

Family Responsibilities Commission Amendment Bill 2013

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Glen Elmes MP

Title of the Bill

Family Responsibilities Commission Amendment Bill 2013

Objectives of the Amendments

The objective of the amendments to the Family Responsibilities Commission Amendment Bill 2013 (the Bill) is to make the necessary amendments to the *Family Responsibilities Commission Act 2008* (the FRC Act) to enable the Family Responsibilities Commission (the commission) commissioner to appoint three local commissioners to convene a conference in his absence and propose that an income management decision be made.

Achievement of the Objectives

The commission is the centrepiece of Cape York Welfare Reform which operates in four Cape York communities: Aurukun; Hope Vale; Coen; and Mossman Gorge (the communities).

The commission is an independent statutory authority, established under the FRC Act. It is constituted by a commissioner, deputy commissioner and local commissioners from each of the communities. The local commissioners are respected Elders and members of the communities.

The commission aims to:

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

The commission's objectives are achieved by holding conferences with community residents in receipt of welfare benefits and who are subject to an agency notice.

For a conference, the commission is constituted by the commissioner and two local commissioners (section 50 of the FRC Act).

The commissioner and local registry coordinator appoint local commissioners to a conference. During the appointment process the commissioner and local registry coordinator can nominate a person to act as a local commissioner to a conference if the person has successfully completed training and can properly perform their duties (section 51 of the FRC Act).

The local registry coordinator and the commissioner must also:

- have regard to the person the subject of the conference's clan or family group;
- have regard to whether the local commissioner should be male or female; and
- if practicable and appropriate in the circumstances, ensure that one of the local commissioners is female (section 51 of the FRC Act).

After holding a conference, the commission can decide to enter into a family responsibilities agreement with the person (section 68 of the FRC Act).

A family responsibilities agreement includes an agreement for a person to attend community support services under a case plan; or to give the Secretary under the *Social Security (Administration) Act 1999 (Cth)* a notice requiring that the person be subject to income management for at least three months but not more than one year (income management decision).

If the commission does not enter into a family responsibilities agreement, it can decide to: take no further action; or do one or more of the following things:

- reprimand the person;
- recommend that the community member attend a community support service;
- direct that the person attend a community support service under a case plan for no more than one year;
- make an income management decision (section 69 of the FRC Act).

Current role of local commissioners

In 2010 the FRC Act was amended to enable the commissioner to appoint three local commissioners to constitute the commission for a conference where an income management decision is unlikely to be made (section 50A of the FRC Act).

After a conference the three local commissioners can make a wide range of decisions including: entering into a family responsibilities agreement; referring the person to community support services; or direct a person to a community support service.

The three local commissioners cannot make an income management decision.

In 2011–12 the commission reported that 67 conferences were independently held by three local commissioners under section 50A of the FRC Act.

Enhanced local commissioners' role

The amendments will support the commission's objective of restoring local authority in the communities by enhancing the role of the local commissioners.

The amendments enable the commissioner, where appropriate, to appoint three local commissioners to constitute the commission for a conference, make decisions in relation to the person subject to the conference and propose that an income management decision be made.

The commissioner's decision to appoint three local commissioners to convene a conference will be made based on the experience levels of local commissioners in each community and on the requirements under section 51 of the FRC Act.

The income management proposal made by the three local commissioners will only take effect if the commissioner endorses it.

If the proposed income management decision is not endorsed, the commissioner must reconstitute the conference.

The commissioner and the three local commissioners, who constituted the original conference, will sit in the reconstituted conference. Where this is not possible, the commissioner will be able to either reconvene with the two remaining local commissioners or appoint a new third local commissioner together with the two remaining local commissioners.

The income management decision will not take effect unless the reconvened conference endorses it.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways of achieving the policy objectives.

Estimated Cost for Government Implementation

No additional funds will be required to implement the amendments.

Consistency with Fundamental Legislative Principles

The amendments are 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 amendments 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 amendment does not extend the commission's operations, its decision making authority, or its orders. Rather, the amendment seeks to enhance local authority by enabling three local commissioners to propose an income management decision.

Consultation

The commissioner and long-term local commissioners suggested the amendment to enable three local commissioners to convene a conference and propose an income management decision.

This was seen as a natural progression from the 2010 amendments to the FRC Act which enables three local commissioners to convene a conference and make a decision other than an income management decision.

The Cape York Institute and the Australian Government have been consulted and support the amendments.

Notes on Provisions

Clause 2A replaces subsections 50A(1) and (2) (Constitution of commission for particular conference) with a new subsection 50A(1) which removes the current limitation on three commissioners constituting the commission for a conference where an income management decision is likely.

It enables the commissioner to appoint three local commissioners to constitute the commission for a conference which could result in an income management decision.

The new subsection 50A(1) provides that the commissioner will appoint the three local commissioners to constitute the commission for a conference, where the commissioner considers it appropriate. It also provides, as is currently required under subsection 50A(2), that the commissioner may appoint the three local commissioners for the welfare reform community areas in which the commissioner considers the person the subject of the conference lives or lived.

The clause renumbers subsections in section 50A to reflect the removal of the current subsection 50A(2).

Clause 2B replaces subsections 53A(3) and (4) (Constitution of commission for particular conference) to outline the process where the commissioner does not approve the proposal for an income management decision made by three local commissioners constituting the commission for a conference under section 50A.

Where the commissioner does not approve a proposal for an income management decision the conference is adjourned. The new subsection 53A(3) provides that after the adjournment the conference will be constituted by: the commissioner; and the three local commissioners who constituted the original conference.

New subsection 53A(4) addresses the situation if a local commissioner, who was appointed to the adjourned conference, stops being a member or is not available. The new provision enables the commissioner to direct that the commission for the conference be constituted by:

- the commissioner and the remaining local constituting members; or
- the commissioner, the remaining constituting members and another local commissioner appointed by the commissioner.

The clause also amends numbering in section 53A(5) to ensure that when appointing another local commissioner to the adjourned conference, the commissioner must have regard to the requirements under section 51 of the FRC Act.

Clause 2C amends subsection 64(2) of the FRC Act (Adjournment of conference) to provide that if a conference for a commission is constituted by three local commissioners, the conference must be adjourned if it proposes to make an income management decision.

The adjournment will enable the commissioner to consider whether an income management decision should be made and to provide his endorsement.

The clause also removes subsection 64(4) of the FRC Act which requires that if a conference is adjourned the registrar must be notified.

Clause 2D amends section 68 (Decision to enter into agreement) to address those situations where the commission, constituted by three local commissioners, decides to enter into a family responsibilities agreement which includes a requirement that the person is subject to income management.

The new subsection 68(3A) provides that the local commissioners' proposal for income management will not take effect unless it has been endorsed by the commissioner.

If the commissioner does not endorse the local commissioners' proposal for income management, the conference be reconstituted in accordance with new subsections 53A(3) and (4) where the income management decision may be affirmed.

Clause 2E amends section 69 (Other decisions) to address those situations where the commission, constituted by three local commissioners, proposes that a person is to be subject to an income management decision by inserting a new subsection 69(3A).

The new subsection 69(3A) provides that the proposal for income management will not take effect unless it has been endorsed by the commissioner.

If the commissioner does not endorse the local commissioners' proposal, the conference must be reconstituted under new subsections 53A(3) and (4). The income management proposal will not take effect unless affirmed by the reconvened conference.

Clause 6 inserts a new section 158 (Transitional provision for Family Responsibilities Commission Amendment Act 2013).

This provides that the new provisions enabling the commission for a conference to be constituted by three local commissioners and make a proposal for an income management decision will apply to agency notices received and conferences commenced after the Bill's commencement.