

# Family Responsibilities Commission Bill 2008

## Explanatory Notes

### Short Title of the Bill

Family Responsibilities Commission Bill 2008

### Objectives of the Bill

The main objectives of the Bill are 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. This is to be achieved by the establishment of the Family Responsibilities Commission (the commission).

### Policy rationale

#### Context

The Cape York Institute for Policy and Leadership (the Institute) is a public policy organisation that champions reform of Indigenous economic and social policies. It is focussed on issues in Cape York, but aims to have a national influence. The Institute's Director is Noel Pearson of Hope Vale.

In early 2006 the former Premier agreed to participate in the development phase of the Cape York welfare reform project being led by the Institute. The project was funded by the Commonwealth Government with in-kind support by the Queensland Government.

The Institute released a design report *From Hand Out To Hand Up* in May 2007 with its proposals for a “welfare reform trial” (the trial) in four communities – Hope Vale, Aurukun, Mossman Gorge and Coen (the welfare reform communities). The rationale for the trial is the need to restore social norms and local authority and change behaviours in response

to chronic levels of welfare dependency, social dysfunction and economic exclusion.

Following release of the welfare reform trial proposal, and the Commonwealth Government response to the *Little Children are Sacred (Ampe Akelyernemane Meke Mekarle)* report on child abuse in the Northern Territory in June 2007, the Federal Parliament passed legislation for welfare reform implementation. The *Social Security and other Legislation Amendment (Welfare Payment Reform) Act 2007 (Cth)* (the social security amendments) provides for:

- the Commonwealth Government's income management interventions in the Northern Territory; and
- a national income management regime that will apply to any person in receipt of welfare payments whose child is at risk of neglect; is not enrolled at school; or fails to attend school adequately (referred to as *the universal measures*).

The social security amendments support the trial by anticipating the establishment of a *Queensland Commission* to direct Centrelink to place a person under income management and providing exemption from the operation of anti-discrimination legislation.

The Premier met with the Federal Minister for Indigenous Affairs on 21 December 2007 when both the State and Commonwealth Governments committed to the trial commencing as soon as possible. The Premier committed to introduce legislation to the Legislative Assembly in February 2008 for the establishment of the commission to enable this aspect of the trial to commence on 1 July 2008.

The trial is commencing at a time when there is a new spirit of cooperation between State and Commonwealth Governments, particularly in relation to Indigenous affairs. It is also an example of a true partnership between government and community through the involvement of the Institute and the engagement of the four trial communities. This cooperation and partnership is key to the potential success of the trial.

### **Policy rationale for trial and commission**

The level of disadvantage suffered by Indigenous Queenslanders, particularly those who live in rural and remote communities, is well documented. The interim assessment of the effect of alcohol management plans introduced in 2002 show that while these plans have led to some

improvements in the safety of women and children, violence and abuse are still far too prevalent and contribute to ongoing dysfunctions such as poor parenting and social disruption.

In addition, the Institute contends that *a combination of welfare payments, free or very cheap housing and the program settings of CDEP has meant there is no incentive for participants to enter the workforce as their income is satisfactory with limited hours of work. Young people's aspirations are often no greater than a CDEP placement.*

The Community Development Employment Projects (CDEP) program is an Australian Government funded initiative for Indigenous people. CDEP programs provide services and manage activities aimed at increasing employment outcomes, providing business development opportunities and meeting community needs to benefit participants their families.

In total, nearly 3,000 people are resident in the four welfare reform communities and there are approximately 1800 people in receipt of relevant welfare payments or CDEP wages. As of January 2008, approximately half of the working adults in these communities were in receipt of CDEP wages.

The Institute puts forward the proposition that persons in receipt of welfare payments or who are participating in the CDEP program have obligations not to behave in ways which are detrimental to family or community wellbeing.

The intent of the trial is to enable Indigenous people to resume primary responsibility for individual, family and community wellbeing. It seeks to fundamentally reform the way communities function socially and economically; and the way governments interact with the communities through partnership arrangements, service design and delivery, and capacity-building to address individual and community dysfunctions with a focus on early intervention. The trial proposes pathways for Indigenous people to participate in economic activity in and beyond the communities.

The trial has been designed with an emphasis on partnership, capacity-building, local authority and service enhancement. It therefore proposes a range of policy, program and service reforms and practical on-the-ground initiatives to help reduce dependency and dysfunction and provide pathways to participation in the real economy including:

- additional responses to alcohol, drugs and gambling addictions;
- services to promote child and family wellbeing;

- interventions in employment, enterprise, education, income management, and housing; and
- greater investment in community capacity through social and physical infrastructure.

The trial also has an emphasis on early intervention in order to address individual and family issues before they escalate and require serious remedial action. The intention of the trial is to enhance and complement existing core responsibilities of state and federal agencies. A major component of the trial, proposed by the Institute, is the establishment of the commission.

### **How objectives are achieved**

The Bill establishes the commission, a new statutory body consisting of a legally qualified commissioner, one or more deputy commissioners and local commissioners comprising respected persons of each trial community. The commission is regarded as a critical mechanism within the wider welfare reform trial to support the rebuilding of local social norms and change in behaviours through attaching reciprocity to welfare and other government payments.

Broadly, the legislation provides that the commission can intervene where (a) a person, or the partner of the person, is an eligible recipient of certain welfare payments or the person is a CDEP participant; and (b) the person resides, or has lived, in one of the welfare reform communities since the legislation commenced; and (c) one of the following occurs:

- a child of the person is either not enrolled or is not meeting designated school attendance requirements;
- there is an intake involving the person by the Department of Child Safety in relation to alleged harm or risk of harm;
- the person is convicted of an offence in the Magistrates Court; or
- the person, as a tenant, is in breach of a social housing tenancy agreement.

Hearings of the commission will be by way of a conference-style process and are to take place in each welfare reform community. The panel which hears a matter will consist of a legally qualified chairperson with two local members from that community. There is to be a central registry in Cairns but with local staff in the communities.

The conference-style process does not utilise the formal procedures of a court or tribunal. Rather, it provides a forum for the person, and others who may have something useful to contribute, to discuss with the panel why and how the person has come to the situation of being the subject of a notice. However, this approach is not inconsistent with the person being made to understand the gravity of the proceeding, both in terms of community expectations and the possible consequences for the person.

The commission may hold a conference about a person and do one of three things: give the person a reprimand; recommend or direct that the person attends community support services; or give Centrelink a notice for the management of all or some of the person's welfare payment or payments or for all or some of the person's welfare payment or payments to someone else, for instance to a responsible family member, who is looking after a child of the person (*income management*). The legislation provides for the commission to attempt to enter into an agreement with a person about attendance at community support services or income management before making orders in this regard. This aims to encourage community members to take responsibility for their actions and to take active steps to address their inappropriate behaviour.

However, where a person is a CDEP participant, but is not an eligible recipient of any of the relevant welfare payments, the person cannot be placed on income management as CDEP is not a welfare payment for social security legislation purposes.

The regime applies whether a person is Indigenous or non-Indigenous and continues to apply if the person leaves the welfare reform community.

### **Comparison with the income management regime in the Northern Territory**

The main purpose of the Commonwealth social security amendments was to set up an income management regime for recipients of certain welfare payments, including enabling the establishment of the commission.

With respect to the Northern Territory a person is subject to income management simply by being present overnight in a declared relevant Northern Territory area, unless given an exemption to the regime by the Centrelink Secretary. In Queensland, a person can only be subject to income management if the person meets the residency requirements and one of the four issues as described above is raised. However, CDEP is not captured in the Northern Territory provisions.

The Institute has always been of the view that CDEP participants should be covered by the legislation. Inclusion recognises that a significant number of people are CDEP participants and that it amounts to passive welfare and should be treated no differently to a welfare payment. It is also recognised that persons move from welfare to CDEP and back again. By including CDEP participants within the definition of welfare recipient, confusion as to whether a person is, or is not, within the jurisdiction of the commission is minimised.

The commission provides the person with an opportunity to be heard in relation to the matter. Also, the commission is not confined to giving a notice that a person be subject to income management. It has a range of options, including referral to services to assist the person. The conference process of the commission, and the opportunity to try and reach agreement with the person about how to address the issues, mean that the commission is working with the individual, not simply imposing a response on them. The presence of local commissioners on the panel and registry staff being in the communities provides the opportunity for significant local community participation in the process and the outcome.

The universal measures under the Commonwealth social security amendments also provide that a person may become subject to income management where (1) State and Territory child protection officers require a person be subject to the income management regime; (2) the person, or the person's partner, has a child who does not meet school enrolment requirements; or (3) the person, or the person's partner, has a child with unsatisfactory school attendance. These measures will apply to eligible recipients of certain welfare payments across Australia.

The details of the interaction between the Cape York trial and these universal measures may be discussed further with the Commonwealth in the context of any Queensland-Commonwealth negotiations about the implementation of the income management regime. However, the social security amendments expressly provide that, where the commission has given a notice to Centrelink about a person, the person will be subject to the income management regime pursuant to that notice rather than under the measures mentioned above.

## **Alternative method of achieving the policy objectives**

The Government does not consider that the income management regime as imposed in the Northern Territory (where a person is income managed simply by virtue of living in a particular area) is an appropriate alternative.

The Institute has spent some time and effort in putting the proposal for the welfare reform trial together. While it has its critics, and there may be alternative ways to achieve the policy objectives, the State and Commonwealth Governments are committed to the trial to test whether the Institute's proposals have a more positive and sustainable outcome than those tried to date.

## **Estimated cost for Government implementation**

Existing resources and commitments will need to be re-focussed and better coordinated to ensure maximum effect, but additional resources will be required.

A State Government funding package will provide for the basic architecture of the trial incorporating:

- the operation of the commission including appeal processes;
- project management funding including a contribution to the Institute;
- pool funding for additional service enhancements, available on an as-needs basis to support both government and non-government service provision;
- alcohol and other substance services in response to the recent Queensland review; and
- external evaluation of the trial assessing the efficacy of the trial and adding to the evidence base of service delivery responses in Indigenous communities.

This package of new funding will complement the Commonwealth funding package for the trial of \$48 million over the four years which incorporates matched funding for program management to the Institute, the operation of compulsory and family income management systems, educational, employment and economic development programs, and the independent evaluation of the trial. In addition the Commonwealth has provided one off funding of \$3.5 million to support the establishment of the commission.

## **Consistency with Fundamental Legislative Principles**

There are a number of issues which may be regarded as infringing Fundamental Legislative Principles.

### **Discrimination**

The legislation may be regarded as being inconsistent with the *Racial Discrimination Act 1975* (Cwth) and the *Anti-Discrimination Act 1991* (Qld) since the legislation focuses on particular Indigenous communities or particular communities with a significant Indigenous population. The Commonwealth social security amendments contain provisions to exempt the operation of the commission from the operation of these Acts. Since the commission is a trial specifically focussed on communities with substantial Indigenous populations with the view to changing behaviours of some people in these populations, this is not inappropriate. The leaders of the four trial communities have been involved in the Cape York Welfare Reform Steering Committee and as recently as 20 February 2008 have expressed strong support for the legislation and the trial more generally.

The Explanatory Notes to the Commonwealth social security amendments included the following in relation to the discrimination issue:

The provisions of the bill that relate to the Northern Territory national emergency response and the Queensland Commission recognise the importance of Australia's obligations under international law:

The Convention on the Rights of the Child requires Australia to protect children from abuse and exploitation and ensure their survival and development and that they benefit from social security. The International Convention for the Elimination of All Forms of Racial Discrimination requires Australia to ensure that people of all races are protected from discrimination and equally enjoy their human rights and fundamental freedoms.

Preventing discrimination and ensuring equal treatment does not mean treating all people the same. Different treatment based on reasonable and objective criteria and directed towards achieving a purpose legitimate under international human rights law is not race discrimination. In fact, the right not to be discriminated against is violated when governments, without objective and reasonable justification, fail to treat differently people whose situations are significantly different.

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In the case of Indigenous people in the Northern Territory, there are significant social and economic barriers to the enjoyment of their rights to health, development, education, property, social security and culture.

The provisions of this bill that relate to the Northern Territory national emergency response and the Queensland Commission reforms are the basis of action to improve the ability of Indigenous peoples to enjoy these rights and freedoms. This cannot be achieved without implementing measures that do not apply in other parts of Australia. The bill will provide the foundation for rebuilding social and economic structures and give meaningful content to Indigenous rights and freedoms.....

### **Use of regulation**

The Bill provides for areas to be added to the definition of welfare reform community area by way of regulation. It might be argued that the precise coverage of the community areas should be a matter for the primary legislation as the regulation would extend the coverage of the legislation without appropriate consideration by Parliament (a “Henry VIII” clause”).

The geographical scope of the legislation has been difficult to specify for Coen and Mossman Gorge because they are not discrete communities in the same manner as Aurukun and Hope Vale. Hope Vale and Coen also have outstations which do not have readily available descriptors of the geographical areas involved. The Government will ensure the necessary Regulation is in place before the commencement of the trial, so that community members can be assured of what constitutes a community area. Once the trial has started, enabling further areas contiguous to the four communities to be included in the trial will ensure community members cannot avoid the trial by establishing new outstations and living there, but continuing to engage in inappropriate behaviour in the communities.

The limit of 12 months for the regulation will ensure that the extension of geographic coverage is put into primary legislation as soon as possible.

The Bill also provides for non-government housing providers in welfare reform communities to be prescribed by regulation. One such provider is presently under administration under the Corporations Act. More generally, such community-based organisations’ involvement in housing provision may be subject to change at short notice. At the time of introduction, the Government intends to prescribe the Coen Regional

Aboriginal Corporation and Bamanga Bubu Ngadimunku Inc (which provide housing in Coen and Mossman Gorge respectively).

### **Double jeopardy**

It could be argued that with respect to the commission dealing with matters relating to child abuse/neglect; tenancy breaches; and offending behaviour, that a person is being dealt with twice for the same behaviour. However, it is considered that there is no breach of the double jeopardy rule as the purpose of the income management regime is not punitive.

### **Net widening**

The chief executive of the Department of Child Safety is required to advise the commission in relation to any notification of alleged harm or alleged risk of harm to a child. It does not require that the allegation be proved, investigated, or even notified to the subject adult. This could be regarded as lack of natural justice. However, a major focus of the trial is wellbeing of children. The commission's early intervention into issues concerning the safety and wellbeing of children in the communities aims to prevent the development of more serious problem behaviour. To the extent that this has a net-widening effect, this is considered justified as it does not affect a person's liberty or deprive a person of income. Further, the Department of Child Safety is supportive of the fact that the commission will have the capacity to act on matters of concern that do not meet the standards required for the Department to act on a matter.

### **Appeal**

Appeal is only on a question of law. This would include where the person asserts that the commission did not have jurisdiction to make a decision: that is, where a person asserts that the person (or the person's partner) was not an eligible welfare recipient at the time; the person was not a CDEP participant; or the person was not a resident of a trial community in the terms of the legislation. However, it would also enable appeal on grounds such as the decision being manifestly unreasonable.

While this may be considered a significant limit on a person's ability to appeal a decision affecting them, the Government considers that the best body to decide what services a person should attend or whether their income should be managed is the commission which is community-based and has local representation. Internal merits review is not possible as there is no higher body within the commission than the panel which sat. Any other external appeal will necessarily involve people who are not connected

with the community, which may undermine a key tenet of the trial, namely that the communities should take responsibility for their issues.

By making the Magistrates Court the appeal body, it is anticipated that appeals could be heard in a relatively short time. All communities have regular access to a Magistrates Court.

The Bill also clarifies that the Ombudsman may investigate administrative actions of the commission. This will ensure that the operation of the commission is subject to review. Review by the Ombudsman may extend both to commission processes and the merits of individual decisions.

The Bill provides that a decision of the commission will not be stayed pending an appeal. An order that a person attend an accessible service is more likely to be of benefit, rather than be prejudicial, to the person. An order that the person's income be managed does not deprive them of the income. It is considered that permitting decisions to be stayed is likely to undermine the effect of the trial by encouraging community members to attempt to avoid the application of a decision by the commission by lodging an appeal.

### **Privacy and confidentiality**

The commission will receive sensitive and confidential information about people over whom it finds it does not have jurisdiction. In order to have a workable information exchange regime for the trial, it has been difficult to avoid this outcome. The commission is only in a position to ascertain whether a person resides or lives in the community and is an eligible welfare recipient once it has received a notice once about a person. Provision has therefore been made for the destruction of notices and any associated material where it is established that the person is not within the jurisdiction of the commission.

A further issue with respect to child safety is that where the Department of Child Safety decides that no further action is warranted at the time and an intake is not investigated, the first that the person may know about the allegation made to Department is when the person receives a notice from the commission to attend a conference. The Department has indicated that it believes it can manage this through development of a protocol or Memorandum of Understanding with the commission.

## **Consultation**

### **Community**

There has been no public consultation on the Bill. However, there has been ongoing consultation with specific stakeholders.

Queensland Government officers have had significant engagement with the Institute in relation to the drafting of the Bill.

The Cape York Welfare Reform Steering Committee, comprising senior representatives from Commonwealth and Queensland Government agencies, the Institute and community leaders from the four trial communities, met on 20 February 2008 and expressed strong support for the legislation and the trial more generally.

The Institute has been engaging communities since 2006. Community leaders have also been engaged through shared participation in the Welfare Reform Steering Committee and through dialogue between Government Champions and Government Coordinators with community leaders and members at Negotiation Tables and other forums.

The peak bodies of the non-state school sector and the unions whose members may be affected by the trial were consulted during the week of 18 February 2008. For the former, the major focus was the impact on approximately 20 boarding schools outside the communities with an estimated 70 students from the four trial communities.

There have also been discussions with the relevant social housing cooperatives in the communities of Mossman Gorge and Coen.

### **Government**

There has been significant discussion with the key agencies which will be affected by the legislation – the Departments of Housing; Education, Training and the Arts; Child Safety; Justice and Attorney-General; Queensland Corrective Services; the Queensland Police Service; the Magistrates Court and the Queensland Ombudsman's Office. Agencies are supportive of the legislation so that the trial can proceed. However, agencies are keen to have the trial monitored and evaluated, especially for any unintended outcomes.

The Department of Education, Training and the Arts has noted that the attendance requirement is higher than the general standard for school attendance in the State.

The Solicitor-General's advice has been obtained on the Bill.

There has been regular discussion with officers from the Commonwealth Government, particularly in relation to the interaction of the Bill and the federal social security legislation. Once the commission is established, it can be specified in a legislative instrument for the purposes of the income management regime in Part 3B of the *Social Security (Administration) Act 1999*.

## Notes on Provisions

### Part 1 Preliminary

#### Short title

**Clauses 1, 2 and 3** provide for the short title of the Act, commencement of the provisions of the Act and that the Act binds all persons, including the State and Commonwealth Governments.

The provisions which enable the chief executive of the Department of Education, Training and the Arts to give personal information about a student are to commence on assent in order to support education services which are part of the broader welfare reform trial and which it is anticipated will commence operation before the commission. The remaining provisions will commence on proclamation.

### Division 2 Objects and principles of Act

**Clause 4** sets out the main objects of the Act and that the objects are to be achieved by the establishment of the Family Responsibilities Commission (the commission).

**Clause 5** sets out the principles by which the Act is to be administered.

Both the objects and the principles refer to *socially responsible standards of behaviour*. This is defined in the Dictionary. It is about behaviour which

relates to school attendance; the safety and welfare of children; drug and alcohol use, gambling and violence; and tenancy obligations.

With respect to the principles, the Act is to be administered under the principle that the wellbeing and best interests of the child are paramount.

## **Division 3            Interpretation**

**Clause 6** provides for the dictionary.

**Clauses 7 and 8** provide the definitions for the key terms of *community member* and *welfare recipient* respectively by way of defining which persons are subject to the legislation.

For a person to be covered by the Act:

- (1) the person, or the person's partner, must be an eligible recipient of certain types of welfare payment; or the person must be a CDEP Scheme participant; and
- (2) the person's usual place of residence is, or was when the Act came into force, in a welfare reform community area; or the person has lived in the community for at least 3 months since the Act came into force.

How the criteria in part (2) can be established is discussed at clause 48. It includes considering a person's postal address, the last address provided to Centrelink, the school at which a child of the person is enrolled, and the address of any premises for which the person has a tenancy agreement.

A distinction has been drawn between "usual place of residence" and "living". This is to reflect that people move in and out of communities and also regularly visit family, often for periods of time. For the purpose of the Act, it is important that anyone who is effectively part of the community for a period of time should have to abide by the community's rules and standards, and not be able to frustrate the Act by being physically absent from a community for a short time.

A *welfare reform community area* is defined in the dictionary and at the time of the passing of the legislation included Aurukun, Hope Vale, Coen and Mossman Gorge. However, other communities can be added by regulation. It is anticipated that this would be at the request, or with the agreement, of communities as is the case with the current communities.

For Aurukun and Hope Vale, these areas equate to the local government boundaries. For the Coen and Mossman Gorge areas, administrative plans (plans numbered AP19403 and AP19404 respectively) have been developed which can be accessed by the public through the Department of Natural Resources and Water. They will also be placed on the website of the Department of Premier and Cabinet.

The Bill provides that other areas which are next to or near one of these areas can be included in these areas by regulation. This is to ensure that, for example, appropriate outstations, or other places with connection to, and which are used by, community members, can be included in the area in order to meet the intent of the Bill.

The Act will apply irrespective of whether a person is Indigenous or non-Indigenous. If a person comes within the jurisdiction of the legislation, it continues to apply if the person leaves the community. It will cease to apply if a person is no longer an eligible welfare recipient.

## **Part 2                    The Family Responsibilities Commission**

### **Division 1                Establishment, functions and powers**

**Clauses 9, 10 and 11** establish the commission and set out its functions and powers. The powers are limited to those which are necessary to perform its functions.

### **Division 2                Membership**

**Clause 12** provides that the commission comprises the commissioner, any deputy commissioners, and local commissioners (commission members). Local commissioners are appointed for a specific welfare reform community. All members are appointed by Governor in Council.

Appointment of a deputy commissioner or deputy commissioners is not mandated. Once the workload of the commission is identified,

consideration will be given as to whether the appointment of a deputy commissioner is required.

**Clauses 13 and 14** provide for the selection of commission members. With respect to local commissioners, nominations should come from the welfare reform communities themselves rather than be imposed from outside. Nominations must be by a statutory community justice group. If there is no statutory group, nomination will be by community groups which are involved in court, diversion/rehabilitation or local justice or a group of elders or respected persons which the Minister considers are appropriate entities to nominate. The Minister must, if practicable, only select persons nominated by this community process.

Local commissioners are considered a vital part of the commission and its processes as they are the means by which the communities can fully participate in encouraging some community members to change their behaviours. This will also support the re-establishment of local authority. For these reasons local commissioners have a decision-making rather than an advisory role.

The provisions therefore provide for a balance of men and women and that clan and family groups are properly represented.

**Clauses 15 and 16** relate to terms and conditions of appointment for commission members.

**Clauses 17 and 18** set out the eligibility requirements to be appointed as a commission member.

**Clauses 19 and 20** detail when a person is disqualified from becoming or remaining a commission member. In particular, a person's own behaviour must be such as to make the person suitable for being a member of the commission. Disqualifying factors include the person is convicted of certain offences, is insolvent, has had a protection order against the person in the five years prior to commencement of the legislation and where the Minister is advised that the person may pose a risk to a child's safety.

**Clause 21** describes when the office of a commission member becomes vacant.

### **Division 3            Functions and powers of                                  commissioner**

**Clauses 22 to 25** provide for the functions and powers of the commissioner; when the commissioner may delegate these to a deputy commissioner or the registrar; and when a deputy commissioner may act as the commissioner.

### **Division 4            Miscellaneous**

**Clause 26** confirms that the commission is an independent body and is not subject to direction by the Minister. The independence of the commission is considered to be important as it confirms the authority of the members of the commission, particularly the local members.

**Clause 27** is a standard legislative provision. In particular, it enables a request to be made to the police commissioner for a written report, and for the police commissioner to provide the report, for the purposes of a criminal history or a domestic violence history check in relation to potential commission members. It contains the usual safeguards that a person must be given a copy of the report and that the report is destroyed as soon as practicable after it is no longer needed.

**Clause 28** enables the Minister to obtain at the time of selection, or be given at a later date, a notice from the chief executive of the Department of Child Safety about whether the chief executive considers the person may pose a risk to a child's safety. Similar safeguards to those in clause 27 are also provided in this circumstance.

**Clause 29** provides that a commission member must advise of any change in the member's criminal history or any protection protection orders made.

**Clause 30** is a technical clause which deals with the commission's financial accountability.

**Clause 31** makes clear that the Queensland Ombudsman may investigate administrative actions of the commission, including its deliberative actions.

## **Part 3                      The Registry**

**Clauses 32 to 39** provide for the establishment of the registry for the commission, including staff and the functions and powers of the registrar and delegation of the powers and functions.

With respect to the registrar's function to prepare case plans for a person who is to attend community support services, it is anticipated that the registry staff will include case managers who will undertake this work.

An innovative feature of the legislation is the provision for local registry coordinators. The registry as such will be based in Cairns. However, in accordance with the policy that the commission operates at the local level with local involvement, it is anticipated that the registry will be represented in the welfare reform communities by local registry coordinators.

**Clause 38** makes specific reference to the function of the local coordinators in the communities. Under Part 10, local coordinators may also be the point of contact for welfare reform community members who voluntarily refer themselves to the commission, either for referral to services or for income management.

**Clause 39** complements clause 26 (commissioner is not subject to the direction of the Minister) by clarifying that the registrar and other registry staff are only subject to the direction of the commissioner with respect to the administration of the commission and the management of the registry.

## **Part 4                      Agency notices**

### **Division 1                      Requirements about giving agency notices**

This division provides what matters are to be referred to the commission for possible intervention and when and how information is provided to the commission about these matters.

Broadly, the commission will be advised if one of the following occurs: (1) a child is either not enrolled or is not meeting designated school attendance

requirements; (2) there is an intake alleging harm or risk of harm involving a person to the Department of Child Safety; (3) a person is convicted of offences in the Magistrates Court; or (4) a person, as a tenant, is in breach of a social housing tenancy agreement.

For each issue there are two scenarios: (1) where the issue happens in the community area and (2) where it occurs outside the community area or involves someone who is outside the community area. Although the latter presents some administrative difficulties, it is important that people cannot avoid commission intervention by simply leaving the welfare reform community in which the person is living. In addition, it is important to address the issue of displacement, that is, another community being disrupted by the person's unacceptable behaviour.

### **Notice about school attendance**

**Clause 40** provides that in relation to a school in the welfare reform communities, the principal must give a notice to the commission if a student of compulsory school age who is enrolled at the school is absent from school for three school days (full or part days) in a school term and the principal is not satisfied that there is a reasonable explanation for the child's absences.

Where a child is attending a school (state or non-state) outside the welfare reform communities, the same situation applies, except that the principal's responsibility to give a notice to the commission arises only when the principal realises that the student, or a parent of the student, lives, or has lived, in a welfare reform community since the Act came into force.

Aside from the general policy consideration that the legislation should cover members of the welfare reform communities if they leave community, this provision is necessary to include the children of Mossman Gorge who attend school in Mossman, some of whom attend a private school there.

In considering whether a student is absent, or whether there is a reasonable explanation for the absence, the principal must have regard to any commission guidelines about student attendance at schools. It is anticipated that the commission will liaise with the schools and Department of Education, Training and the Arts in the development of any guidelines.

The clause sets out the timeframes and contents of the notice.

### **Notice about school enrolment**

**Clause 41** provides that the chief executive of the Department of Education, Training and the Arts must send a notice to the commission if the chief executive becomes aware that a child of compulsory school age is not enrolled at a school and the child, or one of the child's parents, lives in a welfare reform community, or has lived in a community since the Act came into force.

The clause sets out the timeframes and contents of the notice and provides for legal reasons for non-enrolment.

### **Notice about child safety and welfare matters**

**Clause 42** provides that the chief executive of the Department of Child Safety must give the commission a notice where the chief executive becomes aware of alleged harm or risk of harm to (1) a child in a welfare reform community, or (2) in relation to a child where it is reasonably believed that the person who is alleged to be responsible for the harm or risk of harm is living, or has lived, in a welfare reform community.

The definition of *harm* is that used in the *Child Protection Act 1999* (CPA).

The clause sets out the timeframes and contents of the notice.

The Department must provide the notice irrespective of whether it considers there are sufficient grounds for it to commence action under the CPA. This means that virtually all contacts, other than enquiries, with the Department must be referred to the commission. This may therefore be considered to be a very low threshold. However, one of the aims of the trial is early intervention. The Department does not have authority to intervene until there is evidence that the child needs to be taken into care. The need to take a child into care could be averted if there was an opportunity for earlier intervention.

### **Notice about offences**

**Clause 43** provides that the clerk of the Magistrates Court which has jurisdiction for a welfare reform community must give a notice to the commission when a person is convicted by the court of an offence.

The clause also provides the clerk of a Magistrates Court in any other court in Queensland must provide a notice to the commission if the clerk is advised that a person who is convicted by the court is living or has lived in a welfare reform community.

The clause sets out the timeframes and contents of the notice.

The notice is limited to convictions in the Magistrates Court jurisdiction in line with the focus on early intervention. More serious offences dealt with in the District Court are likely to attract a penalty which includes some level of monitoring (be it in the community or in detention) and behaviour program opportunities. Matters dealt with by the Supreme Court are not suitable for intervention by the commission and may attract a significant jail term which will go beyond the trial period.

### **Notice about residential tenancy agreement**

**Clause 44** provides that with respect to residential rental premises provided by way of social housing, the lessor must give the commission a notice if the lessor is satisfied that the premises are being used, or have been used for an illegal purpose; where the tenant has not complied with a remedy notice in relation to a number of other breaches; or where the tenant has failed to pay the rent and has not addressed the default. In addition, if the tenant commits two such breaches in a six-month period, the lessor must give a notice to the commission, irrespective of whether the breaches are remedied.

The notice must be given where (1) a person has a tenancy agreement for social housing premises in a welfare community area or (2) where a person who was such a tenant at or after the commencement of the provision now has a residential tenancy agreement with the housing department for social housing elsewhere in Queensland.

Social housing means housing provided by the housing department, local government or another entity prescribed under regulation. It is anticipated that a prescribed entity will be in the nature of a housing cooperative or similar.

The clause sets out the timeframes and contents of the notice.

## **Division 2            Miscellaneous**

**Clause 45** makes it clear that with respect to the requirement to give notices for people or issues occurring outside the trial communities, the entity which must provide the notice is not required to undertake any investigation to establish whether a notice should be given.

## **Part 5                      Commission's conferences                                          about agency notices**

This part sets out how the commission deals with notices which are given to it. Considering the outcomes which it is anticipated the legislation and the commission will achieve and that the commission should be able to respond quickly to notices, the hearings of the commission are to be in the style of a conference and to that extent informal in nature. However, that relative informality is not inconsistent with the person being made to understand the gravity of the proceeding, both in terms of community expectations and the possible consequences for the person.

### **Division 1                      Preliminary**

**Clause 46** explains the purpose of the conference. Broadly, the issues relating to the notice will be discussed, where possible agreement will be reached with the person on what action the person will take, but the commission may direct the person to services or income management if agreement cannot be reached.

**Clause 47** provides criteria which the commission must consider in deciding whether to hold a conference in relation to a notice. In light of the possible workload of the commission, it is considered that the commission may need to prioritise those matters which come before it.

In addition, if it becomes clear that a person is not within jurisdiction — that is, the person, or the person's partner, is not an eligible welfare recipient, and the person is not a CDEP Scheme participant, or the person is not, or has not been usually resident or lived in a welfare reform community — then it should not be necessary for that person to be brought before the commission. It will therefore be necessary for the commission to be sure that any person coming before it is in jurisdiction.

**Clause 48** sets out matters which would be relevant for the commission to consider in establishing the residence/living requirement.

In relation to welfare payments or CDEP participation, this will be ascertained by requesting Centrelink to provide confirmation of a person's status. The Bill has information sharing provisions to enable the exchange

of information between the commission and Centrelink for this purpose (Part 8).

## **Division 2            Jurisdiction and operation**

**Clause 49** confirms that the commission may only hold a conference if the person is in jurisdiction (see note for clause 48 above).

**Clauses 50 to 55** provide for the constitution of the commission for individual conferences. The commission is to be made up of the commissioner and two local commissioners from the welfare reform community in which the person lives or has lived and for which the local commissioners are appointed. A local commissioner can only participate in a conference if the local commissioner has completed the relevant training.

The local commissioners are to be nominated by the local coordinator after consulting with the “pool” of local commissioners for the particular community and taking into account the clan and family group implications and issues of gender.

Provision is made to address conflict of interest situations for commission members and the possibility of a local commissioner ceasing to be able to be part of the commission for a conference. With respect to the latter, there will always be two local commissioners participating. This is to ensure that local community participation is not undermined.

**Clause 54** provides that there are to be no legal representatives at the conference. The only exception is where the commission considers it is in the interests of justice for the person who is the subject of conference to be legally represented. Since the reason for the conference-style process is to try and engage the person, then generally the person and the other people present need to be actively involved.

**Clause 55** provides that conferences are privileged and things said and documents prepared for, or in the course of, a conference cannot be used in any proceedings other than an appeal from a commission decision. This is an important provision as the person is less likely to participate fully in the conference, and accept and commit to addressing the issues which have brought the person to the conference, if information can be used against them in other forums.

## **Division 3            Conference procedures**

**Clauses 56 and 57** provide for how and when a conference is to happen. It confirms the informal nature of the proceedings whilst ensuring natural justice. It also enables conferences to take place other than face to face. This is primarily intended to enable conferences where the notice is in relation to a person who has left the community, but possibly to ensure timely conferences can be held, for example, during the wet season when access to a community may be difficult.

**Clause 58** provides that conferences can only be held within stated timeframes, in general within one year of receipt of a notice.

**Clause 59** allows the commission to deal with more than one notice in relation to a particular person at the same conference or more than one person in respect of the same notice at the same conference.

**Clause 60** sets out the people who may take part in a conference and confirms that the conference is to be held in private. Again, this is because of the conference-style of proceeding which can encourage a person to be open and address his or her issues. This is less likely to happen if people with no direct interest in the matter are present.

**Clause 61** directs that the commissioner must give a notice to the person who is the subject of the conference and any other person the commissioner considers may be able to assist the commission and details what must be in the notice. The commission can require a notifying agency to attend the conference.

**Clause 62** enables the commissioner to find out the views of relevant people who are not able to attend the conference and bring this information to the conference. The commissioner must advise the person who is the subject of the conference of these views at least three days before the conference.

**Clause 63** provides further direction on how the conference is to be conducted.

**Clause 64** provides for the adjournment of a conference.

**Clauses 65 and 66** address the situation when a person who is the subject of the notice does not attend a conference. The commissioner must reschedule the conference and give the person a notice about the new time and place. If the person fails to attend a second time, the commission may

make a decision in the person's absence, including referral to income management.

**Clause 67** directs that a record must be kept in relation to each conference and the matters which must be part of that record.

## **Part 6                      Commission's decisions at conferences**

### **Division 1                Decisions**

**Clause 68 and 69** set out the decisions which can be made by the commission and when and how a family responsibilities agreement can be made. The commission can take no action; give a reprimand; make a recommendation to attend community support services; make a direction to attend community support services; or give a notice to Centrelink that the person be subject to income management. The commission may take more than one of these actions.

If the commission decides that taking no action, giving a reprimand or a recommendation to attend services is not appropriate, before making an order directing a person to attend *community support services* (see below) or to be subject to income management, the commission must try and reach an agreement (*family responsibilities agreement*) with the person about what the person will do to address the issues raised by the agency notice. The conference provides an opportunity for the person to fully participate by making a choice about what the person will commit to. This commitment will also make it more likely that the outcomes of the trial will be achieved and be sustained.

**Clause 68** sets out what should be in a family responsibilities agreement and time limits.

If it is not appropriate or possible to make a family responsibilities agreement, the commission must consider whether it would be more appropriate in all the circumstances for the person to be directed to attend community support services before deciding to give a notice to Centrelink that the person be subject to income management (**clause 69**).

As noted previously, a person who is a CDEP participant but is not in receipt of any relevant welfare payments cannot be placed on income management whether under a family responsibilities agreement or a family responsibilities order.

## **Division 2            Notice of decisions**

**Clause 70** provides that a person who is the subject of a notice and conference must be given a notice about the decision of the commission and details what must be in the notice. It also provides that a direction to attend community support services can be for up to one year and a direction that a person be placed on income management must be for at least three months but no more than one year.

## **Division 3            Criteria for making decisions**

**Clause 71** sets out a number of criteria for the commission to consider when making a decision directing a person to attend community support services or requiring that a person be subject to income management. It must have regard to how the decision is likely achieve the objects of the Act and facilitate early intervention in addressing issues.

**Clause 72** provides that when making a decision in relation to a child safety notice to recommend or direct the person attend community support services, the commission must have regard to any case plan which the Department of Child Safety has in place under the CPA.

The clause reflects that it is very important that the commission does not duplicate or detract from work which the Department is already doing with the person, the child and the family.

## **Division 4            Other matters**

**Clause 73** provides that where a person agrees, or is ordered, to attend a community support service, the registrar must be advised.

It is likely that this will happen at the conference if the local registry coordinator is in attendance. The registrar is responsible for drawing up a case plan in relation to attendance at services. It is anticipated that case managers will be on the registry staff to deal with this aspect of the registrar's work.

**Clause 74** stipulates what must be provided to Centrelink where there is a family responsibilities agreement or order for income management. The notice must include details about the period (at least three months but no more than one year), that the person is to be subject to income management and the proportion of the welfare payments that should be managed. It is open for the commission to provide an overall proportion for all welfare payments that a person receives or specify the proportion in relation to specific payments.

**Clause 75** is a procedural provision providing for notice of revocation of an existing notice to be given to Centrelink where the commission decides, following a conference about a new agency notice, that a person already on income management should be subject to a further notice to Centrelink.

## **Part 7                      Provisions about case plans**

### **Division 1                Case plans**

#### **Subdivision 1        Preliminary**

Case plans must be developed where a person agrees, or is ordered by the commission, to attend a community support service or services (*compulsory case plans*).

The definition of *community support services* is quite broad, covering "services and activities" which will help an individual in relation to the individual's own wellbeing; the wellbeing of a member of the individual's family; and *socially responsible standards of behaviour*. The latter includes school attendance, among other issues, and therefore programs such as the welfare reform trial Case Management Framework, and the School Attendance Case Managers employed to implement it, will be

within the concept of *community support services*. Examples given of community support services in the dictionary include services relating to matters about health, education, employment or training; money management; drug and alcohol rehabilitation; gambling or anger management.

As noted above, it is anticipated that case managers will be on the registry staff to deal with this aspect of the registrar's work.

**Clause 76** explains what a case plan is, the purpose it serves, and what it must include.

## **Subdivision 2 Particular provisions about case plans**

**Clauses 77 to 80** provide for how a compulsory case plan must be prepared and recorded and how the person must be advised about the plan.

The Bill provides that the commissioner must endorse the plan and can request that it be amended where, for example, the commissioner considers it does not adequately address the issues of concern to the commission in relation to the person's behaviour.

## **Division 2 Non-compliance with compulsory case plans**

**Clauses 81 to 89** provide for what is to happen if a person does not comply with a compulsory case plan. The commission may give the person a notice requiring the person to show why it should not take a specified course of action in response to the non-compliance.

If the person is not subject to income management at the time, the commission may direct that the person be subject to income management (unless the person is a CDEP participant and neither the person nor the person's partner is in receipt of relevant welfare payments). If the person is subject to income management, the commission may increase the period of income management or the proportion of the person's welfare payments which are to be deducted. However, any increase must not result in a

person being subject to income management for more than one year from the original decision.

The person must be given at least 21 days notice of the time and place when the person may attend and explain in person why the commission should not take the action it has outlined. If the person wants someone else to make representation to the commission, the commission must allow this. It may allow a lawyer to do this if it considers it is in the interests of justice for the person to have a legal representative.

After hearing the person, the commission may decide not to take any action or to amend the case plan rather than take the action it outlined in the notice. If it does decide to take the proposed action, it must provide a notice to Centrelink.

## **Part 8 Information exchange**

For the legislation to operate effectively, information must pass between the commission and a number of agencies, including Centrelink.

### **Division 1 Preliminary**

**Clauses 90 and 91** provide definitions for *prescribed entity* and *relevant information* for the purposes of Part 8.

### **Division 2 Particular provisions about information exchange**

**Clause 92** provides that the commission may **give personal information** about a person:

(1) to a prescribed entity to enable the entity to provide *relevant information* back to the commission or to coordinate support services.

(2) to Centrelink to assist the commission to establish that a person is in receipt of a welfare payment, that the person meets the residence requirements under clause 7 and to make other decisions about the person under the Act.

(3) to certain entities, including Centrelink and relevant state government agencies for the purpose of evaluating the operation of the legislation.

*Personal information* about a person, means information or an opinion, whether true or not, about individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**Clause 93** provides that the commission may **request** *relevant information* from a prescribed entity.

*Relevant information* is broadly information which may assist the commission in its decision-making. The entity must comply with the request unless it may be prejudicial or identify confidential sources.

**Clause 94** enables the chief executive for education to provide information to entities involved in the provision of education programs and services being implemented in the welfare reform community areas as part of the welfare reform trial. These projects include the following:

- The Case Management Framework - under this framework, School Attendance Case Managers employed by Cape York Partnership Projects Pty Ltd will liaise between schools and parents to follow up on school absences and encourage school attendance and enrolment.
- MULTILIT – a literacy program for Indigenous primary school students in the welfare reform community areas, whose reading progress is low and to improve the engagement of these students’ parents in their education.

**Clause 95** provides protection to a person who provides information to the commission, the commissioner, the registrar or another entity under the Bill honestly and on reasonable grounds.

**Clause 96** clarifies the interaction of the information sharing provisions in this Act with other laws.

## **Part 9**                      **Amending or ending family responsibilities orders**

**Clauses 97 to 104** provide the process to enable a person to have a family responsibilities agreement or order amended or ended. This includes what an application must contain and what action the commission may take. The commission may request further information from the applicant.

To ensure that applications are genuine, provision is made for the person to provide reasons for seeking the amendment or termination when making the application. The commission can also decide to dismiss the application if it considers the application is frivolous or vexatious.

Where practicable, the panel which dealt with the person's matter originally should deal with the application. The commission can only amend or end the agreement or order if it is satisfied this action is not likely to be detrimental to the interests, rights and wellbeing of children and other vulnerable people in the relevant community area. However, any increase in the period of income management cannot result in the person being subject to income management for more than one year from the original decision.

If there is an amendment in relation to income management, a notice must be sent to Centrelink.

A person may appeal a refusal to amend or end the agreement or order or a decision to amend it in a way other than that requested.

If the commission decides to amend a case plan in relation to a person's attendance at services, either under a family responsibilities agreement or order, the registrar must make the amendment and the amended plan must be endorsed by the commissioner. However, any increase in the period of income management cannot result in the person being subject to income management for more than one year from the original person.

## **Part 10**                      **Voluntary referrals to commission**

As **clause 105** states, the purpose of this Part is to provide a process whereby a person may voluntarily seek help from the commission in relation to a child's school attendance; a child's safety and welfare; the person's conduct such as drug or alcohol use, gambling, offensive behaviour or violence; or in relation to their conduct as a tenant.

**Clauses 106 to 109** enable a voluntary referral for access to community support services and income management for people who would be subject to the jurisdiction of the commission in terms of residence and welfare or CDEP status. Where the referral is in relation to services, the person can approach the local registry coordinator. A case manager can be appointed to assist the person by preparing a case plan and assisting the person to attend appropriate services.

If the person wishes the commission to give Centrelink a notice that the person be subject to income management, the commissioner must be satisfied that this is in the best interests of the person, a child of the person or other family member. The commissioner may then enter into a *voluntary agreement* with the person for this. A person who is a CDEP participant cannot make a voluntary agreement unless the person is also an eligible welfare recipient.

**Clause 109** details the process if a person wants to amend or end a voluntary agreement. The commissioner must amend the agreement as requested unless the commissioner is satisfied to do so would be detrimental to the interests, rights and wellbeing of children and other vulnerable people in the relevant community area. The commission must then provide a notice to Centrelink.

The person has the right to appeal a refusal to amend or end the agreement.

## **Part 11**                      **Appeals**

**Clauses 110 to 115** provide for an appeal against a family responsibilities order; a decision relating to a show cause process following an alleged

breach of an order; and a decision on an application to amend or end a family responsibilities order or agreement. Appeals are only on a question of law to the Magistrates Court and the operation of the commission order cannot be stayed pending the appeal. This may be considered a breach of Fundamental Legislative Principles and is addressed above.

The court has the same powers as the commission when coming to a decision, is not bound by the rules of evidence but must have regard to natural justice. The court may confirm or amend the commission's decision; set it aside and substitute another decision; or set aside the decision and send it back to the commission.

An appeal from the Magistrates Court lies to the District Court but only on a question of law.

## **Part 12                      Family Responsibilities Board**

**Clauses 116 to 124** provide for the establishment of the board and its functions (Division 1), its membership (Division 2) and conduct and business (Division 3).

The Board has a membership of three, reflecting that the welfare reform trial is a tripartite partnership between the Commonwealth and State Governments and the community through the Institute. It has an advisory capacity only but it is anticipated that it will be able to facilitate the smooth operation of the commission where necessary to ensure that the trial is as effective as possible.

## **Part 13                      Particular Offences and Legal Proceedings**

### **Division 1                      Offences**

**Clauses 125 to 134** are standard provisions in relation to giving false or misleading statements or information to the commission and other offences

relating to actions of retaliation and reprisal against people for actions undertaken in accordance with the legislation.

## **Division 2            Evidentiary provisions**

**Clauses 135 to 103** are standard provisions in relation to appointments and authority, signatures and evidentiary aids.

## **Part 14            Other Matters**

### **Division 1            General matters about commission's operations**

**Clauses 138 to 146** prescribe procedures the commission is to follow in relation to providing notices to Centrelink; making decisions under the Act; giving notices to agencies about decisions made at a conference; destruction of documents about a person who is not within the jurisdiction of the commission; preparation of annual reports and reports to the board; development of guidelines; and changing a case plan for a person who has changed their address.

In particular, **clause 138** prescribes what the commission may include with a notice to Centrelink in relation to income management. In relation to decisions to enter into a family responsibilities agreement or a voluntary agreement about income management, the commission may give directions or recommendations about how the Centrelink may exercise a power in relation to income management under the Commonwealth *Social Security (Administration) Act 1999*.

The Government expects that persons the subject of income management will have the opportunity to take money management advice (possibly before the conference), in which case the advice could be incorporated in notices to Centrelink. This scheme is intended to encourage people to reach agreements with the commission, so that they can have a say in how Centrelink manages their income.

In relation to a decision to make a family responsibilities order to subject a person to income management, the commission may give directions in relation to the duration of income management, and the proportion of the person's welfare payments must be managed. However, the commission may only make recommendations about how the Centrelink may exercise a power in relation to income management under part 3B, division 6 of the *Commonwealth Social Security (Administration) Act 1999*. As a result, people may have less say in how Centrelink manages their income.

Where a direction or a recommendation is being given about how the Centrelink may exercise a power in relation to income management under part 3B, division 6 of the *Commonwealth Social Security (Administration) Act 1999*, in relation to income management for a person, the direction or recommendation may be accompanied by a notice stating that a specified bank account held by another person is a nominated third party account in relation to the first person. This enables the Centrelink Secretary to exercise a discretion about whether to direct payments to a third party upon a recommendation by the commission.

**Clause 143** requires the commissioner to prepare and give the Minister an annual report. The requirements are additional to those that will apply under the *Financial Administration and Audit Act 1977*.

**Clause 144** requires the commissioner to give the Family Responsibilities Board a quarterly report. This is intended to allow the tripartite board to monitor the operation and effects of the trial throughout its course.

## **Division 2            Miscellaneous**

**Clause 147** provides for the preservation of confidential information provided to a person in the course of administration of the Act and for other purposes, such as those referred to in clause 94 concerning education programs and services being implemented as part of the welfare reform trial.

**Clause 148** protects officials from liability in relation to acts done honestly and without negligence.

**Clauses 149 and 150** provide for the approval of approved forms and making of regulations under the Act.

**Clause 151** provides for the expiry of the Act on 1 January 1012, which is the date for expiry of the income management regime under the Commonwealth *Social Security (Administration) Act 1999*.

## **Part 15 Transitional Matters**

**Clauses 152 to 155** provide transitional provisions regarding the commission's first annual report and quarterly report to the Board; the vacation of office of commission members upon expiry of the Act; and the ending of family responsibilities agreements, voluntary agreements and family responsibility orders upon the expiry of the Act.

### **Schedule**

The Schedule contains the Dictionary.