

Family Responsibilities Commission Amendment Bill 2015

Explanatory Notes

Short title

Family Responsibilities Commission Amendment Bill 2015

Policy objectives and the reasons for them

The policy objective of the Bill is to make amendments to the *Family Responsibilities Commission Act 2008* (the Act) to increase the effectiveness of the Family Responsibilities Commission (FRC).

The FRC is an independent statutory authority established under the Act to support the program known as Welfare Reform where it operates in designated communities. It currently operates in five communities (Aurukun, Coen, Doomadgee, Hope Vale and Mossman Gorge).

The main objects of the Act are: to support the restoration of socially responsible standards of behaviour and local authority in welfare reform community areas; and to help people in welfare reform community areas to resume primary responsibility for the wellbeing of their community and the individuals and families of the community.

The FRC works with members of welfare reform communities who come to its attention through notices from government agencies. The Act requires the issue of an agency notice where a resident:

- fails to enrol their children in or send them to school;
- comes to the notice of the Department of Communities, Child Safety and Disability Services on account of alleged harm or alleged risk of harm to their child;
- is convicted of an offence before a court, including the Childrens Court; or
- fails to remedy a breach of a tenancy agreement or use premises for an illegal purpose.

The FRC works with relevant community members through a combination of case conferencing and referrals to services either by voluntary agreement or through an order of the FRC. If a person does not comply with an order of the FRC, the FRC can recommend to Centrelink that the person's welfare income is managed through a Conditional Income Management order.

This Bill seeks to enhance the operation of the Act and the FRC through:

- the addition of a domestic violence 'trigger';
- expanding the scope for delegation of the FRC Commissioner's powers and responsibilities;
- broadening suitability requirements for the FRC Registrar;
- removing redundant provisions from the Act; and
- clarifying the process for generating agency notices under the existing youth justice 'trigger'.

The program was established under a tri-partite partnership between the Queensland and Australian Governments and the Cape York Institute.

Achievement of policy objectives

Domestic Violence trigger

The Special Taskforce on Domestic and Family Violence in Queensland (the Taskforce) was established on 10 September 2014. The Taskforce delivered its final report, 'Not Now, Not Ever' – Putting an End to Domestic and Family Violence in Queensland to the Premier in February 2015.

Submissions to the Taskforce suggested a domestic and family violence trigger be created to facilitate FRC conferencing and referrals in circumstances where domestic violence protection orders are made by the courts. The Taskforce recommended that the Queensland Government amend the Act to require a court to notify the FRC when a protection order under the *Domestic and Family Violence Protection Act 2012* is made naming a welfare reform community resident as the respondent (Recommendation 93).

The Bill will directly respond to Recommendation 93 by including a 'domestic violence' trigger in the Act. A court will be required to notify the FRC when a protection order is made against a person under the *Domestic and Family Violence Protection Act 2012*, to enable the FRC to request that person attend case conferencing with the FRC.

Delegation of functions by the Commissioner

Certain decisions regarding the operation of the FRC are required to be exercised by the Commissioner. For example, only the Commissioner has the power to endorse a case plan made by registry staff after a conference has been finalised. The Commissioner may not necessarily be involved in the particular conference but is required to endorse the case plan. The Commissioner must, subject to a particular exception, endorse a family responsibilities agreement that involves the person being subject to income management.

In 2013, the Queensland Parliament provided bipartisan support for amendments to the Act which included enabling the Commissioner, where appropriate, to appoint three Local Commissioners to constitute the Commission for a conference, make decisions in relation to the person subject to the conference, and propose that an income management decision be made.

However, the Commissioner is still legislatively required to endorse such decisions made by a conference of three Local Commissioners and any related case plans. This has not substantially reduced the Commissioner's workload or travel and it is considered there is scope to introduce greater flexibility and cost effectiveness into the operation of the FRC.

The Bill will address the above by allowing the Commissioner to delegate the Commissioner's functions to the Chairperson of a conference constituted by three Local Commissioners and when the Commissioner is satisfied that the chairperson is appropriately qualified to perform the Commissioner's functions. This amendment recognises the experience of the Local Commissioners and will increase the authority and recognition of the authority of the Aboriginal and Torres Strait Islander Local Commissioners

Broadening suitability requirements for the FRC Registrar

The Act provides that a person will be eligible for appointment as the FRC Registrar only if the person has an appropriate understanding of the history and culture of Aboriginal people and Torres Strait Islanders and is either a lawyer or the person has appropriate expertise and experience in matters relating to the operation of a registry of a court or tribunal.

The structure of the FRC has evolved to the point where the Registrar position needs to perform a general manager role and make management, budgetary and human resources decisions.

To take account of this expanded role, the Bill will substitute the requirement for the person to be either a lawyer or to have experience in matters relating to the operation of a registry of a court or tribunal with a general requirement that the person be either a lawyer or otherwise appropriately qualified.

Removing redundant provisions

As the Australian Government has phased out its Community Development Employment Projects (CDEP) scheme, the Bill will amend the Act by deleting all outdated references to CDEP scheme participants.

Clarifying the process for generating agency notices under the existing youth justice 'trigger'

The Act currently requires that where a child has been convicted of an offence and the court has been advised that the parent of a child lives or has lived in a welfare reform community area, the court must provide the FRC with a notice of that conviction.

The FRC has advised that the relevant information about the parent is not always readily available to the child's representatives or representatives from the Department of Justice and Attorney-General who assist the court.

In the absence of relevant information about the parent, the requirement to provide the notice does not activate if the court is only advised if the child lives or has lived in a welfare reform community area.

The FRC has advised that including the child's residential information as a trigger to issue an agency notice will enable the court to provide the relevant agency notice to the FRC.

The Bill will clarify the process for generating agency notices under the existing offence 'trigger' relating to children convicted of an offence. The amendment will require that the Childrens Court provide a notice regarding a child when it is advised that the child or the child's parent live or have lived in a welfare reform community.

Alternative ways of achieving policy objectives

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

Estimated cost for government implementation

It is not expected that the Queensland Government will incur any additional costs associated with implementation of the proposed amendments. While data on the number of protection orders in the welfare reform communities has been assessed, the extent of in-scope agency

referrals, which are dependent upon the status of the person subject to the order as a welfare recipient and their place of address, will not be known until the domestic violence trigger is implemented. This will be monitored by the Family Responsibilities Board.

Should the operation of the additional trigger result in an identified need for further resources to access family violence support or other relevant programs, funding will be available to assist in the development and delivery of such services.

The introduction of an agency notice relating to a protection order is not anticipated to impose significant additional costs on the courts required to provide such notices.

As three Local Commissioners can already be appointed to constitute the Commission for a conference, make decisions in relation to the person subject to the conference and propose that an income management decision be made, the further delegation of power by the Commissioner, while important, does not represent a fundamental change in the nature of the current responsibilities of Local Commissioners. As such, the current remuneration for Local Commissioners remains appropriate.

Consistency with fundamental legislative principles

It is considered that the Bill is consistent with the fundamental legislative principles (FLPs) set out in the *Legislative Standards Act 1992 (Qld)* and that proposed provisions have sufficient regard for the rights and liberties of individuals and the institution of Parliament.

Clause 3 of the Bill extends the power of the Commissioner to delegate the Commissioner's functions to a Local Commissioner duly appointed as the chairperson of a conference and where that Local Commissioner is appropriately qualified to perform the Commissioner's functions.

Clause 3 of the Bill potentially breaches the principle set out in section 4(3)(c) of the *Legislative Standards Act 1992 (Qld)* that requires that there must be delegation of administrative power only in appropriate cases and to appropriate persons.

It is considered that the Chairperson of the FRC as constituted by Local Commissioners, appointed by the Commissioner, and having considerable experience in that role, constitutes an appropriate exercise of the delegation of administrative power. In addition, the Commissioner will only be able to delegate to a Local Commissioner appointed as a Chairperson who is appropriately qualified to perform the Commissioner's functions.

Importantly also, the Act requires that the Commissioner must ensure that Local Commissioners receive regular and appropriate training to enable them to fulfil their role.

The release of information regarding a domestic violence order (Clause 6) may give rise to concerns about the rights and liberties of individuals, namely confidentiality and privacy.

However, while the *Domestic and Family Violence Protection Act 2012* currently provides that court hearings for an application under that Act are closed and section 159(1) prohibits publication of specified information, section 159(2) allows for publication of information where it is specifically provided for by another Act.

In addition, the *Family Responsibilities Commission Act 2008* contains provisions, section 147, which specifically prohibits a person from recording, disclosing or using confidential information otherwise than in accordance with the purpose and authority of the Act.

Consultation

Consultations regarding the proposed amendments, particularly the inclusion of the domestic violence trigger, were conducted with the five communities and key stakeholders in August and September 2015.

The community consultations confirmed that each of the communities were supportive of the proposed amendments.

A consultation draft of the Bill was provided to the Welfare Reform partners (Australian Government and Cape York Institute); and the Family Responsibilities Commission.

Consistency with legislation of other jurisdictions

The main purpose of the Act is specific to the State of Queensland, and is not uniform with legislation of the Commonwealth or another state.

However, the Bill contains provisions which will remove the reference to a 'CDEP participant' throughout the Act. This proposal is consistent with Commonwealth Government's phasing out of the CDEP scheme.

Notes on provisions

Clause 1 is the 'Short title' and notes that the Bill is to be cited as the Family Responsibilities Commission Amendment Bill 2014.

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

Clause 3 amends Section 24 (Delegation by commissioner) to provide for further delegation of the Commissioner's powers and responsibilities to allow the commissioner to delegate the commissioner's functions for a conference to the chairperson of the commission provided the commissioner is satisfied that the chairperson is appropriately qualified to perform the commissioner's functions

Clause 4 amends Section 34 (Eligibility for appointment as registrar) to better recognise the evolution of the role as a 'general manager' position by expanding the eligibility requirement for appointment to include a person who has an appropriate understanding of the history and culture of Aboriginal people and Torres Strait Islanders and if they are a lawyer or otherwise appropriately qualified to perform the functions.

Clause 5 amends Section 34 (Delegation by registrar) to delete the definition of appropriately qualified. The amendment reflects that the term is defined in the *Acts Interpretation Act 1954*, and as such, there is no need to include the definition in this Act.

Clause 6 replaces section 43 (Notice about offences) to expand the section so that it includes the addition of a domestic violence 'trigger' in the Act to require a court to notify the FRC when a protection order under the *Domestic and Family Violence Protection Act 2012* is made naming a welfare reform community resident as the respondent. This reflects Recommendation 93 of the *'Not Now, Not Ever' – Putting an End to Domestic and Family Violence in Queensland*.

Clause 7 amends the Schedule (Dictionary) by:

- 1) omitting the definition of *conviction notice*; and
- 2) inserting a the definition for *court advice notice*; and
- 3) inserting court advice notice *into the definition of agency notice*; and
- 4) inserting a description of a *court advice notice* into the definition for *relevant person*.

Schedule 1

Removes outdated references to Community Development Employment Projects (CDEP) scheme participants from the Act.

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