



Family Responsibilities Commission Amendment Bill 2014

Report No. 56
Health and Community Services
Committee
October 2014

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Abbreviations and glossary

agency notices	<p>A notice received by the Family Responsibilities Commission from:</p> <ul style="list-style-type: none"> • the Department of Education, Training and Employment about school attendance • the Department of Communities, Child Safety and Disability Services about an allegation of harm or risk to a child • the Department of Justice and Attorney-General if a person is convicted of an offence • the Department of Housing and Public Works or provider of social housing if there is a breach of a social housing tenancy agreement.
the Bill	Family Responsibilities Commission Amendment Bill 2014
Cape York Institute	Cape York Institute for Policy and Leadership
CIMA	Cape Indigenous Mayors' Alliance
the Commissioner	the Family Responsibilities Commissioner
the committee	Health and Community Services Committee
community justice groups	<p>Community justice groups are split into two categories – statutory and non-statutory groups.</p> <p>Statutory groups have a legislative role in dealing with alcohol management issues within their community.</p> <p>Both statutory and non-statutory groups carry out local strategies to address justice issues and work towards reducing over-representation of Indigenous people in the criminal justice system.</p>
CYWR (Trial)	Cape York Welfare Reform Trial
the department	Department of Aboriginal and Torres Strait Islander and Multicultural Affairs
the Explanatory Notes	Explanatory Notes, Family Responsibilities Commission Amendment Bill 2014
FRC	Family Responsibilities Commission
the FRC Act	<i>Family Responsibilities Commission Act 2008</i>
the Minister	Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs
the Regulation	Family Responsibilities Commission Amendment Regulation (No. 1) 2014
<i>welfare reform community area</i>	see section 3.5 of this report

Chair's foreword

On behalf of the Health and Community Services Committee of the 54th Parliament, I present this report on the Family Responsibilities Commission Amendment Bill 2014.

The Bill was introduced into the Legislative Assembly by the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs on 5 August 2014. The committee was required to report to the Legislative Assembly by 1 October 2014.

The committee's task was to consider the policy to be given effect by the legislation and whether the Bill has sufficient regard to the fundamental legislative principles, including the rights and liberties of individuals and the institution of Parliament.

The Bill amends the *Family Responsibilities Commission Act 2008* to extend the operations of the Family Responsibilities Commission beyond 1 January 2015. The Commission is part of the Cape York Welfare Reform Trial, which operates as a partnership between the Queensland Government, the Australian Government, and the Cape York Institute for Policy and Leadership.

The Bill also amends the definition of *welfare reform community area* in the *Family Responsibilities Commission Act 2008*, to replace references to specific areas and communities in the Act with the definition of "an area prescribed under regulation". This would mean that, in the future, all *welfare reform community areas* would be prescribed by regulation, rather than specified in the Act. The Department of Aboriginal and Torres Strait Islander and Multicultural Affairs states that this will simplify the process for specific communities to join, or no longer be subject to, the operations of the Family Responsibilities Commission.

Four Cape York communities (Aurukun, Hope Vale, Coen, and Mossman Gorge) have been subject to the operations of the Family Responsibilities Commission since the commencement of the Act in 2008. In August 2014, the community of Doomadgee in the Gulf of Carpentaria was prescribed by regulation as a *welfare reform community area*.

The Bill also proposes adding triggers for notifications to the Family Responsibilities Commission where a community resident is convicted in the District or Supreme Courts (in addition to the current Magistrates Court trigger) or a child is convicted in a court.

On behalf of the committee, I thank the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs, the committee secretariat and the Technical Scrutiny of Legislation secretariat.

I commend the report to the House.



Trevor Ruthenberg MP

Chair

Recommendations

Recommendation 1 4

The committee recommends that the Family Responsibilities Commission Amendment Bill 2014 be passed.

Recommendation 2 7

The committee recommends that the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs clarify, during the second reading debate, whether the policy intent is that only those communities which request to be included in welfare reform will be prescribed as a *welfare reform community area*.

Recommendation 3 10

The committee recommends that the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs ensure that information about the indicators and assessment methods to be used when considering whether to prescribe a community as a *welfare reform community area* is made available to community leaders and the public.

The committee recommends that this information include examples of the circumstances where a community may be considered for inclusion, for example, by reference to school attendance levels.

Recommendation 4 11

The committee recommends that the Family Responsibilities Commission Amendment Bill 2014 be amended to require that consultation, aimed at obtaining informed consent from community leaders, be undertaken with any proposed *welfare reform community area* prior to a decision being taken to prescribe the community as a *welfare reform community area*.

Recommendation 5 12

The committee recommends that the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs require the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs to:

- develop and publish guidelines for consultation with proposed new *welfare reform community areas*
- publish the outcomes of consultation with proposed new *welfare reform community areas*.

Recommendation 6 13

The committee recommends that the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs ensure that information about the indicators and assessment methods to be used when considering whether a *welfare reform community area* is ready to leave welfare reform is made available to community leaders and the public.

Recommendation 7 13

The committee recommends that the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs provide the Legislative Assembly, during the second reading debate, with details about the:

- arrangements that will be put in place to ensure a smooth transition for communities out of welfare reform
- measures that will be put in place to ensure that a former *welfare reform community area* continues to improve.

Recommendation 8 17

The committee recommends that the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs and the Department for Aboriginal and Torres Strait Islander and Multicultural Affairs continue to work with local communities and stakeholders to monitor the effectiveness of the Family Responsibilities Commission to ensure that the current model of welfare reform meets the needs of those communities.

1 Introduction

1.1 Role of the committee

The Health and Community Services Committee (the committee) was established by resolution of the Legislative Assembly on 18 May 2012, and consists of government and non-government members.

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill
- the application of fundamental legislative principles to the Bill.

1.2 Committee process

The Family Responsibilities Commission Amendment Bill 2014 (the Bill) was referred to the committee on 5 August 2014, and the committee was required to report to the Legislative Assembly by 1 October 2014.

Officers from the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs (the department) briefed the committee on the Bill on Wednesday 27 August 2014 (see Appendix B).

The committee invited submissions on its website and by notice to subscribers to updates on the work of the committee. It also directly invited submissions from the Family Responsibilities Commission (FRC), the Cape York Institute for Policy and Leadership (the Cape York Institute), and key stakeholders in the affected communities. The committee received submissions from Commissioner David Glasgow (the Commissioner) on behalf of the FRC, the Cape Indigenous Mayors' Alliance (CIMA), and the Australian Christian Lobby. Submissions are published on the committee's website at <http://www.parliament.qld.gov.au/work-of-committees/committees/HCSC/inquiries/current-inquiries/FamRespComAmb14>.

The committee also received letters, after the deadline for submissions, from the Cape York Institute and councillors on the Aurukun Shire Council, in support of the Bill and the ongoing work of the FRC.

On 8 September 2014, the committee wrote to the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs (the Minister), to seek clarification about certain provisions in the Bill. A response was received on 12 September 2014.

The committee also wrote to the Minister on 15 September 2014 to request a response to concerns raised by the CIMA. A response was received on 17 September 2014 and is published on the committee's website at <http://www.parliament.qld.gov.au/documents/committees/HCSC/2014/FamRespComAmb14/cor-17Sep2104.pdf>.

2 Background

2.1 The Family Responsibilities Commission

The FRC is a statutory body established under the *Family Responsibilities Commission Act 2008* (the FRC Act) to:

- support the restoration of socially responsible standards of behaviour and local authority in *welfare reform community areas*
- 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.¹

The FRC's core objectives include safeguarding and restoring child safety, school attendance, lawful behaviour, and responsible tenancy.² The FRC Act provides that the FRC may conduct conferences where it receives an agency notice about a welfare recipient in one of the participating communities who:

- has a child who is not enrolled in or meeting designated school attendance requirements
- has come to the attention of the Department of Communities, Child Safety and Disability Services for a child safety matter
- is convicted of an offence in the Magistrates Court, or
- is in breach of a social housing tenancy agreement.

The conferences provide a forum for the person and any other relevant party to discuss with the FRC why and how the situation occurred.

At the conclusion of a conference, the FRC may give the person a reprimand, recommend or direct the person to attend community support services or give Centrelink a notice to manage all or some of the person's welfare payments, or pay all or some of the person's welfare payments to someone else, for example someone who is looking after their child.

The FRC Act also allows the FRC to enter into an agreement with the person about attending community support services or income management arrangements, instead of making an order.³

Further information about the FRC's functions, processes, staffing and governance arrangements can be found in the committee's Report No. 49, *Oversight of the Family Responsibilities Commission*.⁴

2.2 The Cape York Welfare Reform Trial

The FRC is part of the Cape York Welfare Reform (CYWR) Trial, which seeks to restore social norms and local indigenous authority in the Cape York communities of Aurukun, Coen, Hope Vale, and Mossman Gorge.

The trial commenced in 2008 and operates as a partnership between the Queensland and Australian Governments and the Cape York Institute.

The trial is based on the philosophy that people who are in receipt of welfare payments or participating in funded employment programs "have an obligation to their community not to behave in ways which are detrimental to their family or to the wellbeing of the general community".⁵

1 *Family Responsibilities Commission Act 2008*, s.4

2 Family Responsibilities Commission (FRC), *Family Responsibilities Commission*, <http://www.frcq.org.au>

3 *Family Responsibilities Commission Act 2008*, s.68

4 Health and Community Services Committee (HCSC), *Oversight of the Family Responsibilities Commission*, Report No. 49, May 2014, Legislative Assembly of Queensland, <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2014/5414T5068.pdf>

5 FRC, *Annual Report 2011–12*, p.12, <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2012/5412T1438.pdf>

Indigenous and non-Indigenous people who live, or have lived, in a *welfare reform community area* and receive welfare or funded employment program payments are within the jurisdiction of the FRC. This jurisdiction continues if the individual relocates from the community.⁶

2.2.1 *Current welfare reform community areas*

The FRC Act defines four Cape York *welfare reform community areas* (Aurukun, Coen, Hope Vale and Mossman Gorge) and provides for “another area prescribed under a regulation”⁷ to be included as a *welfare reform community area*. A regulation prescribing the local government area of Doomadgee Aboriginal Shire Council as a *welfare reform community area* was made on 7 August 2014.⁸

The Explanatory Notes to the Bill state that other communities may be considered in the future.⁹

2.3 **Cape York Welfare Reform Trial evaluation**

A report on an independent evaluation of the CYWR Trial was published in early 2013. The evaluation framework was developed by consultants, in conjunction with the Queensland and Australian Governments and the Cape York Institute.

The committee commented on the evaluation in its Report No. 49, *Oversight of the Family Responsibilities Commission*.¹⁰

The Minister advised the committee that:

*This evaluation found that that Cape York Welfare reform (CYWR) had made some progress in restoring social norms and re-establishing local authority, with the FRC Local Commissioners playing a significant role. It also found that CYWR had led to fundamental behavioural changes in money management, responsibility for children, school attendance, educational attainment and attitudes to work.*¹¹

The Minister also advised the committee that the evaluation found:

*... statistically significant improvements in school attendance in Aurukun and Mossman Gorge, while Coen and Hope Vale maintained their relatively high attendance rates. The increases in school attendance were not part of a broader trend in Aboriginal and Torres Strait Islander communities.*¹²

6 FRC, *Annual Report 2011–12*, p.12

7 *Family Responsibilities Commission Act 2008*, Schedule (Dictionary)

8 Family Responsibilities Commission Amendment Regulation (No. 1) 2014,
<https://www.legislation.qld.gov.au/LEGISLTN/SLS/2014/14SL172.pdf>

9 Explanatory Notes, Family Responsibilities Commission Amendment Bill 2014, p.3,
<https://www.legislation.qld.gov.au/Bills/54PDF/2014/FamRespComAmB14E.pdf>

10 HCSC, *Oversight of the Family Responsibilities Commission*, Report No. 49

11 Hon. Glen Elmes MP, Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs, *Correspondence*, 17 September 2014, p.1,
<http://www.parliament.qld.gov.au/documents/committees/HCS/2014/FamRespComAmB14/cor-17Sep2104.pdf>

12 Hon. Glen Elmes MP, *Correspondence*, 17 September 2014, p.1

3 Examination of the Bill

3.1 Policy objectives of the Family Responsibilities Commission Amendment Bill 2014

The Bill's main objective is to make the necessary amendments to the FRC Act to extend the FRC's operation beyond 1 January 2015. The Bill also makes amendments aimed at extending the "timeframe, flexibility, and efficacy of the [FRC] Act".¹³

The Bill aims to achieve these objectives by:

- omitting the FRC Act's sunset clause (section 152), which states that the FRC Act expires on 1 January 2015, resulting in the cessation of the FRC on 31 December 2014, and omitting associated provisions
- amending the definition of *welfare reform community area* in the FRC Act to replace specific references to communities (currently Aurukun, Hope Vale, Coen and Mossman Gorge) in the FRC Act with a power to prescribe *welfare reform community areas* by regulation¹⁴
- adding new 'justice triggers' for notifications to the FRC, if a community resident is convicted in the District or Supreme Courts or a child is convicted in a court¹⁵
- amending the disqualification provisions for local commissioners¹⁶
- requiring the FRC Board to meet every six months, rather than quarterly.¹⁷

These amendments are discussed, in detail, in the rest of this chapter.

3.2 General comments on the Bill

The FRC's submission supports the Bill. The Commissioner states that the majority of amendments were requested by the FRC and that the amendments are understood and supported by both the local commissioners and staff of the FRC.¹⁸

The Australian Christian Lobby "welcomes the addition of Doomadgee as a further welfare reform community under the [FRC] Act".¹⁹

The CIMA does not support the Bill.²⁰ The CIMA's comments on specific elements of the Bill are set out in the rest of this chapter.

3.3 Should the Bill be passed?

Standing order 132 (1) requires the committee to recommend whether the Bill should be passed.

After examining the Bill, considering the policy issues discussed in this chapter, and considering whether the Bill has sufficient regard to the fundamental legislative principles, the committee decided to recommend that the Bill be passed.

Recommendation 1

The committee recommends that the Family Responsibilities Commission Amendment Bill 2014 be passed.

13 Explanatory Notes, Family Responsibilities Commission Amendment Bill 2014, p.1

14 Family Responsibilities Commission Amendment Bill 2014, cl.4

15 Family Responsibilities Commission Amendment Bill 2014, cl.6

16 Family Responsibilities Commission Amendment Bill 2014, cl.5

17 Family Responsibilities Commission Amendment Bill 2014, cl.8

18 FRC, Submission 1, p.2

19 Australian Christian Lobby, Submission 3, p.1

20 Cape Indigenous Mayors Alliance (CIMA), Submission 2, p.1

3.4 Omission of expiry provisions

Clause 10 of the Bill omits section 152 of the FRC Act, which provides for the FRC Act to expire on 1 January 2015, resulting in the cessation of the FRC on 31 December 2014. The Explanatory Notes state that the amendment allows for the “continued operation of the FRC into the future” and that the omission of this section “does not compromise the ‘special measure’ status of the welfare reform initiative”.²¹

Two other amendments are consequential to the omission of the expiry date for the FRC Act. Clause 9 of the Bill omits section 151(2), which provides that a regulation that prescribes an area as a *welfare reform community area* expires one year after it is made. Clause 11 of the Bill omits sections 155 and 156, which provide that the office of commissioner or board member is taken to be vacant on 1 January 2015 and that an FRC order or family agreement ceases on 1 January 2015.

During his introductory speech, the Minister stated:

*The removal of the act’s sunset clause will allow the significant resources and effort spent every year since 2011—developing submissions, undertaking consultations and seeking parliamentary approval to extend the time frame of the act—to be focused instead on innovation and strengthening of the welfare reform initiative. This will be a much more cost-effective use of our investment in departmental resources.*²²

3.4.1 Support for extending the Family Responsibilities Commission

The Explanatory Notes state that consultations in Aurukun, Coen, Mossman Gorge, and Hope Vale revealed “general support to continue welfare reform” while consultations in Doomadgee “indicated strong support for implementation of the FRC”.²³ The Explanatory Notes also highlight a number of key consultation outcomes, including the need to embed welfare reform as an ongoing initiative, rather than extend the CYWR trial on a year-to-year basis.²⁴

The FRC, in its submission, states that the removal of the expiry provisions and extension of the trial for an undefined term “will assist the Commission to more effectively and efficiently conduct its core business of restoring social responsibility and local authority to the welfare reform communities” and “build upon the achievements gained since 2008”.²⁵

3.4.2 Concerns about extending the Family Responsibilities Commission

In its submission, CIMA states that it does “not want to see the FRC extended in existing communities without a full independent assessment and the informed consent of local councils”.²⁶

The Minister’s response

The Minister advised the committee, that:

... the proposals to extend the FRC ... were thoroughly canvassed with the original welfare reform communities (Aurukun, Hope Vale, Coen and Mossman Gorge) as well as Doomadgee.

and

21 Explanatory Notes, Family Responsibilities Commission Amendment Bill 2014, p.5

22 Hon. Glen Elmes MP, Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs, ‘Introductory Speech, Family Responsibilities Commission Amendment Bill 2014’, *Hansard*, 5 August 2014, Legislative Assembly of Queensland, p.2,366, http://www.parliament.qld.gov.au/documents/hansard/2014/2014_08_05_WEEKLY.pdf

23 Explanatory Notes, Family Responsibilities Commission Amendment Bill 2014, p.4

24 Explanatory Notes, Family Responsibilities Commission Amendment Bill 2014, p.4

25 FRC, Submission 1, p.2

26 CIMA, Submission 2, p.1

As part of its decision to continue welfare reform in the existing communities and extend to Doomadgee, the Government also took into account the findings of the independent evaluation released in 2013.²⁷

Committee comment

The committee supports the omission of the expiry date from the FRC Act. The committee considers that the amendment will reduce uncertainty in communities, allow the FRC to build on the work it has undertaken in Aurukun, Hope Vale, Coen and Mossman Gorge since 2008, and focus on its core functions of restoring socially responsible standards of behaviour and local authority in communities, so that those communities are able to transition out of welfare reform.

The committee considers, however, that with the removal of the expiry date, greater emphasis should be given to the assessment of when a community is ready to transition out of welfare reform and ensuring appropriate support is in place for such communities so that they continue to improve (see section 3.10 of this report).

3.5 Amendments to the definition of *welfare reform community area*

The FRC Act includes the following definition of *welfare reform community area*:

- (a) *Aurukun area*;
- (b) *Coen area*;
- (c) *Hope Vale area*;
- (d) *Mossman Gorge area*;
- (e) *another area prescribed under a regulation.*²⁸

Clauses 7 and 12(1) of the Bill omit this definition from the FRC Act.

Clause 4 inserts new section 8A to define a *welfare reform community area* as “an area prescribed by regulation as a *welfare reform community area*”. New section 8A(2) requires the Minister to have regard to the main objects of the FRC Act before recommending to the Governor in Council that an area be prescribed as a *welfare reform community area*.²⁹

The main objects of the FRC Act are to support the restoration of socially responsible standards of behaviour and local authority in *welfare reform community areas* and to help the people in these areas resume primary responsibility for the wellbeing of their community.³⁰

The Explanatory Notes state that deleting definitions of specific communities from the FRC Act and utilising a regulation “would remove the need for more complex legislative processes when communities seek to join welfare reform or no longer require the FRC”.³¹

The committee has considered the potential fundamental legislative principles issues raised by these amendments – see chapter 5 of this report.

3.6 Potential new *welfare reform community areas*

During his introductory speech, the Minister stated:

*I will also continue to work with my federal colleagues to roll out the FRC model where necessary to support Aboriginal and Torres Strait Islander communities to be positive places where people can feel safe and children can look forward to receiving the care and education to which they are entitled.*³²

27 Hon. Glen Elmes MP, *Correspondence*, 17 September 2014, p.1

28 *Family Responsibilities Commission Act 2008*, s.94(3) and Schedule (Dictionary)

29 Family Responsibilities Commission Amendment Bill 2014, cl.4, cl.7 and cl.12

30 *Family Responsibilities Commission Act 2008*, s.4(1)

31 Explanatory Notes, Family Responsibilities Commission Amendment Bill 2014, p.2

32 Hon. Glen Elmes MP, *Introductory Speech*, Family Responsibilities Commission Amendment Bill 2014, p.2,366

The Explanatory Notes state that it is proposed that welfare reform and the FRC will be extended to the community of Doomadgee and that other communities may be considered in the future.³³ Under proposed new section 8A of the Bill, new *welfare reform community areas* would be prescribed by regulation.

3.6.1 Concerns about new welfare reform community areas and extension of the Family Responsibilities Commission

The CIMA states, in its submission, that it does not want the FRC extended to any other Cape York communities.³⁴

Committee comment

The committee notes that both the Explanatory Notes tabled with the Bill and the Explanatory Notes tabled with the Families Responsibilities Commission Bill 2008 suggest that communities will 'opt in' to welfare reform.³⁵

The committee seeks clarification from the Minister about whether only those communities which have requested inclusion in welfare reform will be prescribed as *welfare reform community areas*.

Recommendation 2

The committee recommends that the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs clarify, during the second reading debate, whether the policy intent is that only those communities which request to be included in welfare reform will be prescribed as a *welfare reform community area*.

3.7 Welfare reform in Doomadgee – a case study

A regulation prescribing the local government area of Doomadgee as a *welfare reform community area* was made on 7 August 2014 (the Regulation).³⁶ During the public briefing on 27 August 2014, the department used Doomadgee as a case study to illustrate how welfare reform and the FRC may be extended, under the FRC Act, to new communities.

Doomadgee is located on the Nicholson River in the Gulf of Carpentaria, approximately 140 kilometres east of the Northern Territory border. The community has approximately 1,400 people, the majority of whom are descendants of the Waanyi and Gangalidda peoples.³⁷

Doomadgee was originally established by the Christian Brethren as an aboriginal mission at Bayley Point in 1931. The settlement was moved to its present location after a cyclone in 1936.³⁸

3.7.1 Why Doomadgee was included in welfare reform

During the public briefing, the department advised:

33 Explanatory Notes, Family Responsibilities Commission Amendment Bill 2014, p.3

34 CIMA, Submission 2, p.1

35 The Explanatory Notes to the 2008 Bill state "... 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 current communities." (Explanatory Notes, Family Responsibilities Commission Bill 2008, p.14, <https://www.legislation.qld.gov.au/Bills/52PDF/2008/FamRespCommB08Exp.pdf>).

The Explanatory Notes to the 2014 Bill state "... utilising the Regulation would remove the need for more complex legislative processes when communities seek to join welfare reform or no longer require the FRC." (Explanatory Notes, Family Responsibilities Commission Amendment Bill 2014, p.2)

36 Family Responsibilities Commission Amendment Regulation (No. 1) 2014

37 Gulf Savannah Development Inc., *Doomadgee Shire*, accessed 25 August 2014, <http://www.gulf-savannah.com.au/visiting/doomadgee-shire.html>

38 Gulf Savannah Development Inc., *Doomadgee Shire*

... the Premier visited Doomadgee last year and found what, in his view, was a large number of unsupervised children roaming the community during school hours. The Premier then suggested to Minister Elmes that he look at what might be done to rectify that situation in Doomadgee.

*My unit was engaged and we looked at things like the school attendance rate in Doomadgee and a number of other key pieces of data. We did an assessment of where Doomadgee was at. When we looked at school attendance, the school attendance rate in Doomadgee in 2013 was 48.3 per cent. If we put that into context, on average each child was attending school for 2½ days out of five per week, and that attendance rate was one of the worst attendance rates state-wide in 2013. If we looked at the table of attendance rates, it comes in at the bottom handful of schools for attendance in 2013. The other thing we looked at was demographic data to ensure consistency with the Act and how it is prepared and looking at the proportion of Aboriginal and Torres Strait Islander community members. We also looked at evidence of disadvantage. Our key areas were employment participation, school engagement—that includes school attendance and school enrolment—incidents of child protection issues and convictions for alcohol offences. That is consistent with the objects of the Act, which look at things like promoting the interests, rights and wellbeing of children and other vulnerable people. In the principles of the Act it mentions that the wellbeing and interests of a child are paramount, so that is how the assessment and the objects of the Act relate to each other.*³⁹

The Minister advised the committee that “As part of its decision to continue welfare reform in the existing communities and extend to Doomadgee, the Government also took into account the findings of the independent evaluation released in 2013”.⁴⁰

The Explanatory Notes tabled with the Regulation state that the school attendance rate in Doomadgee in 2013 was 48.3 per cent, compared with a State average of 90.8 per cent, and that extending the operations of the FRC to Doomadgee to increase school attendance is supported by an independent evaluation of the CYWR Trial, released in 2013.

The Explanatory Notes state that the evaluation found that “there had been statistically significant improvements in school attendance in Aurukun and Mossman Gorge, while Coen and Hope Vale maintained their relatively high attendance rate” and that this increase in attendance was not a broader trend in indigenous communities.⁴¹

The Explanatory Notes also state that an Alcohol Management Plan was introduced in 2003 “to address unacceptably high levels of alcohol-related harm and violence” and that the community currently faces high rates of unemployment, overcrowding, offences against the person and hospitalisations for assault-related conditions.⁴²

3.7.2 Consultation with the Doomadgee community

The Explanatory Notes tabled with the Regulation state that consultations were undertaken in April 2014 with the mayor and councillors, community leaders, the Community Justice Group, community members, service providers, relevant Queensland and Australian Government agencies,

39 Ms Robyn Kerr, Director, Community Initiatives, Department of Aboriginal and Torres Strait Islander and Multicultural Affairs, *Public Briefing Transcript*, 27 August 2014, pp.2-3,
<http://www.parliament.qld.gov.au/documents/committees/HCS/2014/FamRespComAmB14/trns-27Aug2014.pdf>

40 Hon. Glen Elmes MP, *Correspondence*, 17 September 2014, p.1

41 Explanatory Notes, Family Responsibilities Commission Amendment Regulation (No. 1) 2014, p.1,
https://www.legislation.qld.gov.au/LEGISLTN/SLS/RIS_EN/2014/14SL172E.pdf

42 Explanatory Notes, Family Responsibilities Commission Amendment Regulation (No. 1) 2014, p.2

the FRC Commissioners and staff. The Explanatory Notes conclude that all groups involved in the consultation “agreed that the FRC was needed in Doomadgee”.⁴³

The Explanatory Notes tabled with the Bill also briefly describe consultation undertaken in Doomadgee on the proposed expansion of the operation of the FRC to Doomadgee.⁴⁴

The department expanded on this during the public briefing. It advised that:

There was also consultation at a community level, and there were many visits by regional staff and FRC members to go through with people in the community a series of questions. I can tell you about those questions. The focus questions for the community consultations were things like: Do you understand what the FRC is and how it will operate? Do you think the FRC is needed in your community and how will it help? Do you think people will come to the FRC and understand how the FRC, and particularly the FRC local commissioners, will work to help people? The FRC is being introduced to Doomadgee to address school attendance and enrolment and the safety of children. Do you think the FRC will help? Do you have any concerns about the introduction of the FRC into Doomadgee?

*There were a number of consultations that occurred from May right through until June, including a whole-of-community doorknock to discuss those matters with people. We prepared a report that went through that, and what we found during all of those consultations was only one dissenting voice who had concerns about the introduction of the FRC on the basis that they could not work out how the FRC and the community justice group would coexist and work together in the community. We also had 14 people from the Doomadgee community who nominated for appointment as local commissioners during the consultations, and that is a pretty high nomination rate compared to what we had in the other original welfare reform communities. It is an indication of the local level of support for the FRC in Doomadgee.*⁴⁵

The Minister also outlined consultations arrangements in Doomadgee. The Minister stated:

*Support for the FRC to be extended to the community was overwhelming, which was a significant factor in Doomadgee becoming a welfare reform community area on 7 August 2014.*⁴⁶

3.7.3 Appointment of local commissioners

The department advised during the public briefing that eight local commissioners were appointed on 8 August 2014, and that all appointments were supported by the Mayor of Doomadgee Aboriginal Shire Council and made with an awareness of the need for clan balance.⁴⁷

3.8 Identifying potential new welfare reform community areas

The committee asked the department during the public briefing on the Bill whether there are guidelines or criteria to determine whether a community should be prescribed as a *welfare reform community area*. The department advised that there are no guidelines.⁴⁸

Committee comment

The committee notes that the objects of the FRC Act and the remit of the FRC provide some indication of the factors that may be assessed when considering whether to prescribe a community

43 Explanatory Notes, Family Responsibilities Commission Amendment Regulation (No. 1) 2014, p.3

44 Explanatory Notes, Family Responsibilities Commission Amendment Bill 2014, p.4

45 Ms Robyn Kerr, *Public Briefing Transcript*, 27 August 2014, p.3

46 Hon. Glen Elmes MP, *Correspondence*, 17 September 2014, p.1

47 Ms Robyn Kerr, *Public Briefing Transcript*, 27 August 2014, p.3

48 Ms Robyn Kerr, *Public Briefing Transcript*, 27 August 2014, p.4

as a *welfare reform community area*, for example school attendance levels, conviction rates and the prevalence of child safety and social housing issues.

The committee considers, however, that there is a lack of publicly available information about how potential new welfare reform communities will be assessed, or the degree to which the above factors must be present in a community, before it is recommended that a community be prescribed as a *welfare reform community area*.

For example, while school attendance has been used as a primary indicator in all current *welfare reform community areas*, there is no publicly available information about what is considered an unacceptable level of school attendance. Neither is there publicly available information about social housing issues, criminal offence or child protection thresholds to illustrate when, or how, the department will consider whether a community should be prescribed as a *welfare reform community area*.

The committee acknowledges that each proposed community would need to be considered on a case-by-case basis. The committee considers, however, that it is important that information about the indicators and assessment methods to be used when considering whether to prescribe a community as a *welfare reform community area* be made publicly available.

The committee considers that such information may provide some reassurance to communities that may be potentially affected, and ensure that the assessment of communities for inclusion in welfare reform is open and transparent.

Recommendation 3

The committee recommends that the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs ensure that information about the indicators and assessment methods to be used when considering whether to prescribe a community as a *welfare reform community area* is made available to community leaders and the public.

The committee recommends that this information include examples of the circumstances where a community may be considered for inclusion, for example, by reference to school attendance levels.

3.9 Consultation with proposed *welfare reform community areas*

The Explanatory Notes for the Bill state "... it will continue to be important to consult extensively with communities seeking inclusion as a welfare reform area".⁴⁹

The committee notes the level of consultation undertaken in Doomadgee prior to the community being prescribed as a *welfare reform community area*.

During the public briefing on the Bill, the department advised the committee that the objects of the FRC Act will ensure that the same level of consultation that was undertaken in Doomadgee will be conducted in any proposed community prior to the community being prescribed as a *welfare reform community area*.⁵⁰

The committee notes that objects of the FRC Act do not include a requirement to consult proposed welfare reform communities. The objects of the FRC Act are:

(a) to support the restoration of socially responsible standards of behaviour and local authority in welfare reform community areas; and

⁴⁹ Explanatory Notes, Family Responsibilities Commission Amendment Bill 2014, p.4

⁵⁰ Ms Robyn Kerr, *Public Briefing Transcript*, 27 August 2014, p.4

*(b) 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.*⁵¹

The department also stated during the public briefing that, whether it is entering or exiting welfare reform, "... the community willingness to have that conversation is a big part of it".⁵²

The committee heard similar views during its visit to Cairns and Cape York in November 2013. At a public hearing in Cairns, the Commissioner stated:

*It has generally been accepted in the communities where we are, but a lesson we have learnt about the future is that we need community support or at least understanding before we should go into new communities.*⁵³

During the same hearing, Ms Zoe Ellerman of the Cape York Institute described the misconceptions that can arise among communities which have had no experience with the FRC:

*We recently had a visit from a broad range of community leadership from another community and it was a good reminder about a lot of the myths that are still out there about the FRC. So it was very clear very quickly in that conversation that they still believed the FRC was a bunch of whitefellas sitting there making decisions about income management.*⁵⁴

The Minister also emphasised the importance of community consultation in his letter to the committee of 17 September 2014:

*In response to the [CIMA] Mayors' concerns, I would like to advise that the Family Responsibilities Commission (FRC) operations have never been and never will be extended to any community without significant consultation occurring with community members, local government, stakeholders and service providers.*⁵⁵

Committee comment

The committee notes that there is widespread acknowledgment from all stakeholders of the need for proposed new communities to understand and support the introduction of the FRC and welfare reform into the community.

The committee notes, however, that while the Minister, the department and other key stakeholders acknowledge the importance of consulting extensively with proposed new welfare reform communities prior to a community being prescribed as a *welfare reform community area*, there is no explicit requirement for such consultation in the FRC Act.

The committee considers culturally appropriate consultation is paramount to communities accepting welfare reform and the jurisdiction of the FRC.

Recommendation 4

The committee recommends that the Family Responsibilities Commission Amendment Bill 2014 be amended to require that consultation, aimed at obtaining informed consent from community leaders, be undertaken with any proposed *welfare reform community area* prior to a decision being taken to prescribe the community as a *welfare reform community area*.

51 *Family Responsibilities Commission Act 2008*, s.4(1)

52 Mr Paul Newman, Acting Manager, Community Initiatives, Department of Aboriginal and Torres Strait Islander and Multicultural Affairs, *Public Briefing Transcript*, 27 August 2014, p.4

53 Commissioner David Glasgow, FRC, *Public Hearing Transcript*, 28 November 2013, p.14, <http://www.parliament.qld.gov.au/documents/committees/HCS/2012/FRC/trns-28Nov2013.pdf>

54 Ms Zoe Ellerman, Cape York Institute for Policy and Leadership, *Public Hearing Transcript*, 28 November 2013, p.2

55 Hon. Glen Elmes MP, *Correspondence*, 17 September 2014, p.1

The committee considers that such consultation should be timely, inclusive, community-focused, interactive, facilitated, flexible, open, fair and subject to evaluation. The committee considers that this level of consultation will provide considerable comfort to community leaders in potentially affected areas.

Recommendation 5

The committee recommends that the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs require the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs to:

- develop and publish guidelines for consultation with proposed new *welfare reform community areas*
- publish the outcomes of consultation with proposed new *welfare reform community areas*.

3.10 Exiting welfare reform

During his introductory speech, the Minister stated:

*... the amendments also provide for communities to move out from under the FRC umbrella should it be assessed that social norms have been re-established to a level to make that an option. The independent evaluation of Cape York Welfare Reform released in April 2013 noted there have been positive outcomes to date. Fundamental behavioural changes in money management were detected, and positive changes were noted around the responsibility for children, school attendance, educational attainment and attitudes to work.*⁵⁶

The Explanatory Notes also state that “Monitoring of key indicators in each community will continue to gauge progress toward meeting the objectives of the Act”.⁵⁷

The department, however, advised the committee at the public briefing that there are no guidelines in place to determine whether the objects of the FRC Act have been achieved in a *welfare reform community area*, and therefore when a community is ready to transition out of the FRC’s jurisdiction.⁵⁸

The issue of how to determine when the optimal effect of the FRC has been achieved, and when is an appropriate time to leave, was raised with the committee as part of its FRC oversight responsibilities, most recently at a public hearing in Cairns in November 2013.

For example, the Commissioner asked whether 75 per cent school attendance in Aurukun was the maximum that is going to be achieved, and whether this is equivalent to 75 per cent attendance in the state school in Cairns.⁵⁹ The Commissioner stated that the CYWR trial was designed to be a “short, sharp, shell shock”, and emphasised the need for somebody to determine the appropriate time to leave a community.⁶⁰

At the public briefing on the Bill, the department advised that discussions are currently underway with the Coen community about when Coen may exit, as “school attendance has been up around 90 per cent for some time now”.⁶¹

⁵⁶ Hon. Glen Elmes MP, *Introductory Speech, Family Responsibilities Commission Amendment Bill 2014*, p.2,365

⁵⁷ Explanatory Notes, *Family Responsibilities Commission Amendment Bill 2014*, p.3

⁵⁸ Ms Robyn Kerr, *Public Briefing Transcript*, 27 August 2014, p.4

⁵⁹ Commissioner David Glasgow, *Public Hearing Transcript*, 28 November 2013, p.17

⁶⁰ Commissioner David Glasgow, *Public Hearing Transcript*, 28 November 2013, pp.17-18

⁶¹ Ms Robyn Kerr, *Public Briefing Transcript*, 27 August 2014, p.4

Committee comment

The committee understands, based on the evidence it has heard, that if a *welfare reform community area* has made significant progress against the objects of the FRC Act and the remit of the FRC (for example, improvements in school attendance or a decrease in conviction rates), then the community may be ready to transition out of welfare reform.

The committee notes that there is no publicly available information about what is considered an acceptable level of school attendance – or acceptable thresholds in relation to tenancy, criminal offence or child protection notices – to indicate when, or how, the department will consider whether sufficient progress has been made in a *welfare reform community area* to support the community transitioning out of welfare reform.

Given the proposed removal of section 152 of the FRC Act, and the absence of any other date specifying when welfare reform will end in a community, the committee considers that it is important that such information be made available to community leaders and the public.

The committee also considers that it is important for *welfare reform community areas* to know, in advance, what is expected of them in order to transition out of welfare reform – to encourage improvements in the community and guard against welfare reform becoming the norm.

The committee notes that the International Convention which forms the Schedule to the *Racial Discrimination Act 1975* (Cwlth) states that special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups “shall not be continued after the objectives for which they were taken have been achieved”.⁶²

Recommendation 6

The committee recommends that the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs ensure that information about the indicators and assessment methods to be used when considering whether a *welfare reform community area* is ready to leave welfare reform is made available to community leaders and the public.

The committee also considers that there is a lack of publicly available information about how an area would transition out of welfare reform, and the measures that will be put in place to ensure that a former *welfare reform community area* continues to improve. Such measures may include, as suggested by CIMA, an ongoing role for local community justice groups to work to improve the quality of life in their community.

Recommendation 7

The committee recommends that the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs provide the Legislative Assembly, during the second reading debate, with details about the:

- arrangements that will be put in place to ensure a smooth transition for communities out of welfare reform
- measures that will be put in place to ensure that a former *welfare reform community area* continues to improve.

62 *Racial Discrimination Act 1975* (Cwlth)

3.11 Addition of new justice notices

The FRC currently receives agency notices about community members who:

- *fail to enrol their children in or send them to school;*
- *come to the attention of the Department of Communities, Child Safety and Disability Services for a child safety matter;*
- *are convicted of an offence in the Magistrates Court; or*
- *fail to remedy a breach of a tenancy agreement or use premises for an illegal purpose.*⁶³

Clause 6 of the Bill omits and replaces section 43 (Notice about offences) of the FRC Act to provide for the FRC to also receive notifications about the:

- conviction of a community resident in the District or Supreme Courts
- conviction of a child in a court.⁶⁴

These amendments enable the FRC to receive notifications about both children and adults who have been convicted of an offence in the Children's Court, District Court, Magistrates Court or Supreme Court, if the court has been advised that the adult, or parent where a child is the subject of the notification, lives in, or has lived in, a *welfare reform community area*.⁶⁵

The Explanatory Notes state that the additional triggers "will provide consistent disincentives for offending behaviour across all jurisdictions".⁶⁶

3.11.1 Support for new justice triggers

The department advised that community consultations support the inclusion of the "youth justice trigger". Local commissioners and community members indicated that more needs to be done to stop young people who disengage from high school coming into contact with the youth justice system. The Explanatory Notes state the aim of this trigger is to:

*... ensure greater parental/ carer responsibility for the young person's offending behaviour and reduce the current trajectory of Aboriginal and Torres Strait Islander young people from youth detention into the adult criminal justice system.*⁶⁷

The Minister advised the committee that:

*... the proposals to extend the FRC and expand the triggers for FRC notifications, as put forward in the Bill, were thoroughly canvassed with the original welfare reform communities (Aurukun, Hope Vale, Coen and Mossman Gorge) as well as Doomadgee.*⁶⁸

Committee comment

The committee supports the inclusion of the new justice notices, which it considers will assist the FRC in effectively fulfilling its role of restoring responsible standards of behaviour and local authority in *welfare reform community areas*.

63 Explanatory Notes, Family Responsibilities Commission Amendment Bill 2014, p.2

64 Explanatory Notes, Family Responsibilities Commission Amendment Bill 2014, p.2

65 Family Responsibilities Commission Amendment Bill 2014, cl.6

66 Explanatory Notes, Family Responsibilities Commission Amendment Regulation (No. 1) 2014, p.2

67 Explanatory Notes, Family Responsibilities Commission Amendment Bill 2014, pp.2 & 4

68 Hon. Glen Elmes MP, *Correspondence*, 17 September 2014, p.1

3.12 Disqualification of local commissioners

Section 19(1)(b) of the FRC Act provides that a person is disqualified from becoming, or continuing as a commissioner or deputy commissioner, if “at any time after 5 years before the commencement of this section, a protection order has been made against the person”.

Section 20(1)(b) of the FRC Act makes similar provisions about local commissioners, providing that a person is disqualified from becoming, or continuing as, a local commissioner if “at any time after 5 years before the commencement of this section, a protection order has been made against the person”.

In both cases, the period during which a person must not have a protection order made against them started in 2003.

Clause 5 inserts a new subsection 20(1)(b) in to the FRC Act to provide that a person is disqualified from being, or becoming, a local commissioner, if a protection order has been made against them five years before the person is proposed to be appointed or during their term of appointment.⁶⁹

The Explanatory Notes state that this amendment restores the original intent of the FRC Act to “disqualify persons who have had a protection order made against them *unless five years has elapsed prior to being appointed*”.⁷⁰

Committee comment

The committee notes that the amendment at clause 5 would mean that the local commissioners would be subject to different disqualification provisions than the Commissioner and Deputy Commissioner.

The committee sought advice from the Minister on why this approach was taken in the Bill. The Minister advised:

*Applying the same provisions to the Deputy Commissioner and Commissioner as proposed for the local commissioners ... was carefully considered as part of the development of the Bill. However, given the legal qualifications required for appointment as Deputy or Commissioner, and their standing in the community, it was not considered appropriate to provide such leeway for these positions.*⁷¹

The committee is satisfied with the Minister’s response.

3.13 Frequency of Family Responsibilities Commission Board meetings

Clause 8 of the Bill amends section 123 of the FRC Act, to require FRC Board meetings to occur at least once every six months instead of once every three months, as is currently the case. The Explanatory Notes state that this will enable “more locally focussed meetings to be scheduled to ensure greater local involvement in decision-making”.⁷²

The department also advised the committee that “moving to a lesser number of board meetings allows us to divert more effort to community-focused, in-community work ...”.⁷³

The committee is satisfied that this amendment is practical and should facilitate the effective operation of the FRC Board.

69 Family Responsibilities Commission Amendment Bill 2014, cl.5

70 Explanatory Notes, Family Responsibilities Commission Amendment Bill 2014, p.5

71 Hon. Glen Elmes MP, *Correspondence*, 12 September 2014, p.1

72 Explanatory Notes, Family Responsibilities Commission Amendment Bill 2014, p.2

73 Ms Robyn Kerr, *Public Briefing Transcript*, 27 August 2014, p.2

4 Future of welfare reform

As part of its oversight responsibilities, the committee has heard from a number of stakeholders who suggest there is scope to expand and evolve the model of welfare reform prescribed in the FRC Act.

During the Cairns public hearing in November 2013, the Commissioner described the FRC model as “game changing” and suggested that it be “considered for extension into other communities in Queensland and elsewhere in Australia”.⁷⁴ The Commissioner also stated that he believes the FRC has a great future and that “... there are other communities—dysfunctional Indigenous communities and white communities—where it can be of great assistance”.⁷⁵

Ms Zoe Ellerman of the Cape York Institute expressed similar views, emphasising the need for the model to evolve as part of a comprehensive approach which encourages indigenous development.

*Just because the FRC looks the way it did when the trial was originally designed, this does not actually need to be the model of the FRC that continues on forevermore or that expands to other places, for example. We need to continue to evolve the model and to strengthen it, and we would urge governments to be more responsive to these kinds of changes.*⁷⁶

*Obviously, in terms of potentially going to other communities, I think there is some danger, if you like, in cherry picking bits and pieces of the Cape York Welfare Reform model. Very much what we have promoted and what Noel Pearson has promoted is that, to achieve the change that we want and to overcome Indigenous disadvantage, we need to pursue a comprehensive approach to development. We have seen and we continue to see far too much work that happens in silos and that is very clearly ineffective because of that. So we need a comprehensive approach to development.*⁷⁷

The CIMA, in its submission on the Bill, suggested that community justice groups be provided with advocacy support to deliver the services of the FRC, instead of continuing with the current model. The CIMA also stated that it does not accept that income management is effective in addressing school attendance, without considering other factors.⁷⁸

Community justice groups and income management were also discussed during the Cairns public hearing. For example, Ms Zoe Ellerman identified the comparative difficulties that community justice groups face, in comparison to the FRC, when it comes to rebuilding local authority:

*So I suppose the other thing I just want to highlight in terms of talking about rebuilding local authority is just to compare the success that the local commissioners have had through the FRC model where they have been given some real power, some real responsibility and some real levers—they have been given a real chance to actually make a difference—and compare that to some of the other well-intentioned efforts that we have had to build local authority. Clear examples are community justice groups and police liaison officers. Community justice groups are being asked in very difficult situations and very difficult circumstances in communities where there are very high rates of conflict and dispute to somehow solve that problem with no real power, no real authority, no levers to make people change. So the FRC is certainly very distinct in that.*⁷⁹

74 Commissioner David Glasgow, *Public Hearing Transcript*, 28 November 2013, p.14

75 Commissioner David Glasgow, *Public Hearing Transcript*, 28 November 2013, p.15

76 Ms Zoe Ellerman, *Public Hearing Transcript*, 28 November 2013, p.2

77 Ms Zoe Ellerman, *Public Hearing Transcript*, 28 November 2013, p.6

78 CIMA, Submission 2, p.1

79 Ms Zoe Ellerman, *Public Hearing Transcript*, 28 November 2013, p.3

The Minister commented on this issue in response to a request from the committee to address concerns raised by the CIMA. The Minister stated:

In relation to Community Justice Groups (CJGs), it is envisaged that the Local Commissioners, who have a leadership role in their communities, could support the CJGs through mentoring and advice, especially where CJGs need to be more effective in their communities. This would improve CJGs' capacity to provide local leadership, including for when a community may no longer needs a welfare reform program and the FRC is withdrawn.⁸⁰

Committee comment

The committee reiterates its comments – in its most recent oversight report on the FRC – that to restore social norms, responsible behaviour, and local authority:

... a holistic approach and long term government support is necessary; significant social change is not achieved from short term initiatives. This is complex and challenging welfare reform, which requires more than conferencing and income management provided by the FRC. Change must be fostered across years and across generations. Communities must be engaged, policy makers must be prepared to listen and to try diverse and innovative approaches that will be accepted by the communities in which they are to be implement.⁸¹

Accordingly, the committee recommends that the Minister and the department continue to work with local communities and stakeholders to monitor the effectiveness of the existing FRC model to ensure it meets the needs of those communities, and is best able to help people in *welfare reform community areas* to resume primary responsibility for the wellbeing of their community.

Recommendation 8

The committee recommends that the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs and the Department for Aboriginal and Torres Strait Islander and Multicultural Affairs continue to work with local communities and stakeholders to monitor the effectiveness of the Family Responsibilities Commission to ensure that the current model of welfare reform meets the needs of those communities.

80 Hon. Glen Elmes MP, *Correspondence*, 17 September 2014, p.2

81 HCSC, *Oversight of the Family Responsibilities Commission*, Report No. 49, May 2014

5 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the “principles relating to legislation that underlie a parliamentary democracy based on the rule of law”. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of parliament.

The committee considered the application of fundamental legislative principles to the Bill.

5.1 Omission of expiry date for agreements and orders – rights and liberties of individuals

Clause 11 of the Bill omits section 156 of the FRC Act. Section 156 provides that the following agreements and orders cease on 1 January 2015:

- a *family responsibilities agreement* – an agreement between the FRC and a community member, who is the subject of an agency notice, that the community member will attend a community support service or be subject to income management
- an agreement about income management entered into under part 10 of the FRC Act – arising from a community member voluntarily seeking help from the FRC
- a *family responsibilities order* – a decision by the FRC to direct a community member, who is the subject of an agency notice, attend a community support service or be subject to income management.

Clause 11 is consequential to clause 10, which omits the expiry date for the FRC of 1 January 2015. The Explanatory Notes state that the removal of the expiry date in the FRC Act will “enable the authority of the agreements and orders that are in force to be continued beyond 1 January 2015”.⁸²

The committee considers that clause 11 has the potential to impact on the rights and liberties of individuals. The committee notes that community members who are currently the subject to the above agreements or orders could reasonably expect that their obligations under the agreements or orders would cease on 1 January 2015.

Under clause 11, however, the obligations under those agreements or orders will continue to apply to community members post 1 January 2015.

The committee notes, however, that agreements and orders are time-limited to a maximum of one year.⁸³ The committee also notes that community members may apply to the FRC to amend or end an agreement or order.⁸⁴ The committee understands that this generally involves a hearing during which a community member presents evidence about why the agreement or order should be amended or ceased.⁸⁵

Given the time-limited nature of the agreements and orders, and the opportunity for community members to apply for them to be ended early or amended, the committee considers that, on balance, clause 11 has sufficient regard to the rights and liberties of individuals.

82 Explanatory Notes, Family Responsibilities Commission Amendment Bill 2014, p.2

83 *Family Responsibilities Commission Act 2008*, sections 68, 69 and 106

84 *Family Responsibilities Commission Act 2008*, Part 9

85 FRC, *Annual Report 2011-12*, p.17-18

5.2 Potential inconsistency with the *Racial Discrimination Act 1975* (Cwlth) – rights and liberties of individuals

The Explanatory Notes raise the issue of whether the amendments in the Bill will affect the ‘special measure’ status of the FRC under the Commonwealth’s *Anti-Discrimination Act 1991* (Cwlth) and *Racial Discrimination Act 1975* (Cwlth).⁸⁶

The committee has previously considered whether income management schemes supported by the FRC may potentially breach the *Racial Discrimination Act 1975* (Cwlth), and concluded that the Commonwealth has deemed income management schemes as ‘special measures’ under the FRC Act.⁸⁷

The committee considers the Bill, which extends the operation of the FRC, is likely to receive the related protection afforded by the ‘special measures’ exception given that a primary purpose of the Bill is to facilitate the administration of ‘special measure’ income management arrangements.

The committee notes, however, that the Commonwealth Government’s deeming of income management schemes as ‘special measures’, and their consequent exemption from racial discrimination laws, remains open to future High Court challenge.

5.3 Prescribing *welfare reform community areas* by regulation – institution of Parliament

The Schedule to the FRC Act defines *welfare reform community area* as the areas of Aurukun, Coen, Hope Vale, Mossman Gorge, and another area prescribed under a regulation.

Clauses 7 and 12(1) of the Bill omit these provisions from the FRC Act. Clause 4 inserts new section 8A(1) into the FRC Act which defines a *welfare reform community area* as “an area prescribed by regulation as a welfare reform community area”.

The committee considered whether this proposed delegation of a legislative power (prescribing a *welfare reform community area* by regulation) is sufficiently subject to the scrutiny of the Legislative Assembly.

When matters that are key to legislation are prescribed by executive action (regulation) rather than specified in primary legislation, issue arises as to whether there is sufficient regard to the institution of Parliament. This is because the regulation is notified and commences operation at the will of the Executive, without further regard to the will of the Parliament (save for Parliament’s ability to recommend a regulation’s disallowance).

It could be argued that, by naming Aurukun, Coen, Hope Vale and Mossman Gorge as *welfare reform community areas* in the FRC Act in 2008, the Parliament at that time considered the act of naming these areas was important enough to be specified in primary legislation, and the subject of Parliamentary scrutiny and debate. It could, therefore, be argued that any amendment that allows future *welfare reform community areas* to be prescribed by regulation fails to have sufficient regard

⁸⁶ Explanatory Notes, Family Responsibilities Commission Amendment Bill 2014, p.4

⁸⁷ Special measures are measures that confer an advantage or benefit on people of a particular race or ethnicity in order to counteract the economic and social disadvantages suffered by that racial group as a result of historic discrimination. The concept of ‘special measures’ is expressed in the *International Convention on the Elimination of all forms of Racial Discrimination* (ICERD) article 1(4) which declares that:

Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintaining of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

The Commonwealth directly incorporates the Convention’s definition of ‘special measures’ into the *Racial Discrimination Act 1975* (Cwlth).

to the institution of Parliament because it does not subject the inclusion of these areas to the same level of Parliamentary scrutiny as that accorded to the original four communities.

The committee notes, however, that the original definition of *welfare reform community area* enacted in the FRC Act in 2008 included “another area prescribed under a regulation”, and therefore anticipated and provided for further areas to be prescribed by regulation, by the Executive, as the need arose. Further, in passing the FRC Act, the Parliament of 2008 endorsed the notion that additional areas could be added by way of regulation.

The committee also notes that the Minister is required to have regard to the main objectives of the FRC Act before recommending that an area be prescribed as a *welfare reform community area*.

Accordingly, the committee considers that, on balance, clauses 4, 7 and 12 have sufficient regard to the institution of Parliament.

5.4 Explanatory notes to the Bill

Part 4 of the *Legislative Standards Act 1992* requires that an Explanatory Note be circulated when a Bill is introduced into the Legislative Assembly. Explanatory Notes were tabled with the introduction of the Bill.

Section 23 of the *Legislative Standards Act 1992* outlines the information an Explanatory Note should contain.

The Explanatory Notes generally conform to the requirements of section 23, providing sufficient information and commentary to facilitate understanding of the Bill’s aims and origins; however, the committee notes the following inaccuracies in the description of the amendments at clause 6.

The Explanatory Notes state that clause 6 of the Bill amends section 43 of the FRC Act by replacing “Magistrates Court” with “relevant court” and defining “relevant court” at a new subsection (6).⁸⁸ This is inaccurate, as clause 6 of the Bill:

- replaces “Magistrates Court” with “court” at current subsection 1(a), as well as current subsections 1(b) and 5(c)
- uses the term “court”, not “relevant court”, at proposed new subsections 43(1)(a)(i) and 43(1)(a)(ii)
- defines “court” at subsection 4, not “relevant court” at subsection 6.

⁸⁸ Explanatory Notes, Family Responsibilities Commission Amendment Bill 2014, p.5

Appendices

Appendix A – List of submissions

Sub #	Submitter
001	Family Responsibilities Commission
002	Cape Indigenous Mayors' Alliance
003	Australian Christian Lobby

Appendix B – Witnesses at public briefing

Public briefing – 28 August 2014, Brisbane
<p>Department of Aboriginal and Torres Strait Islander and Multicultural Affairs</p> <ul style="list-style-type: none"> • Ms Robyn Kerr, Director, Community Initiatives • Mr Paul Newman, Acting Manager, Community Initiatives • Ms Julie Lawler, Acting Principal Policy Officer, Community Initiatives

