

# Family Responsibilities Commission Amendment Bill 2014

## Explanatory notes

### Short title

Family Responsibilities Commission Amendment Bill 2014

### Policy objectives and the reasons for them

The policy objective of the Bill is to make the necessary amendments to the *Family Responsibilities Commission Act 2008* (the Act) to extend the operation of the Family Responsibilities Commission (FRC) beyond 1 January 2015.

The FRC supports welfare reform in Aboriginal and Torres Strait Islander communities and this Bill seeks to extend the timeframe, flexibility and efficacy of the Act by:

- deleting the Act's sunset clause (currently 1 January 2015) and amending provisions affected by the expiry date;
- adding new justice 'triggers' for FRC notifications;
- removing the sunset provision for regulations made under the Act;
- amending the provision for quarterly Board meetings to half yearly; and
- moving descriptions of welfare reform community areas from the Act to the *Family Responsibilities Commission Regulation 2008* (the Regulation).

Currently, welfare reform applies in four Cape York communities (Aurukun, Hope Vale, Coen and Mossman Gorge) where it has operated since 2008. The program is a tripartite partnership between the Queensland and Australian Governments and the Cape York Institute and is known as Cape York Welfare Reform (CYWR). It is proposed to add Doomadgee as a further welfare reform community area under the Act, to be described in the Regulation.

Welfare reform aims to restore social norms and local authority, and change behaviours in response to chronic levels of welfare dependency, social dysfunction and economic exclusion.

The FRC is an independent statutory authority that is established under the Act as a mechanism for supporting welfare reform. The FRC aims to:

- support the restoration of socially responsible standards of behaviour and local authority in welfare reform communities; and
- help people 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.

## Achievement of policy objectives

The Bill is consistent with the main objectives of the Act—to support the restoration of socially responsible standards of behaviour and local authority in welfare reform community areas; and to help people in welfare reform community areas to resume primary responsibility for the wellbeing of their community and the individuals and families of the community.

Community members in welfare reform 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.

An independent evaluation of CYWR, released in March 2013, found that welfare reform had made progress in restoring social norms and local authority and led to subtle and fundamental behavioural changes in money management, responsibility for children, school attendance, educational attainment and attitudes to work.

As an uncertain future of the initiative may impact on achievement of welfare reform aims, it is proposed to remove the sunset clause of the Act. It is understood that this will not affect the ‘special measure’ status of the initiative.

The removal of the sunset clause in the Act will allow further opportunity to consolidate the gains made in terms of the safety and wellbeing of people in welfare reform community areas, and enable the authority of family responsibilities agreements and orders that are in force to be continued beyond 1 January 2015. The sunset provision for regulations made under the Act will also be deleted.

The Bill also proposes new triggers for FRC notifications regarding:

- conviction of a community resident in the District or Supreme Courts (in addition to the current Magistrates Court trigger); and
- conviction of a child in a court (in accordance with new provisions in the *Youth Justice Act 1992* and ensuring compliance with its confidentiality provisions).

The additional triggers will provide consistent disincentives for offending behaviour across all jurisdictions. The inclusion of the youth justice trigger aims to ensure greater parental/carer responsibility for the young person’s offending behaviour and reduce the current trajectory of Aboriginal and Torres Strait Islander young people from youth detention into the adult criminal justice system. A court would be required to notify the FRC when a child is convicted, to enable the FRC to request conferencing with the community members who are the parents or carers of the child.

Amending the provision for quarterly meetings of the Family Responsibilities Board to meet every six months, will enable more locally focussed meetings to be scheduled to ensure greater local involvement in decision-making.

‘Welfare reform community areas’ currently subject to the operations of the FRC are defined in the Act, the Schedule to the Act, and in the Regulation. Deleting definitions of specific communities in the Act and utilising the Regulation would remove the need for more complex legislative processes when communities seek to join welfare reform or no longer require the FRC.

## **Alternative ways of achieving policy**

There are no other viable alternatives to amending the Act that will achieve the policy objectives.

## **Estimated cost for government implementation**

\$8 million has been approved for the 2015 extension of CYWR as part of the 2014–15 State Budget (allocated as \$4 million for 2014–15 and \$4 million for 2015–16).

It is proposed that welfare reform and the FRC will be extended to the community of Doomadgee and costs met from within the available funding allocation. Other communities may be considered in the future, with commitments dependent on support of the Australian Government's Department of Social Services for implementation of income management.

The Australian Government is a funding partner. Key to the proposed extension of welfare reform will be an emphasis on obtaining better value from existing investment through new approaches to funding; enhanced local decision-making; and better coordination through the Remote Indigenous Land and Infrastructure Program Office.

## **Consistency with fundamental legislative principles**

The Bill is 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).

The main objects of the Act are to support the restoration of socially responsible standards of behaviour and local authority; and to help people resume primary responsibility for the wellbeing of their community and the individuals and families of the community. The main purpose of the Act is to establish the FRC. To support a finding that the FRC is a special measure, community and stakeholder consultations, as extensive as previous consultations undertaken when the CYWR Trial and FRC were first established and subsequent extensions in 2011, 2012 and 2013, were held. Monitoring of key indicators in each community will continue to gauge progress toward meeting the objectives of the Act.

Identifying all welfare reform community areas, existing and new, in the Regulation instead of the Act, was recommended to afford greater flexibility in identifying and targeting welfare reform community areas.

The delegation down to Regulation to designate the welfare reform communities required careful consideration to ensure the rights and liberties of individuals are protected. It is understood any potential issues are mitigated by the requirement for the Minister to apply the objects and principles of the Act when communities are being considered for inclusion as a welfare reform community and also because the purpose of the Act is to establish the FRC, not to establish specific welfare reform areas.

Having considered the proposed amendments and the matters outlined in Section 4 (3) of the *Legislative Standards Act 1992* (Qld), there is a good argument that this action would not be contrary to FLPs. Extensive consultations relating to the expansion of the FRC processes

and locations were undertaken in all affected communities and, to mitigate any concerns, further consultations are recommended for any future changes.

The requirements of Section 4(3)(j) of the *Legislative Standards Act 1992* (Qld) to observe Aboriginal tradition and Island custom are met by the extensive community consultations conducted in relation to welfare reform; and the appointment of respected community members as local commissioners to the FRC.

Mitigating circumstances for any potential issues arising from extending the geographical reach of the Act, adding justice triggers or removing the sunset clause were taken into account. As a result it is considered the amendments will not be likely to affect the 'special measure' status of the FRC under the *Anti-Discrimination Act 1991* or the *Racial Discrimination Act 1975*.

## **Consultation**

Consultations regarding welfare reform and the FRC's extension beyond 1 January 2015 were conducted with the four CYWR communities and key stakeholders in May–June 2014. This involved the same level of engagement with communities and stakeholders as the establishment and previous extensions of CYWR and the FRC.

The consultation sought the views of: CYWR partners; state government agencies; local councils; Community Justice Groups; community members; service providers; FRC Local Commissioners; unions; and other community groups.

Consultations were undertaken in Doomadgee with the community and key stakeholders (including the Australian Government) in April–July 2014 to ascertain their views on the proposed expansion of the operation of the FRC to Doomadgee. Officers from the Department of the Prime Minister and Cabinet also attended some of these consultations.

### ***Key outcomes***

The key outcome from community consultations in Aurukun, Coen, Mossman Gorge and Hope Vale is general support to continue welfare reform. Consultations undertaken in Doomadgee indicated strong support for implementation of the FRC.

Communities highlighted that the yearly extensions of CYWR needed to stop and a longer term programmatic response should be implemented. Local Commissioners indicated that welfare reform should be embedded as an ongoing initiative, that communities now feel safer, and that communities would 'go backwards' if welfare reform was stopped.

Local FRC Commissioners and community members all indicated that more needs to be done to address the number of young people disengaged from high school and who are also coming in contact with the youth justice system. The proposed new youth justice trigger is intended to increase parental responsibility for the young person's offending behaviour.

In the future, in order to preserve the special measure status, it will continue to be important to consult extensively with communities seeking inclusion as a welfare reform area and with all communities potentially affected by changes such as the addition of new FRC triggers.

## Consistency with legislation of other jurisdictions

The proposals to extend the timeframe of welfare reform and expand operations of the FRC to Doomadgee are also 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 Social Services 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 2014*.

### Schedule 1

*Clause 2* notes the Act commences on a day to be fixed by proclamation.

*Clause 3* notes that this Act amends the *Family Responsibilities Commission Act 2008*.

*Clause 4* insertion of new Section 8A (Meaning of welfare reform community area) as "an area prescribed under Regulation".

*Clause 5* amends Section 20 (Disqualification from being a local commissioner) to restore the original intent of the Act to disqualify persons who have had a protection order made against them *unless five years has elapsed prior to being appointed*.

*Clause 6* amends Section 43 (Notice about offences) at subsections (1)(b) and (5)(c) by Replacing "Magistrates Court" with "relevant court" and defining at a new subsection (6) a "relevant court" as "the Children's Court, District Court, Magistrates Court or Supreme Court". These amendments will allow for consistent consequences for offending across jurisdictions and will also enable the youth justice trigger to be applied, requiring the parent or carer of the child to conference with the FRC. In relation to convictions where the person is a child, the information released under section 43 will ensure consistency with the confidentiality provisions in Part 9 of the *Youth Justice Act 1992*.

*Clause 7* amends Section 94 (Education Chief Executive may give a particular information) by omitting subsection 94(3) **welfare reform community area** as welfare reform areas will be described in the Regulation.

*Clause 8* amends Section 123 (Board meetings) to require meetings to occur at least once every 6 months instead of every 3 months, to enable locally-focused meetings to be convened.

*Clause 9* amends Section 151 (Regulation-making power) by omitting the sunset clause (2). This reflects the removal of the Act's expiry date.

*Clause 10* omits Section 152 (Expiry of Act) to allow for continued operation of the FRC into the future. Removal of the sunset clause does not compromise the 'special measure' status of the welfare reform initiative.

*Clause 11* omits Sections 155 (Vacation of office on expiry of the Act) and 156 (When particular agreements or family responsibilities orders end) to reflect the removal of the expiry date of the Act.

*Clause 12* amends the Schedule (Dictionary) at Section 6 by:

- 1) omitting descriptions of individual welfare reform communities (Aurukun, Coen, Hope Vale and Mossman Gorge); and
- 2) amending description of **convictions** and **relevant person** to reflect changes to the FRC notification triggers.

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