Family Responsibilities Commission and Other Acts Amendment Bill 2011

Explanatory Notes

Short title

The short title of the Bill is the Family Responsibilities Commission and Other Acts Amendment Bill 2011.

Policy objective of the Bill and the reason for it

The objective of the Bill is to make the necessary amendments to the *Family Responsibilities Commission Act 2008* (the FRC Act) to ensure that the Cape York Welfare Reform Trial (the Trial) and the operations of the Family Responsibilities Commission (the FRC) are extended by 12 months. This will provide continued support for the restoration of socially responsible standards of behaviour and local authority in the Trial communities and improve the wellbeing of community members.

The Bill also makes technical and consequential amendments to the FRC Act relating to the Australian Government's changes to the organisational status of Centrelink that were effective from 1 July 2011.

In addition, the Bill makes technical amendments to the *Child Protection Act 1999* to complete the provisions relating to the making of a temporary custody order and the rights, powers and obligations conferred by the order.

The Bill also includes amendments to the *Adoption Act 2009* and the *Births, Deaths and Marriages Registration Act 2003* to allow for the recording in the adopted children register of adoptions that are arranged under the *Adoption Act 2009* or the repealed *Adoption of Children Act 1964* but finalised in a country other than Australia or New Zealand. Recording these adoptions in the adopted children register in Queensland will enable an application for a Queensland birth certificate for the adopted person to be issued under the *Births, Deaths and Marriages Registration Act 2003*.

Achievement of policy objectives

Family Responsibilities Commission Act 2008 amendments

The Trial operates in the communities of Hope Vale, Aurukun, Mossman Gorge and Coen. The objective of the Trial is to restore local authority, build stronger and more resilient communities and change behaviours in response to chronic levels of welfare dependency, social disadvantage and economic exclusion. The Trial is a partnership between the Queensland Government, the Australian Government and the Cape York Institute for Policy and Leadership (the Institute). The Trial commenced in January 2008 and delivers a range of enhanced support services and educational, economic development, employment and housing initiatives. Wellbeing Centres, parenting programs, anti-violence, drug and alcohol services and School Attendance Case Managers are all critical to the Trial's successful outcomes. Other funded activities focus on assisting the school and working age populations and social housing tenants in the four Trial communities. These services are due to finish on 30 June 2012. Alcohol management plans (in two of the four Trial communities) combined with alcohol treatment and diversionary services, also support the Trial.

A central feature of the Trial is the FRC, a statutory body established under the FRC Act, which is legislated to expire on 1 January 2012. The FRC operates to restore local Indigenous authority and build stronger and more resilient communities, through attaching behavioural obligations to the receipt of welfare payments. The FRC Commissioner and Local Commissioners hold conferences with community members who can be 'notified' to the FRC for failing to enrol and send children to school, coming to the attention of the Department of Communities for a child safety matter, being convicted of an offence in the Magistrates Court, or failing to remedy a breach of a tenancy agreement. The FRC Act is administered under the principle that the wellbeing and best interests of a child are paramount.

An independent implementation review of the FRC released in November 2010, together with the *Annual Highlights Report for Queensland's Discrete Indigenous Communities July 2009 – June 2010*, published in December 2010, reveals that since the FRC began operation on 1 July 2008, all Trial communities have experienced relative stability in the levels of reported offences against the person and hospital admissions for assault-related conditions, while school attendance has improved or been maintained at higher levels.

The Trial has also provided impetus for significant innovative policy reform in relation to education, land administration, home ownership on Indigenous lands and welfare reform, including voluntary income management. Extending the Trial in its current form until 31 December 2012 will provide time to consolidate the gains already achieved in terms of the safety, wellbeing and welfare of the people in the Trial communities, particularly for women and children.

Those provisions of the FRC Act that impact on the expiration of the Act, the appointment of FRC Commissioners and Board members, and the ending of family responsibilities agreements or orders, require amendment in order to reflect the extension of the Trial and the continued operation of the FRC until 31 December 2012. It is reasonable and appropriate that these amendments to the FRC Act be made as they are essential to enabling the extension of the Trial and ensuring the continued operation of the FRC until 31 December 2012.

Child Protection Act 1999 amendments

Provisions introducing the temporary custody order were inserted into the *Child Protection Act 1999* by the *Child Protection and Other Acts Amendment Act 2010* to empower a magistrate, on application, to make a temporary custody order. The amendments in the Bill are consequent to the temporary custody order and will achieve, in full, the policy objectives of the temporary custody order provisions in the *Child Protection Act 1999.* The amendments will ensure that the provisions of the *Child Protection Act 1999* that operate specifically in circumstances when a child is in the chief executive's (child safety) custody or guardianship under an assessment order, a child protection order or a care agreement, also apply when a child is in the chief executive's custody under a temporary custody order.

The temporary custody order may provide for an authorised officer or police officer to have contact with, and take, a child into the custody of the chief executive. The order can be made when the court is satisfied that a child will be at unacceptable risk of suffering harm if the order is not made and the chief executive will be able, within the term of the order, to decide the most appropriate action to meet the child's ongoing protection and care needs and start taking that action. The order may be made for up to three business days. While it is still current, the temporary custody order may be extended once, on application, until the end of the business day after which it would otherwise end, if a magistrate is satisfied that the applicant intends to apply for a child protection order for the child during the term of the extension.

Adoption Act 2009 and *Births, Deaths and Marriages Registration Act 2003* amendments

Section 289 of the *Adoption Act 2009* requires the chief executive to notify the registrar of births, deaths and marriages when a final adoption order is made by the Childrens Court of Queensland. Section 41A of the *Births, Deaths and Marriages Registration Act 2003* provides that when the registrar is notified of a final adoption order, the notice must be incorporated into the adopted children register, enabling a Queensland birth certificate to be issued for the adopted person that includes their adopted parents.

When adoptive parents are assessed as suitable to adopt a child in Queensland and an adoption is finalised in a country other than Australia or New Zealand under arrangements made between the chief executive and the competent authority for the other country, there is currently no power for the chief executive to notify the registrar and the adoption cannot be recorded in Queensland's adopted children register. This means that a Queensland birth certificate naming the adoptive parents cannot be issued for the adopted person. The Bill will amend the *Adoption Act 2009* and the *Births, Deaths and Marriages Registration Act 2003* to allow, upon application to the chief executive, a notice to be provided to the registrar in relation to these adoptions and requiring, when a notice is provided to the registrar, the notice to be recorded by incorporating it into the adopted children register.

The amendments in the Bill will enable an adopted person, or if the adopted person is a child, deceased or does not have capacity to make the application, a relative, to apply to the chief executive for the notice to be issued. The amendments will require the chief executive to give notice to the registrar if they are reasonably satisfied that the adopted person was adopted in the other country under arrangements made between the chief executive and the competent authority for the other country not to give notice to the registrar, will be a reviewable decision by the Queensland Civil and Administrative Tribunal.

The amendments will apply to adoptions for which the adoptive parents were assessed or reassessed under the *Adoption Act 2009* or who were favourably assessed as a prospective adoptive parent under the now repealed *Adoption of Children Act 1964*. The amendments will enable a notice to be given to the registrar in relation to adoptions arranged between the chief executive at the time the adoption was arranged, and the

competent authority for the other country, at the time the adoption was granted.

The amendments will enable a Queensland birth certificate to be issued under the *Births, Deaths and Marriages Registration Act 2003* for the adopted person that names the adoptive parents if the adoption was finalised in another country but arranged between the chief executive and the competent authority for the other country.

Alternative ways of achieving policy objectives

There are no other viable alternatives to amending the FRC Act that will achieve the policy objective of extending the operations of the FRC for a further 12 months until 31 December 2012. The amendments to the *Child Protection Act 1999* are the only means of achieving the full policy intent in relation to temporary custody orders when a child is in the chief executive's custody.

The amendments to the *Adoption Act 2009* and the *Births, Deaths and Marriages Registration Act 2003* are the only means of achieving the policy intent of recording in the adopted children register in Queensland adoptions finalised in a country other than Australia or New Zealand but arranged between the chief executive in Queensland and the competent authority for the other country.

Estimated cost for government implementation

The Queensland Government originally committed $40 million to the Trial's implementation and the Australian Government originally committed $48 million. The 12 month extension of the Trial will be covered by the current budget and an additional $1.6million which was announced as part of the Queensland Government's 2011–12 Budget.

In addition, on 10 May 2011, the Honourable Jenny Macklin MP, Minister for Families, Housing, Community Services and Indigenous Affairs, announced that the Australian Government would also provide funding to extend the Trial.

There are no additional costs associated with the amendments to the *Child Protection Act 1999.*

There are no additional costs associated with the amendments to the *Adoption Act 2009* and the *Births, Deaths and Marriages Registration Act 2003*.

Consistency with fundamental legislative principles

The Bill is considered to be consistent with the fundamental legislative principles (FLPs) set out in the *Legislative Standards Act 1992* (Qld). However, any potential breaches of FLPs are addressed below.

The main FLP issue involving the FRC extension, in terms of 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), relates to the potential infringement of the *Racial Discrimination Act 1975* (Cth) (RDA). To address this matter, fresh community consultation as extensive as that carried out when the FRC legislation was originally developed has been undertaken and completed by the Department of Communities. Details of this consultation and the results are described below.

The proposed amendment of section 156 (When particular agreements or family responsibilities orders end), to change references to "1 January 2012" to "1 January 2013", also raises an FLP issue. Agreements or orders and their related obligations that would have ended on 1 January 2012, will now be preserved for the life of the agreement or order, or until the new section 156 expiry date of 1 January 2013 (whichever is the earliest).

However, there was nothing in the FRC Act that prevented the making of FRC agreements or orders that purport to go beyond 1 January 2012, if the FRC believed that these best achieved the objects and purposes of the FRC Act. The 1 January 2012 expiry date arose as a result of the 1 January 2012 expiry date for the income management regime under Part 3B of the *Social Security (Administration) Act 1999* (Cth). The Commonwealth has extended the duration of the income management regime to 1 January 2013 and the proposed amendment of section 156 is consistent with this. The preservation of particular agreements and orders that would have ended on 1 January 2012, if not for the section 156 amendment, is consistent with and will also contribute to the continued achievement of the objects of the FRC Act, in particular, helping people in the Trial communities to resume primary responsibility for their own and their families and communities wellbeing. Accordingly, the proposed amendment of section 156 has sufficient regard for the rights and liberties of people in the Trial communities.

Consultation

Family Responsibilities Commission Act 2008 amendments

Extensive consultation has been carried out in relation to the extension of the Trial and the continued operation of the FRC for a further 12 months. Consultation was led by Aboriginal and Torres Strait Islander Services, the Department of Communities.

Consultation was carried out for the purposes of informing the decision to extend the Trial for a further 12 months and as a means of gathering feedback from community members and stakeholders in relation to their views on the Trial and how it may be improved.

Consultation was undertaken at central and regional levels and in each of the four Trial communities. Key stakeholders consulted included Mayors and community leaders, service providers, relevant Queensland Government and Australian Government agencies, FRC Commissioners and staff, community justice groups, and relevant unions. Written submissions and meetings with stakeholders in Brisbane, Cairns, Mossman Gorge, Mossman, Coen, Hope Vale, Cooktown and Aurukun also provided information to inform the consultation process.

Key outcomes of Consultation

Community members and other stakeholders reported that the Trial is seen as having had, since it commenced, a positive effect on the behaviour of community members, with improvements in school attendance, rent being regularly paid and communities becoming quieter. In particular, the Trial has been a key driver of improved school attendance and school readiness and Trial initiatives aimed at schooling and education are widely accepted and supported by community members.

Community members expressed understanding that the FRC can provide them with assistance through Wellbeing Centres (which provide integrated drug and alcohol counselling and support services), Parenting Programs to assist in good parenting practices, income management to assist with budgeting and meeting the priority financial needs of individuals and families and school Attendance Case Managers to ensure children attend school. People are accessing these services as a result of referrals from the FRC and voluntarily. For example, the Australian Government's Department of Health and Ageing's January 2011 statistical report for Wellbeing Centre referrals shows that nearly 35 percent of all referrals are self-referrals. Increased participation by individuals in the opportunities

provided by the Trial is vital to the process of embedding behavioural change and an extension will enable further growth in personal responsibility across the Trial communities.

During the consultation process a number of areas for improvement were suggested by respondents. These suggested improvements and current responses include:

- The need for an increase in local employment – during the Trial, projects supporting economic development have begun and further developments are planned for the future. These include business precincts in communities, converting a proportion of CDEP places to real jobs, a range of training and small business initiatives including the Aurukun Sewing Centre, a Cape York Arts Marketing Project, planned small business and agriculture projects, and employment of local Mossman Gorge people in a range of Trial initiatives. Planning is well-advanced for increased local training and employment in the roll-out of the social housing program and the development of the associated infrastructure. The further development of the Mossman Gorge tourism venture is also expected to result in increased employment for local people.
- Improved communication with stakeholders – the Trial communication strategy is to be reviewed and increased opportunities for communication (especially with community members) and information dissemination will be identified. Suggestions are being sought from community leaders for processes to ensure that communication and consultation processes relating to Trial initiatives are strengthened.
- More work to improve community safety and to address the gap in services to address domestic and family violence – programs to support and enhance safety, wellbeing and the welfare of communities will be consolidated and strengthened. Community safety plans will be developed and implemented to ensure that the range of facilities and services required to improve safety are available to community residents.

<u>Hope Vale</u>

Community members at the Hope Vale community consultation meeting expressed concern that notification to the FRC following convictions before the Magistrates Court is seen as a form of ‘double punishment’. An example provided was where a person is convicted for an alcohol carriage

offence and receives a penalty or a fine, yet they are then notified to the FRC which may order income management.

A consultation meeting was held with the Hope Vale Aboriginal Shire Council (the Council), with the Mayor, Chief Executive Officer and three Councillors in attendance. The Council expressed concern that the Trial had provided little direct funding to the Council and limited employment to local people.

Following this, the Council wrote to the Minister for Disability Services, Mental Health and Aboriginal and Torres Strait Islander Partnerships on 6 June 2011, calling for Hope Vale to be removed from the Trial. This letter also called for stronger engagement between all levels of government and that government work through the local Government Coordination Office to allocate the resources necessary to transition community members from welfare dependency into real employment and home ownership. A petition with 163 signatures, accompanied the letter.

A relatively small number of people attended the formal Hope Vale community consultation meeting on 1 June 2011. As a result, a simplified version of the consultation questions provided at that meeting were made available throughout the Hope Vale community to gain a broader range of views. Through this process, 31 responses were received with six supportive and 25 not supportive of Hope Vale remaining a part of the Trial.

Following the community consultation meeting approximately 85 Hope Vale community members approached the Government Coordination Office, with around 60 people supportive of the Trial continuing. Those that were supportive expressed the view that income management was providing more food to households and they supported the Trial's education measures. Of the approximately 20 people opposed to the Trial, opinions varied from strong opposition to some dissatisfaction with certain aspects of the Trial. There was a desire for increased local management of welfare reform and disappointment that more employment opportunities were not going to local people.

Around 25 people in middle-management and administrative positions in Hope Vale community agencies and the Council (both Indigenous locals and non-Indigenous people) were also consulted following the Hope Vale community consultation meeting. These people expressed support for the Trial continuing.

The rationale for continuing the Trial in Hope Vale for another 12 months includes statistical evidence that since the Trial commenced hospital admissions have declined significantly and school attendance has improved. Also, the Hope Vale community generally supports the education opportunities provided to children and the social support that the Trial delivers, including income management and the Wellbeing Centres.

In addition, on 9 August 2011, the Minister for Disability Services, Mental Health and Aboriginal and Torres Strait Islander Partnerships met with the Council to discuss their reservations relating to the extension of the Trial and committed to working collaboratively with them to ensure the Council is fully informed and involved in Trial initiatives. This also includes working with the community more broadly to ensure that the Trial and the functions of the FRC are well understood. Following this meeting, the Council indicated that it is now accepting of the continuation of the Trial in Hope Vale.

Aurukun, Mossman Gorge and Coen

The majority of community members and stakeholders consulted from these communities expressed the view that the Trial is beneficial and should be continued on the grounds that while progress is being made, behavioural change is yet to be consolidated - a strong theme from the community consultations was that "while we are on the road, we are not there yet and we don't want our community to go back to square one". Such views recognise that the process of embedding changes to achieve stronger and more resilient communities is an incremental and often long-term one.

Other stakeholders

The Department of Communities was formally advised that the Commission for Children and Young People and Child Guardian supports the extension of the Trial.

Five Queensland employee organisations were consulted and stated their support for the Trial continuing, based on the positive outcomes being achieved for children in the Trial communities.

Independent Schools Queensland and the Catholic Education Council were also consulted and advised that an extension of the Trial raised no issues for their representative schools.

Queensland Government Champions (Chief Executive Officers of Queensland Government agencies) were consulted and their support

officers participated in the consultation process. The Champions were supportive of the Trial continuing given the positive changes achieved so far in the Trial communities.

Child Protection Act 1999 amendments

There was extensive consultation with the government and non-government sectors during the formulation of the amendments in the *Child Protection and Other Acts Amendment Act 2010* which included provisions inserted into the *Child Protection Act 1999* to establish the temporary custody order. There was general support for the introduction of the order. The amendments to the *Child Protection Act 1999* in the Bill are consequent on the introduction of the temporary custody order and are being made to achieve the policy intent of the order.

Adoption Act 2009 and *Births, Deaths and Marriages Registration Act 2003* amendments

There was extensive consultation with government and non-government sectors during the development of the *Adoption Act 2009*. In relation to the amendments in the Bill consultation was undertaken with an adoptive parent whose adoption of a child was granted in another country who will be impacted by the amendments. Brief consultation has also been undertaken with several key stakeholder groups including Post Adoption Services Queensland, the Inter-Country Adoption Stakeholders Group and International Social Services Australia. The amendments were broadly supported with particular support for the application process being administrative, and for the scope of the amendments being limited to adoptions granted in another country that were arranged by the chief executive and the competent authority for the other country.

Consistency with legislation of other jurisdictions

The proposal to extend the FRC Act is consistent with the income management regime under Part 3B of the *Social Security (Administration) Act 1999* (Cth) (the Social Security Administration Act). Section 123UF of the Social Security Administration Act makes specific provision for the FRC to give the Secretary of the Australian Government's Department of Families, Housing, Community Services and Indigenous Affairs notices requiring that persons be subject to income management. Federal Parliament has passed legislation, effective from 28 June 2011, to enable income management to continue in the Trial communities until 1 January 2013.

In November 2005, Federal Parliament's House of Representatives' Standing Committee on Family and Human Services released the report *Overseas Adoption in Australia: Report on the inquiry into adoption of children from overseas* (the Report). Recommendation 11 of the Report relates to state legislation providing for registering a child's birth and issuing a local birth certificate where an adoption order has been made overseas. To date, the Northern Territory is the only jurisdiction that has implemented legislation in support of this recommendation.

Notes on Provisions

Part 1 Preliminary

Clause 1 is the 'Short title' and notes that the Act is to be cited as the Family Responsibilities Commission and Other Acts Amendment Act 2011.

Part 2 Amendment of Family Responsibilities Commission Act 2008

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

Clause 3 amends section 8 (Meaning of welfare recipient) to change the references at subsections 8(a) and 8(b) to "the Social Security Act" to "the Social Security Administration Act". These are consequential amendments stemming from the Australian Government's organisational changes to Centrelink, effective from 1 July 2011.

Clause 4 amends section 48 (Matters commissioner or commission may have regard to in considering whether a person is a community member) to

change the reference to in subsection 48(a) to "the centrelink secretary" to "the secretary". This is a consequential amendment stemming from the Australian Government's organisational changes to Centrelink, effective from 1 July 2011.

Clause 5 amends section 68 (Decision to enter into agreement) to change the references at subsections 68(2)(b) and 68(6) to "the centrelink secretary" to "the secretary". These are consequential amendment stemming from the Australian Government's organisational changes to Centrelink, effective from 1 July 2011.

Clause 6 amends section 69 (Other decisions) to change the reference at subsection 69(1)(b)(iv) to "the centrelink secretary" to "the secretary". This is a consequential amendment stemming from the Australian Government's organisational changes to Centrelink, effective from 1 July 2011.

Clause 7 amends section 70 (Notice of decision) to change the reference at subsection 70(2)(c) to "the centrelink secretary" to "the secretary". This is a consequential amendment stemming from the Australian Government's organisational changes to Centrelink, effective from 1 July 2011.

Clause 8 amends section 71 (Matters commission has regard to in making particular decisions) to change the reference at subsection 71(1)(b) to "the centrelink secretary" to "the secretary". This is a consequential amendment stemming from the Australian Government's organisational changes to Centrelink, effective from 1 July 2011.

Clause 9 amends section 74 (Notice to centrelink secretary) to change the references in the section title and in subsection 74(1) to "the centrelink secretary" to "the secretary". This is a consequential amendment stemming from the Australian Government's organisational changes to Centrelink, effective from 1 July 2011.

Clause 10 amends section 75 (Revocation of notice to centrelink secretary) to change the references in the section title and in subsections 75(1)(a) and 75(1)(b) to "the centrelink secretary" to "the secretary". These are consequential amendments stemming from the Australian Government's organisational changes to Centrelink, effective from 1 July 2011.

Clause 11 amends section 81 (definitions for div 2) to change the reference in subsection 81 *proposed action* (b) to "the centrelink secretary" to "the secretary". This is a consequential amendment stemming from the

Australian Government's organisational changes to Centrelink, effective from 1 July 2011.

Clause 12 amends section 87 (Commission may decide to take proposed action) to change the references at subsections 87(2)(a), 87(2)(b), 87(2)(c) – twice, and 87(7) to "the centrelink secretary" to "the secretary". Subsection 87(7) is also to be amended to have the reference to "the Social Security Act" changed to "the Social Security Administration Act". These are consequential amendments stemming from the Australian Government's organisational changes to Centrelink, effective from 1 July 2011.

Clause 13 amends section 89 (Notice to centrelink secretary) to change the references in the section title and at subsection 89(1) to "the centrelink secretary" to "the secretary". This is a consequential amendment stemming from the Australian Government's organisational changes to Centrelink, effective from 1 July 2011.

Clause 14 amends section 92 (Commissioner may give information to particular entities) to change the references at subsection 92(2) and 92(4) *relevant entity* (c) to "the centrelink secretary" to "the secretary". Subsection 92(2) is also to be amended to have the reference to "the Social Security Act" changed to "the Social Security Administration Act". These are consequential amendments stemming from the Australian Government's organisational changes to Centrelink, effective from 1 July 2011.

Clause 15 amends section 99 (Decision about application) to change the references in subsection 99(6)(a) to "the centrelink secretary" to "the secretary" and to the "Social Security Act" to "the Social Security Administration Act". These are consequential amendments stemming from the Australian Government's organisational changes to Centrelink, effective from 1 July 2011.

Clause 16 amends section 102 (Notice to centrelink secretary) to change the references in the section title and subsection 102(2) to "the centrelink secretary" to "the secretary". These are consequential amendments stemming from the Australian Government's organisational changes to Centrelink, effective from 1 July 2011.

Clause 17 amends section 106 (Asking for referral to community support services or income management) to change the reference at subsection 106(b) to "the centrelink secretary" to "the secretary". This is a

consequential amendment stemming from the Australian Government's organisational changes to Centrelink, effective from 1 July 2011.

Clause 18 amends section 108 (Responding to request about referral to income management) to change references at subsections 108(1)(a), 108(1)(b), and 108(6) to "the centrelink secretary" to "the secretary". These are consequential amendments stemming from the Australian Government's organisational changes to Centrelink, effective from 1 July 2011.

Clause 19 amends section 109 (Amendment or ending of voluntary agreement) to change references at subsections 109(3) and 109(6) to "the centrelink secretary" to "the secretary". Subsection 109(6) is also to be amended to have the reference to "the Social Security Act" changed to "the Social Security Administration Act". These are consequential amendments stemming from the Australian Government's organisational changes to Centrelink, effective from 1 July 2011.

Clause 20 amends section 138 (Commission's notices to centrelink secretary) to change references at subsections 138(1), 138(2)(a) – twice, 138(2)(b) – twice, 138(3), 138(4)(a) – three times, 138(4)(b) – twice, 138(5) – three times to "the centrelink secretary" to "the secretary". Subsections 138(4)(a), 138(5) and 138(7) are also to be amended to have references to "the Social Security Act" changed to "the Social Security Administration Act". These are consequential amendments stemming from the Australian Government's organisational changes to Centrelink, effective from 1 July 2011.

Clause 21 amends section 152 (Expiry of Act) by changing 1 January 2012 to 1 January 2013 to allow for the continued operation of the FRC for a further 12 months.

Clause 22 amends section 155 (Vacation of office on expiry of the Act). Subsection 155(1) currently states that section 155 applies to a FRC commission member or board member holding office immediately before 1 January 2012. To reflect the extension of the expiry date of the FRC this will be amended to 1 January 2013. Subsection 155(2) currently states that a member's office is taken to have been vacated on 1 January 2012. To reflect the extension of the expiry date of the FRC this will be amended to 1 January 2013.

Clause 23 amends section 156 (When particular agreements or family responsibilities orders end). Subsections 156(1) and 156(2) state that family responsibilities agreements, including agreements about income

management, and family responsibilities orders that are in force immediately before 1 January 2012 end on 1 January 2012. To reflect the extension of the expiry date of the FRC the references to 1 January 2012 in subsections 156(1) and 156(2) will be amended to 1 January 2013.

Clause 24 amends the schedule (Dictionary) to:

- omit the definition "centrelink secretary" and to insert the definition "secretary means the Secretary under the Social Security Administration Act";
- the definition "family responsibilities order" is to be amended to omit "centrelink secretary" and insert "secretary".
- the definition "income management" is to be amended to have references to "the Social Security Act" changed to "the Social Security Administration Act";
- the definition "income management decision" is to be amended to omit "centrelink secretary" and insert "secretary"; and
- the definition title "Social Security Act" is to be amended to "Social Security Administration Act".

These are consequential amendments stemming from the Australian Government's organisational changes to Centrelink, effective from 1 July 2011.

Part 3 Amendment of Adoption Act 2009

Clause 25 notes that this Part amends the *Adoption Act 2009*.

Clause 26 inserts new sections 290A to 290C into the *Adoption Act 2009*.

Section 290A (Application for notice of adoptions in another country) provides for the making of an application by and interested person as defined under subsection (4) in an approved form to the chief executive to give notice to the registrar of births, deaths and marriages to record the adoption in the adopted children register. Under subsection (1) an application can be made if an adoption is granted in a country other than Australia or New Zealand and before the adoption the adoptive parents

were assessed or reassessed as suitable adoptive parents under Part 6 of the *Adoption Act 2009* or were favourably assessed as a prospective adoptive person under the now repealed *Adoption of Children Act 1964*. Under subsection (2) an application can be made by the adopted person themself, or if the adopted person is a child, is deceased or does not have the capacity to make the application themselves, a relative (as defined in section 249) of the adopted person. Subsection (3) requires the person making the application to the chief executive to give to the chief executive any documents that the chief executive might reasonably require and that relate to either the adoption or the identification of the adopted person.

Subsection (1) of section 290B (Deciding applications for notice of adoptions in another country) requires the chief executive, on application under section 290A, if they are reasonably satisfied that the adopted person was adopted in the other country under arrangements between the chief executive and the competent authority for the other country to give notice to the registrar of births, deaths and marriages, to record the adoption in Queensland's adopted children registrar. The adoption will need to have been arranged with the competent authority for the other country at the time the adoption was granted. Subsection (2) requires the chief executive, if they decide not to give the notice to the registrar in subsection (1), to give the person who made the application, an information notice about the decision. Subsection (3) clarifies that the chief executive cannot decide not to give the notice having taking into consideration information, other than information received by the chief executive from the applicant, without giving the applicant notice of the information and allowing the applicant to make submissions to the chief executive about the information.

Section 290C (Registrar to record information about adoptions granted in another country) provides that if the chief executive gives the registrar notice under section 290B(1) about an adoption, the registrar must record the adoption by incorporating the notice about the adoption in the adopted children register in Queensland. This then provides a "registrable event" as defined in paragraph (d) of the definition of that term in Schedule 2 Dictionary of the *Births, Deaths and Marriages Registration Act 2003*.

Clause 27 amends section 319 (Right of review against particular decisions) to insert a new paragraph (f) in section 319 to enable 'an interested person' as defined in section 290A(4)(a) and (b) to apply to make application to the Queensland Civil and Administrative Tribunal for the review of the decision not to give notice to the registrar under section 290B(2).

Clause 28 amends paragraph (a) of the definition of "adoptive parent" in the schedule 2 Dictionary in the *Adoption Act 2009* to clarify that paragraph (a) defines the term "adoptive parent" for Part 12 and Part 13 of the *Adoption Act 2009*.

Part 4 Amendment of Births, Deaths and Marriages Registration Act 2003

Clause 29 notes that this Part amends the *Births, Deaths and Marriages Registration Act 2003.*

Clause 30 amends subsection (1) of section 41A (Registering adoptions) to require the registrar of births, deaths and marriages to record an adoption in the adopted children register when, under subsection 41A(1)(a), a notice of the making of a final adoption order under section 289 of the *Adoption Act 2009* is received by the registrar; or, under subsection 41A(1)(b), a notice to record an adoption granted in another country under section 290B of the *Adoption Act 2009* is received by the registrar. The registrar records the adoption by incorporating the notice received in these circumstances into the adopted children register.

Part 5 Amendment of Child Protection Act 1999

Clause 31 notes that this Part amends the *Child Protection Act 1999*.

Clause 32 amends section 12 (What is effect of custody). Section 12 sets out the effect of custody under the *Child Protection Act 1999*. The section applies when an authorised officer or police officer takes a child into the chief executive's custody or when the chief executive has custody under a care agreement or an assessment order or a child protection order. A temporary custody order is separate from those arrangements and section 12(1)(c) is amended to include the temporary custody order so that the all

of the circumstances in which the chief executive may have custody of a child are covered.

Clause 33 amends section 162 (Offence to remove child from carer). Section 162 applies when a child is in the chief executive's custody or guardianship under an assessment order or a child protection order or a care agreement. It prohibits a person from unlawfully removing a child from the care of the child's carer or from keeping a child who has been removed or keeping a child who has been removed lawfully beyond the period allowed. Section 162 is amended so that the offence provision and penalty will also apply when a child is in the chief executive's custody under a temporary custody order.

Clause 34 amends section 166 (Offence to refuse contact with child in custody or guardianship). Section 166 defines "child" for the purposes of the section as a child who is in the chief executive's custody or guardianship under an assessment order or child protection order. The section makes it an offence for a person, without reasonable excuse, to refuse an authorised officer permission to enter premises to have contact with a child to ensure the child's protection. Section 166 is amended so that the definition of "child" includes a child in the chief executive's custody under a temporary custody order. The effect of the amendment is to extend the offence provision and penalty to refusal of contact with a child who is the subject of a temporary custody order.

Clause 35 amends definitions in schedule 3 (Dictionary). The definition of "appellate court" specifies courts for hearing appeals for applications for a court assessment order or child protection order, a temporary assessment order or an order transferring a child protection order or proceeding to a participating state (Australian states and territories and New Zealand). The definition of "appellate court" is amended to specify the court for hearing appeals on a decision for an application for a temporary custody order.

The current definition of "order" is an assessment order or child protection order. The definition of "order" is amended so that it includes a temporary custody order. The effect of the amendment is that provisions that refer to an "order" in the *Child Protection Act 1999* will include assessment orders (i.e. temporary assessment orders and court assessment orders) and temporary custody orders and child protection orders.