



Family Responsibilities Commission Amendment Bill 2015

**Report No. 9, 55th Parliament
Communities, Disability Services and Domestic
and Family Violence Prevention Committee
November 2015**

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Family Violence Prevention Committee**

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Communities, Disability Services and Domestic and Family Violence Prevention Committee

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Acknowledgements

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Abbreviations

Agency notice	<p>A notice received by the Family Responsibilities Commission from:</p> <ul style="list-style-type: none"> • the Department of Education and Training about school enrolment or 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, through court registry staff, if a person, or their child, is convicted of an offence, or • the Department of Housing and Public Works, or provider of social housing, if there is a breach of a social housing tenancy agreement.
Bill	Family Responsibilities Commission Amendment Bill 2015
Commissioner	Family Responsibilities Commissioner
Committee	Communities, Disability Services and Domestic and Family Violence Prevention Committee
CIM	Conditional Income Management
CYI	Cape York Institute
CYWR Trial	Cape York Welfare Reform Trial
Department	Department of Aboriginal and Torres Strait Islander Partnerships
DVO	Domestic Violence Order
FRA	Family Responsibilities Agreement
FRC	Family Responsibilities Commission
FRC Act	<i>Family Responsibilities Commission Act 2008</i>
PACT	Protect All Children Today Inc.
POQA	<i>Parliament of Queensland Act 2001</i>
SCM	Student Case Manager
Taskforce	<i>Special Taskforce on Domestic and Family Violence in Queensland</i>
Taskforce Report	<i>Not now, not ever: putting an end to domestic and family violence in Queensland</i>
Treasurer	Hon. Curtis Pitt MP, Treasurer, Minister for Employment and Industrial Relations, Minister for Aboriginal and Torres Strait Islander Partnerships
Welfare reform community area	The community areas of Aurukun, Coen, Doomadgee, Hope vale and Mossman Gorge

Chair's foreword

This Report presents a summary of the Communities, Disability Services and Domestic and Family Violence Prevention Committee's examination of the Family Responsibilities Commission Amendment Bill 2015.

The Bill introduces a new domestic violence trigger for *agency notices* to the Family Responsibilities Commission in response to recommendations made by the Special Taskforce on Domestic and Family Violence in Queensland in its report, *Not Now, Not Ever: Putting an End to Domestic Violence in Queensland*. The Bill also makes a number of amendments to administrative provisions relating to the Family Responsibilities Commission's operations and functions to assist the Commission to effectively perform its functions.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the Committee, I thank those organisations who lodged written submissions on the Bill. I also thank the Committee's Secretariat, the Technical Scrutiny Secretariat and the Department of Aboriginal and Torres Strait Islander Partnerships.

I commend this Report to the House.



Leanne Donaldson MP

Chair

Recommendations

Recommendation 1 10

The Committee recommends that the Family Responsibilities Commission Amendment Bill 2015 be passed.

Recommendation 2 17

The Committee recommends that the Department of Aboriginal and Torres Strait Islander Partnerships ensure that appropriate domestic and family violence specific support services are available for the Family Responsibilities Commission to refer community members following a conference.

Recommendation 3 19

The Committee recommends that the Department of Aboriginal and Torres Strait Islander Partnerships and the Family Responsibilities Commission monitor the number of *agency notices* received from the courts as a result of:

- a community member being the subject of a *protection order*, and
- a community member being convicted for a breach of a *protection order*.

Recommendation 4 19

The Committee recommends that the Treasurer, Minister for Employment and Industrial Relations, Minister for Aboriginal and Torres Strait Islander Partnerships require the Family Responsibilities Commission to report, in its annual report, on the number of *agency notices* it receives in the following circumstances:

- when a court makes a *protection order* against a community member, and
- when a court convicts a community member of a breach of a *protection order*.

Recommendation 5 22

The Committee recommends that the Family Responsibilities Commission Amendment Bill 2015 be amended to identify clearly which functions the Commissioner may delegate to the chairperson of the commission for a conference constituted under section 50A of the *Family Responsibilities Commission Act 2008*.

1. Introduction

1.1 Role of the Committee

The Communities, Disability Services and Domestic and Family Violence Prevention Committee (Committee) is a portfolio committee of the Legislative Assembly which was established on 27 March 2015 under the *Parliament of Queensland Act 2001* (POQA) and the Standing Rules and Orders of the Legislative Assembly.¹

The Committee's primary areas of responsibility include:

- Communities, Women, Youth, Child Safety and Multicultural Affairs
- Domestic and Family Violence Prevention, and
- Disability Services and Seniors.²

Section 93(1) of the POQA provides that a portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

Section 92 of the POQA provides that a portfolio committee is to also deal with an issue referred to it by the Legislative Assembly or under another Act, whether or not the issue is within its portfolio area.

1.2 Committee process

The Family Responsibilities Commission Amendment Bill 2015 (Bill) was introduced into the House on 13 October 2015 by the Hon Curtis Pitt MP, Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships (Treasurer). The Bill was referred to the Committee for examination by the Committee of the Legislative Assembly pursuant to Standing Order 136.³ The Committee was required to report to the Legislative Assembly by 6 November 2015.

On 14 October 2015, the Committee wrote to the Department of Aboriginal and Torres Strait Islander Partnerships (Department) seeking advice on the Bill. Officers from the Department briefed the Committee on the Bill on 20 October 2015 (see **Appendix A**).

The Committee invited submissions on its website and from subscribers to updates on the work of the Committee. The Committee also directly invited submissions from 157 stakeholder organisations. The Committee received two submissions (see **Appendix A**).

1 *Parliament of Queensland Act 2001*, section 88 and Standing Rules and Orders of the Legislative Assembly, Standing Order 194

2 Standing Rules and Orders of the Legislative Assembly, Schedule 6

3 Standing Rules and Orders of the Legislative Assembly, Standing Order 136

The transcript of the public briefing on 20 October 2015, correspondence from the Department and the submissions received and accepted by the Committee, are published on the Committee's website: <http://www.parliament.qld.gov.au/work-of-committees/committees/CDSDFVPC/inquiries/current-inquiries/06FRCAMdtBill2015>

1.3 Policy objectives of the Bill

The objectives of the Bill are to amend the *Family Responsibilities Commission Act 2008* (FRC Act) to increase the effectiveness of the Family Responsibilities Commission (FRC) by:

- including an additional domestic violence trigger for *agency notices* to the FRC in response to Recommendation 93 of the Special Taskforce on Domestic and Family Violence in Queensland's report, *Not Now, Not Ever: Putting an End to Domestic Violence in Queensland*
- clarifying the process for generating *agency notices* to the FRC under the existing youth justice trigger
- expanding the scope for delegation of the Commissioner's powers and responsibilities
- broadening the suitability requirements for the Registrar, and
- removing redundant provisions.⁴

1.4 Consultation on the Bill

The Explanatory Notes state that consultation regarding the proposed amendments, particularly the inclusion of the domestic violence trigger, was conducted with the five communities in which the FRC operates (Aurukun, Coen, Doomadgee, Hope Vale and Mossman Gorge) and key stakeholders in August and September 2015.⁵

The Department advised that:

*Key stakeholders included FRC Local Commissioners from each community, and representatives from the Royal Flying Doctor Service, local Community Justice Groups, Queensland Police, Aurukun Shire Council, Doomadgee Aboriginal Shire Council, Doomadgee Hospital, Cook Shire Council and the Coen Regional Aboriginal Corporation.*⁶

At the public briefing, the Department advised that its consultation on the Bill involved holding public meetings within *welfare reform community areas*, which were attended by community members.⁷ The Explanatory Notes state that "The community consultations confirmed that each of the communities were supportive of the proposed amendments".⁸

4 Family Responsibilities Commission Amendment Bill 2015, *Explanatory Notes* (Explanatory Notes), p.1

5 Explanatory Notes, p.5

6 Department of Aboriginal and Torres Strait Islander Partnerships (Department), *Briefing Note*, 20 October 2015, p.7

7 Ms Ainslie Barron, Acting Executive Director, Community Participation, Department, *Public Briefing Transcript*, 20 October 2015, p.7

8 Explanatory Notes, p.5

A consultation draft of the Bill was also provided to the Welfare Reform partners (the Australian Government and Cape York Institute (CYI)) and the FRC.⁹ The Department advised that “Both the Commonwealth Government and the CYI advised that they had no issues with the proposed legislative changes” and “The FRC Commissioner and Registrar ... did not raise any issues with the proposed changes”.¹⁰

Committee comment

The Committee notes the consultation undertaken by the Department and the support expressed for the Bill by key stakeholders, including the FRC and CYI, and the affected communities.

1.5 Submissions on the Bill

The FRC’s and Protect All Children Today Inc.’s (PACT) submissions support the Bill.¹¹ The Commissioner stated that he has discussed the contents of the Bill with the Local Commissioners who advised they “understand and support the Bill”. The Commissioner stated that the Registrar has also discussed the amendments with FRC staff “who would like to advise of their support of the Bill”. The Commissioner stated that “the amendments will assist the Commission to more effectively conduct its core business of restoring social responsibility and local authority to the welfare reform communities”.¹²

1.6 Should the Bill be passed?

Standing Order 132(1) requires the Committee to determine whether or not to recommend the Bill be passed.

After examination of the Bill, including its policy objectives, and consideration of the information provided by the Department and from submitters, the Committee recommends that this Bill be passed.

Recommendation 1

The Committee recommends that the Family Responsibilities Commission Amendment Bill 2015 be passed.

9 Explanatory Notes, p.5

10 Department, *Briefing Note*, 20 October 2015, p.7

11 Family Responsibilities Commission (FRC), Submission No.1, p.1 and Protect All Children Today Inc. (PACT), Submission No.2, p.1

12 FRC, Submission No.1, p.1

2. Policy background and context

2.1 Family Responsibilities Commission

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

- support the restoration of socially responsible standards of behaviour and local authority in *welfare reform community areas* (as prescribed by regulation - currently Aurukun, Coen, Doomadgee, Hope Vale and Mossman Gorge¹³), and
- 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.¹⁴

The FRC is part of the Cape York Welfare Reform Trial (CYWR Trial), which commenced in 2008 and operates as a partnership between the Queensland and Australian Governments and CYI.

The CYWR Trial seeks to reduce levels of dysfunction by emphasising individual responsibility to engage in socially responsible behaviours by providing opportunities through enhanced services and a range of incentives and disincentives, including management of welfare payments.¹⁵

The CYWR Trial is based on the philosophy that people who are in receipt of welfare payments or participating in funded employment programs “not only have an obligation to their community not to behave in ways which are detrimental, but must reciprocate with economic engagement and actively support their community”.¹⁶

Staffing structure and governance

The FRC is comprised of: the Commissioner, Mr David Glasgow; Deputy Commissioners (if appointed); and Local Commissioners, who are indigenous leaders from each *welfare reform community area*.¹⁷ The work of the FRC is supported by local coordinators, the Registrar and staff.

The FRC Act provides for the establishment of the Family Responsibilities Board, which consists of one person nominated by the Minister (chairperson of the Board), one person nominated by the Australian Government and one person nominated by the CYI.

The Board provides advice and makes recommendations to the responsible Minister about the operation of the FRC, and to the Commissioner about the performance of the FRC’s functions.¹⁸

Agency notices and conferences

The FRC Act provides that the FRC may conduct conferences where it receives an *agency notice* about a welfare recipient (for example, a recipient of Newstart, parenting payments or Youth Allowance) in one of the participating communities who:

13 Family Responsibilities Commission Regulation 2014, section 2

14 *Family Responsibilities Commission Act 2008*, section 4

15 Department, *Briefing Note*, 20 October 2015, p.1

16 FRC, *Annual Report 2013-14*, September 2014, p.10

17 *Family Responsibilities Commission Act 2008*, section 12

18 *Family Responsibilities Commission Act 2008*, Part 12

- has a child who is not enrolled in school 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 a court or their child is convicted in the Childrens Court, or
- fails to remedy a breach of a tenancy agreement or uses premises for an illegal purpose.¹⁹

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 take no action, give the person a reprimand, recommend or order the person to attend community support services or give Centrelink a notice to manage all or some of the person's welfare payments through a Conditional Income Management (CIM) order.

If a person does not comply with an FRC order, the FRC can order that a percentage of the client's welfare payment be managed through a CIM order.²⁰

The FRC Act also allows the FRC to enter into a Family Responsibilities Agreement with the person about attending community support services or income management arrangements, instead of making an order.²¹

Since its commencement in 2008, the FRC has received 19,262 *agency notices* that were within its jurisdiction (i.e. concerning a welfare reform community member in receipt of welfare payments). For the 2013-14 reporting period, a total of 3,392 notices within jurisdiction were received by the FRC, which resulted in 1,794 conferences, 435 referrals to service providers and 304 CIM orders.²²

2.2 Special Taskforce on Domestic and Family Violence in Queensland

The *Special Taskforce on Domestic and Family Violence in Queensland* (Taskforce), chaired by the Hon. Quentin Bryce AD CVO, was established on 10 September 2014.

The Taskforce's role was to define the domestic and family violence landscape in Queensland, and make recommendations to inform the development of a long-term vision and strategy for Government and the community, to rid our State of domestic and family violence.²³

On 28 February 2015, the Taskforce's report *Not now, not ever: putting an end to domestic and family violence in Queensland* was released (Taskforce Report). The Taskforce Report contains 140 recommendations which are comprehensive and cover all aspects of the way government, police, lawyers and the courts deal with domestic and family violence. The recommendations provide direction as to how and where improvements can be made with the ultimate aim of reducing and preventing domestic and family violence.

19 Explanatory Notes, p.1

20 Department, *Briefing Note*, 20 October 2015, p.2

21 *Family Responsibilities Commission Act 2008*, section 68

22 Ms Ainslie Barron, Acting Executive Director, Community Participation, Department, *Public Briefing Transcript*, 20 October 2015, p.4

23 Special Taskforce on Domestic and Family Violence in Queensland Report, *Not now, not ever: putting an end to domestic and family violence in Queensland* (Taskforce Report), February 2015, p.6

In relation to the FRC, the Taskforce Report recommended:

- the introduction of a domestic and family violence trigger, related to the making of a *protection order* by a court (Taskforce Recommendation 93), and
- that the Queensland Government review the resourcing impact of the new domestic and family violence trigger and ensure sufficient funding is available to manage the anticipated increase in referrals to the FRC (Taskforce Recommendation 94).²⁴

The Queensland Government released its response to the Taskforce Recommendations on 18 August 2015, and has accepted all 121 recommendations directed at government.

24 Taskforce Report, February 2015, p.267

3. New domestic violence trigger for agency notices

3.1 Proposed amendments

Clause 6 of the Bill implements Taskforce Recommendation 93 by omitting and replacing section 43 of the FRC Act (Notice about offences) to provide for the FRC to receive an *agency notice* when a court makes a *protection order* against a person who lives, or has lived, in a *welfare reform community area*.

The Treasurer, in his explanatory speech, stated that:

*By including an amendment in the act to give legislative effect to [Taskforce] recommendation No. 93, this government reinforces its commitment to address the incidents of domestic violence and, as far as the welfare reform communities are involved, reiterates its commitment to provide a mechanism to restore socially responsible standards of behaviour and help community members resume primary responsibility for themselves, other community members and families.*²⁵

The Department stated that “In keeping with the [Taskforce] recommendation, the proposed provision in the Bill will only require an agency notice if a protection order is made and it will not extend to a temporary protection order made under the *Domestic and Family Violence Protection Act 2012*”.²⁶

The Department stated that:

*... a domestic violence trigger ... will assist the FRC in helping welfare reform communities rebuilding social norms, re-establish Indigenous authority within Indigenous communities through conferencing and referral to support services to help those people who come before the FRC to address and correct the offending behaviours and provide some level of reassurance for community members that this sort of behaviour will be monitored and will not be tolerated.*²⁷

The *agency notice* from the courts is to include:

- the conditions, if any, on the *protection order*
- the day the court made the *protection order*
- the person’s name and address
- information that identifies the court that made the *protection order* against the person, and
- information that identifies where the conduct that is the subject of the *protection order* happened, or the *welfare reform community area* where the person lives or had lived.²⁸

25 Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships (Treasurer), *Hansard*, 13 October 2015, p.2082

26 Department, *Briefing Note*, 20 October 2015, p.5

27 Mr Ron Weatherall, Deputy Director-General, Community Participation, Department, *Public Briefing Transcript*, 20 October 2015, p.2

28 Ms Ainslie Barron, Acting Executive Director, Community Participation, Department, *Public Briefing Transcript*, 20 October 2015, p.5

Committee comment

The Committee supports the proposed amendment to introduce a new domestic violence trigger for *agency notices* to the FRC. The Committee considers that the new provisions will assist the FRC in the early identification of domestic and family violence issues in *welfare reform community areas* and mean that the FRC is better placed to take action to address such issues.

3.2 Protection orders

A *protection order*, or Domestic Violence Order (DVO), is a civil order made by a Magistrates Court that imposes conditions to protect a person from future domestic violence.

The *protection order* requires the respondent (the person who is the subject of the order) to be of good behaviour and not commit domestic violence against the aggrieved person.²⁹

The court can also impose other conditions in a *protection order*, where necessary or desirable to protect the aggrieved person. For example, a *protection order* may include a condition that the respondent must not come within a certain distance of the aggrieved, must not contact the aggrieved by telephone or text, or must not contact any children of the aggrieved. An ouster condition (where the perpetrator is excluded from the home) can also be included in an order.³⁰

Generally, a *protection order* continues in force for up to two years. However, a court may order that a *protection order* continues in force for more than two years, if it is satisfied there are special reasons for doing so.³¹

If a respondent breaches a *protection order*, a criminal offence is committed. The maximum penalty for a breach of a *protection order* is:

- if, within five years of the breach of the *protection order*, the respondent has been convicted of a *domestic violence offence*³² – 240 penalty units or five years imprisonment, or
- otherwise – 120 penalty units or three years imprisonment.³³

3.3 Conference process

The FRC's process for dealing with an *agency notice* is summarised below:

- **Assessing the agency notice** to determine whether it is within the jurisdiction of the FRC. Section 49 of the FRC Act allows the FRC to deal with an *agency notice* relating to a *community member*.³⁴

29 *Domestic and Family Violence Protection Act 2012*, section 56

30 *Domestic and Family Violence Protection Act 2012*, sections 57 to 67

31 *Domestic and Family Violence Protection Act 2012*, section 97

32 *Criminal Law (Domestic Violence) Amendment Act 2015*, section 3 amended the *Criminal Code Act 1899* to include a definition of a *domestic violence offence*

33 *Criminal Law (Domestic Violence) Amendment Act 2015*, section 7 amended the *Domestic and Family Violence Protection Act 2012*, section 177

34 *Family Responsibilities Commission Act 2008*, section 7 defines a *community member* as a person who is a welfare recipient who has lived in one of the *welfare reform community areas* for at least three months since the commencement of the *Family Responsibilities Commission Act 2008*

If the matter is within jurisdiction, a referral is made to Local Commissioners who decide whether the client should be ordered to attend a conference and whether other relevant persons should be invited or directed to attend the conference.

- **Serving a 'Notice to Attend Conference'** where a decision is made to proceed to conference. The client is advised of the time, date and place of the conference, the purpose of the conference, what they can expect to occur and the ramifications if they fail to attend.
- **Conducting a conference** to discuss the subject of the notice and any related problems the client wishes to raise. Conferences are conducted in the local language where the client's first language is not English and are informal and confidential. Local Commissioners translate as required.

3.4 Conference outcomes

Conferencing can result in a number of outcomes, including:

- **A referral or referrals** if Commissioners establish that clients would benefit from one or more support services. Support services include Wellbeing Centres, parenting programs, budgeting and financial programs, Student Case Managers (SCMs), anger management programs, or other appropriate referrals.
- **Issue of a notice to Centrelink for a CIM order** if Commissioners believe a client's financial circumstances need to be stabilised. A CIM order is often issued where children or other vulnerable people are affected, when a client fails to attend two scheduled conferences, when a client is not complying with their agreement or order, or when the FRC continues to receive additional notices in relation to their behaviour.

A CIM order is normally for 12 months and is reviewed at six and nine months. The Commissioners determine the proportion of the fortnightly welfare payments which is to be managed, and Centrelink implements the notice. This includes a meeting between Centrelink and the client to discuss their priority needs and financial obligations, and allocating the remainder of their funds to a BasicsCard for the purchase of food and other consumables.

- **Case management for clients** who enter into an agreement or who are ordered to attend community support services. This includes a review of monthly progress reports from service providers in which providers advise the FRC whether the client has attended and engaged with the provider and the progress made towards achieving their goals.³⁵

3.5 Availability of domestic and family violence prevention support services

The Committee notes that the FRC already deals with domestic and family violence related matters in the form of *agency notices* from the courts about breaches of *protection orders*. In the 2014-15 financial year, the FRC received 71 court notices of breaches of *protection orders* within its jurisdiction.³⁶

In response to a Question Taken on Notice about existing domestic and family violence support services available to the FRC following a conference, the Department stated that:

Where domestic violence is an issue for the individual or family, the Family Responsibilities Commission currently can and does refer clients to the Wellbeing Centres managed by the Royal Flying Doctor Service in each community. The services offered by the Royal Flying Doctor Service provide for partnership counselling. The

35 FRC, *Annual Report 2013-14*, September 2014, pp.16-17

36 Department, *Response to Questions on Notice*, 23 October 2015, p.1

Family Responsibilities Commission can and does also refer people to Parenting Programs provided by Cape York Partnerships.

Clients can also be referred to the “Positive Futures” program run by Queensland Corrective Services. Nine Courses are provided over a year: three in Cairns and six in other locations across Cape York.³⁷

The Explanatory Notes state that “Should the operation of the additional trigger result in an identified need for further resources to access family violence support or other relevant programs, funding will be available to assist in the development and delivery of such services”.³⁸

The Committee notes that the services mentioned by the Department do not provide specific domestic and family violence support or rehabilitation to domestic and family violence perpetrators. The FRC’s Annual Report 2013-14 refers to the Ending Family Violence program; however, this service appears to have ceased on 31 December 2013.³⁹

The Committee understands that the Wellbeing Centres currently focus on addressing alcohol and/or drug abuse, gambling, parenting or social health issues and the Parenting Programs assist in implementing good parenting practices.⁴⁰ The Committee also understand that *Positive Futures* is a culturally-specific program designed for Indigenous offenders to help them holistically address aspects of their offending behaviour, which may include substance abuse.⁴¹

Given the likelihood of the FRC receiving more *agency notices* about domestic and family violence perpetrators, the Committee recommends that the Department ensure that appropriate domestic and family violence specific support services are available for the FRC to refer community members following a conference.

The Committee considers that the availability of such domestic and family violence specific support services is vital, if the FRC is going to be able to play an effective part in tackling domestic and family violence in *welfare reform community areas*.

Recommendation 2

The Committee recommends that the Department of Aboriginal and Torres Strait Islander Partnerships ensure that appropriate domestic and family violence specific support services are available for the Family Responsibilities Commission to refer community members following a conference.

37 Department, *Response to Questions on Notice*, 23 October 2015, p.1

38 Explanatory Notes, p.4

39 FRC, *Annual Report 2013-14*, September 2014, p.16

40 FRC, *Annual Report 2013-14*, September 2014, p.16

41 Department of Justice and Attorney-General, *Annual Report 2013-14*, p.19

3.6 Monitoring and resourcing of Family Responsibilities Commission

The Queensland Government, in its response to Taskforce Recommendation 94,⁴² committed to review the FRC data at quarterly intervals from the date of implementation of the proposed trigger to assess any resourcing impact.⁴³

At the public briefing, the Department stated that:

*DATSIP will monitor the funding associated with the effect of the application of the domestic violence trigger by regular consultation with the FRC to determine whether the domestic violence trigger increases the workload of local commissioners or FRC staff and whether it is likely the FRC will require additional funding to address any increased workload or logistic demands associated with the domestic violence trigger. When the Director-General [of the Department] sits as the chair of the Family Responsibilities Board, the impact of domestic violence triggers are a standing agenda item on these board meetings. We will monitor the impact the trigger has on the workload of the FRC.*⁴⁴

Committee comment

The Committee notes the Department's undertaking to monitor the impact that the new domestic violence trigger for *agency notices* has on the FRC's workload.

The Committee is aware that the increased promotion and awareness of domestic violence issues has coincided with significant increases in reporting of domestic violence incidents to services, such as DVConnect. In 2014-15, DVConnect received approximately 71,255 calls for assistance, compared with 52,447 in 2012-13.⁴⁵

The Committee considers that the increase in reporting of domestic violence incidents may result in the FRC receiving more *agency notices* under the existing trigger when community members are convicted of the criminal offence of breaching a *protection order*. The Committee considers that the potential increase in *agency notices*, under the existing trigger, coupled with the proposed new domestic violence trigger may have a significant impact on the FRC's workload and resources.

The Committee notes that the FRC currently monitors and reports on the number of *agency notices* received from the courts in relation to criminal offences generally. However, in order to gauge the number of *agency notices* the FRC receives about domestic violence incidents, in total, and to assess the prevalence of such incidents in *welfare reform community areas*, the Committee recommends that the Department and FRC monitor and report on the number of *agency notices* it receives as a result of:

42 Taskforce Recommendation 94 recommends that "the Queensland Government reviews the resourcing impact of the new domestic and family violence trigger and ensure sufficient funding is available to manage the anticipated increase in referrals to the Family Responsibilities Commission", Taskforce Report, February 2015, p.267

43 Queensland Government, *Queensland Government response to the report of the Special Taskforce on Domestic and Family Violence in Queensland*, February 2015, p.29

44 Mr Ron Weatherall, Deputy Director-General, Community Participation, Department, *Public Briefing Transcript*, 20 October 2015, p.3

45 Department of Communities, Child Safety and Disability Services, *Annual Report 2013-14*, 2014, pp.38-39 and *Annual Report 2012-13*, p.56

- a community member being the subject of a *protection order*, and
- a community member being convicted of a breach of a *protection order*.

Recommendation 3

The Committee recommends that the Department of Aboriginal and Torres Strait Islander Partnerships and the Family Responsibilities Commission monitor the number of *agency notices* received from the courts as a result of:

- a community member being the subject of a *protection order*, and
- a community member being convicted for a breach of a *protection order*.

Recommendation 4

The Committee recommends that the Treasurer, Minister for Employment and Industrial Relations, Minister for Aboriginal and Torres Strait Islander Partnerships require the Family Responsibilities Commission to report, in its annual report, on the number of *agency notices* it receives in the following circumstances:

- when a court makes a *protection order* against a community member, and
- when a court convicts a community member of a breach of a *protection order*.

4. Clarifying process for existing youth justice agency notices

Section 43 of the FRC Act provides that where a child has been convicted of an offence and the court has been advised that any parent of the child lives, or has lived, in a *welfare reform community area*, the court must provide the FRC with a notice of that conviction.

The Explanatory Notes state that “... the relevant information about [the child’s] parent is not always readily available to the child’s representatives or representatives from the Department of Justice and Attorney-General who assist the court” and “In the absence of relevant information about the parent, the requirement to provide the notice does not activate if the court is only advised if the child lives or has lived in a welfare reform community area”.⁴⁶

4.1 Proposed amendment

Clause 6 omits and replaces section 43 of the FRC Act to provide that where a child has been convicted of an offence and the court has been advised that the child, or any parent of the child, lives, or has lived, in a *welfare reform community area*, the court must provide the FRC with a notice of that conviction.

The Explanatory Notes state that “The FRC has advised that including the child’s residential information as a trigger to issue an agency notice will enable the court to provide the relevant agency notice to the FRC”.⁴⁷

46 Explanatory Notes, p.3

47 Explanatory Notes, p.3

5. Delegation of Commissioner's powers

In 2013, the FRC Act was amended to enable the Commissioner, where appropriate, to appoint three Local Commissioners from the relevant *welfare reform community area* to constitute the commission for a conference, make decisions about the person subject to the conference, and propose that an income management decision be made.⁴⁸

The Commissioner is, however, still required to endorse the Local Commissioner's decisions at case conferences and any related case plans. The Explanatory Notes state that "This has not substantially reduced the Commissioner's workload or travel and it is considered there is scope to introduce greater flexibility and cost effectiveness into the operation of the FRC".⁴⁹

5.1 Proposed amendments

Clause 3 amends section 24 of the FRC Act to provide that the Commissioner may delegate his or her commissioner's functions for a conference (constituted by three Local Commissioners) to the chairperson of the commission for the conference, if the Commissioner is satisfied that the chairperson is *appropriately qualified* to perform the Commissioner's functions.

The term *appropriately qualified* is defined in the *Acts Interpretation Act 1954* as:

(a) for a function or power—means having the qualifications, experience or standing appropriate to perform the function or exercise the power; or

*(b) for appointment to an office—means having the qualifications, experience or standing appropriate to perform the functions of the office.*⁵⁰

The Treasurer, in his explanatory speech, stated that:

*In recognition of their experience and representative role within the communities, the Bill allows the delegation of the commissioner's responsibilities to the chairperson of a commission constituted by local commissioners ... Importantly, this increases recognition of the authority of the Aboriginal and Torres Strait Islander local commissioners. It will also allow cost savings in terms of the commissioner's travel and improve practical flexibility for the FRC.*⁵¹

The Department advised that:

*The inability of the Commissioner to delegate particular functions and powers to a duly appointed Local Commissioner creates a bureaucratic burden on the FRC process, as well as the Commissioner. The most significant change will enable Local Commissioners to decide to enter a family responsibilities agreement requiring that a person be subject to income management.*⁵²

48 *Family Responsibilities Commission Act 2008*, section 50A

49 Explanatory Notes, p.2

50 *Acts Interpretation Act 1954*, Schedule 1

51 Treasurer, *Hansard*, 13 October 2015, p.2082

52 Department, *Briefing Note*, 20 October 2015, p.4

Committee comment

The Committee supports the delegation of the Commissioner's functions to local indigenous community leaders. The Committee considers that the amendments will enhance local empowerment and have practical and resource benefits for the Commissioner and the FRC.

The Committee notes, however, that the term 'commissioner's functions for a conference' is not defined in the Bill or the FRC Act. On reviewing the FRC Act, the Committee considers that it is arguable that all of the following functions of the Commissioner relate to a conference:

- determining whether the relevant person for the notice is a community member, and therefore, whether a conference may be held in relation to that person (section 49)
- deciding the time and place of a conference (section 57) in keeping with statutory requirements (section 58)
- determining whether a conference may be about more than one *agency notice* relating to a particular person and more than one relevant person for an *agency notice* (section 59)
- requiring that the Registrar give notice of the conference to any other person the Commissioner considers likely to make a useful contribution to the conduct of the conference (section 61), and
- taking all reasonable steps to ascertain and make known at the conference the views:
 - of any other person or persons the Commissioner considers likely to make a useful contribution to the conduct of the conference and who has been given a notice to attend, and notified the Commissioner that they will not be attending the conference, and
 - if the person the subject of the conference is an Aboriginal and Torres Strait Islander person, of a member of the clan or family group of the person who has not been given a notice, but whose views the Commissioner considers should be obtained (section 62).

The Committee notes that the Bill also specifies that the reference to the Commissioner's functions in clause 3 includes the Commissioner's function of endorsing an income management decision.

Section 4(3)(k) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether the legislation is unambiguous and drafted in a sufficiently clear and precise way.

The Committee considers that clause 3 is ambiguous and lacks clarity in that it is unclear from the current drafting of the Bill which functions the Commissioner may delegate to the chairperson of the commission for a conference.

Accordingly, the Committee recommends that the Bill be amended to identify clearly which functions the Commissioner may delegate to the chairperson of the commission for a conference.

Recommendation 5

The Committee recommends that the Family Responsibilities Commission Amendment Bill 2015 be amended to identify clearly which functions the Commissioner may delegate to the chairperson of the commission for a conference constituted under section 50A of the *Family Responsibilities Commission Act 2008*.

6. Broadening suitability requirements for the Registrar

Part 3 of the FRC Act establishes the Registry (managed by the Registrar) and provides that it is responsible for managing the administrative affairs of the FRC. The Registry also fulfils a number of other functions, including:

- keeping records and information the Registrar or Commissioner considers appropriate
- helping the Commissioner prepare the annual report
- making FRC guidelines and preparing case plans relating to a person's attendance at a community support service
- monitoring a person's compliance with their case plan, and
- providing the FRC with reports about a person's compliance.⁵³

The FRC Act provides that a person is eligible for appointment as the Registrar, only if the person has an appropriate understanding of the history and culture of Aboriginal people and Torres Strait Islanders and is either a lawyer or has appropriate expertise and experience in matters relating to the operation of a registry of a court or tribunal.⁵⁴

The Explanatory Notes state that "The structure of the FRC has evolved to the point where the Registrar position needs to perform a general manager role and make management, budgetary and human resources decisions".⁵⁵

The Department also advised that "The specific eligibility criteria in the Act are considered to limit the potential candidate pool as well as limiting the expertise or experience that the person could provide to the FRC".⁵⁶

6.1 Proposed amendment

Clause 4 amends section 34 of the FRC Act to provide that a person is eligible for appointment as the Registrar, if the person:

- has an appropriate understanding of the history and culture of Aboriginal people and Torres Strait Islanders; and
- is a lawyer or otherwise – *appropriately qualified*⁵⁷ to perform the functions of the Registrar.

The Department stated that "the proposed amendment ... will remove any reference to a potential candidate having to have the appropriate experience and expertise in matters relating to the operation of the registry of a court or a tribunal and replace it with a requirement that the person be appropriately qualified to perform the functions of the registrar".⁵⁸

53 Department, *Briefing Note*, 20 October 2015, pp.3-4

54 *Family Responsibilities Commission Act 2008*, section 34

55 Explanatory Notes, p.3

56 Department, *Briefing Note*, 20 October 2015, p.5

57 *Acts Interpretation Act 1954*, Schedule 1

58 Ms Ainslie Barron, Acting Executive Director, Community Participation, Department, *Public Briefing Transcript*, 20 October 2015, p.5

7. Removal of redundant provisions

Clause 7 and schedule 1 remove redundant definitions in the FRC Act, including the Australian Government's Community Development Employment Projects (CDEP) scheme which has been phased out.

8. Fundamental legislative principles and explanatory notes

8.1 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, and
- the institution of Parliament.

The Committee has examined the application of the fundamental legislative principles to the Bill. Notwithstanding the Committee’s comments in relation to the drafting of clause 3 (see page 22 of this report), the Committee did not identify any significant issues of concern regarding fundamental legislative principles.

8.2 Explanatory Notes

Part 4 of the *Legislative Standards Act 1992* provides that an Explanatory Note must be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an Explanatory Note should contain.

The Committee notes that Explanatory Notes were tabled with the Bill on its introduction in the Legislative Assembly.

The Committee considers that the Explanatory Notes are fairly detailed and contain the majority of the information required by Part 4 of the *Legislative Standards Act 1992* and a reasonable level of background information and commentary to facilitate understanding of the Bill’s aims and origins.

The Committee considers, however, that the Explanatory Notes lack the required detail in the ‘Notes on Provisions’ section. Section 23(1)(h) of the *Legislative Standards Act 1992* provides that the Explanatory Notes must include a simple explanation of the purpose and intended operation of each clause of the Bill. The Committee considers that the ‘Notes on Provisions’ section does not provide sufficient information about the functions the Commissioner may delegate to the chairperson of a conference, under clause 3, and does not provide any information about the amendments to the existing youth justice trigger at clause 6.

Appendix A – List of submissions and witnesses at public briefing

Submissions

Submission Number	Submitter
001	Family Responsibilities Commission
002	Protect All Children Today Inc.

Public briefing

Public briefing held on 20 October 2015
Mr Ron Weatherall – Deputy-Director General, Community Participation, Department of Aboriginal and Torres Strait Islander Partnerships
Ms Ainslie Barron – Executive Director, Community Participation, Department of Aboriginal and Torres Strait Islander Partnerships
Mr Brian McFayden, Principal Policy Officer, Community Participation, Department of Aboriginal and Torres Strait Islander Partnerships

