

# Ailan Kastom child rearing practice in Torres Strait Islander families

*How do I get Ailan Kastom recognised under the law?*

## What is Ailan Kastom child rearing practice?

Torres Strait Islander families have traditional adoption and child raising practices called Ailan Kastom child rearing practice. Under Ailan Kastom child rearing practice, a child's biological (birth) parents may agree for another couple (the cultural parents) within their extended family to permanently raise their biological child as the cultural parents' own.

Ailan Kastom child rearing practice is a cultural practice followed by generations of Torres Strait Islander families who've raised children in supportive and loving extended families. It is a deeply personal and private practice and there are strict cultural protocols around when and how the child will be informed about their traditional adoption and birth parents.

## Is Ailan Kastom child rearing practice recognised under the law?

Yes. A new law called *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020* (Qld) allows Ailan Kastom child rearing practice to be legally recognised and establishes a process to do so. The date when applications can be made will be announced in the near future.

Under the law, a child or adult who has been raised under Ailan Kastom child rearing practice can now get their legal identity (eg their birth certificate, Medicare and Centrelink records) to match their cultural identity. The person's parentage is transferred from the birth parents to the cultural parents. They become a child of the cultural

parents and the cultural parents become the parents of the person—the person stops being a child of the birth parents and a birth parent stops being a parent of the person.

You must apply for a cultural recognition order for a child or adult to get their Ailan Kastom child rearing practice legally recognised.

## What is a cultural recognition order?

A cultural recognition order is an order made by the commissioner that transfers a child's parentage from the birth parents to the cultural parents. The cultural parents become the legal parents of the child and the birth parents stop being the legal parents of the child. When the order is made, inheritance and traditional land ownership rights are transferred to the cultural (legal) parents.

The birth parents and the cultural parents must all consent (agree) to applying for a cultural recognition order. Consent can only be waived in rare circumstances. For more information, see page 4.

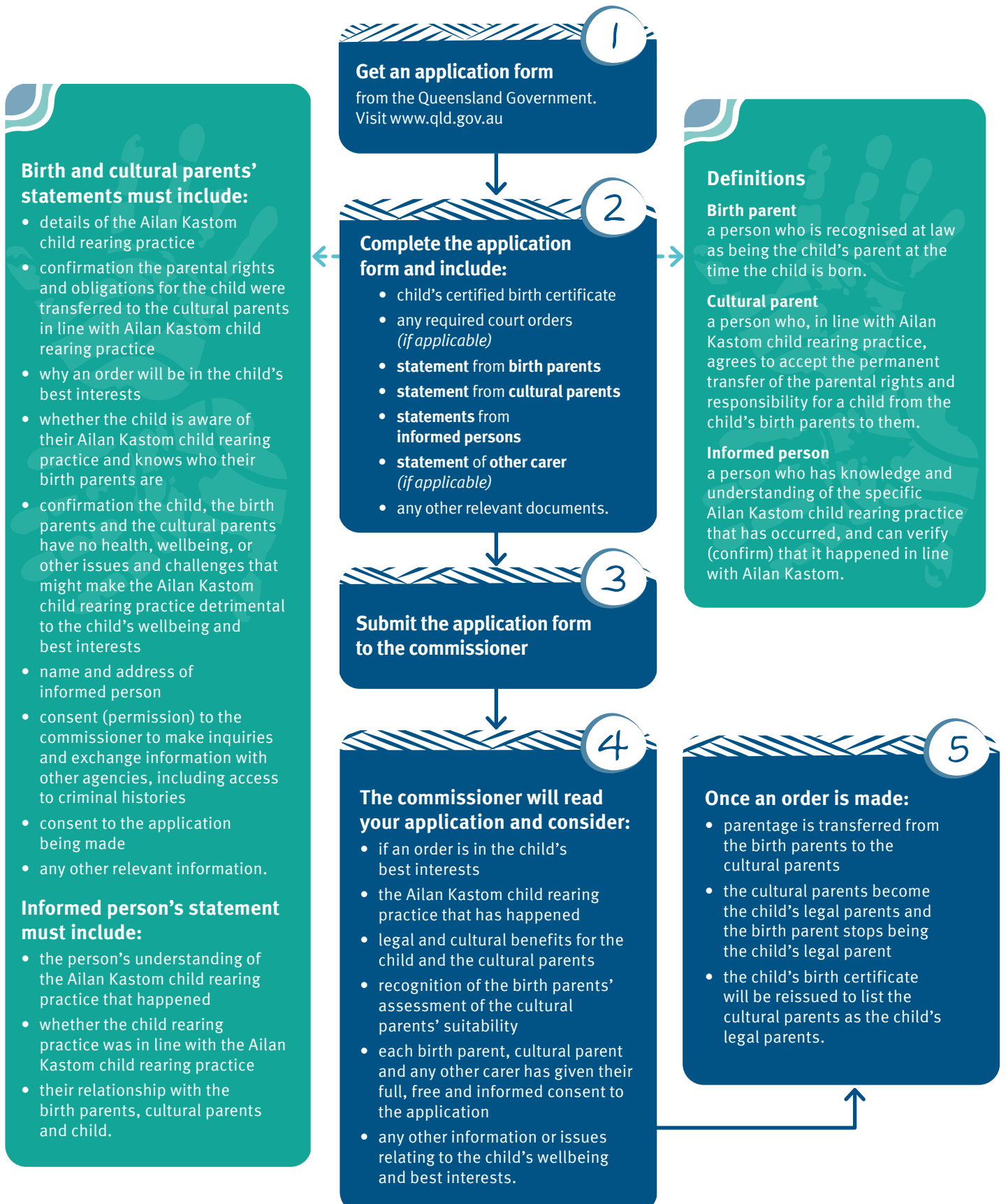
Once a cultural recognition order is made, it will be registered with the Queensland Registry of Births, Deaths and Marriages. Under the law, a cultural recognition order will have the same legal effect as an adoption under Queensland's adoption laws (eg the *Adoption Act 2009* and *Adoption Regulations 2009*).

Legal Aid Queensland, the Queensland Indigenous Family Violence Legal Service (QIFVLS) and the Aboriginal and Torres Strait Islander Legal Service (ATSILS) in Queensland can help you with the application process for a cultural recognition order.

# How to apply for a cultural recognition order for a child

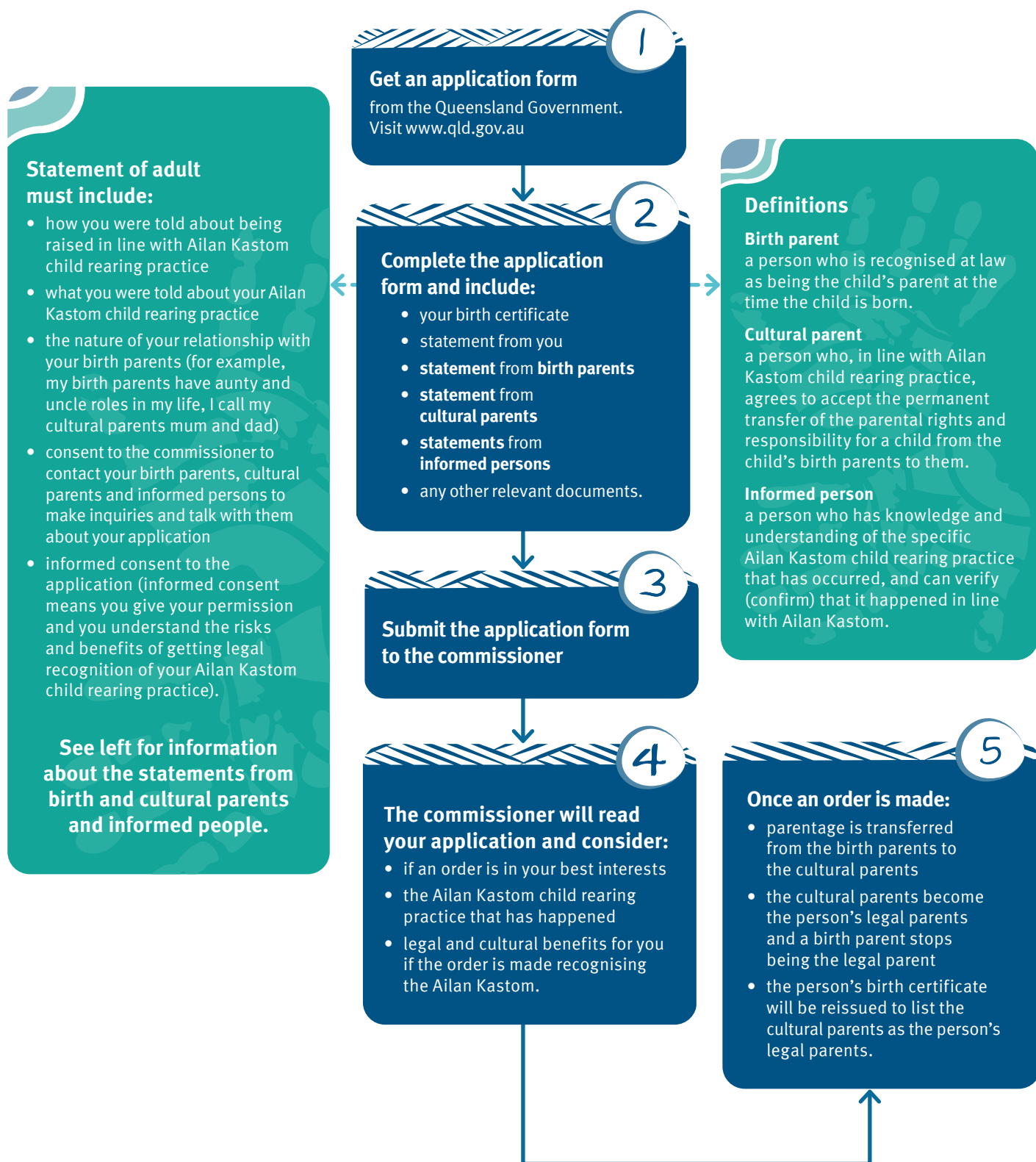
For children under 18, the child's birth and cultural parents must each apply for a cultural recognition order.

To be eligible for an order, at least one birth parent and at least one cultural parent must be a Torres Strait Islander, and the child's birth must be registered in Queensland. The parent/s must be an adult and the application can only be made 30 days or more after the child's birth is registered.



# How to apply for a cultural recognition order for an adult

An application for an adult (18 and over) can only be made by that adult person.



## What happens if someone doesn't give their consent to the application?

There must be at least one birth or cultural parent listed as an applicant for a cultural recognition order.

If a birth parent or cultural parent does not give their consent to the cultural recognition order application, the commissioner can waive the need to consent in some situations.

## What if the commissioner decides not to make a cultural recognition order?

If the commissioner decides not to make a cultural recognition order, you can ask for their decision to be reviewed. Your request needs to be made within 20 business days after you get the commissioner's statement of reasons. If this happens, the minister will appoint a review officer who will review your application and will then confirm or revoke (change) the commissioner's decision.

## Do I need a cultural recognition order for myself or a child in my care?

A cultural recognition order is not essential but if there is no cultural recognition order, the Ailan Kastom child rearing practice will not have legal recognition. This means the cultural parents will have no legal status as parents.

If a cultural parent doesn't want to get a cultural recognition order for a child in their care, they can consider applying for parenting orders in the Family Court of Australia. These orders only last until the child turns 18.

Cultural parents still have rights and responsibilities for the child. A person who cares for a child is responsible for their day-to-day care and welfare.

With a cultural recognition order, cultural parents can perform tasks and duties that birth parents would normally do, like:

- have the child listed as a dependent on a Medicare card
- take the child to health and medical appointments
- receive Centrelink payments for child's care
- enrol the child at child care/school and be listed as a contact person.

However, if there is no cultural recognition order for the child, the cultural parents may face these challenges:

- misunderstandings and disagreements about the child's care arrangements
- problems with identification and legal issues such as:
  - getting a passport
  - getting a driver licence
  - school enrolment and access to education, health, banking and housing services
  - access to inheritance rights.

If you need help with a cultural recognition order, talk to ATSILS, QIFVLS or Legal Aid Queensland to get legal advice for your situation.



## How does criminal history screening work in relation to an application for a cultural recognition order?

The commissioner can decide whether they want to get a criminal history report about a cultural parent from Queensland Police Services. They can only do this if the application for a cultural recognition order relates to a child.

When applying for a cultural recognition order, cultural parents must consent to the commissioner getting a criminal history report about them.

Applicants for a cultural recognition order must confirm they are not aware of any details that may be detrimental to the child's best interests and wellbeing. If a party to the application believes a cultural parent has a criminal history that may impact on the child's best interests and wellbeing, details about this should be included in an application for a cultural recognition order.

Not giving these details could lead to offences being committed and any cultural recognition order made being cancelled.

If there is any doubt, you should make the commissioner aware of those doubts. Having a criminal history will not automatically prevent a cultural recognition order being made.

If the commissioner receives a criminal history report, they will contact the respective cultural parent and give them a copy of the report and a notice for them to give any extra information about their criminal history that may help the commissioner decide whether or not to make a cultural recognition order.

The commissioner will only share the report if they include it as part of their notice of intention to make or not make a cultural recognition order or a statement of reasons for the decision.



## For more information contact:



Visit [legalaid.qld.gov.au](http://legalaid.qld.gov.au)  
or phone 1300 650 143  
(Aboriginal and Torres Strait  
Islander Information Line)



Aboriginal & Torres Strait Islander  
Legal Service (Qld) Ltd

Visit [atsils.org.au](http://atsils.org.au)  
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