

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

By Lauren Penny and Kerry Arabena

September 2020

First 1000 Days Australia is so pleased that Torres Strait Islander traditional child-rearing practice has been recognised in Queensland law, after the [Meriba Omasker Kaziw Kazipa \(Torres Strait Islander Traditional Child Rearing Practice\) Act 2020](#) (the Act) was passed in Parliament on 8 September 2020. Congratulations to everyone involved!

This is a momentous occasion, and one we are proud of because of the way in which our cultural lore – founded in our knowledge, strength and lived experiences – is now enshrined in Australian law. We pay respect to everyone involved and thank them so much for honouring our children and grandchildren.

The legislation was introduced into the Legislative Assembly on 16 July 2020 by Member for Cook, Cynthia Lui, the first Torres Strait Islander elected to any Australian Parliament. The legal recognition of this child-rearing practice is ‘a [historic step](#) and the first legal framework of its kind in Australia’.

It is also – with the words ‘Meriba Omasker Kaziw Kazipa’ meaning ‘For our children’s children’ – the first instance of Indigenous language being incorporated into the title of legislation in Queensland, and the first legislation in any Australian Parliament to include Torres Strait Islander languages.

This child-rearing practice, also known as Ailan Kastom, has always been practised in the Torres Strait and is [described](#) as being part of the ‘unique, ancient, integral and enduring culture’ that exists within the community. It involves sharing the responsibility of raising children with trusted family and friends, with a mutual agreement for parental rights and responsibilities to be permanently transferred from a child’s birth parents to their cultural parents. The practice varies between the island groups, but it is generally a private, confidential agreement that results in the child taking the surname of their cultural parents and having the same entitlements as any of their other children. However, the birth parents are not lost to the child, as they are usually placed in the family network, and recognised as an aunt, uncle or other family member.

Although existing Queensland adoption law acknowledges that traditional child rearing occurs, up until now it has not been legally recognised. The new legislation provides an avenue for Torres Strait Islanders to apply for legal recognition of the practice through a cultural recognition order, so that the child’s legal identity reflects their cultural identity. This order will result in a permanent transfer of parentage from the birth parents to the cultural parents, and have the same effect as if a final adoption order had been made under adoption legislation.

The process will involve the appointment of a commissioner, who will consider applications for cultural recognition orders. The commissioner must be an appropriately qualified Torres Strait Islander person and ensure that any decision made is in the best interests of the person subject to the order application. An application can only be made if the person’s birth is registered in Queensland and at least one birth parent and one cultural parent are Torres Strait Islander. There have also been [calls for legislative reform](#) in other Australian jurisdictions to recognise child-rearing practices for Torres Strait Islanders whose births were not registered in Queensland.

Although an application for a cultural recognition order about a child can only be made by each of the child’s birth and cultural parents, exemptions can be made where it is not possible to obtain the consent of all relevant parties. Adults can also apply themselves for a cultural recognition order that recognises their cultural parentage. The legislation amends various other laws to incorporate traditional child rearing, including those relating to parental and annual leave entitlements, payroll tax, guardianship and powers of attorney, and the treatment of incest and child stealing.

As [outlined by Cynthia Lui](#) when introducing the Bill to Parliament, this legislation will ‘resolve longstanding issues faced by Torres Strait Islanders whose legal identity does not currently reflect their cultural identity and lived experience’. The lack of legal recognition of traditional child-rearing practice has meant that families have been unable to obtain a birth certificate which reflects the cultural identity of the child. This has presented problems when a birth certificate is required for proof of identity, such as for enrolment in school or when applying for a driver’s licence, passport or government services. It has also caused ‘[confusion and distress](#)’ for children when they discover that the name on their birth certificate is different to the name they have been using.

A cultural recognition order will result in a new birth certificate being issued to the person, one that reflects their cultural identity. The legislation also aims to provide a solution to issues that can arise in succession law and disputes over estates. For instance, as traditionally adopted children have not been considered legally adopted, disputes have arisen when someone attempts to access their cultural parents’ estate, particularly when a parent dies without a will which commonly occurs among Torres Strait Islanders. Up until now, the only means of addressing these issues has been to obtain a parenting order from the Family Court, which may result in ‘[significant unfairness and the undervaluing](#)’ of traditional approaches to child rearing as well as significant costs.

This legislation is the result of Torres Strait Islanders, such as those in the Kupai Omasker Working Party, lobbying the Queensland Government for three decades, and is another illustration of the valuable contribution they have made to legislative practices in Australia. The most famous of these the historic Mabo case which led to the establishment of a legal framework for native title claims by Aboriginal and Torres Strait Islander peoples. Relevantly, in that case the Supreme Court determined that as Eddie Mabo had not officially been adopted in line with Australian law, he could not, therefore, inherit his cultural parents’ ancestral lands. Fortunately, the plaintiffs were successful in the High Court when they shifted the focus of their argument to the claims of the community and their rights to land as Meriam people.

This legislation has similar potential to prompt positive change across a broad range of areas for Indigenous Australians. As explained in the [Bringing Them Home](#) report, the failure to appreciate different child-rearing values in Indigenous communities has led non-Indigenous authorities to dismiss as neglectful the common practice of shared parenting. According to the [Australian Government](#), one of the underlying issues that has seen the ‘over-representation of Indigenous children in the child protection system is the cultural differences between Indigenous communities and welfare agencies in their understandings of family structure and child-rearing practices’. Thus, engaging in traditional cultural practices and reclaiming a sense of cultural identity has been [described](#) as key to alleviating Indigenous disadvantage, with culture acting as a protective force for children and families.

As [outlined](#) by the Queensland Government, the new Act ‘promotes the right of Torres Strait Islanders to enjoy, maintain, control, protect and develop their kinship ties under the *Human Rights Act 2019*, while still ensuring the protection of children in their best interests’. With traditional child-rearing practice an ‘[integral part](#) of Torres Strait Islander community and family life’, it is vital both to the protection of their children and to their sense of stability and social order. The Queensland Government is now able to create the structures and processes for Torres Strait Islander families to apply for cultural recognition orders ahead of the Act coming into force in 2021.

We congratulate Cynthia Lui and the Palaszczuk Government, and are grateful for the guidance from the three appointed Eminent Persons – Ms Ivy Trevallion, Mr Charles Passi and the Hon. Alastair Nicholson AO RFD QC.

Suggested citation: Penny, L. & Arabena, K. 2020, *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Child Rearing Practice) Act 2020 (Qld)*, Karabena Consulting, Riddell's Creek, Vic.