

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

Explanatory notes for SL 2021 No. 120

made under the

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

General Outline

Short title

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

Authorising law

Sections 33(1)(b)(vi) and 112 of the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*.

Policy objectives and the reasons for them

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 cultural recognition order.

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 cultural recognition order for a child (section 33(1)(b)(vi));
- what a cultural recognition order 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 cultural recognition order 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 cultural recognition order 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 cultural recognition order 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 cultural recognition order 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 cultural recognition order 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 cultural recognition order (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 cultural recognition order.

Giving consent to a cultural recognition order 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 cultural recognition order 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.

Inconsistency with policy objectives of other legislation

The Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The Regulation will further legislate operational components of the Act, simultaneously commencing as the Act commences in full.

There are no anticipated implementation costs associated with the Regulation.

Consistency with fundamental legislative principles

The Regulation is consistent with the fundamental legislative principles.

Consultation

The chair of the Kupai Omasker Working Party was consulted on the Regulation and supports it.

A self-assessment by the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships has determined that no further Regulatory Impact Analysis is required as the regulatory proposal is excluded under Queensland Government Guide to Better Regulation exclusion category (g) as regulatory proposals that are of a machinery nature.