

# **Family Responsibilities Commission Amendment Bill 2012**

**Report No. 11**

**Health and Community Services Committee**

**October 2012**

## Health and Community Services Committee

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## Chair's foreword

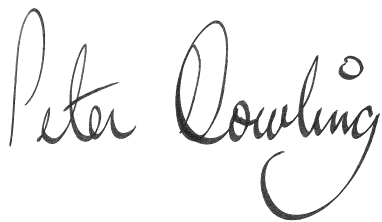
This report presents a summary of the committee's examination of the Family Responsibilities Commission Amendment Bill 2012.

The committee's task was to consider the policy outcomes to be achieved 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.

Examination of a Bill by a portfolio committee allows the Parliament to hear views from the public and stakeholders on legislation and its impact. The examination of Bills is intended to contribute to better policy and legislation in Queensland.

On behalf of the committee I thank those who contributed to the committee's deliberations: officials from the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs, the committee's secretariat and the Technical Scrutiny of Legislation secretariat.

I commend the report to the House.

A handwritten signature in black ink that reads "Peter Dowling". The signature is written in a cursive style with a large, stylized 'P' and 'D'.

Mr Peter Dowling MP  
**Chair**

25 October 2012

## **Recommendation**

### **Recommendation 1**

**3**

The committee recommends that the Family Responsibilities Commission Amendment Bill 2012 be passed.

## 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 17 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, and
- the application of fundamental legislative principles to the Bill.

### 1.2 Committee process

The Family Responsibilities Commission Amendment Bill 2012 (the Bill) was referred to the committee on 12 September 2012 and the committee was required to report to the Legislative Assembly by 25 October 2012.

The committee considered the consultation undertaken by the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs (DATSIMA), described in the Explanatory Notes and outlined in the oral briefing provided by DATSIMA. The committee was satisfied with the consultation undertaken by the Department. In light of the time available to consider the Bill, the committee decided that extensive consultation was not required.

The committee called for submissions on its website and requested submissions from the Family Responsibilities Commission (FRC) and the Cape York Institute for Policy and Leadership (the Institute). Two submissions were received and are published on the committee's website.<sup>1</sup>

An oral briefing on the Bill was provided by officials from DATSIMA on 8 October 2012. A transcript of that briefing is on the committee's website.<sup>2</sup>

The committee did not hold a public hearing on the Bill.

### 1.3 Policy objectives of the Family Responsibilities Commission Amendment Bill 2012

#### 1.3.1 Primary objective of the Bill

The primary objective of the Bill is to extend the operation of the FRC for a further 12 months by amending the expiry date of the *Family Responsibilities Commission Act 2008* (the Act). Section 152 of the Act currently states that the Act expires on 1 January 2013, resulting in the cessation of the FRC on 31 December 2012. Clause 4 of the Bill proposes to amend the expiry date to 1 January 2014, enabling the FRC to operate until 31 December 2013.

The Bill also proposes two consequential amendments. Clauses 4 and 5 align the date on which the office of commissioner or board member is considered vacant, and the date on which an FRC order or family agreement cease, with the amended expiry date of 1 January 2014.

The third provides that two members of the Family Responsibilities Board are required for a quorum, instead of the current requirement for all three members to be present.

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<sup>1</sup> <http://www.parliament.qld.gov.au/work-of-committees/committees/H CSC/inquiries/current-inquiries/FamResponsCommAmendBill2012>

<sup>2</sup> <http://www.parliament.qld.gov.au/work-of-committees/committees/H CSC/inquiries/current-inquiries/FamResponsCommAmendBill2012>

### *1.3.2 The Family Responsibilities Commission*

The FRC is statutory body, comprised of a legally qualified commissioner, one or more deputy commissioners and local commissioners who are respected elders from the four participating Cape York communities.

The purpose of the FRC is to support the restoration of socially responsible standards of behaviour and to assist community members to resume and maintain primary responsibility for the wellbeing of their community, and the individuals and families within their community.

The core objectives of the FRC include safeguarding and restoring child safety, school attendance, lawful behaviour and responsible tenancy. The Act allows the FRC to conduct conferences where a welfare recipient in one of the communities:

- 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 hearing 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 e.g. someone who is looking after their child.

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



## 2 Examination of the Bill

### 2.1 Should the Bill be passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed. The committee considered the policy intent of the Bill, which is to extend the operation of the FRC for a further 12 months to 31 December 2013, and noted the key role the FRC plays in the Cape York Welfare Reform Trial (the Trial).

After examination of the Bill, the committee determined that the Bill should be passed.

#### **Recommendation 1**

The committee recommends that the Family Responsibilities Commission Amendment Bill 2012 be passed.

### 2.2 Extension of the Family Responsibilities Commission until the end of 2013

#### 2.2.1 Link to Cape York Welfare Reform Trial

Extending the operations of the FRC will ensure continued support for the Trial, which operates as a partnership between the Queensland Government, the Australian Government and the Institute. The Trial commenced in 2008 and includes four Cape York communities - Aurukun, Coen, Hope Vale and Mossman Gorge. The Trial aims to restore social norms and local authority in these communities. The FRC is a central feature of the Trial, with provisions relating to its establishment, functions and powers outlined in the Act.

#### 2.2.2 Support for extending the FRC

The committee considered the report of the former Community Affairs Committee's examination of the Family Responsibilities Commission and Other Acts Amendment Bill 2011 (the 2011 Bill). That Bill included a similar amendment to the date of expiry of the Act to extend the operation of the FRC by one year to 31 December 2012.<sup>3</sup> The Community Affairs Committee identified a number of considerations to justify the extension. The committee notes that similar considerations are relevant to the current Bill.

Additional government funding has been committed to extend the Trial. On 8 May 2012 the Australian Government announced it would commit an additional \$11.8 million to extend the Trial for a further 12 months.<sup>4</sup> The Queensland Government 2012-13 Budget allocates \$5.7 million over two years to continue the Trial until 31 December 2013. Approximately \$1.8 million of this has been allocated to the continued operation of the FRC.<sup>5</sup>

Recent consultations, described in the Bill's Explanatory Notes and outlined in the oral briefing provided to the committee by DATSIMA on 8 October 2012, show significant stakeholder support for the extension of the Trial and the ongoing operation of the FRC. The Trial is described as having a 'positive effect on the behaviour of community members', with greater school attendance, a decrease in child safety notifications, quieter communities, improved relationships with police and

<sup>3</sup> Community Affairs Committee 2011, *Report No. 4 to the Legislative Assembly: Examination of Family Responsibilities Commission and Other Acts Amendment Bill 2011*, 12 October 2011, pp.2-3

<sup>4</sup> The Hon Jenny Macklin MP, Media Release - *Investing to close the gap on Indigenous disadvantage*, 8 May 2012

<sup>5</sup> State Budget 2012-13 *Service Delivery Statements*, Department of Aboriginal and Torres Strait Islander and Multicultural Affairs, p.4 & p.26

more local leadership.<sup>6</sup> In its briefing to the committee DATSIMA stated that communities have expressed 'a strong view that the FRC should be continued'.<sup>7</sup>

Both the Explanatory Notes and a transcript of the briefing provided by DATSIMA are published on the committee's website.<sup>8</sup>

The Queensland Government announced on 31 August 2012 that it had reached agreement with the Institute to extend the Trial for a further 12 months.<sup>9</sup>

The committee has also been advised that relevant Commonwealth legislation, (*The Social Security and Other Legislation Amendment (2012 Budget and Other Measures) Bill 2012*), has been introduced into the House of Representatives. This bill enables the FRC to continue to recommend income management of welfare payments.

### 2.2.3 Submissions

The committee received submissions from Commissioner David Glasgow, Family Responsibilities Commissioner (the Commissioner), and The Cape York Institute for Policy and Leadership (the Institute), which support the ongoing role of the FRC.

The Commissioner states that the FRC supports all amendments in the bill and argues that extending the operation of the FRC for a further 12 months will assist the Commission to build upon achievements they have made in the Aurukun, Coen, Hope Vale and Mossman Gorge communities.<sup>10</sup>

The Institute notes that the bill is confined to operational matters, which will allow the FRC to continue to operate for a further 12 months, and states there is scope to amend the Act further, to provide the FRC with additional tools to 'resolve intractable cases of antisocial behaviour'.<sup>11</sup> Both submissions are published on the committee's website.

The committee supports the proposal to amend the date of expiry of the Act from 1 January 2013 to 1 January 2014, extending the operation of the FRC for a further 12 months.

## 2.3 Family Responsibilities Board - quorum

Clause 3 of the Bill amends section 123 of the Act to provide that the quorum for meetings of the Family Responsibilities Board is at least two members.

Section 123(3) of the Act currently requires that all board members must be present at a board meeting. The board consists of three people appointed by Governor in Council, one of whom is nominated by each of the Minister, the Commonwealth and by the Institute (s.118).

The Explanatory Notes state that the amendment is to address the practical issues arising when a member is not available to attend a board meeting.<sup>12</sup>

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<sup>6</sup> Explanatory Notes, Family Responsibilities Commission Amendment Bill 2012, pp.5 -6

<sup>7</sup> Mr Wayne Briscoe, Acting Deputy Director-General, Department of Aboriginal and Torres Strait Islander and Multicultural Affairs, Transcript, 8 October 2012, p.1

<sup>8</sup> <http://www.parliament.qld.gov.au/work-of-committees/committees/HSCS/inquiries/current-inquiries/FamResponsCommAmendBill2012>

<sup>9</sup> The Hon Glen Elmes MP, Media Release - Cape York Welfare Trial to go ahead, 31 August 2012

<sup>10</sup> Submission 1, Commissioner David Glasgow, Family Responsibilities Commission

<sup>11</sup> Submission 2, Ms Fiona Jose, Acting Chief Executive Officer, Cape York Institute for Policy and Leadership

<sup>12</sup> Explanatory Notes, Family Responsibilities Commission Amendment Bill 2012, p.1

In its briefing to the committee DATSIMA advised that there is unlikely to be any adverse impact as the board is an advisory body only, with limited decision making capacity. The committee was advised that that there have been very few meetings in which all three Board members were not in attendance and that the amendment is 'to cover the eventuality that one may not be able to make it. Mr Briscoe noted that were this the case, the views of this member would be sought prior to the meeting.<sup>13</sup>

Submissions from the Commissioner and the Institute support this amendment.

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

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<sup>13</sup> Mr Wayne Briscoe, Acting Deputy Director-General, Department of Aboriginal and Torres Strait Islander and Multicultural Affairs, Transcript, 8 October 2012, p.2

### 3 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 considered the application of fundamental legislative principles to the Bill.

#### 3.1 Rights and liberties of individuals - potential inconsistency with the *Racial Discrimination Act 1975* (Cth)

The committee considered the potential inconsistency of the Bill with the Commonwealth *Racial Discrimination Act 1975* (the RD Act), including the report of the former Community Affairs Committee’s examination of the 2011 Bill, which also extended the operation of the FRC for one year. The former committee examined whether the 2011 Bill was inconsistent with the RD Act or whether it was a ‘special measure’ under that Act, and would therefore not offend against the Commonwealth Act.

In its briefing to the committee DATSIMA said:

*The ability to impose compulsory income management is, on the face of it, or would appear to be, a breach of the Racial Discrimination Act because it only applies to those four communities, which are primarily Indigenous communities. To ensure that we are not in breach of the Racial Discrimination Act and that the FRC in particular continues as what is referred to as a ‘special measure’, we have to ensure that we consult with each of the communities before proposing an extension, and we have done that. We did that prior to the first extension happening and we did it most recently in June this year. In each of the communities that we consulted there was a very strong view that the FRC should be continued primarily because a number of positives were at least perceived to be happening in those communities, including increased school attendance.<sup>14</sup>*

The Explanatory notes accompanying the Bill provide further detail on those consultations. In 2012 DATSIMA consulted with all relevant stakeholders, including Trial partners, State and regional agencies, Councils, service providers, unions and community groups, to determine whether or not to extend the Trial for a further year. The consultations identified ‘a commonly held view that the Trial has a positive effect on the behaviour of community members’ and showed ‘that people knew how the FRC could assist in addressing their problems’.<sup>15</sup>

The communities of Aurukun, Coen and Mossman Gorge were extremely supportive of the Trial and provided positive examples of how the Trial had improved conditions in their communities. There was no criticism of the FRC or of welfare reform.

The Hope Vale community was largely supportive, identifying a number of community improvements, including less community unrest and a decrease in Child Safety notifications. The only dissenting view was the local Council which, while not directly supporting the continuation of the

<sup>14</sup> Mr Wayne Briscoe, Acting Deputy Director-General, Department of Aboriginal and Torres Strait Islander and Multicultural Affairs, Transcript, 8 October 2012, p.1

<sup>15</sup> Explanatory Notes, Family Responsibilities Commission Amendment Bill 2012, p.5

Trial and the FRC, acknowledged that the 'the Wellbeing Centre was having a positive impact and that Income Management was assisting some people'.<sup>16</sup>

The committee notes that in 2010-11 the Commonwealth repealed legislation which declared the FRC to be a 'special measure' for the purposes of the RD Act, with the result that the FRC was no longer excluded from operation of that Act. The explanatory notes for the repealing Commonwealth legislation indicate a protective intention, stating that the amendments did "not alter the fact that the provisions and acts covered ... are intended to be special measures under the *Racial Discrimination Act*."<sup>17</sup> The committee also notes that the merits of the Commonwealth Government's 'deeming' of income management as a 'special measure' has not at this time been subject to legal challenge.

After examining the question of potential inconsistency of the FRC with the RD Act the former Community Affairs Committee concluded that:

*.... legislation such as this bill which merely operates to extend the operation of the FRC and its income management schemes would presumably also enjoy the same protections afforded by the 'special measures' exemptions at Commonwealth level.*<sup>18</sup>

The committee draws these issues to the attention of the Legislative Assembly.

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<sup>16</sup> Explanatory Notes, Family Responsibilities Commission Amendment Bill 2012, p.6

<sup>17</sup> Explanatory Notes, Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010 (Cth), p.9

<sup>18</sup> Community Affairs Committee 2011, Report No. 4 to the Legislative Assembly: Examination of Family Responsibilities Commission and Other Acts Amendment Bill 2011, 12 October 2011, pp.5-6