



HEALTH AND COMMUNITY SERVICES COMMITTEE

Members present:

Mr TJ Ruthenberg MP (Chair)
Mrs JR Miller MP (Deputy Chair)
Ms RM Bates MP
Dr AR Douglas MP
Mr JD Hathaway MP
Mr JM Krause MP
Mr DE Shuttleworth MP

Staff present:

Ms S Cawcutt (Research Director)
Ms K Dalladay (Principal Research Officer)
Mr K Holden (Principal Research Officer)

PUBLIC BRIEFING—FAMILY RESPONSIBILITIES COMMISSION AMENDMENT BILL 2014

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 27 AUGUST 2014

Brisbane

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Committee met at 11.00 am

KERR, Ms Robyn, Director, Community Initiatives, Department of Aboriginal and Torres Strait Islander and Multicultural Affairs

LAWLER, Ms Julie, Acting Principal Policy Officer, Community Initiatives, Department of Aboriginal and Torres Strait Islander and Multicultural Affairs

NEWMAN, Mr Paul, Acting Manager, Community Initiatives, Department of Aboriginal and Torres Strait Islander and Multicultural Affairs

CHAIR: Good morning and welcome. I declare open the Health and Community Services Committee public briefing on the Family Responsibilities Commission Amendment Bill 2014. Our purpose today is to receive a briefing on the bill from officials from the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs. My name is Trevor Ruthenberg; I am the member for Kallangur and chair of the committee. Mrs Jo-Ann Miller will join us shortly; she is the deputy chair and member for Bundamba. I also have Ms Ros Bates, member for Mudgeeraba, Dr Alex Douglas, member for Gaven, Mr John Hathaway, member for Townsville, Mr Jon Krause, member for Beaudesert and Mr Dale Shuttleworth, member for Ferny Grove.

Welcome to the officials from the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs who are with us today from the community initiatives section. Mobile phones should be turned off or switched to silent, please. I remind those present that these proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders.

Hansard is making a transcript of the proceedings. The committee intends to publish the transcript of today's proceedings unless there is good reason not to. Our proceedings today are also being broadcast live on the parliamentary website.

The bill was introduced by the Minister for Aboriginal and Torres Strait Islander and Multicultural Affairs and referred to the committee on 5 August. The committee is required to report to parliament by 1 October. Submissions have been invited on the bill closing on Monday, 1 September. Subject to submissions, the committee may hold a public hearing on Wednesday, 10 September.

Ms Kerr, I invite you to please commence your briefing. We are intending to close at about quarter to 12, so if you could give us probably 15 or 20 minutes for questions after that.

Ms Kerr: I would like to open by acknowledging the traditional owners of the land on which we meet today and pay my respects to their elders past and present.

We have prepared an outline of the proposed amendments and the policy rationale behind those amendments, so I will take you through those. We are happy to assist the committee in their work. We welcome questions at any time and are not at all put off by any questions that you may wish to ask.

The major amendment in the bill is the deletion of the sunset clause, section 152, which currently causes the act to expire on 1 January 2015. There will be associated amendments to the other provisions that are affected by the sunset clause. Effectively those amendments would allow the act to continue until it is repealed. The rationale behind that is that in 2011, 2012 and 2013 considerable effort was required to extend the expiry of the act for one year.

CHAIR: For the purposes of the record I am just welcoming Mrs Jo-Ann Miller, the member for Bundamba and deputy chair. Please continue.

Ms Kerr: Those one-year extensions, in addition to creating quite a bit of administrative burden, also created a sense of uncertainty at the community level about the initiative. I have heard anecdotally that that has had some negative effect on the level of impact that the reform has had at a community level.

The second amendment that I will mention is to add convictions in the District and Supreme Courts to a trigger currently in the act for Magistrates Court offences, so that would cause notifications to go to the FRC if somebody is convicted of an offence in any of those jurisdictions. Up until now it is only for the Magistrates Court. That amendment was actually requested by FRC commissioners, and the idea is to maintain consistent consequences for adults who offend.

I apologise for the huskiness of my voice. I have fallen victim to the 'exhibition virus'. I am just getting past that.

In addition to that amendment there is another amendment to add a youth justice orders trigger which will ensure compliance with the Youth Justice Act. Again that amendment has been proposed at the request of local commissioners, who wanted to be in a position to proactively engage with young offenders to try and halt their progression on to further offending.

The next amendment is to provide for local commissioners who are the subject of a child protection notice to be ineligible for appointment unless five years has elapsed prior to their appointment. The original intent was to have that five-year window when the act was originally passed in 2008. This amendment is really now rectifying what has in effect been a slowly lengthening time frame. Because it said 'five years from the commencement of the act', we have now amended it so that it would be 'five years prior to appointment'. At the moment with the amendments that have occurred, that period of time goes back to 2003.

The next amendment that I will mention is to amend the provision for quarterly board meetings to a provision for half yearly board meetings. The rationale behind that is that the need for board meetings has thinned out over time as the operations of the FRC have become more bedded down within communities and it has become more of a routine arrangement. Quarterly reporting of the FRC required under the act would not change and would still be prepared and be considered out of session by the board members. We are also thinking that doing that and moving to a lesser number of board meetings allows us to divert more effort to community-focused, in-community work with senior officials to work through the reform agenda for the next oncoming phase, and we would be looking at doing that annually.

We would also remove the identification of areas from within the act. The original welfare reform community areas of Aurukun, Hope Vale, Mossman Gorge and Coen are mentioned at various stages in the act itself. The idea behind having the treatment of welfare reform community areas dealt with in the regulation is that it provides the flexibility at some future point to withdraw FRC operations from regional communities and the current arrangements that are in place for going into new communities would continue; that is, that they would be added by way of regulation amendment.

Just as a note for the committee, an amendment regulation to declare Doomadgee a welfare reform community area was made by the Governor in Council on 7 August and was notified on the Queensland legislation website on 8 August.

That is my overview of the proposed amendments in the bill. Are there any questions?

CHAIR: I do not know if you are going to come to this, but one of the things that I am interested in is when we intend to move into a new area or consider a particular area to be included in the FRC, what consultation is proposed? How is that consultation determined? What level of consent would be sought of the community itself? How are commissioners appointed? The bill proposes to put a regulatory trigger in place that allows a new community to be named and included. There are some fundamental legislative principle issues that are associated with that, because all of a sudden we create a circumstance where people within a bill cannot predict if their community is going to be included in something like this. I would be keen to understand the consultation process, how consent is obtained from the community and how much that is taken into account as well as how commissioners are identified and appointed.

Ms Kerr: I can take you through the case study of Doomadgee and how that has happened, because the same sorts of provisions would be in place after the amendments have occurred. For example, in the case of Doomadgee what happened was that 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.

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. Those nominations were supported by the mayor. Following those nominations, eight people were appointed on 7 or 8 August and were gazetted as local commissioners for Doomadgee.

Mr Newman: In terms of how they are appointed, I think we could add that the act specifies certain checks about the commissioners' suitability. It needs to align with their current work arrangements as well and also we need to be aware of clan balance.

Ms Kerr: That is how we get from 14 nominations down to eight appointments.

CHAIR: How was the mayor's support received; was it in writing or verbally?

Ms Kerr: It was in writing.

CHAIR: In writing?

Ms Kerr: Yes. I have the gazette notice here and it was Friday, 8 August that those eight people were appointed.

Mr HATHAWAY: Thanks very much for the review of the Doomadgee case study particularly. Have you had any feedback from Indigenous communities about the potential changes, specifically the exclusion of specified areas, or have you had any feedback from other Indigenous communities about the potential that they could be nominated as an area?

Ms Kerr: Not in recent times, no. Last year I was in the room when there was a conversation between the Hope Vale mayor and the Yarrabah mayor. The Yarrabah mayor did suggest that welfare reform and the sort of reform that had occurred in Hope Vale was the sort of thing that he would like to see for his community. There has been no formal request from the Yarrabah mayor that I am aware of to have that community considered for inclusion as a welfare reform community area. So there was that statement a while ago but no follow-up.

Mr HATHAWAY: From what I am picking up—and obviously I have the Palm Island community in my seat—there is potentially a fear, whether it is founded or unfounded, that these sorts of changes could enable the declaration of an area without community acceptance and that, whilst there may have been consultation, et cetera, amongst the leadership community, it appears to come across as quite paternalistic; whereas in other legislation that we as a government are

introducing we are trying to give authority, resources and autonomy to the communities themselves and community leaders. I have concerns over that and the impact it could potentially have if Palm Island was included as an area in the regulations at the stroke of a pen.

Ms Kerr: What I can say in response to that is that the intention of the reform effort is to re-establish standards and socially responsible behaviour and the right sort of circumstances that protect and care for children in communities. This is not the sort of initiative, in my view, that would have a place in a community that is not suffering disadvantage. When you look at those indicators, that informs our advice and links back to the objects of the act.

Mr HATHAWAY: Has any consideration been given to the potential identification of an area by establishing triggers or banding school attendance, et cetera, for when an area might progress out of being an area of concern or might be approaching an area of concern? Do we have those sorts of measures provided as guidelines to the community? For example, I think you said in Doomadgee school attendance was 48 per cent. That might be a trigger for starting a consultation process; for a community that is up around 80 per cent or 90 per cent, it might be the trigger for exiting the system.

Ms Kerr: We do not have those guidelines in place at the moment, although we have been discussing the right point in time to exit out of Coen. Coen school attendance has been up around 90 per cent for some time now.

Mr Newman: Whether it is entering the welfare reform FRC or exiting, the community willingness to have that conversation is a big part of it. So whether it is from the mayor, council or community justice groups, it is about the community's willingness to be involved. If they want to have a conversation about leaving, then we can just have that conversation—

Mr HATHAWAY: I will make an observation—and it is my observation only—that I think it is paramount that there is community acceptance of the guidelines, and I will give you my reason. We are in the process of reviewing AMPs or allowing communities to review their AMPs. The whole intent of that is to let them be the masters of their direction, which they should be, but I guess it is also maintaining documentary evidence of consultation and community approval. Because 10 years down the track, if and when a community may remain under the FRC or an AMP, people start to question whether there was consultation. 'Did we have engagement?' I know that full well from Palm Island in regard to the AMP.

Ms Kerr: There has certainly been extensive consultation in relation to Doomadgee, and we have documented and kept a record of those consultations. My report back to you that there was one dissenting voice is well documented and we have that evidence.

Mr HATHAWAY: And available 10 years down the track perhaps.

CHAIR: Can I follow up on that exact point. The process used at Doomadgee seems fairly thorough from what you have reported to us. Is that thoroughness going to be identified as critical within the regulation? What ensures that sort of consultation will occur in other communities?

Ms Kerr: It is in the objects of the act.

Ms Lawler: It is in the objects of the act in order to change the regulation.

Ms Kerr: So it is in those objects we went through before, and they relate back to those sorts of things that we assessed.

CHAIR: I am not questioning the department's integrity here, but I am cognisant that people change positions and things change over time. How does that translate to an assurance that this level of consultation will occur? Consultation as an objective is a good intention, but how does that translate to practical application within the regulation?

Ms Kerr: I am not sure I follow the question.

CHAIR: The objective is clear. Within the act the objective states that consultation needs to occur. There is going to be a regulation that then allows a government to include a new community within welfare reform efforts. This consultation seems fairly thorough. What I am driving at is let us say you guys decide to move on to greener pastures and someone new comes in who does not have the background in this. My experience is that when you are well documented, that lapse of corporate knowledge does not occur. What stops someone in the future from not doing as thorough a consultation as you have done in Doomadgee?

Ms Kerr: The safeguard that is there is the one that Julie just referred to. The act requires the minister to have reference to the objectives of the act in making such a decision. That is the safeguard.

Mrs MILLER: Trevor, me being a former public servant, if I might just butt in. 'Consultation' can mean anything from a phone call to quite detailed consultation. I think over the years with any government it is sort of very much bipartisan that the fullest consultation is always undertaken; however, basically it can fall over at any point in time depending on the implementation. But bipartisan-wise I think you will find that consultation between any group and government, particularly with public servants doing it, is as thorough as can be. In fact, you do not want to have specific consultation requirements in regulations because some public servants would only go to that length. You want a broad overhead policy that consultation is required, and then the department will go through it.

CHAIR: To do that at that point in time—

Mrs MILLER: Yes. I think with the implementation of consultation in the communities there are also processes in relation to the community's concern; for example, you have to get permission even to go into the communities, all of the elders have to agree and it is quite a detailed process. In fact, I would think, Robyn and team, that you probably have specialist consultation people just in your department; would that be right?

Ms Kerr: That is true. Regional staff—

Mrs MILLER: So they are very skilled. I would be fairly confident about it.

CHAIR: I am trying to find a level of comfort here that what is not going to happen is that there is going to be a six-week process that all of a sudden ends up with the community not agreeing, but that it is dropped on them. I can see that that would turn into a fairly contentious situation very, very quickly.

Ms Kerr: There are safeguards in the Racial Discrimination Act around special measure status and consultation requirements.

Mr HATHAWAY: In relation to the new trigger in the Youth Justice Act for child offences, it is outlined that that would trigger a conference with the parents or carers.

Ms Kerr: Yes.

Mr HATHAWAY: Is there anything in the act that outlines the interactions with the youth offender, or on the ground are there going to be any measures put into place to manage the individual? Because it is highly likely, I would think, that the dysfunction probably comes from the environment he or she was in, being his parents and carers. Is there anything on the ground that is going to be put into place to help assist and manage the child?

Ms Kerr: There are similar circumstances at the moment for when the FRC receives a notification for a child not attending school or a child not enrolled in school. The notice is about the child; the people who are conferenced are the parents and carers. I understand from talking to the commissioner and staff of the FRC that the network of people involved in a child's life in Aboriginal and Torres Strait Islander communities can be much broader. The panel of local commissioners will work that through and involve the relevant people in providing the right sort of support and care network for the young person. That can be quite detailed and operational down to who is getting Johnny up in the morning to walk him to school and who is picking him up. What other problems does he have, or are his care arrangements for getting him to school problematic. They will work through very detailed and practical issues. The same sorts of arrangements can occur, as can referral to support services.

When it comes to youths who are offending, the range of support services available in the community can be thin. In partnership with the Australian government, we are looking at getting better supports available for younger teenage people in communities. In the last year we have funded a prevocational service through Myuma at Camooweal and while it is not, strictly speaking, a boot camp, they do have personal development activities mixed in with prevocational activities. But the aim is to get people into employment, so we are looking at services to help in those sorts of areas as well. But there are parenting services, there are family counselling services and there are student education trusts to help with financial arrangements to support getting kids back into school.

Mrs MILLER: I only have one question just taking up from where I left off. Roughly how many people would you have who are specialist consultation officers within the department? I imagine it would be quite a few.

Ms Kerr: They do not have a specific job title, but you sort of get to know who the 'go to' people are. There are usually a few people for each community who know it fairly well, know who the key players are in the community, know what is going on at any point in time and know how to tactically manage consultation and those sorts of things.

Mrs MILLER: And they would be trusted by those communities as well.

Ms Kerr: Yes.

CHAIR: I do not think there is anything further. Is there anything else you would like to add before we shut up the shop here?

Ms Kerr: No. If you are happy, we are happy.

CHAIR: Thank you. We appreciate your attendance here. It may be that as we finalise submissions we may need some clarification on different things. Depending on what that looks like, it may be another brief hearing or it may be simply a letter. It may be nothing, depending on where we end up with those submissions.

We appreciate your time. We appreciate your being here. The time allocated has not expired, but our questions have. Thank you. I declare this briefing closed.

Committee adjourned at 11.30 am