

# Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020

## Explanatory notes for SL 2020 No. 246

made under the

*COVID-19 Emergency Response Act 2020*  
*Family Responsibilities Commission Act 2008*

## General Outline

### Short title

*Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020*

### Authorising law

Sections 8 and 17 of the *COVID-19 Emergency Response Act 2020*  
Sections 50, 51, 53, 56, 83, 85, 98, 123 and 139 of the *Family Responsibilities Commission Act 2008*

### Policy objectives and the reasons for them

The objective of the *Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020* (the Regulation) is to facilitate the continuance of public administration and protect the health, safety and welfare of people affected by the COVID-19 emergency in the communities of Aurukun, Coen, Doomadgee, Hope Vale and Mossman Gorge by enabling the continued operation of the Family Responsibilities Commission (FRC) and the Family Responsibilities Board (FRB) during the COVID-19 emergency in reliance on sections 8 and 17 of the *COVID-19 Emergency Response Act 2020* (COVID-19 Act).

### COVID-19 Act

On 29 January 2020 the Minister for Health and Minister for Ambulance Services declared a public health emergency under section 319 of the *Public Health Act 2005* due to the outbreak of COVID-19 (COVID-19 emergency).

The COVID-19 Act received assent and commenced on 23 April 2020. Section 2 of the COVID-19 Act provides that the main purposes of the Act include protecting the health, safety and welfare of persons affected by the COVID-19 emergency.

The COVID-19 Act includes additional regulation-making provisions to make extraordinary regulations under affected Acts. Under section 5, a Minister administering an affected Act may recommend to the Governor in Council the making of an extraordinary regulation only if satisfied it is necessary for a purpose of the COVID-19 Act.

Part 5 of the COVID-19 Act relates to proceedings. Under section 17(1) of the COVID-19 Act, the enabling Act for a proceeding before a relevant entity is taken to include a power to make a regulation in relation to the proceeding, including alternative provisions about the constitution of a relevant entity for conducting the proceeding.

Part 3 of the COVID-19 Act relates to reducing physical contact between persons. Under section 8(2), an affected Act is taken to include a power to make a regulation as provided in section 8.

Section 8 provides a regulation-making power in relation to requirements or permissions under an Act for a person to physically attend a place or meeting. The regulation, which may be made under an Act with such a requirement, can establish altered arrangements for the attendance. This section applies to a wide variety of matters across many Acts which require an attendance, including meetings of boards.

Section 8(3) of the COVID-19 Act enables a regulation to make provision about how the purpose or matter can be achieved or otherwise dealt with in a modified way, including by allowing a meeting to be conducted using communication technology.

### **Constitution of FRC conferences and related matters**

The FRC is a central feature of the Welfare Reform program which aims to restore social norms and local authority and change behaviours in response to chronic levels of welfare dependency, social dysfunction and economic exclusion.

It is a statutory body established under the *Family Responsibilities Commission Act 2008* (FRC Act) and operates to restore local Indigenous authority and build stronger and more resilient communities, through attaching behavioural obligations to the receipt of welfare payments.

Community members in Welfare Reform communities are ‘notified’ to the FRC regarding school attendance and school enrolment, child safety and welfare, court convictions, domestic and family violence and housing tenancy breaches. On receiving these notices, the FRC conferences with community members and the vast majority of FRC conferences are conducted by local commissioners, many of whom are of a mature age and some of whom suffer from medical conditions. The FRC wishes to reduce the number of people required for general conferencing, for show cause and for amend/end applications pursuant to sections 50, 85 and 98 of the FRC Act, from two local commissioners to one local commissioner, enabling social

distancing and reducing the burden on local commissioners during the COVID-19 emergency.

### **FRB meetings**

The FRC Act provides for the establishment of the FRB and its functions, membership, conduct and business. Section 123 of the FRC Act states that the FRB must meet every six months. The meeting may be held by using any technology available which will allow for efficient and effective communication. However, the FRB members must meet in person at least once a year, which may not be possible during the COVID-19 emergency.

## **Achievement of policy objectives**

The COVID-19 Act provides for the making of extraordinary regulations in response to the COVID-19 public health emergency.

The Regulation is necessary for the main purposes of the COVID-19 Act, namely to facilitate the continuance of public administration and protecting the health, safety and welfare of people affected by the COVID-19 emergency in the communities of Aurukun, Coen, Doomadgee, Hope Vale and Mossman Gorge.

The Regulation will expire on 31 December 2020.

### **Constitution of FRC conferences and related matters**

The Regulation allows conferences to be conducted and lawfully binding decisions made by the family responsibilities commissioner (or deputy commissioner) and one local commissioner for the relevant community under sections 50, 85 and 98, thereby enabling the FRC to continue to hold conferences and make decisions during the COVID-19 emergency.

The power to conference using technology already exists under the FRC Act, but is limited by 'appropriate cases' (similarly in the show cause process allowing a person to make oral representations). The Regulation modifies sections 56(2) and 83(4) of the FRC Act during the COVID-19 emergency to enable such conferences to be held, and oral representations to be made, using technology without a requirement to justify in each instance whether it is 'appropriate'.

Under section 51(3)(c) of the FRC Act, in nominating or appointing local commissioners for a conference, if practicable and appropriate one of the local commissioners must be female. The Regulation provides that if the commission is constituted by only one local commissioner, section 51(3)(c) of the FRC Act is taken to provide that the local registry coordinator and commissioner must ensure the local commissioner is female, if practicable and appropriate in the circumstances.

The Regulation modifies section 53 of the FRC Act to deal with an unavailable single local commissioner for a conference, providing that if the commission is constituted by only one local commissioner and that local commissioner stops being a constituting member or is unavailable for the conference, the commissioner may

direct that the commission for the conference be constituted by the commissioner (or deputy commissioner) and another local commissioner appointed by the commissioner. Section 53(3) of the FRC Act applies in relation to the appointment of the other local commissioner and section 53(4) applies in relation to the commission as reconstituted.

Given the reduction in overall commissioners from three to two in the Regulation, where a decision cannot be reached unanimously although every reasonable effort will be made by the commission to do so pursuant to section 139(2) of the FRC Act, the Regulation provides for the commissioner (or deputy commissioner) to carry the deciding vote.

### **FRB meetings**

The Regulation enables the FRB (an important governance body) to meet using communication technology, removing the requirement under section 123(5) of the FRC Act to meet in person at least once a year, which may not be possible due to COVID-19 travel restrictions and social distancing requirements.

## **Consistency with policy objectives of authorising law**

The Regulation is consistent with the main objectives of the FRC Act to support the restoration of socially responsible standards of behaviour and local authority in the Welfare Reform communities and to help the members of those communities to resume primary responsibility for the wellbeing of individuals and families in the communities and the communities as a whole.

The Regulation is also consistent with the main purposes of the COVID-19 Act. It will facilitate the continuance of public administration and protect the health, safety and welfare of persons affected by the COVID-19 emergency.

## **Inconsistency with policy objectives of other legislation**

The Regulation is not inconsistent with the policy objectives of other legislation.

## **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the policy objectives.

## **Benefits and costs of implementation**

The Regulation facilitates the continuance of public administration and protects the health, safety and welfare of people affected by the COVID-19 emergency. Failure to make the modifications could potentially risk public and personal health, and prevent compliance with obligations and requirements under the FRC Act.

The Regulation will not result in any additional costs for the Queensland Government.

## Consistency with fundamental legislative principles

The Regulation is considered consistent with the fundamental legislative principles (FLPs) as set out in the *Legislative Standards Act 1992*.

The COVID-19 emergency is an extraordinary, unprecedented situation that, in turn, requires a commensurate response.

The provisions in the COVID-19 Act are considered justified to allow Ministers ultimate discretion to take immediate executive action, including the making of regulations such as this Regulation to make the necessary interventions to mitigate the spread of COVID-19 in the community; facilitate continued functioning of institutions and economy to the extent possible in the pandemic; and to allow for timely, targeted and flexible responses caused by COVID-19 and public health restrictions, such as social distancing measures.

The COVID-19 Act applies general safeguards in relation to each of the modification framework provisions. In particular, the COVID-19 Act makes clear that any extraordinary regulations or statutory instruments may only be made if the Minister or responsible entity is satisfied that the regulation or instrument is necessary for a purpose of the COVID-19 Act. Extraordinary regulations are also strictly time limited providing that upon commencement, the Act and all regulations made under the Act expire on 31 December 2020.

A further safeguard is provided in the COVID-19 Act to ensure that no extraordinary regulations are able to be exercised so as to amend or override the *Human Rights Act 2019*, or any particular provision of the *Human Rights Act 2019*, thus preserving its important human rights protections.

Further, the broad regulation-making powers under the COVID-19 Act are considered justified given the scope of Acts affected by the COVID-19 emergency, as it is not practical given the nature of the changes that may be required to make specific amendments across the statute book.

Having regard to the purpose and intention of the COVID-19 Act the Queensland Government considers that the provisions are consistent with the FLPs, and have sufficient regard for the rights and liberties of individuals and the institution of Parliament.

The Regulation reduces the number of people required to hold conferences and make decisions, and enables the FRB to meet using communication technology, all of which is considered consistent with the FLPs.

## Consultation

There has been no public consultation on the Regulation. However, the FRC has been engaged during this process for its advice on required modifications to the operation

of the FRC Act during the COVID-19 emergency. The FRC has been updated on developments, including the Regulation which is supported by the FRC.

The Regulation meets agency-assessed exclusion categories (c) or (g) of the *Queensland Government Guide to Better Regulation* as it is a regulatory proposal for the internal management of the public sector or statutory authority, or that is of a machinery nature, and accordingly does not require consultation with the Office of Best Practice Regulation, Queensland Productivity Commission.