

Family Responsibilities Commission Amendment Bill 2013

Explanatory Notes

Short title

The short title of the Bill is the Family Responsibilities Commission Amendment Bill 2013 (the Bill).

Policy objectives and the reasons for them

The objective of the Bill is to make the necessary amendments to the *Family Responsibilities Commission Act 2008* (the FRC Act) to ensure that the operations of the Family Responsibilities Commission (the FRC) are extended for 12 months to 1 January 2015.

The FRC is the centrepiece of the Cape York Welfare Reform (CYWR) Trial (the Trial) which has been extended to 31 December 2014 (the 2014 extension).

Achievement of policy objectives

The Trial operates in four Cape York communities: Aurukun; Hope Vale; Coen; and Mossman Gorge (the Trial communities).

CYWR aims to: rebuild social norms; re-establish Indigenous authority; increase engagement in the real economy; and move individuals and families from social housing to home ownership. It seeks to reduce levels of dysfunction by focusing on individual responsibility to engage in socially responsible behaviours by providing opportunities, through enhanced services, and a range of incentives/disincentives including income management of welfare payments.

The Trial operates as a tripartite partnership between the Queensland and Australian Governments and the Cape York Institute. It has operated since 2008 in the Trial communities.

The FRC, an independent statutory authority, is an essential feature of the Trial. Established by the FRC Act, it is due to expire on 1 January 2014.

The FRC aims to:

- support the restoration of socially responsible standards of behaviour and local authority in welfare reform communities; and
- help people in the Trial communities to resume primary responsibility for the wellbeing of their community and the individuals and families of the community.

This is achieved by holding conferences with community residents and by attaching behavioural obligations to the receipt of welfare benefits.

Community members, who are in receipt of welfare payments, in the four Trial communities are 'notified' to the FRC if they:

- fail to enrol their children in or send them to school;
- come to the attention of the Department of Communities, Child Safety and Disability Services for a child safety matter;
- are convicted of an offence in the Magistrates Court; or
- fail to remedy a breach of a tenancy agreement or use premises for an illegal purpose.

The FRC is constituted by the FRC Commissioner, the Deputy FRC Commissioner and Local Commissioners.

The independent evaluation of CYWR, publicly released by the Australian Government on 28 March 2013, found that the Trial had: made progress in restoring social norms and local authority, with FRC Local Commissioners playing a critical role; and led to subtle and fundamental behavioural changes in money management, responsibility for children, school attendance, educational attainment and attitudes to work.

The extension of the FRC to 1 January 2015 will allow further opportunity to consolidate the gains the Trial has made in terms of the safety, wellbeing and welfare of the people in the Trial communities. The extension will also provide time for the Queensland Government to consider the future of welfare reform, including possible expansion to other Queensland locations.

The provisions within the FRC Act that set the Act's and the FRC's expiration date and the ending of family responsibilities agreements and orders require amendment to enable the continued operation of the FRC to 1 January 2015.

Alternative ways of achieving policy objectives

There are no other viable alternatives to amending the FRC Act that will achieve the policy objective of extending the operations of the FRC for a further 12 months to enable the Trial's welfare reform initiatives to continue.

Estimated cost for government implementation

Since the beginning of the Trial through to 31 December 2013, the direct financial contribution from the Queensland and Australian Governments totals approximately \$123.45 million. The Australian Government contribution to date is \$75.9 million, while the Queensland Government has committed \$47.55 million in direct costs. The State has allocated funds sufficient to extend the Trial for a further 12 months.

The State has allocated funding of \$5.65 million for the 2014 extension. The Australian Government has committed \$26.3 million over two years (2014 and 2015 calendar years) for the Trial's operations in the four current communities.

Of these allocations, the State Government will contribute \$1.6 million and the Australian Government \$2 million towards the FRC's operations from 1 January 2014 to 1 January 2015.

Consistency with fundamental legislative principles

The Bill is considered to be consistent with the fundamental legislative principles (FLPs) set out in the *Legislative Standards Act 1992 (Qld)*.

The primary FLP issue regarding the extension of the FRC and its orders, is whether the proposed legislation has sufficient regard for the rights and liberties of individuals in accordance with Section 4 of the *Legislative Standards Act 1992 (Qld)*.

Whilst the *Anti-discrimination Act 1991 (Qld)* will not impact on a 12 month extension of the Trial and the FRC, there are issues relating to a potential breach of the *Racial Discrimination Act 1975 (Cth)* (RDA).

The 12 month extension of the FRC to 1 January 2015, is likely to be considered a ‘special measure’ and therefore unlikely to breach the RDA.

To support a finding that the FRC is a special measure, community and stakeholder consultation, as extensive as previous consultations undertaken when the Trial and FRC were first established and subsequent extensions in 2011 and 2012, were required.

The proposed amendment of Section 156 of the FRC Act (“When particular agreements or family responsibilities orders end”) to change references from “1 January 2014” to “1 January 2015”, also raises an FLP issue. Agreements, orders and related obligations due to expire on 1 January 2014, will now be preserved for the life of the agreement or order, or until the new Section 156 expiry date, 1 January 2015 (depending on whichever is the earliest).

The preservation of particular agreements and orders that would have ended on 1 January 2014, if not for the Section 156 amendment, is consistent with, and will contribute to the continued achievement of the objects of the Act. This amendment has sufficient regard for the rights and liberties of people in the Trial communities.

Consultation

Consultation regarding the Trial’s and the FRC’s 12 month extension were conducted with the Trial communities and key stakeholders in June 2013.

The consultation involved the same level of engagement with the Trial communities and stakeholders as was conducted for establishment and previous extensions of the Trial and the FRC. The consultations sought the views of: the Trial partners; State Government agencies; local councils; Community Justice Groups; community members; service providers; FRC Local Commissioners; unions; and community groups.

Key outcomes

All stakeholders supported the Trial’s and the FRC’s extension for 2014, including the Hope Vale Aboriginal Shire Council (HVASC) which had previously opposed the Trial.

Stakeholders advised that the Trial and the FRC have had a positive impact on their communities. For example, communities are now “quieter” and parents are taking more responsibility for their families than before the Trial commenced.

The Trial was regarded by many as important to improved school attendance and school readiness in the communities and that focus on consistent school attendance and valuing education need to continue.

Local FRC Commissioners and community members indicated that more should be done to address the number of young people disengaged from high school and who are then coming in contact with the youth justice system.

The Regional Organisations of Councils of Cape York acknowledged the need for welfare reform, however, they indicated a preference for funding to be provided to the councils in Cape York thereby enabling the local governments to provide the services.

The HVASC indicated that more jobs funded by the Trial should be given to locals. Some stakeholders who had previously not supported the Trial identified elements which they now considered to be beneficial. For example, increasing school attendance was identified as a significant achievement in the Trial communities.

Consistency with legislation of other jurisdictions

The proposal to extend the FRC Act is consistent with the income management regime under Part 3B of the *Social Security (Administration) Act 1999 (Cth)* (the Social Security Administration Act). Section 123UF of the Social Security Administration Act makes specific provision for the FRC to give the Secretary of the Australian Government’s Department of Families, Housing, Community Services and Indigenous Affairs notices requiring that persons be subject to income management.

Notes on provisions

Part 1 Preliminary

Clause 1 is the ‘Short title’ and notes that the Act is to be cited as the *Family Responsibilities Commission Amendment Act 2013*.

Schedule 1

Clause 2 notes that this Act amends the *Family Responsibilities Commission Act 2008*.

Clause 3 amends Section 152 (Expiry of Act) by changing 1 January 2014 to 1 January 2015 to allow for the continued operation of the FRC for a further 12 months.

Clause 4 amends Section 155 (Vacation of office on expiry of the Act).

Subsection 155(1) currently states that Section 155 applies to a FRC commission member or board member holding office immediately before 1 January 2014. To reflect the extension of the expiry date of the FRC, this will be amended to 1 January 2015.

Subsection 155(2) currently states that a member's office is taken to have been vacated on 1 January 2014. To reflect the extension of the expiry date of the FRC, this will be amended to 1 January 2015.

Clause 5 amends Section 156 (When particular agreements or family responsibilities orders end).

Subsections 156(1) and 156(2) state that family responsibilities agreements, including agreements about income management, and family responsibilities orders that are in force immediately before 1 January 2014 end on 1 January 2014.

To reflect the extension of the expiry date of the FRC, the references to 1 January 2014 in subsections 156(1) and 156(2) will be amended to 1 January 2015.