continuation of service as a public service officer.
- (3) At the end of the person's term of office, or on resignation as the commissioner, the person's service as the commissioner is taken to be service of a like nature in the public service for deciding the person's rights as a public service officer.

## **16 Leave of absence**

- (1) The Minister may approve a leave of absence for the commissioner.
- (2) The Minister may appoint another person to act in the office of the commissioner during the leave of absence.
- (3) Subsection (2) does not limit the Governor in Council's power under the *Acts Interpretation Act 1954*, section 25(1)(b)(v).

## **17 Resignation**

- (1) The commissioner may resign by signed notice given to the Minister.
- (2) The resignation takes effect on—
  - (a) the day the notice is given; or

- (b) if a later day is stated in the notice—the later day.

## 18 Disclosure of conflict of interests

- (1) If the commissioner considers that the commissioner can not independently consider and decide a particular application for a cultural recognition order, the commissioner must give the Minister a notice (a *disclosure notice*) stating—
- (a) the particular application in sufficient detail to enable the Minister to identify the application; and
  - (b) the reasons the commissioner is not able to independently consider and decide the application; and
  - (c) that the commissioner will not participate in the process leading to a decision for the application.
- (2) Without limiting subsection (1), the commissioner must give a disclosure notice to the Minister if—
- (a) the commissioner becomes aware of a direct or an indirect interest the commissioner has in the application; and
  - (b) the interest could conflict with the proper performance of the commissioner’s functions and powers.
- (3) In this section—
- interest*, in relation to an application, includes a familial interest or a financial interest.

## 19 Effect of disclosure notice

- (1) As soon as practicable after the Minister receives a disclosure notice, the Minister must appoint a person (the *appointed person*), other than the commissioner, to decide the application.
- (2) The Minister may appoint a person as an appointed person if the Minister is satisfied the person is appropriately qualified.
- (3) The appointed person must—

- (a) consider and decide the application under part 5 as if the appointed person had the powers and functions of the commissioner; and
  - (b) give a statement of reasons for the decision to—
    - (i) each party to the application; and
    - (ii) the commissioner.
- (4) The appointed person’s decision—
- (a) is taken to be a decision of the commissioner; and
  - (b) takes effect as if the decision were the commissioner’s decision.

## **20 Vacancy in office**

- (1) The office of the commissioner becomes vacant if the commissioner—
- (a) gives notice of resignation under section 17; or
  - (b) is convicted of an indictable offence; or
  - (c) is removed from office by the Governor in Council under subsection (3).
- (2) Also, if the commissioner is suspended by the Minister under subsection (5), the office is vacant during the period of suspension.
- (3) The Governor in Council may, at any time, remove the commissioner from office on the recommendation of the Minister.
- (4) The Minister may recommend the commissioner’s removal if the Minister is satisfied the commissioner—
- (a) is guilty of misconduct; or
  - (b) is incapable of performing the functions or exercising the powers of the office of the commissioner; or



- (c) has neglected the functions or powers of the office of the commissioner or performed or exercised them incompetently.
- (5) The Minister may suspend the commissioner for up to 60 days by signed notice to the commissioner if—
  - (a) there is an allegation of misconduct against the commissioner; or
  - (b) the Minister is satisfied a matter has arisen in relation to the commissioner that may be grounds for removal under this section.

## **21 Acting commissioner**

- (1) If there is a vacancy in the office of the commissioner or the commissioner is absent for any other reason or is unable to perform the functions of the office, the Minister may appoint a person to act as the commissioner for a period of not more than 6 months.
- (2) A person may only be appointed to act as the commissioner if the Minister is satisfied the person is appropriately qualified.

## **Subdivision 2 Functions and powers**

### **22 Functions**

The commissioner has the following functions—

- (a) to independently consider and decide each application for a cultural recognition order;
- (b) to ensure the proper, efficient and effective performance of the office;
- (c) to provide advice, or make recommendations, to the Minister about the operation of this Act and the office;
- (d) to promote public awareness of the commissioner's functions and the office;

- (e) to advise the registrar of each cultural recognition order made by the commissioner;
- (f) any other function conferred on the commissioner under this Act or another Act.

### **23 Obligation in performing functions**

The commissioner must, in performing the commissioner's functions, act in accordance with the main principle of this Act.

### **24 Powers**

The commissioner has power to do all things necessary or convenient to perform the commissioner's functions.

### **25 Commissioner not subject to direction**

The commissioner is not subject to direction by any person about the way the commissioner performs the commissioner's functions or exercises the commissioner's powers.

## **Division 2 Office of the commissioner**

### **26 Office of the commissioner**

- (1) An office called the Office of the Commissioner (Meriba Omasker Kaziw Kazipa) is established.
- (2) The office's function is to help the commissioner perform the commissioner's functions.
- (3) The office consists of the commissioner and the officers of the office.

**27 Control of the office**

The commissioner controls the office.

**28 Officers**

Officers of the office are appointed under the *Public Sector Act 2022*.

**29 Officers not subject to outside direction**

An officer of the office is not subject to direction by any person, other than from within the office, about the way the commissioner's functions or powers under this Act are performed or exercised.

**30 Staffing arrangements and administrative support**

- (1) The commissioner may ask the chief executive to give or make available to the office the administrative support services and facilities the office requires to perform its functions effectively.
- (2) The commissioner may arrange with the chief executive for the services of officers or employees of the department to be made available to the commissioner.
- (3) An officer or employee whose services are made available under subsection (2)—
  - (a) continues to be an officer or employee of the department; and
  - (b) continues to be employed or otherwise engaged by the department on the same terms and conditions applying to the officer or employee before the services were made available; and
  - (c) is, for the period the services are made available and for carrying out the office's functions, taken to be an officer of the office.

### **31 Office not a statutory body for particular Acts**

To remove any doubt, it is declared that the office is not a statutory body for the *Financial Accountability Act 2009* or the *Statutory Bodies Financial Arrangements Act 1982*.

## **Part 4 Applications for cultural recognition orders**

### **Division 1 Eligibility and criteria**

#### **32 Preliminary criteria for making application for cultural recognition order**

- (1) An application for a cultural recognition order about a person may be made only if—
  - (a) at least 1 birth parent is a Torres Strait Islander; and
  - (b) the person’s birth was registered in Queensland; and
  - (c) at the time the person’s parentage is transferred in accordance with Ailan Kastom child rearing practice, at least 1 cultural parent is a Torres Strait Islander.
- (2) Also, an application for a cultural recognition order about a person who is a child at the time the application is made may be made only—
  - (a) by each of the child’s birth parents and cultural parents; and
  - (b) if each applicant is an adult; and
  - (c) 30 days, or more, after the child’s birth is registered.
- (3) For subsection (2), nothing prevents the application from being made if—
  - (a) a birth parent or cultural parent is deceased; or

- (b) at the time the person's parentage was transferred in accordance with Ailan Kastom child rearing practice—there was only 1 cultural parent.
- (4) However, if a birth parent or cultural parent is deceased, the application can be made only if—
  - (a) at least 1 birth parent is an applicant for the order; and
  - (b) at least 1 cultural parent is an applicant for the order.
- (5) An application for a cultural recognition order about a person who is an adult at the time the application is made only by the person.
- (6) For subsection (5) nothing prevents the application from being made if—
  - (a) a birth parent or cultural parent is deceased; or
  - (b) at the time the person's parentage was transferred in accordance with Ailan Kastom child rearing practice—there was only 1 cultural parent.

### **33 Making an application**

- (1) An application for a cultural recognition order must be—
  - (a) made in the approved form; and
  - (b) if the person the subject of the application is a child—accompanied by—
    - (i) a certified copy of the child's birth certificate; and
    - (ii) if a final adoption order has been made in relation to the child under the *Adoption Act 2009*, part 9—a copy of that order; and
    - (iii) if an order has been made in relation to the child under the *Family Law Act 1975* (Cwlth)—a copy of that order; and
    - (iv) if an order has been made in relation to the child under the *Child Protection Act 1999*—a copy of that order; and

- (v) the statements or information required under section 34; and
- (vi) any other document or information prescribed by regulation; and
- (c) if the person the subject of the application is an adult—accompanied by—
  - (i) a certified copy of the person’s birth certificate; and
  - (ii) the statements or information required under section 34.

*Note—*

Some requirements may be dispensed with if a court makes a dispensation order under section 52.

- (2) The commissioner must make a record of each application.

## **Division 2                      Documents and signed statements**

### **34            Application to include particular documents and information**

- (1) An application for a cultural recognition order about a person who is a child at the time the application is made must include—
  - (a) a signed statement from each birth parent addressing the matters mentioned in section 35; and
  - (b) a signed statement from each cultural parent addressing the matters mentioned in section 36; and
  - (c) a signed statement from the birth parents’ nominated informed person and the cultural parents’ nominated informed person addressing the matters mentioned in section 38; and

- (d) if the child has an other carer—a signed statement from the other carer addressing the matters mentioned in section 39.
- (2) Also, the application may be accompanied by any other information or document the applicant reasonably considers may help the commissioner in deciding whether to make a cultural recognition order.
- (3) An application for a cultural recognition order about a person who is an adult at the time of the application must include—
- (a) a signed statement from the person addressing the matters mentioned in section 37; and
  - (b) a signed statement from each birth parent addressing the matters mentioned in section 35(1)(a), (b), (f), (g) and (h); and
  - (c) a signed statement from each cultural parent addressing the matters mentioned in section 36(1)(a), (b), (e), (f) and (j); and
  - (d) a signed statement from the birth parents' nominated informed person and cultural parents' nominated informed person addressing the matters mentioned in section 38.
- (4) Also, the application may be accompanied by any other information or document the applicant reasonably considers may help the commissioner in deciding whether to make a cultural recognition order.

### **35 Birth parent's statement**

- (1) A birth parent's signed statement must address the following matters—
- (a) the nature and details of the Ailan Kastom child rearing practice that occurred;
  - (b) that the parental rights and obligations for the child were transferred under Ailan Kastom from the birth parent to

- the cultural parents in accordance with Ailan Kastom child rearing practice;
- (c) the reasons the birth parent considers a cultural recognition order will be in the best interests of the child;
  - (d) whether, to the birth parent's knowledge, the child is aware that the Ailan Kastom child rearing practice occurred;
  - (e) that the birth parent is not aware of any matter that might be detrimental to the wellbeing and best interests of the child;
  - (f) the name and address of a person both birth parents nominate as the informed person for the application;
  - (g) that the birth parent consents to the making of inquiries of, and the exchange of information with, the informed person for the purpose of helping the commissioner decide whether to make a cultural recognition order;
  - (h) that the birth parent gives their informed consent to the application being made.
- (2) Without limiting subsection (1)(c), the birth parent's statement may include the following matters—
- (a) the nature of any relationship the birth parent has with the child;
  - (b) if the birth parent provides any financial support for the child—details of that support;
  - (c) if the birth parent is involved in any decisions in relation to the child—details of that involvement.

*Example—*

details of the birth parent's ability to decide or influence a decision about the child's education or medical treatment



### **36 Cultural parent's statement**

- (1) A cultural parent's signed statement must address the following matters—
  - (a) the nature and details of the Ailan Kastom child rearing practice that occurred;
  - (b) that the parental rights and obligations for the child were transferred under Ailan Kastom from the birth parents to the cultural parents in accordance with Ailan Kastom child rearing practice;
  - (c) the reasons the cultural parent considers a cultural recognition order will be in the best interests of the child;
  - (d) the period the child has lived with the cultural parent;
  - (e) the name and address of a person both the cultural parents nominate as the informed person for the application;
  - (f) that the cultural parent consents to the making of inquiries of, and the exchange of information with, the informed person for the purpose of helping the commissioner decide whether to make a cultural recognition order;
  - (g) whether, to the cultural parent's knowledge, the child is aware that the Ailan Kastom child rearing practice occurred;
  - (h) that the cultural parent consents to the commissioner—
    - (i) requesting a copy of the cultural parent's criminal history; and
    - (ii) relying on information contained in the cultural parent's criminal history to decide whether to make a cultural recognition order;
  - (i) that the cultural parent is not aware of any matter that might be detrimental to the well being and best interests of the child;

- (j) that the cultural parent gives their informed consent to the application being made.
- (2) Without limiting subsection (1)(c), the cultural parent's statement may include the following matters—
  - (a) the nature of any relationship the birth parent has with the child;
  - (b) the nature of the relationship the cultural parent has with the child;  
*Example—*
    - how the child refers to the cultural parent and other family members
  - (c) details of the child's current living arrangements;  
*Example—*
    - the number and ages of other children living with the cultural parent
  - (d) details of the financial support provided by the cultural parent for the child;
  - (e) details of how any decision is made in relation to the child.  
*Example—*
    - who makes decisions about the child's education or medical treatment

### **37 Signed statement of adult who was subject to Ailan Kastom child rearing practice**

A signed statement of an adult who was subject to Ailan Kastom child rearing practice must address the following matters—

- (a) how the person was made aware that they were the subject of Ailan Kastom child rearing practice;
- (b) what information the person was provided with about the Ailan Kastom child rearing practice;

- (c) the nature of the relationship the person has with their cultural parents;

*Example—*

how the person refers to the cultural parents

- (d) the nature of any relationship the person has with their birth parents;

*Example—*

how the person refers to the birth parents

- (e) that the person consents to the making of inquiries of, and the exchange of information with, the person's birth parents, cultural parents and informed person for the purpose of deciding whether to make a cultural recognition order;

- (f) that the person gives their informed consent to the application.

### **38 Informed person's signed statement**

An informed person's signed statement must address the following matters—

- (a) the person's understanding of the Ailan Kastom child rearing practice that occurred in relation to the application;
- (b) whether the Ailan Kastom child rearing practice occurred in accordance with Ailan Kastom;
- (c) the person's relationship, if any, to the birth parents, the cultural parents and the person the subject of the application.

### **39 Other carer's statement**

An other carer's signed statement must address the following matters—

- (a) the other carer's relationship to the child;

- (b) that the other carer gives their informed consent to the application being made;
- (c) the reasons the other carer considers a cultural recognition order will be in the best interests of the child.

## **Part 5 Cultural recognition orders**

### **Division 1 Applications for cultural recognition order**

#### **40 Commissioner must deal with applications**

The commissioner must deal with an application for a cultural recognition order by considering and deciding the application under this part.

#### **41 Commissioner may request additional information**

- (1) The commissioner may, by notice given to an applicant for a cultural recognition order, ask the applicant for further information or a document the commissioner reasonably requires to decide whether to make a cultural recognition order.
- (2) The notice—
  - (a) must state a reasonable period of at least 30 business days within which the applicant must give the information or document to the commissioner; and
  - (b) must state that an applicant may request that the commissioner extend the period mentioned in paragraph (a); and
  - (c) may require the information or document be verified by statutory declaration.

- (3) The commissioner may extend the period mentioned in subsection (2)(a) by notice given to the person—
  - (a) on the commissioner’s own initiative; or
  - (b) if an applicant makes a request under subsection (2)(b).
- (4) The commissioner may decide whether to make a cultural recognition order regardless of whether the applicant gives the further information or document requested.

#### **42 Withdrawal of application**

- (1) An applicant for a cultural recognition order may withdraw the application by giving written notice (a *notice of withdrawal*) to the commissioner.
- (2) On the commissioner’s receipt of the notice of withdrawal, the application ends.
- (3) As soon as practicable after receiving the notice of withdrawal, the commissioner must give the applicant, and each other party to the application, notice that the application is withdrawn.

#### **43 Duty of parties to application**

Each applicant for a cultural recognition order must participate in the commissioner’s consideration of the application in good faith.

#### **44 Consideration procedure**

- (1) Subject to this Act, the commissioner must consider an application for a cultural recognition order in accordance with any guidelines made by the commissioner under section 108.
- (2) Also, the commissioner, in considering the application—
  - (a) must act in a way that is fair and reasonable; and
  - (b) must maintain confidentiality; and

- (c) must comply with natural justice; and
- (d) may have regard to any matter the commissioner considers relevant to the application, including any previous applications made in relation to the person the subject of the application; and
- (e) may make inquiries the commissioner considers appropriate.

## **Division 2 Information to assist commissioner**

### **45 Criminal history report**

- (1) This section applies for deciding an application for a cultural recognition order if the person the subject of the application is a child.
- (2) The commissioner may ask the police commissioner for a written report about a cultural parent's criminal history that includes a brief description of the circumstances of a conviction mentioned in the criminal history.
- (3) The police commissioner must comply with the request.
- (4) The duty to comply applies only to information the police commissioner has possession of or to which the police commissioner has access.
- (5) The commissioner must ensure the report is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.

### **46 Dealing with criminal history report**

- (1) This section applies if the commissioner receives a report about a cultural parent's criminal history.
- (2) As soon as practicable after receiving the report the commissioner must give written notice to the cultural parent.

- (3) The written notice must include a copy of the report and state—
  - (a) that the cultural parent may within 30 business days after receiving the notice give the commissioner information or documents about any information contained in the report; and
  - (b) that the cultural parent may request that the commissioner extend the period mentioned in paragraph (a).
- (4) If the cultural parent makes a request to extend the period mentioned in subsection (3)(a), the commissioner may extend the period by notice given to the person.

## **Division 3                      Dispensing with a person’s consent**

### **47            Application of division**

This division applies if an applicant for a cultural recognition order is not able to make the application for the order with the consent of any of the following persons—

- (a) a birth parent;
- (b) a cultural parent;
- (c) if the child has an other carer—the other carer.

### **48            Application for dispensation**

- (1) If an applicant for a cultural recognition order is not able to apply for a cultural recognition order with the consent of a party whose consent is otherwise required, the applicant may apply to a court for an order dispensing with the need for the consent of the party (the *stated party*).
- (2) The application must state the grounds on which it is made.

## **49 Notice of application**

- (1) As soon as practicable after filing an application for an order dispensing with the need for the consent of a stated party, the applicant must serve a copy of the application on—
  - (a) the stated party; and
  - (b) each other party who is an applicant for the cultural recognition order; and
  - (c) the commissioner.
- (2) A served copy must state where and when the application is to be heard.
- (3) A copy served on the stated party must also state that the application may be heard and decided even though the party does not appear in court.
- (4) The court may dispense with the requirement to serve a copy of the application on the stated party if the court is satisfied of any of the following matters—
  - (a) the applicant can not establish the identity of the party after making all reasonable enquiries;
  - (b) the applicant can not locate the party after making all reasonable enquiries;
  - (c) the conception of the person the subject of the application for a cultural recognition order was a result of an offence committed by the party;
  - (d) there would be an unacceptable risk of harm to the birth mother of the person the subject of the application for a cultural recognition order if the party were made aware of the person's birth or the application for a cultural recognition order;
  - (e) there are other special circumstances for dispensing with the requirement to serve a copy of the application.



## 50 Respondent

If a stated party is served with a copy of an application for an order dispensing with the need for the stated party's consent to an application for a cultural recognition order, the stated party is a respondent in the proceeding.

## 51 Hearing of application in absence of stated party

- (1) The court may hear and decide an application for an order dispensing with the need for the consent of a stated party in the absence of the party only if—
  - (a) the party has been given reasonable notice of the hearing and failed to attend or continue to attend the hearing; or
  - (b) the court dispenses with the requirement to serve a copy of the application on the party under section 49(4).
- (2) Subsection (1) does not limit the court's jurisdiction to exclude a person from a proceeding.

## 52 Court may dispense with need for consent

- (1) The court may make an order (a *dispensation order*) dispensing with the need for the consent of a stated party as part of the application for a cultural recognition order if—
  - (a) the court is satisfied of a matter stated in section 49(4)(a) to (d); or
  - (b) QCAT has made a declaration that the party does not have capacity to give the consent; or
  - (c) a court or tribunal of another jurisdiction has made an order or other direction, however called, that the party does not have capacity to give the consent; or
  - (d) the court is satisfied there are other special circumstances for giving the dispensation.
- (2) However, if the person the subject of the application for a cultural recognition order is a child and the stated party is or is

believed to be the person's birth parent, the court must not give the dispensation—

- (a) within 30 days after notice is given to the party under section 49; or
- (b) if the court has reason to believe there is—
  - (i) a current application under the *Status of Children Act 1978*, section 10, by the party or another person, for a declaration of parentage for the child; or
  - (ii) a current application under the *Family Law Act 1975* (Cwlth) by the party for a parenting order for the child.

### **53 Notice of court order**

If a court makes a dispensation order, the applicant must give the commissioner a copy of the order.

### **54 Effect of order**

- (1) This section applies if the commissioner is given a copy of a dispensation order under section 53.
- (2) The commissioner must continue to consider and decide the application for a cultural recognition order without the need for the consent of the stated party.

## **Division 4 Discharge of dispensation order**

### **55 Discharge of dispensation order if stated party not served with application**

- (1) This section applies if—
  - (a) a court makes a dispensation order; and

- (b) a copy of the application for the order was not served on a stated party.
- (2) The party may apply to the court to discharge the dispensation order.
- (3) The applicant must serve a copy of the application for discharge of the dispensation order on each other person who was a party to the proceeding for the dispensation order.
- (4) The court may discharge the dispensation order if—
  - (a) a cultural recognition order has not been made; and
  - (b) the court is satisfied a ground on which the dispensation order was made under section 52 does not apply.

## **Division 5                      Deciding whether to make cultural recognition orders**

### **56            Considerations before making decision**

Before deciding to make a cultural recognition order the commissioner must be satisfied—

- (a) that, subject to any dispensation order, each birth parent and cultural parent gave full, free and informed consent to the making of the application for the order; and
- (b) if the application contains a signed statement from an other carer—the other carer gave full, free and informed consent to the making of the application; and
- (c) if the person the subject of the application for the order is a child—that the making of the order is for the wellbeing and in the best interests of the child; and
- (d) that the transfer of parentage occurred in accordance with Ailan Kastom child rearing practice; and
- (e) that each applicant was entitled to apply under section 32; and

- (f) that the requirements mentioned in section 34 are satisfied; and
- (g) that each applicant has provided the required information or statement.

## **57 Notice of intention before deciding not to make cultural recognition order**

- (1) If the commissioner is considering not making a cultural recognition order, the commissioner must give each party to the application for the order a notice (a *notice of intention*) that states—
  - (a) the reasons the commissioner is considering not making the order; and
  - (b) that an applicant may within 30 business days after receiving the notice of intention give the commissioner information or documents not included in the application that support the making of the order; and
  - (c) that an applicant may request that the commissioner extend the period mentioned in paragraph (b).
- (2) If an applicant makes a request under subsection (1)(c), the commissioner may extend the period mentioned in subsection (1)(b) by notice given to the applicant.

## **58 Deciding about cultural recognition order**

- (1) After having regard to the information in an application for a cultural recognition order and information or documents given under section 57, the commissioner must decide—
  - (a) to make a cultural recognition order; or
  - (b) not to make a cultural recognition order.
- (2) If the person the subject of the application for the cultural recognition order is a child, the commissioner must give each party to the application—

- (a) a statement of reasons for the decision; and
  - (b) if the decision is to make an order—a copy of the order.
- (3) If the applicant is an adult who is the subject of the application, the commissioner must give to the applicant and the applicant's birth parents and cultural parents—
- (a) a statement of reasons for the decision; and
  - (b) if the decision is to make an order—a copy of the order.

## **59 What cultural recognition order must state**

If the commissioner makes a cultural recognition order about a person, the order must state the following information—

- (a) that the order is made under this Act in recognition of Ailan Kastom;
- (b) the person's name;
- (c) the name of each of the person's birth parents and cultural parents;
- (d) that the person's parentage is transferred from the birth parents to the cultural parents;
- (e) the date of the decision;
- (f) any other information prescribed by regulation.

## **Division 6 Internal review**

### **60 Application for internal review**

- (1) If the commissioner decides to not make a cultural recognition order the parties to the application for the order may apply to the Minister for a review of the decision (an *application for internal review*).
- (2) The application for internal review must be made—
  - (a) in the approved form; and

- (b) jointly by the parties; and
  - (c) within 20 business days after the statement of reasons for the decision was given to the parties.
- (3) The Minister may, at any time, extend the period within which the application for internal review may be made.

## **61 Internal review**

- (1) Within 20 business days after the Minister receives an application for internal review, the Minister must appoint a person (the *review officer*), other than the commissioner, to review the commissioner's decision.
- (2) The Minister may appoint a person as the review officer if the Minister is satisfied the person is appropriately qualified.
- (3) The review officer must—
- (a) consider the application; and
  - (b) review the commissioner's decision; and
  - (c) make a decision (the *reviewed decision*) to—
    - (i) confirm the commissioner's decision; or
    - (ii) revoke the commissioner's decision and make a cultural recognition order; and
  - (d) give a statement of reasons for the reviewed decision to—
    - (i) the parties to the application for internal review; and
    - (ii) the commissioner.

## **62 Effect of review officer's decision to make a cultural recognition order**

If the review officer revokes the commissioner's decision and makes a cultural recognition order—

- (a) the reviewed decision is taken to be a decision of the commissioner; and
- (b) the commissioner must give effect to the decision as if—
  - (i) the decision were the commissioner’s decision; and
  - (ii) no application for internal review had been made.

## **Part 6**                      **Registration of cultural recognition orders**

### **63**            **Commissioner must notify registrar**

As soon as practicable after a cultural recognition order is made by the commissioner, the commissioner must give a copy of the order to the registrar.

### **64**            **Entitlement to certificate, information relating to particular entries**

- (1) This section applies to each of the following persons—
  - (a) a person who was an applicant for a cultural recognition order that was made by the commissioner;
  - (b) an adult who was the subject of a cultural recognition order;
  - (c) if a person mentioned in paragraph (a) or (b) has a guardian—the person’s guardian.
- (2) On request by a person mentioned in subsection (1), the commissioner must give the person an authorisation to obtain a certificate, information, source document or a copy of the cultural recognition order under this section.
- (3) However, the authorisation may exclude information if the commissioner is satisfied that allowing access to the certificate, information, source document or the copy of the

cultural recognition order would be an unreasonable invasion of a person's privacy or otherwise unreasonably harm a person's interests.

*Example—*

The authorisation may exclude a part of a document showing a person's birth was the result of a sexual offence.

- (4) The person may make an application under the *Births, Deaths and Marriages Registration Act 2003*, section 44, accompanied by an authorisation from the commissioner, for the requested information mentioned in that section to which the authorisation relates.
- (5) The registrar must grant the application if it relates to an entry about the cultural recognition order in the register of births and the cultural recognition register.
- (6) A certificate or copy of a source document given under this section and relating to a closed entry must be endorsed 'Not to be used for official purposes'.
- (7) In this section—

***certificate*** see the *Births, Deaths and Marriages Registration Act 2003*, schedule 2.

***closed entry*** means an entry that has been closed under the *Births, Deaths and Marriages Registration Act 2003*, section 14, 41DA or 41DB.

***cultural recognition register*** see the *Births, Deaths and Marriages Registration Act 2003*, schedule 2, definition *relevant child register*.

***source document*** see the *Births, Deaths and Marriages Registration Act 2003*, schedule 2.



## **Part 7**                      **Effect of cultural recognition orders**

### **65**      **Application of part**

This part applies if the commissioner makes a cultural recognition order.

### **66**      **Effect on relationships**

- (1) On the making of a cultural recognition order about a person—
  - (a) the person’s parentage is transferred from the birth parents to the cultural parents; and
  - (b) the person becomes a child of the cultural parents; and
  - (c) the cultural parents become the parents of the person; and
  - (d) the person stops being a child of the birth parents; and
  - (e) a birth parent stops being a parent of the person.
- (2) Other relationships are determined in accordance with subsection (1).
- (3) However, for the purpose of applying a law relating to a sexual offence where a familial relationship is relevant, the person is taken to have—
  - (a) the familial relationship that existed before the making of the order; and
  - (b) the familial relationship resulting from the making of the order.

### **67**      **Effect on disposal of property**

- (1) Section 66(1) and (2) have effect in relation to—

- (a) dispositions of property, whether by will or otherwise; and
  - (b) devolutions of property in relation to which a person dies intestate.
- (2) However, section 66 does not affect the operation of a will or other instrument that distinguishes between a person about whom a cultural recognition order is made and another person about whom a cultural recognition order has not been made.

## **68 Public trustee to make inquiries if bequest to unlocatable person**

- (1) This section applies if—
- (a) under a will made after the commencement, a testator makes a disposition of property to a person—
    - (i) who is described as being a child of the testator or of another person; and
    - (ii) whose parentage was transferred to another person or persons as a result of a cultural recognition order; and
  - (b) the personal representative of the testator is unable to determine the name and address of the person.
- (2) The personal representative must give the public trustee a copy of the will and a notice stating that the personal representative is unable to determine the name and address of the person.
- (3) On receipt of the copy and notice, the public trustee must take steps to determine the name and address of the person and, if the person has died, the date of the death, by asking for information from—
- (a) the commissioner; and
  - (b) the registrar under the *Births, Deaths and Marriages Registration Act 2003*.

- (4) Despite any other Act or law, if the commissioner receives a request from the public trustee under subsection (3), the commissioner must give the public trustee the name and address of the person held in the commissioner's records.
- (5) The *Births, Deaths and Marriages Registration Act 2003*, section 44 does not apply to a request for information made under subsection (3) to the registrar under that Act.
- (6) After taking the steps mentioned in subsection (3), the public trustee must give a notice to the personal representative stating—
  - (a) that the public trustee has been able to determine—
    - (i) the person's name; or
    - (ii) the person's address; or
    - (iii) the death of the person; and
  - (b) to the extent the public trustee is unable to determine the name or address of the person or whether the person has died, what details the public trustee has been unable to determine.

## **69 Public trustee is trustee if bequest to unlocatable person**

- (1) This section applies if—
  - (a) under a will made after the commencement, a testator makes a disposition of property to a person—
    - (i) who is described as being a child of the testator or of another person; and
    - (ii) whose parentage was transferred to another person or persons as a result of a cultural recognition order; and
  - (b) the personal representative of the testator is given a notice by the public trustee under section 68(6).
- (2) The public trustee is a trustee for the person on the trusts stated in, or arising under, the will.

- (3) If the personal representative transfers property to the public trustee as trustee for the person, the personal representative is taken to have transferred the property to the person.
- (4) Subsections (2) and (3) do not apply if the person died before the testator or, for another reason, is not entitled to an interest under the will.
- (5) If the public trustee gives the personal representative a notice that the person has disclaimed property to which the person was entitled under the will, the notice is, for the purpose of administering the estate, sufficient evidence that the person has disclaimed the property.

## **70 Public trustee's fees for involvement**

- (1) The public trustee may charge fees for taking steps under section 68(3) or (6) or for acting as trustee under section 69.
- (2) The personal representative of the testator must pay to the public trustee out of the testator's estate any fees charged by the public trustee under subsection (1) and any fees or costs incurred by the public trustee in taking steps under section 68(3) or (6).

## **71 Transfer or distribution of property by trustee**

- (1) Subject to this section, a trustee may transfer or distribute property to a person who appears entitled to it without finding out whether the person's entitlement is affected by a cultural recognition order.
- (2) A trustee who transfers or distributes property under subsection (1) is not liable to a person claiming directly or indirectly because of an order unless the trustee has written or other notice of the claim before the transfer or distribution.
- (3) This section does not affect a person's right to follow property into the hands of a person, other than a purchaser for value, who has received it.
- (4) In this section—

*trustee* includes a personal representative of the testator.

## Part 8 Discharge of cultural recognition order

### 72 Definition for part

In this part—

*relevant party* means—

- (a) for a cultural recognition order about a child—
  - (i) a birth parent of the child; or
  - (ii) a cultural parent of the child; or
- (b) for a cultural recognition order about an adult—
  - (i) the adult; or
  - (ii) a birth parent of the adult; or
  - (iii) a cultural parent of the adult.

### 73 Grounds for discharge

- (1) A relevant party for a cultural recognition order may apply to the court for an order (a *discharge order*) discharging the cultural recognition order on any of the following grounds—
  - (a) the order was made—
    - (i) because of a false or misleading document or representation; or
    - (ii) because a person acted fraudulently or used undue influence on another person; or
    - (iii) because a person did not provide full, free and informed consent; or
    - (iv) on some other improper basis; or

- (b) there are other exceptional circumstances that warrant the discharge.
- (2) In this section—
- undue influence* includes—
- (a) the use or threatened use of force or restraint; and
  - (b) causing or threatening to cause injury; and
  - (c) causing or threatening to cause any other detriment.

## **74 Application for discharge order**

- (1) An application for a discharge order must be made to a court.
- (2) The application must state the ground on which it is made.
- (3) As soon as practicable after filing the application in the court, the applicant must serve a copy of it on—
  - (a) each person—
    - (i) other than the applicant, who was a relevant party for the cultural recognition order; and
    - (ii) who was required to consent to the application for the cultural recognition order; and
  - (b) the commissioner.
- (4) A served copy of the application for a discharge order must state where and when the application is to be heard.
- (5) The court may dispense with the requirement to serve a copy of the application on a person if the court is satisfied—
  - (a) the applicant can not locate the person after making all reasonable enquiries; or
  - (b) the person is deceased.

## **75 Respondent**

A person, other than the commissioner, who is served with a copy of an application for a discharge order is a respondent in the proceeding.

## **76 Hearing of application in absence of party**

- (1) A court may hear and decide an application for a discharge order only—
  - (a) if the person the subject of a cultural recognition order is an adult—if the person or a lawyer representing the person appears in the proceeding; or
  - (b) if the person the subject of a cultural recognition order is a child—if the child’s birth parents and cultural parents appear in the proceeding.
- (2) However, the court may hear and decide the application in the absence of a relevant party if—
  - (a) the party has been given reasonable notice of the hearing and failed to attend or continue to attend the hearing; or
  - (b) the court dispenses with the requirement to serve a copy of the application on the party under section 74(5).
- (3) Subsections (1) and (2) do not limit the court’s jurisdiction to exclude a person from a proceeding.

## **77 Court may make a discharge order**

- (1) The court may make a discharge order only if satisfied of a ground mentioned in section 73(1).
- (2) However, if an application for a discharge order is about a child who was the subject of a cultural recognition order, the court may only make a discharge order if it considers the discharge is for the wellbeing and in the best interests of the child.
- (3) The discharge order must state the following information—

- (a) the name of the person who applied for the discharge order;
  - (b) the name of the person about whom the cultural recognition order was made and the date the order was made;
  - (c) the date the discharge order is made;
  - (d) any other information prescribed by regulation.
- (4) Also, if the court makes a discharge order, it may also—
- (a) make any other order it considers appropriate in the interests of justice; and
  - (b) if the person the subject of the cultural recognition order is a child—make any other order to protect the wellbeing and best interests of the child.
- (5) An order, other than a discharge order, made under subsection (4) may be about any matter relating to the wellbeing or best interests of the person, including, for example, any of the following matters—
- (a) if the person the subject of the cultural recognition order is a child—
    - (i) the ownership of property; or
    - (ii) the child’s name; or
    - (iii) the custody or guardianship of the child;
  - (b) if the person the subject of the cultural recognition order is an adult—the ownership of property.

## **78 Effect of discharge order**

- (1) On the making of a discharge order discharging a cultural recognition order, the rights, privileges, duties, liabilities and relationships of the person and each relevant party to the cultural recognition order are the same as if the cultural recognition order had not been made.
- (2) However, the making of the discharge order does not affect—



- (a) anything lawfully done, or the consequences of anything lawfully done, while the cultural recognition order was in force; or
  - (b) a right, privilege or liability acquired, accrued or incurred while the cultural recognition order was in force.
- (3) Also, for the purpose of applying a law relating to a sexual offence where a familial relationship is relevant, the person is taken to have—
- (a) the familial relationships that resulted from the making of the cultural recognition order; and
  - (b) the familial relationships resulting from the making of the discharge order.

## **79 Applicant must give copy of order**

As soon as practicable after a discharge order is made, the applicant for the discharge order must give a certified copy of the discharge order to—

- (a) the registrar; and
- (b) the commissioner.

# **Part 9 Court proceedings**

## **Division 1 Preliminary**

### **80 Application of part 9**

This part applies to a proceeding under this Act.

## **Division 2                      Constitution of court and procedural provisions**

### **81            Court's constitution**

When exercising its jurisdiction under this Act, a court must be constituted by a Childrens Court judge.

### **82            Court rules**

- (1) The *Uniform Civil Procedure Rules 1999* apply in relation to proceedings under this Act as if the proceedings were proceedings in the District Court.
- (2) However, the *Uniform Civil Procedure Rules 1999* do not apply for a matter in relation to a proceeding in the Childrens Court that is provided for under rules of that court made under the *Childrens Court Act 1992*.

### **83            Court fees**

A regulation made under the *Supreme Court of Queensland Act 1991* about how fees are to be received and dealt with in the courts applies in relation to a proceeding in the Childrens Court under this Act as if the proceeding were a proceeding in the District Court.

### **84            Court's paramount consideration**

In exercising its jurisdiction or powers under this Act a court must regard the wellbeing and best interests of a child as paramount.

### **85            Evidence**

- (1) A court is not bound by the rules of evidence, but may inform itself in any way it thinks appropriate.

- (2) If, on an application for an order under this Act, the court is to be satisfied of a matter, the court need only be satisfied of the matter on the balance of probabilities.

## **86 Court to ensure parties understand proceeding**

A court must, as far as practicable, ensure the parties to a proceeding understand the nature, purpose and legal implications of the proceeding and of any order or ruling made by the court.

## **87 Expert help**

- (1) A court may appoint a person with special knowledge or a special skill to help the court.
- (2) The court may act under subsection (1) on the court's own initiative or on the application of a party to the proceeding.

## **88 Right of appearance and representation**

- (1) A party to a proceeding may appear in person or be represented by a lawyer.
- (2) Also, if a party for any reason can not appear in person in a proceeding, another person appointed in writing by the party may, with the leave of the court, represent the party in the proceeding.

## **89 Child can not be compelled to give evidence**

- (1) In a proceeding, a child may be called to give evidence only with the leave of the court.
- (2) The court may grant leave only if the child—
  - (a) is at least 12 years; and
  - (b) is represented by a lawyer; and
  - (c) agrees to give evidence.

- (3) If the child gives evidence, the child may be cross-examined only with the leave of the court.

## **90 Court may hear submissions from non-parties to proceeding**

- (1) In a proceeding, the court may hear submissions from the following persons—
- (a) a member of the family of the child to whom the proceeding relates;
  - (b) anyone else the court considers is able to inform it on any matter relevant to the proceeding.
- (2) A submission may be made by a person’s lawyer.

## **91 Costs**

Each party to a proceeding must pay its own costs of the proceeding.

## **Division 3 Appeals**

### **92 Who may appeal**

A party may appeal to the appellate court against a decision on an application if—

- (a) the party was an applicant for a dispensation order and the dispensation order was not made; or
- (b) the party is a stated party and a dispensation order has been made about the party; or
- (c) the party was an applicant for a discharge order and the discharge order was not made.

### **93 How to start appeal**

- (1) The appeal is started by filing a notice of appeal with the registrar of the appellate court.
- (2) The appellant must serve a copy of the notice—
  - (a) if section 92(a) or (c) applies—on each other person entitled to appeal against the decision; or
  - (b) if section 92(b) applies—on the person who applied for the dispensation order.
- (3) The notice of appeal must be filed within 28 days after the decision is made.
- (4) The court may at any time extend the period for filing the notice of appeal.
- (5) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

### **94 Stay of decision**

- (1) The appellate court may stay a decision appealed against to secure the effectiveness of the appeal.
- (2) A stay—
  - (a) may be given on conditions; and
  - (b) operates for the period fixed by the court; and
  - (c) may be revoked or amended by the court.
- (3) The period of a stay must not extend past the time when the court decides the appeal.
- (4) The starting of an appeal against a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

## **95 Hearing procedures**

An appeal must be decided on the evidence and proceedings before the court.

## **96 Powers of appellate court**

In deciding an appeal, the appellate court may—

- (a) confirm the decision appealed against; or
- (b) vary the decision appealed against; or
- (c) set aside the decision appealed against and substitute another decision; or
- (d) set aside the decision appealed against and remit the matter to the court that made the decision.

## **Division 4 General**

### **97 Court hearings not public**

- (1) This section applies to the hearing in the court or the appellate court of a proceeding under this Act.
- (2) The hearing for the proceeding is not open to the public.
- (3) Despite section 20 of the *Childrens Court Act 1992*, a court must exclude from the room in which the court is sitting a person who is not—
  - (a) a child to whom the proceedings relates; or
  - (b) an adult who is the subject of a cultural recognition order relevant to the proceeding; or
  - (c) an appellant; or
  - (d) a respondent; or
  - (e) if the proceeding relates to a child who is the subject of a cultural recognition order—

- (i) the child's birth parent; or
  - (ii) the child's cultural parent; or
  - (iii) the child's other carer; or
  - (f) the commissioner; or
  - (g) a lawyer of a party to the proceeding or of a person mentioned in paragraphs (a) to (e)(iii); or
  - (h) a witness giving evidence.
- (4) However, the court may permit a person who is not mentioned in subsection (3) to be present during the hearing if the court is satisfied it is in the interests of justice to do so.

## **98 Access to court records**

- (1) A person may not have access to the record of proceedings in the court or the appellate court in relation to a proceeding under this Act about a cultural recognition order unless the court, on application by an applicant for the order, or the commissioner, has given approval to access the record.
- (2) The court may give access to all or part of the record of proceedings.
- (3) Without limiting the reasons for which the court may refuse to give a person access to all or part of the record of proceedings, the court may refuse to give access if—
  - (a) the person has not produced to the registrar or another appropriate officer of the court proof of the person's identity; or
  - (b) the person has not complied with a requirement of the court under any law or rule of practice relating to inspection of and release of information generally from its record of proceedings.
- (4) In this section—

***record of proceedings*** includes—

  - (a) a written transcript of the proceedings; and

- (b) the documents in the court file for the proceedings; and
- (c) an appeal book in relation to the proceedings.

## **Division 5                      Offences and legal proceedings**

### **99            False or misleading information**

A person must not give information under this Act to the commissioner that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

### **100          Offences against this Act**

- (1) A proceeding for an offence against this Act is to be heard and decided summarily.
- (2) A proceeding for the offence must start within the later of the following periods to end—
  - (a) 1 year after the offence was allegedly committed;
  - (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the offence was allegedly committed.

## **Part 10                              Confidentiality and access to information**

### **101          Definitions for part**

In this part—

*confidential information*—

- (a) means the following information—
  - (i) personal information;



- (ii) information in relation to an Ailan Kastom child rearing practice that a person knows is of a secret or sacred nature; and
- (b) does not include information that is lawfully available to the public.

*personal information* see the *Information Privacy Act 2009*, section 12.

*sacred* means sacred according to Ailan Kastom.

*secret* means secret according to Ailan Kastom.

## 102 Confidentiality of information

- (1) An administrator must not, directly or indirectly, disclose confidential information, that has become known to the administrator in the course of performing the administrator's functions under this Act, to another person unless the disclosure is permitted under subsection (2) or (3).

Maximum penalty—100 penalty units or 2 years imprisonment.

- (2) An administrator is permitted to disclose confidential information, other than information that the administrator knows is of a secret or sacred nature, to another person—
  - (a) under this Act; or
  - (b) if the disclosure is otherwise required or permitted by law; or
  - (c) if the person to whom the information relates consents to the disclosure; or
  - (d) if the disclosure is in a form that does not identify the person to whom the information relates.
- (3) The commissioner may disclose information that is contained in a person's criminal history if the disclosure is made in—
  - (a) a notice of intention; or
  - (b) a statement of reasons given under section 58(2)(a).

### 103 Access to particular information

- (1) An applicant for a cultural recognition order may apply in writing to the commissioner for a copy of restricted information about the application for a cultural recognition order.
- (2) In deciding whether or not to grant the application for a copy of restricted information the commissioner must have regard to—
  - (a) the need to protect a person’s privacy; and
  - (b) the need to safeguard a person from harm.
- (3) If the commissioner grants the application, the commissioner may grant access to all or a part of the restricted information.
- (4) If the commissioner decides not to grant the application, the commissioner must give the applicant written notice of the commissioner’s decision and a statement of reasons for the decision.
- (5) In this section—

*restricted information*, about an application for a cultural recognition order, means—

  - (a) the application for the order; or
  - (b) information or a document that accompanied the application for the order; or
  - (c) information or a document that was given to the commissioner under section 41; or
  - (d) a statement of reasons given under section 58(2) or (3).

### 104 Publishing identifying material

- (1) This section applies to material (*identifying material*) that is confidential information or other information that identifies, or is likely to lead to the identification of, a person as—
  - (a) a party, or relative of a party, to an application for a cultural recognition order; or

- (b) a party, or relative of a party, to a court proceeding relating to an application for a discharge order; or
  - (c) a person whose consent to an application for a cultural recognition order is or was required.
- (2) A person must not publish identifying material unless written consent to the publication has been given, for each identified person, by—
- (a) for an identified person who is a child the subject of a cultural recognition order or an application for a cultural recognition order—the birth parents and the cultural parents of the child; or
  - (b) for an identified person who is an adult—that person.

Maximum penalty—

- (a) for an individual—100 penalty units or 2 years imprisonment; or
  - (b) for a corporation—1,000 penalty units.
- (3) In this section—

***identified person***, in relation to identifying material, means a person identified by the material as a person mentioned in subsection (1)(a) to (c).

***publish*** means publish to the public by television, radio, the internet, newspaper, periodical, notice, circular or other form of communication.

## Part 11 Civil liability

### 105 Administrator not civilly liable

- (1) An administrator is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

- (2) If subsection (1) prevents a liability attaching to the administrator, the liability attaches instead to the State.
- (3) This section does not apply to an administrator if the administrator is a prescribed person under the *Public Sector Act 2022*, section 267.

*Note—*

For protection from civil liability in relation to prescribed persons under the *Public Sector Act 2022*, section 267, see the *Public Sector Act 2022*, section 269.

## Part 12                      Miscellaneous

### 106      Relationship with Adoption Act 2009 and other laws

- (1) On the making of a cultural recognition order about a child, the order has effect as if the order were a final adoption order made under the *Adoption Act 2009*.
- (2) Without limiting subsection (1), for any law the making of the cultural recognition order takes effect as if—
  - (a) a child who is the subject of the cultural recognition order were a child adopted under the *Adoption Act 2009*; and
  - (b) a cultural parent named in the cultural recognition order were an adoptive parent named in a final adoption order; and
  - (c) a birth parent named in the cultural recognition order were a birth parent named in a final adoption order.

- (3) In this section—

*adoptive parent* see the *Adoption Act 2009*, schedule 3.

*final adoption order* see the *Adoption Act 2009*, schedule 3.

## 107 Decisions and persons with impaired capacity

- (1) This section applies if—
  - (a) a decision-maker is making a decision under part 5, 8, 9 or 10; and
  - (b) the decision may affect the rights and interests of an adult with impaired capacity.
- (2) In making the decision, the decision-maker must take into account—
  - (a) the adult's right to participate, to the greatest extent practicable, in the decision making process; and
  - (b) that the adult must be given the support and access to information necessary to enable the adult to make a decision as part of, or participate in, the decision making process.
- (3) In addition, the decision-maker must ensure that, to the greatest extent practicable, the adult's views, wishes and preferences are sought and taken into account before making the decision.
- (4) The adult's views, wishes and preferences may be expressed orally, in writing or in another way, including, for example, by conduct.
- (5) In this section—

*capacity* see the *Guardianship and Administration Act 2000*, schedule 4.

*impaired capacity* see the *Guardianship and Administration Act 2000*, schedule 4.

## 108 Commissioner may make guidelines

- (1) The commissioner may make guidelines for matters within the scope of this Act to help compliance with this Act.
- (2) The guidelines—
  - (a) must be consistent with this Act; and

- (b) may include—
  - (i) procedures about how an application may be considered; and
  - (ii) procedures for making cultural recognition orders; and
  - (iii) procedures about internal reviews; and
  - (iv) procedures about any other matter the commissioner considers relevant.
- (3) The guidelines must be published on the department's website.
- (4) In this section—

*department's website* means a website, or part of a website—

  - (a) administered by the department; and
  - (b) with a URL that contains qld.gov.au.

## **109 Approved forms**

- (1) The commissioner may approve forms for use under this Act.
- (2) Information in an approved form must, if the approved form requires, be verified by a signed statement.

## **110 Annual report on office**

- (1) As soon as practicable after each financial year, but not later than 31 October, the commissioner must give the Minister a report including—
  - (a) a review of the operation of the office during the preceding financial year; and
  - (b) proposals for improving the operation of, and forecasts of the workload of, the office in the present financial year; and

- (c) any other information required by the Minister relating to the performance of the commissioner's functions or exercise of powers under this Act.
- (2) The report must not contain—
  - (a) confidential information; or
  - (b) any other information that identifies, or is likely to lead to the identification of, a person as—
    - (i) a child who was the subject of an application for a cultural recognition order; or
    - (ii) an applicant for a cultural recognition order; or
    - (iii) a person, other than a person mentioned in paragraph (ii), who was required to give a statement for an application for a cultural recognition order.
- (3) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

### **111 Review of Act and operations of office**

- (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.

### **112 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may—
  - (a) prescribe fees payable under the Act; and
  - (b) provide for a maximum penalty of 20 penalty units for a contravention of a regulation.

## Schedule 1 Dictionary

### section 7

***administrator*** means—

- (a) a person who is, or was, the commissioner; or
- (b) a person who is, or was, involved in the administration of this Act, including, for example—
  - (i) an officer of the office; or
  - (ii) a review officer; or
  - (iii) a person appointed under section 19(1); or
  - (iv) an officer or employee of the department whose services are made available to the commissioner under section 30(2).

***Ailan Kastom*** means Island custom.

***Ailan Kastom child rearing practice*** see section 8.

***appellate court*** means the Court of Appeal.

***application for internal review*** see section 60(1).

***birth parent*** see section 9.

***Childrens Court judge*** see the *Childrens Court Act 1992*, section 3.

***commissioner*** means the person appointed as commissioner (Meriba Omasker Kaziw Kazipa) under section 11.

***confidential information***, for part 10, see section 101.

***court*** means the Childrens Court constituted by a Childrens Court judge.

***criminal history***, for a person, means—

- (a) the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*; and



- (b) despite section 6 of that Act, includes, a conviction of the person to which the section applies.

***cultural parent*** see section 10.

***cultural recognition order*** is an order made by the commissioner under section 58.

***discharge order*** see section 73(1).

***disclosure notice*** see section 18(1).

***dispensation order*** see section 52(1).

***guardian***, of a person in relation to a particular matter, means the person's guardian appointed under the *Guardianship and Administration Act 2000*, or a corresponding law of another State, for the matter.

***guidelines*** means the guidelines made under section 108.

***informed consent***, of a person, means—

- (a) the person has capacity to consent; and  
(b) the consent is given freely and voluntarily.

***informed person***, for an application for a cultural recognition order, means a person who—

- (a) has knowledge and understanding of the specific Ailan Kastom child rearing practice that occurred in relation to the application; and  
(b) can, for the purpose of the application, verify that the practice occurred in accordance with Ailan Kastom.

***internal review*** means a review conducted under section 61.

***notice of intention*** see section 57(1).

***office*** means the Office of the Commissioner (Meriba Omasker Kaziw Kazipa) established under section 26(1).

***other carer***, of a child, means 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—

- (a) an Act, other than—

- (i) this Act; or
- (ii) the *Child Protection Act 1999*, if the person is certified as an approved foster carer or an approved kinship carer under that Act; or
- (b) a law of the Commonwealth or another State; or
- (c) a court order; or
- (d) a testamentary instrument.

***personal information***, for part 10, see section 101.

***police commissioner*** means the commissioner of the police service.

***registrar*** means the registrar-general established under the *Births, Deaths and Marriages Registration Act 2003*.

***relevant party*** for part 8, see section 72.

***reviewed decision*** see section 61(3).

***review officer*** see section 61(1).

***sacred***, for part 10, see section 101.

***secret***, for part 10, see section 101.

***stated party*** see section 48.