

# 06

## WHERE TO FROM HERE?

### Priorities for 2022-2023

## Meriba Omasker implementation and improvement opportunity

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

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

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

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

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








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

**Improvement opportunities:**

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

# Identified challenges for future consideration







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

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

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

Identified challenges for future consideration

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

 **Technical change**






 **Definition**

 **Scenario**

 **Major change**

 **Process**

 **Clarify intention**

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

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## 06 Where to from here?

Identified challenges for future consideration

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



Technical change



Definition



Scenario









Major change



Process



Clarify intention

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

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

**Technical change**

**Definition**

**Scenario**

**Major change**

**Process**

**Clarify Intention**