



## FAMILY RESPONSIBILITIES COMMISSION

Submission to the Community Support and Services Committee for consideration in its inquiry of the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2022* (Bill).

### RECOMMENDATIONS

**It is recommended that the Community Support and Services Committee:**

1. **considers** the issues raised by the Family Responsibilities Commission in its submission relating to the need for transitional arrangements to be in place to facilitate the continuance of public administration and protect the health, safety and welfare of vulnerable people living in remote Aboriginal communities affected by the COVID-19 emergency; and
2. **supports** an extension to the expiry of the *Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020* to 31 December 2022.

### BACKGROUND

***The Family Responsibilities Commission is a key mechanism to support vulnerable community members in remote Aboriginal communities.***

- The Family Responsibilities Commission (FRC) is a key mechanism of the Welfare Reform program which supports community members and their families to restore social norms, local authority and change behaviours in response to chronic levels of welfare dependency, social dysfunction and economic exclusion
- The FRC operates in the communities of Aurukun, Coen, Doomadgee, Hope Vale and Mossman Gorge which are culturally unique and geographically remote. Each community is different; however, each can be characterised by the entrenched disadvantage of Indigenous community members. Over-crowded housing, high rates of welfare dependency and multi-generational poverty have resulted in communities with high numbers of individuals and families with complex needs.
- The FRC is a statutory body established under the *Family Responsibilities Commission Act 2008* (FRC Act) and operates within a legal framework to assist clients and their families to address complex anti-social behaviours. The administration of the FRC Act must be in accordance with the principle that the wellbeing and best interests of a child are paramount (section 5).
- The FRC Act sets out the statutory obligations of relevant Queensland Government departments to notify the Commission when a community member is not meeting pre-determined obligations relating to school attendance and enrolment, child safety



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and welfare, court convictions, domestic and family violence and housing tenancy breaches.

- On receiving these notices, the FRC applies a locally based and culturally relevant conference-style process with community members, delivered by a panel of Elders and respected community leaders appointed as Local Commissioners, and overseen by a legally qualified FRC Commissioner. The purpose of a conference is to provide a forum for the community member to discuss with the FRC why and how the person has come to be the subject of an agency notice. The outcome of a conference may result in a legally binding decision being made requiring the person/s to take active steps to address inappropriate behaviour (such as attendance in counselling or other support programs) before it escalates and requires serious remedial action.
- When dealing with matters at conference the FRC is required to do so in such a way that “*promotes the interests, rights and wellbeing of children and other vulnerable persons*” living in the community (section 4(2)(b)(ii)).

### ***Commission decisions are made using local Indigenous authority.***

- All FRC decisions made at conference require the decision-making panel to comprise of locally appointed Commissioners which may be constituted by either:
  - three Local Commissioners sitting as a panel without the assistance of the FRC Commissioner or Deputy Commissioner with one of the Local Commissioners acting as Chairperson (section 50A); or
  - two Local Commissioners sitting as a panel with the FRC Commissioner or Deputy Commissioner acting as Chairperson (section 50).
- The FRC Act requires “*Aboriginal tradition and Island custom must be taken into account*” when administering the Act (section 5). This is primarily achieved through the legislative requirement of Indigenous local authority being the cornerstone of the Commission and its decision-making processes.

### ***Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020 allowed the continued operations of the FRC during the COVID-19 emergency.***

- The *COVID-19 Emergency Response Act 2020* (COVID-19 Act) received assent and commenced on 23 April 2020. It included provisions whereby extraordinary regulations could be made for affected Acts.
- The Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020 (referred to hereafter as the ‘FRC COVID-19 Regulation’) was made as part of the broader COVID-19 related legislative scheme.
- A key objective of the FRC COVID-19 Regulation is to facilitate the continuance of public administration and protect the health, safety and welfare of people affected by the COVID-19 emergency. This is achieved through the modification of the FRC



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Act's statutory requirement to have at least two Local Commissioners (Elders or respected community members) as part of the Commission's decision-making panel.

- The FRC COVID-19 Regulation permits conferences, if required, to be conducted and lawfully binding decisions made by the FRC Commissioner (or Deputy Commissioner) **and one** Local Commissioner for the relevant community under sections 50, 85 and 98, thereby enabling the FRC to continue to hold conferences and make decisions during the COVID-19 emergency.
- The Explanatory Notes to the FRC COVID-19 Regulation recognises:

*“FRC conferences are conducted by Local Commissioners, many of whom are of a mature age and some of whom suffer from medical conditions. The FRC wishes to reduce the number of people required for general conferencing... from two Local Commissioners to one Local Commissioner, enabling social distancing and reducing the burden on Local Commissioners during the COVID-19 emergency” (page 2).*

*“[f]ailure to make the modifications could potentially risk public and personal health, and prevent compliance with obligations and requirements under the FRC Act” (page 4).*

- The FRC understands there is no proposal by the Queensland Government to extend the FRC COVID-19 Regulation from expiring on 30 April 2022.
- The FRC was initially consulted by the Department of Seniors, Disabilities Services and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP) and advice provided by the Commission in relation to the enactment of the Regulation and its modifications to the FRC Act. The FRC continued to advise DSDSATSIP of its support for periodic extensions to the expiry of the Regulation.
- The FRC welcomes this opportunity to provide advice to the Community Support and Services Committee in relation to the proposed expiry of the FRC COVID-19 Regulation.
- The FRC supports the extension of the expiry of the FRC COVID-19 Regulation from 30 April 2022 to 31 December 2022 as a transitional arrangement necessary to ensure the continuance of public administration and protect the health, safety and welfare of vulnerable people living in remote Aboriginal communities affected by the COVID-19 emergency.

### ISSUES

***The FRC's continuity of operations is at risk because of the unavailability of the requisite number of Local Commissioners to form a decision-making panel.***

- Currently there are 26 Local Commissioners appointed to the FRC - six Local Commissioners appointed to Aurukun, four to Coen, seven to Doomadgee, seven to Hope Vale and two to Mossman Gorge. The FRC Act restricts the use of Local



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Commissioners as part of the decision-making panel to only those matters involving persons from the community to which they are appointed.

- Many of the Local Commissioners are of mature age and some have underlying health issues. This places the Commissioners at higher risk of testing positive to COVID-19 (as has already occurred) and suffering ongoing side effects of the illness, or being subjected to protracted periods of quarantining because of their 'close contact' exposure to a positive case arising from chronic overcrowded housing. These factors will affect the availability and reliability of Local Commissioners, and adversely impact the FRC's continuity of operations.
- The FRC has raised this matter with DSDSATSIP and expressed concern about the risk these factors present to the Commission's ability to consistently conduct conferences throughout the pandemic and provide early intervention support to vulnerable community members and their families, especially children and the elderly.
  - In April and May 2021, the Commission sought approval from DSDSATSIP for the appointment of new Local Commissioners for the communities of Aurukun, Doomadgee, Hope Vale and Mossman Gorge. Twelve new Local Commissioner applications were forwarded to the department for consideration. No eligible applicants were identified from the community of Coen despite inviting expressions of interest.
  - On 19 May 2021 DSDSATSIP was further notified of the intended retirement of a Local Commissioner in Mossman Gorge, effective from 30 June 2021 and advised that this would result in the FRC being left with only two Local Commissioners for Mossman Gorge. From 1 July 2021 Mossman Gorge would no longer be able to conduct section 50A conferences (three Local Commissioners sitting independently) and all conferences would require the assistance of either Deputy Commissioner Curtin or FRC Commissioner Williams. Should neither the Deputy Commissioner nor Commissioner Williams be available to sit with the Mossman Gorge Commissioners, no conferences could be held. An urgent request was made to DSDSATSIP that at least two Local Commissioner appointments be made, preferably one female and one male for gender equity.
  - DSDSATSIP advised at the Family Responsibilities Board meeting held on 4 May 2021 that the Commission's advice about the proposed nominations of additional Local Commissioners, and operational risks should no additional appointments be made for the 2021-22 financial year, were noted. DSDSATSIP further advised that subject to a new Memorandum of Understanding being agreed between the Queensland and Australian Governments, new appointments may be considered in the first quarter of a new FRC funding term (July to September 2021).
  - Local Commissioner Victor Gibson has advised of his retirement as of 30 June 2022 due to health reasons, reducing the Hope Vale Local Commissioners to six, and the total of Local Commissioners to 25.



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- As at the date of this submission, no additional Local Commissioner appointments have been made.
- Throughout the course of the pandemic, the Commission has been able to rely on the provisions of the FRC COVID-19 Regulation which permits the Commission, in circumstances where Local Commissioner availability is an issue, to decide matters at conference with only one Local Commissioner and the FRC Commissioner (or her deputy).
- The Commission has used this provision sparingly and proportionately, recognising one of the main objects of the FRC Act is to establish and promote local Indigenous authority by having matters decided at conference by respected Elders and leaders with the necessary expertise and cultural knowledge to make those decisions.
- Throughout the 2020-21 financial year a total of 59 conferences were held pursuant to the FRC COVID-19 Regulation. In these limited circumstances the FRC Act must still be administered in such a way that the wellbeing and best interests of children are paramount and the interests, rights and wellbeing of other vulnerable people living in the community are safeguarded. It was considered by the Commission, that in these 59 instances, the circumstances were such that it was indeed in the best interests of vulnerable clients and children that these matters proceed pursuant to the FRC's COVID-19 Regulation and not be delayed by an adjournment to a time when additional Local Commissioners were available.

### ***Transitional arrangements which extend the expiry of the FRC COVID-19 Regulations to 31 December 2022 will allow the FRC to facilitate the return of normal operations.***

- Without additional Local Commissioner appointments made by Governor-in-Council (s12) before the expiry of the FRC COVID-19 Regulation on 30 April 2022, the Commission is at risk of not being able to hold conferences and provide early intervention support to vulnerable community members in circumstances where there is limited Local Commissioner availability.
- Even if additional Local Commissioner appointments were made by Governor-in-Council between now and April, or even shortly thereafter, the FRC will remain exposed to operational uncertainty. Section 51(2) of the FRC Act prevents a Local Commissioner – in this case, one newly appointed – from being nominated and appointed by the FRC to hear a matter at conference, *“unless the person has successfully completed the training reasonably required by the Minister to ensure the person can properly perform the person’s duties on the Commission”*. In this regard, the FRC Act makes it a function of the Commissioner to ensure *“Local Commissioners and the staff of the registry receive regular and appropriate training”*. (s22).
- The FRC estimates it takes a minimum of 6-9 months, having regard to their individual circumstances, to deliver training to a newly appointed Local Commissioner so they can reasonably perform (at a base level) their duties as a



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public official entrusted with decision-making powers. Since the Commission's establishment in 2008, all Local Commissioners are provided with regular opportunities for continuous learning and improvement.

- The FRC therefore requires transitional arrangements to be in place to allow the Commission to facilitate the return of normal operations. This can only be achieved by an extension to the expiry of the FRC COVID-19 Regulation from 30 April to 31 December 2022 to enable the appointments of additional Local Commissioners to be progressed by DSDSATSIP to the Governor-in-Council as a matter of urgency. The granting of this extension will provide the Commission with an opportunity to appropriately train new appointees so they can competently perform their statutory duties prior to the expiry of the Regulation on 31 December 2022.

### **Submission prepared by:**

- Commissioner Tammy Williams, Family Responsibilities Commission
- Registrar Maxine McLeod, Family Responsibilities Commission

Dated: 4 March 2022