

Queensland Community Safety Bill 2024

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Submission to the Queensland Parliament Community Safety and Legal Affairs Committee May 2024

1. RECOMMENDATION

The Family Responsibilities Commission (FRC) makes the following recommendations to the Community Safety and Legal Affairs Committee in its consideration of the Queensland Community Safety Bill 2024:

- A. The Queensland Government reconsiders its response to the Youth Justice Reform Select Committee's draft interim report, specifically in relation to recommendation 11 as it relates to the Family Responsibilities Commission.
- B. The Queensland Community Safety Bill 2024 be amended so that the Family Responsibilities Commission can operationalise its existing power to receive notices from the Childrens Court to:
 - (i) Omit, section 43(1)(b) *Family Responsibilities Commission Act 2008*; and
 - (ii) Insert, a clarifying provision into the *Family Responsibilities Commission Act 2008* to remove ambiguity as to the operation of section 43 and confirm that its operation does not impact the non-publication provisions contained in the *Youth Justice Act 1992*.
- C. The drafting of the above amendments by the Office of Queensland Parliamentary Counsel to be undertaken with advice from the Family Responsibilities Commission.

2. INTRODUCTION

On 30 April 2024, the Queensland Government released its Community Safety Queensland Plan (the Plan) which outlined initiatives to address crime and community safety in Queensland. The following day the Honourable Mark Ryan, Minister for Police and Community Safety tabled the Plan, which formed part of the Queensland Government's response¹ to the recommendations of the Youth Justice Reform Select Committee (the YJRS Committee).

The Minister also introduced the Queensland Community Safety Bill 2024 (the Bill) into the Queensland Parliament. The Bill 'reflects several of the initiatives outlined in the Plan, aimed at optimising law enforcement capabilities and efficiencies, improving crime prevention strategies, and addressing issues broadly relevant to community safety.'²

The stated purpose of the Bill, if enacted, is 'to amend the *Childrens Court Act 1992*, the *Corrective Services Act 2006*, the Criminal Code, the *Disaster Management and Other Legislation Amendment Act 2024*, the *Domestic and Family Violence Protection Act 2012*, the *Explosives Act 1999*, the *Judicial Review Act 1991*, the *Police Powers and Responsibilities Act 2000*, the *Summary*

¹ Queensland Government Response to the Interim Report: Inquiry into ongoing reform to the youth justice system and support for victims of crime, Report No. 1, 57th Parliament—Youth Justice Reform Select Committee, April 2024

² Briefing paper by Queensland Police Service, 13 May 2024 – Briefing Note to the Community Safety and Legal Affairs Committee Regarding the Queensland Community Safety Bill 2024

*Offences Act 2005, the Transport Operations (Road Use Management) Act 1995, the Weapons Act 1990, the Youth Justice Act 1992 and the legislation mentioned in schedule 1 for particular purposes.*³

The Bill was referred to the Community Safety and Legal Affairs Committee (the Committee) for detailed consideration. The Committee invites submissions on any aspect of the Bill, from all interested parties. The FRC makes this submission, and recommendations, as an interested party.

3. RELEVANT INFORMATION

3.1 The Youth Justice Reform Select Committee's recognition of the FRC's role.

The the YJRS Committee of the 57th Parliament was established by the Queensland Legislative Assembly to investigate a wide range of issues, including how to divert young offenders from the criminal justice system, prevent reoffending and better protect the community from the effects of youth crime. The Committee was dissolved by order of the house on 17 April 2024. The same order required the version of the latest report put to the YJRS Committee for adoption, which failed to pass, to be tabled by the Clerk.⁴

The YJRS Committee's draft interim report recognised inter alia the role of the FRC as part of a recommended youth justice response. Specially recommendation 11 proposed:

'That the Queensland Government consider introducing legislation seeking to operationalise the 'Childrens Court Trigger' in accordance with section 43(2) of the Family Responsibilities Commission Act 2008, to enable the Childrens Court to provide court advice notices to the Family Responsibilities Commission in relation to a child or young person who has been convicted of an offence.'

The under-utilisation of the FRC, as a public sector entity, was identified in the report. The YJRS Committee commented that 'it may be necessary to remedy any legislative impediment to the provision of notices concerning children and young people to ensure that the FRC can fulfil its role'.

The YJRS Committee recognised the concerns outlined in the FRC's submission that further delays in amending the legislation may lead to missed opportunities for early intervention to vulnerable and at-risk First Nations young people and their families, living in remote communities in Aurukun, Coen, Doomadgee, Hope Vale, and Mossman Gorge.

A copy of the FRC's submission to the Youth Justice Reform Select Committee to better understand the operational environment and policy context for the Commission's 'Children's Court Trigger' powers can be obtained from the parliamentary record.

3.2 Amending section 43 of the *Family Responsibilities Commission Act 2008* (FRC Act) will provide greater consistency with the fundamental legislative principles and human rights.

The recommendations proposed by this submission, seeking amendments to the FRC Act, has been prepared with due regard to the fundamental legislative principles outlined in the *Legislative Standards Act 1992*. The amendments ensure section 43 of the FRC Act will have greater consistency with at least two aspects of the fundamental legislative principles as it relates to ambiguity, and sufficiency of First Nations customs. It could be argued that section 43, without the amendment, would remain deficient regarding these fundamental legislative principles.

Unambiguous, sufficiently clear, and precise legislation.

³ Queensland Community Safety Bill 2024 as in as introduced into Parliament by the Honourable Mark Ryan, Minister for Police and Community Safety on 1 May 2024.

⁴ www.parliament.qld.gov.au

Arguably in its current form, section 43 of the FRC Act, as it applies to notices from the Childrens Court, is ambiguous.

The FRC Act⁵ requires the Childrens Court to give the FRC a court advice notice within 10 business days of a child being convicted of an offence⁶. However, the 2016 amendments to the *Youth Justice Act 1992* (YJ Act) prohibiting the publication of identifying information about a child, has given rise to a statutory interpretation by government officials resulting in Court advice notices no longer being provided to the FRC by the Children's Court.

The FRC's 'Children's Court Trigger' power has not been repealed. However the amendment has estopped the Commission, and its Local Commissioner Elders from being able to work with the parents (and broader kinship, if necessary) to create a healthy home environment with the aim of reducing the risk of recidivism by helping parents to resume primary responsibility for the wellbeing of their children and families.

The then FRC Commissioner, David Glasgow, first reported the matter to the Queensland Parliament when the Commission's 2015-2016 Annual Report was tabled in accordance with his legislative requirements.⁷

The Commission, whilst continuing to liaise with DJAG's Youth Justice in regard to the timely receipt of Childrens Court notices, was advised that effective from 1 July 2016 the Youth Justice Act 1992 (YJ Act) was amended by the Youth Justice and Other Legislation Act (No. 1) 2016 and Youth Justice and Other Legislation Act (No.2) 2016. One of the key policy changes to be effected by these amendments was to prohibit the publication of identifying information about all children dealt with under the YJ Act.

The Youth Justice Practice team have contacted the Commission and confirmed that the effect of the amendments is that notices are unable to be provided to the Commission, as publication of identifying information is prohibited under s301 of the YJ Act. This has raised immediate operational implications for the Commission. As an example, it has been noted that the Commission will not receive notices in relation to the young people charged with offences relating to the recent assaults and carjacking in Aurukun, as they have not yet appeared before the Childrens Court. The Commission will liaise with DATSIP's legal policy officers to assist with the best legislative construction to overcome this issue.

Since that time, the FRC, over the course of eight years, has made many representations⁸ to the Queensland Government and the Queensland Parliament with respect to resolving this matter. In its most recent annual report for the 2022-23 financial year, the FRC and its Local Commissioners from different communities continue to advocate, with increased frustration and urgency, for the operationalisation of the Commission's 'Children's Court Trigger'.

For example, Mossman Gorge Local Commissioners advise:

"[W]e feel our hands are tied in what we can do due to legislative constraints. We would like to support local youth and their families with our early intervention and culturally appropriate approach, but to do this we need to have the Childrens Court trigger reinstated so that the FRC receives child conviction notices as intended under the FRC Act."⁹

⁵ Section 43(2) of the FRC Act.

⁶ Section 43(1)(c)(iii) also includes the requirement that the section applies when the Court 'learns that a parent of the child lives, or at any time after the start day has lived, in a welfare reform community area'.

⁷Section 143 of the FRC Act requires the Commissioner to prepare an annual report.

⁸ For example: Quarterly Reports 28-29/2015, 31-34/2016, 35/2017, FR Board Meeting 32, paper no 8, Annual Reports 2015-16, and recently in the FRC's submission to the Queensland Government's Consultation on Queensland Domestic and Family Violence Perpetrator Strategy and the FRC's 2022-23 Annual Report tabled in the Queensland Parliament on 1 March 2024.

⁹ For example, see Mossman Gorge Local Commissioners, Community Operations Report, FRC Annual Report 2023-23.

Doomadgee Local Commissioners advise:

The issue of youth crime requires a multi-prong approach. The FRC doesn't have all of the answers, but we strongly believe if we were able to use the Childrens Court Trigger which exists under section 43 of Family Responsibilities Commission Act 2008, we could engage the parents of these youth offenders and work with them, in partnership with the police and service providers, towards making the community safe again.

For the sake of our young people and community safety, we will ... not give up the fight to have the Childrens Court Trigger operating in Doomadgee.¹⁰

On 28 March 2022, when the FRC appeared at a public briefing of the Community Support and Services Committee, the Hope Vale Local Commissioners requested Commissioner Williams, table a document on their behalf. The Alliance of Guugu Yimithirr People passed a resolution at its meeting supporting amendments to the FRC Act to enable the Childrens Court trigger to be reactivated. A copy can be obtained from the parliamentary record.

Extensive advocacy has been undertaken by the FRC, its Local Commissioner Elders, and stakeholders since Commissioner David Glasgow's earliest efforts in 2016, to work with the government to 'assist with the best legislative construction to overcome this issue.' Disappointingly the matter remains outstanding, and leaves the FRC unable, after eight years, to work with the parents and family/kinship of children¹¹ convicted in the Childrens Court, as originally intended by the Queensland Parliament.

The FRC considers the matter, could be resolved, and the ambiguity removed as to the operation of section 43 FRC Act, if legislative amendments, like those recommended in this submission, were drafted in a sufficiently clear and precise manner confirming that its operation does not impact the non-publication provisions contained in the YJ Act.

Legislation with sufficient regard to Aboriginal tradition and Island custom.

Culture and family are well understood to be protective factors for vulnerable young offenders in reducing the risk of recidivism. It is for these reasons, the FRC Act was amended in 2014 so the Commission could use its holistic and culturally safe model of conferencing to provide support to the whole families, or kinship, of young offenders from remote Aboriginal communities through its 'Childrens Court Trigger'. For the short period of time the 'trigger' was operationalised,¹² clients and their families could benefit from case plan referrals to specialist support services to make the changes necessary to alter the trajectory of a young person's life.

The FRC Act emphasises and encourages the relationship of clients and families with their cultural practices. Along with the explicit paramountcy of the best interests of children, the FRC Act requires 'Aboriginal tradition' be taken into account.¹³ Amendments to section 43 FRC Act as recommended by this submission, would result in further alignment with the fundamental legislative principles through greater utilisation of the FRC, a novel bi-cultural institution with First Nations decision makers.

Human Rights Compatibility

The FRC has oversight mechanisms in place to ensure appropriateness and consistency of decision making that is proportionate to the needs of the client and in the best interest of children. The FRC Act enshrines natural justice¹⁴ and avenues for review and appeal,¹⁵ alongside ensuring

¹⁰ For example, see Doomadgee Local Commissioners, Community Operations Report, FRC Annual Report 2022-23.

¹¹ Jurisdiction requirements limit this power to children whose parent/s are from a welfare reform community area.

¹² Prior to the commencement of the YJ Act amendments on 1 July 2016.

¹³ Section 5 of the FRC Act.

¹⁴ s56(1)(a) of the FRC Act.

¹⁵ Parts 9 and 11 of the FRC Act.

that ‘Aboriginal tradition’ is taken into account in administering the Act.¹⁶ There has never been any suggestion the FRC has acted outside its powers.

Furthermore, as a public sector entity, there is an onus on the Commission, to act and make decisions in a way compatible with human rights as required by the Human Rights Act (Qld) 2019. In the 2022-23 Annual Report, recently tabled in the Queensland Parliament, the Commission declared its continued unblemished record of receiving no human rights complaints during the reporting period.

The FRC also brings to the Committee’s attention the existing protections of the information exchange provisions¹⁷ provided for in the FRC Act, as well as an offence provision for the disclosure of confidential information.¹⁸ As a public sector entity, the FRC is also subject to the *Information Privacy Act 2009*, the *Public Records Act 2002* and the Queensland Government’s Information Security Policy. The FRC, as a quasi-judicial body, deals with the sensitive personal information of its clients and their families daily, including detailed child safety reports and health information. The FRC has carefully and responsibly managed this highly sensitive information within the protection of a legislative framework without issue for the past 15 years.

4.0 THE QUEENSLAND GOVERNMENT’S RESPONSE

At the time of tabling the Community Safety Queensland Plan in Parliament, Minister Ryan stated the government’s response to the YJRS Committee’s recommendations, “accepts, in principle, all 60 recommendations.”

On Thursday, 18 April 2024, the Premier, the Honourable Steven Miles MP, made an undertaking in the Queensland Parliament¹⁹ to consider the Committee’s report and ‘start implementing recommendations, because that always was the intention of the Committee... and incorporate it into the government’s comprehensive plan to address community safety.’

It is therefore disappointing, based on the impasse for the past eight years, that the Queensland Government’s response to the YJRS Committee’s recommendation 11, specifically relating to the FRC, is unlikely to lead to a resolution in the foreseeable future.

“This matter has been considered by the Family Responsibilities Board and is now under further consideration by the Department of Youth Justice. This issue requires further policy analysis and consultation with impacted communities prior to consideration of legislative amendments.”²⁰

When the initial 2014 amendments to the FRC Act were proposed, giving rise to the ‘Children’s Court Trigger’, the Queensland government undertook policy analysis and extensive consultation with impacted communities. The Explanatory Notes confirmed the results of the consultation.

“The Local FRC Commissioners and community members all indicated that more needs to be done to address the number of young people disengaged from high school and who are also coming in contact with the youth justice system. The proposed new youth justice trigger is intended to increase parental responsibility for the young person’s offending behaviour.”²¹

Yet, prior to when the Queensland Government introduced legislation amending the YJ Act in 2016, it is unclear to what extent consultations were held with impacted First Nations communities. It is also unknown whether policy analysis was shared with community members and stakeholders,

¹⁶ s5(2)(c) of the FRC Act.

¹⁷ See Part 8 of the FRC Act.

¹⁸ Section 147 of the FRC Act.

¹⁹ Record of proceedings (proof); First Session of the Fifty Seventh Parliament, Thursday, 18 April 2024; <http://www.parliament.qld.gov.au/work-of-assembly/hansard>.

²⁰ Queensland Government Response to the Interim Report: Inquiry into ongoing reform to the youth justice system and support for victims of crime, Report No. 1, 57th Parliament—Youth Justice Reform Select Committee, April 2024.

²¹ Explanatory notes; Family Responsibilities Commission Bill 2014.

including the FRC, and the Family Responsibilities Board²², regarding the likely cessation of the 'Childrens Court Trigger', prior to the government's consideration of the YJ legislative amendment.

The FRC argues that government's response to the YJSR Committee's recommendation 11,²³ requiring consultation and further policy analysis prior to consideration of legislative amendments, is superfluous. Instead, the legislative amendment proposed by the FRC in this submission, is a clarifying provision and is not intended to change the law, or policy environment concerning the general non-publication of identifying information about a child under the YJ Act. The amendment would operationalise an existing legislative power,²⁴ about which the impacted communities have already been consulted, and the relevant policy considerations have already been undertaken by the then government.

To require additional consultation and further policy analysis in these circumstances, would cause undue delay. In the present environment, further delays in amending the legislation are likely to lead to missed opportunities for early intervention for vulnerable and at-risk First Nations young people and their families, living in remote communities.

5.0 CONCLUSION

The FRC would welcome the opportunity to assist the Queensland Government and/or Queensland Parliament, with advice to progress the necessary amendment to the *Family Responsibilities Commission Act 2008* as part of the Queensland Community Safety Bill 2024. This will enable the early implementation of recommendation 11 in the remote First Nations communities of Aurukun, Coen, Doomadgee, Mossman Gorge, and Hope Vale as part of the comprehensive plan to address community safety and youth justice concerns throughout the state.

Following the amendment of section 43 FRC Act, the FRC and its Local Commissioners can commence working, as soon as possible, with parents and family members, as part of a linked service system to create a supportive and healthy home/kinship environment for young people involved in the youth justice system to reduce the risk of recidivism.

Submitted by: Tammy Williams, FRC Commissioner

²² The Family Responsibilities Board (FRB) has a statutory role provided for in section 117 FRC Act including (1)(a) to give advice and make recommendations to the Minister about the operations of the Commission.

²³ Recommendation 11 specifically relates to the FRC and operationalisation of the 'Childrens Court trigger'.

²⁴ i.e., the 'Childrens Court Trigger' per section 43 FRC Act which requires Childrens Court officials to provide the Commission with agency notices.