

Youth Justice Reform Select Committee inquiry into youth justice reform in Queensland

Submission No: 217
Submitted by: Family Responsibilities Commission
Publication:
Attachments:
Submitter Comments:



Submission to the Queensland Parliament Youth Justice Reform Select Committee

1. INTRODUCTION

- 1.1 The *Family Responsibilities Commission Act 2008* (FRC Act)¹ requires the Childrens Court to give the FRC a court advice notice within 10 business days of a child being convicted of an offence². The 2016 amendments to the *Youth Justice Act 1992* (YJ Act) prohibiting the publication of identifying information about a child resulted in Court advice notices no longer being provided to the FRC by the Children's Court. This has estopped the FRC, and its Local Commissioner Elders from being able to work with the parents (and broader kinship, if necessary) under the FRC Act to create a healthy home/kinship 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.
- 1.2 Since that time the FRC has made many representations³ to the Queensland Government and the Queensland Parliament with respect to resolving this matter. The FRC considers the matter, believed to be the result of an oversight, could be easily resolved through a clarifying legislative amendment. The FRC seeks amendments to be made to the FRC Act so that there is clarity in the interpretation and application of both Acts, in that the provisions which prevent the publication of identifying information about a child, do not interfere with the FRC's administration of the FRC Act.
- 1.3 Whilst it is noted that drafting appropriate legislative amendments is a matter for the Office of the Queensland Parliamentary Counsel, the suggested amendment would be a minor amendment to the FRC Act, which would not impact on the operation of the YJ Act's confidentiality provisions, except to the extent of allowing court advice notices to be provided to the FRC as required by section 43 of the FRC Act.
- 1.4 Further delays in amending the legislation to operationalise the FRC's use of the 'Children's Court trigger' leads to missed opportunities for early intervention to vulnerable and at-risk First Nations young people and their families, living in remote communities. It is also an under-utilisation of existing resources and local infrastructure of the FRC, a public sector entity.
- 1.5 Operationalising the Children's Court trigger under the FRC Act would enable the FRC to make a real difference to the life trajectory of young offenders and their families and contribute significantly to addressing the youth crime crisis in FRC communities and nearby regional towns and cities. In this regard, the Commission's legislative mandate is a

¹ Section 43(2) of the FRC Act.

² 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'.

³ 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.

complementary approach, focused primarily on parental and kinship behavioural change (although it can involve young people themselves), operating in unison with the change behavioural work being undertaken by the young person through custodial or place-based orders implemented by the youth justice system.

- 1.6 The FRC has a long-standing track record of providing holistic, place-based family interventions with cultural authority and within a legal framework, that is lacking in other responses and jurisdictions.

2. OPERATION OF THE CHILDREN'S COURT NOTICE TRIGGER

FRC's primary focus is on supporting 'parents' and empowering them to resume personal responsibility for their own lives and that of their family.

- 2.1. The FRC Act's focus is on the parents or caregivers of the offending young person. The FRC may only hold a conference in relation to 'a relevant person' for an agency notice.⁴ A relevant person for a Childrens Court notice is 'any parent of the child, or the child'.⁵
- 2.2. 'Parent' is further defined in the FRC Act with reference to the definition set out in the *Child Protection Act 1999*. This is a broad definition that encompasses a person who, under Aboriginal tradition, is regarded as a parent of the child.
- 2.3. In practical terms, should the 'Children's Court trigger' be operationalised, it would mean that FRC could recommence receiving notices from the Children's Court, as intended in the FRC Act⁶, about the conviction of a child from one of the remote Aboriginal communities of Aurukun, Coen, Doomadgee, Mosman Gorge and Hope Vale⁷. It would then provide the FRC and its Local Commissioners with the opportunity to work with the parents and caregivers, to address the environmental issues at home that may have contributed to the young person's progression of socially irresponsible behaviours (over time) that may have led to offending.
- 2.4. The operation of this trigger would apply in the same manner as other triggers, when the FRC receives child safety agency notices relating to alleged harm to a child, or education notices relating to a child's attendance at school or non-enrolment. In each of these cases, the FRC's jurisdiction is limited to conferencing 'relevant persons', i.e., the adult/s responsible. However, the FRC Act does allow the Commission to include, where it is appropriate to do so, the participation of young people, or other appropriate family or community members⁸ in its proceedings having regard to their age and ability to understand the nature of matters contained within an agency notice.⁹
- 2.5. In this way, FRC conferencing is a complementary intervention to other responses that are targeted solely towards the child. The criminal justice system, for example, is confined in its responses to dealing with the young offender and his/her own behaviour.

⁴ Section 49.

⁵ See the Schedule to the FRC Act, Dictionary – **relevant person** (d)(i). The 'relevant person' must also meet the other jurisdictional requirements of being a resident of the community, and in receipt of a relevant welfare payment. See sections 7 (meaning of community member) and 49 of the FRC Act.

⁶ Section 43

⁷ These communities are welfare reform community areas for the purposes of the FRC Act.

⁸ Section 60 and section 61

⁹ Section 5(2)(b)

- 2.6. Whereas the FRC's legislative focus is on the 'parents' of the child. This provides the opportunity to facilitate greater levels of parental responsibility for the child's offending behaviour. This important aspect of addressing factors contributing to the offending behaviour is also lacking in other approaches.
- 2.7. The FRC's holistic and culturally safe model of conferencing can provide support to the whole families of young offenders. Case plan referrals to specialist support services and the FRC's ongoing case management functions, including Intensive Case Management, can provide the foundation for whole families to make the changes necessary to alter the trajectory of a young person's life.
- 2.8. Culture and family are well understood to be protective factors for vulnerable young offenders in reducing the risk of recidivism. The FRC Act emphasises and encourages the relationship of clients and their families to cultural practices. Along with the explicit paramountcy of the best interests of children, the FRC Act in fact requires that 'Aboriginal tradition' be taken into account.¹⁰ It is this unique approach that enables the FRC to provide a stable and supportive intervention within a legislative framework and be an integral part of our communities' response to youth crime.
- 2.9. The FRC understands that the privacy and human rights of children appearing in court are key factors underlying the policy intentions of the 2016 amendments.
- 2.10. The FRC wishes to note the existing protections of the information exchange provisions¹¹ of the FRC Act, as well as an offence provision for the disclosure of confidential information.¹² The FRC 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.

3. ABOUT THE FAMILY RESPONSIBILITIES COMMISSION

A leading model of self-determination.

- 3.1 The 2022-23 financial year marked the fifteenth anniversary of the Queensland Parliament passing the *Family Responsibilities Commission Act 2008* (FRC Act) with bipartisan support. Since then, the FRC continues to demonstrate why it is arguably Queensland's leading model of shared decision-making and self-determination - one that is enshrined in legislation.
- 3.2 Through the FRC Act, powers and responsibilities of the Crown have been shared with First Nations people, so they are *not just advisers* to other decision-makers. They hold formal decision-making powers enabling them to respond to the needs of individuals and families in their own communities. As at 30 June 2023, 37 Elders or respected Aboriginal people were appointed as Local Commissioners to serve in their own communities.¹³

¹⁰ Section 5 of the FRC Act.

¹¹ See Part 8 of the FRC Act.

¹² Section 147 of the FRC Act.

¹³ Two new Local Commissioners for the Coen community have been appointed from 1 July 2023.



Figure 1.1 The FRC is a novel bi-cultural institution.

3.3 Since the appointment of Ms Tammy Williams, a Murri woman and barrister, as FRC Commissioner and CEO in September 2019, **all FRC decision-makers¹⁴ under the FRC Act are First Nations people**. The single exception is the Deputy Commissioner,¹⁵ whose powers as a decision-maker can only be exercised upon delegation by the FRC Commissioner. One of the objects of the FRC Act is to support the restoration of local authority in FRC communities. The FRC puts local Elders and respected persons at the centre of efforts to support community members to address complex issues and empowers them to make decisions.

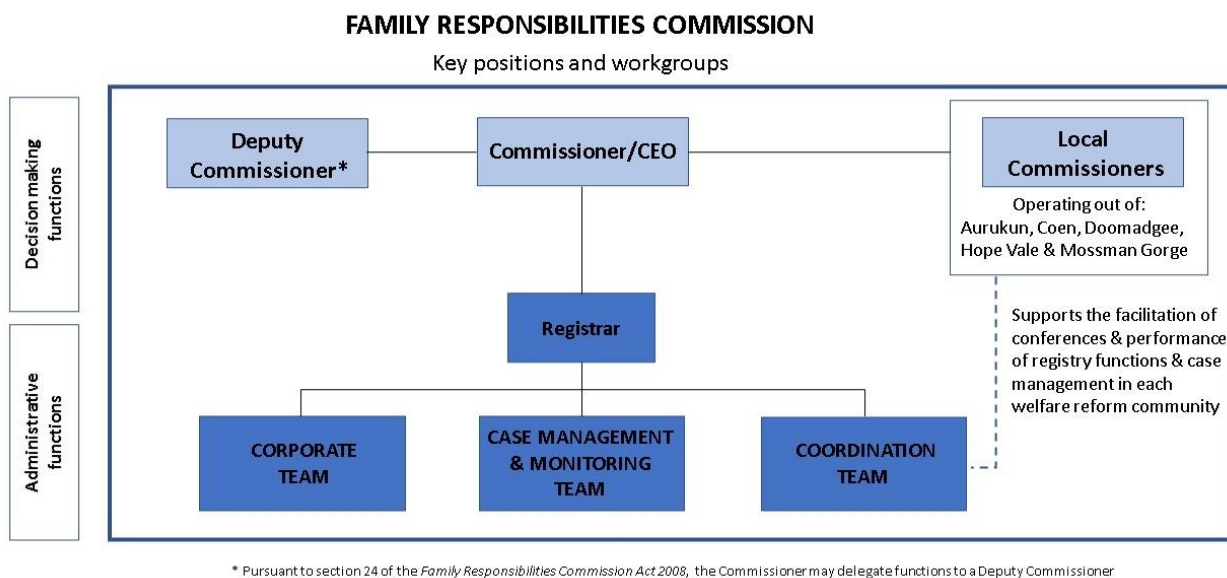


Figure 1.2 FRC Organisational Structure

The suite of FRC triggers to allow early intervention.

3.4 The communities of Aurukun, Coen, Doomadgee, Hope Vale and Mossman Gorge 'opted-in' to a higher standard to allow early community-based intervention by the FRC. This

¹⁴ Division 2, FRC Act sets out the requirements for using Local Commissioners to 'constitute the Commission' for conferences to hear and determine matters, including the power to make legally binding decisions pursuant to ss68 and 69 FRC Act.

¹⁵ Rodney Curtin, Deputy Commissioner is also legally qualified like the FRC Commissioner. He has more than 25 years' experience in the conduct of circuits in Cape York and Torres Strait regions.

enables their own Elders and respected persons to act where community members are not meeting their basic responsibilities to their families and children.

- 3.5 The FRC Act sets out the statutory obligations of relevant Queensland Government departments to notify the FRC when a community member is not meeting pre-determined obligations. The FRC can intervene when it receives notifications (an agency notice) in the following circumstances:
1. A child of the person is either not enrolled at school, or not meeting designated school attendance requirements – an agency notice must be received from the Department of Education.
 2. There is a child safety investigation or child concern report involving the person, in relation to alleged harm or risk of harm to a child – an agency notice must be received from the Department of Child Safety, Seniors and Disability Services.
 3. A court convicts the person of an offence or makes a domestic violence protection order (DVO) against the person – a court advice notice must be received from a court officer.¹⁶
 4. The person, as a tenant, is in breach of a social housing tenancy agreement – an agency notice must be received from the Department of Housing, Local Government, Planning and Public Works.¹⁷
- 3.6 The FRC applies a locally based and culturally relevant conferencing-style process delivered by a panel of Elders and respected community leaders appointed as Local Commissioners. The purpose of a conference is to provide a forum for the community member and others who may have something useful to contribute, to discuss with the FRC why, and how, the person has come to be the subject of an agency notice. Conferences are held in a manner which facilitates early intervention, encourages community members to take personal responsibility for their actions and implement strategies to address inappropriate behaviour before it escalates.

The FRC is part of a linked service system to engage and empower individuals and their families to make positive and lasting change.

- 3.7 The FRC operates within a legal framework to assist clients and their families living in the welfare reform community areas of Aurukun, Coen, Doomadgee, Hope Vale and Mossman Gorge to address complex behaviours. The FRC applies a locally based and culturally relevant conferencing-style process delivered by a panel of Elders and respected community leaders, appointed as Local Commissioners, which is overseen by a legally qualified Commissioner. Throughout 2022-23 the vast majority (89 percent) of Commission decisions were made by three Local Commissioners constituting the panel.
- 3.8 Client-centred conferencing is at the heart of the FRC model. FRC conferences are designed to ensure that FRC Commissioners have all relevant information available to them, to give clients an opportunity to speak directly to local decision-makers. This process is aided by the powers the FRC Commissioner has to request relevant information from government agencies and community services, to ensure Local Commissioners can make informed decisions in the best interests and wellbeing of children and the protection of vulnerable community members.¹⁸ These aspects of the model mean that decisions are appropriately tailored to the circumstances of the individual or family, and the FRC can utilise its legislative powers to coordinate a multi-disciplinary approach as part of a linked service system.

¹⁶ Section 43(4) defines a court officer as the registrar or clerk of the Magistrates, District and Supreme Courts.

¹⁷ The FRC only has jurisdiction to receive agency notices outlined above in paragraph 3.5 (1) and (2) relating to Doomadgee community members.

¹⁸ s4 Main objects and s5 principles for administering the FRC Act.

3.9 Local Commissioners encourage individuals appearing before the Commission to take the necessary steps to make lasting changes to benefit their health, wellbeing, home and community life. This includes by facilitating the rebuilding of intra-community social norms and encouraging behavioural change through attaching reciprocity and communal obligations to welfare and other government payments. The FRC uses a graduated range of decision-making options, including referrals to support services to build the capabilities required to break the cycle of disadvantage and, in limited circumstances, income management.

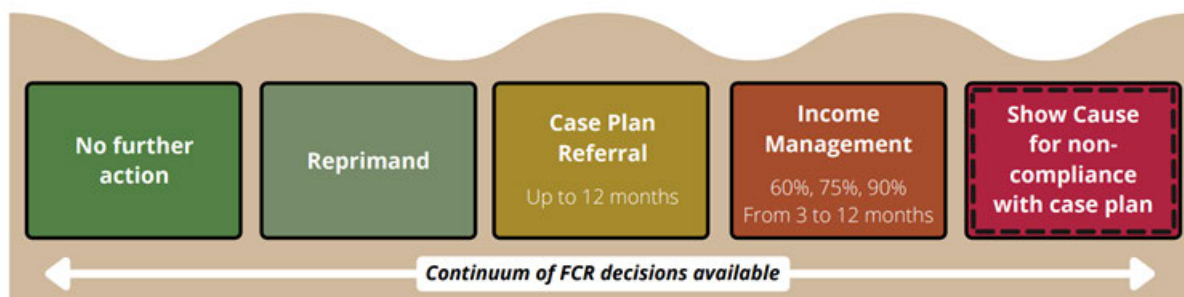


Figure 1.3 FRC decisions are graduated and tailored appropriately to an individual's circumstances.

3.10 Through case planning, referral, case management and monitoring, and information sharing, the FRC model enables multiple stakeholders to work holistically through a client-centred approach. During the 2022-23 reporting period the FRC made at conference 499 referrals for 354 clients to attend support services¹⁹. This is the second highest number of clients referred since the commencement of the Commission.

Intensive Case Management for clients with complex needs.

3.11 The FRC continues to adapt and evolve the Commission's operations to respond to the changing needs of our clients. This includes increased opportunities for client engagement outside of the conference setting, for example, through Intensive Case Management (ICM) to support community members and their families to address complex issues.

3.12 ICM is a time and resource intensive response proportionate to the needs of highly vulnerable clients in need of targeted and coordinated support from a multi-disciplinary team of stakeholders. ICM is best utilised in cases where clients with a multitude of chronic needs, require several referrals to specialist providers. Often the client's issues are interrelated and have a compounding effect on their vulnerability. In these circumstances the FRC can utilise its legislative framework (particularly its provisions that support information sharing amongst prescribed entities, in certain circumstances) to play an active case management role to coordinate a holistic approach to service delivery to the client.

Case study:

Female client, mother of two children (one school-aged, the other an infant) attended conference in October 2023. The complexity of the matter necessitated the need for Commissioner Williams to preside over the conference with two Local Commissioners. The client experienced a range of vulnerabilities including child safety concerns, physical and mental health issues (including risks of self-harm and suicide), substance misuse, and a history of domestic and family violence. Male partner recently returned to the community from a period of incarceration. School-aged child had a history of irregular school attendance.

¹⁹ This is inclusive of Family Responsibilities Agreements and Orders

Client agreed to be placed on a case plan with several referrals to specialist providers. The client and her partner further agreed to work with the Commission, and other providers and government agencies, as part of ICM towards achieving the case plan goal of the family being accepted into the [redacted] Centre for a three-month residential placement.

Between October 2023 and January 2024, the FRC worked with the client, her family and key stakeholders to overcome a myriad of challenges that risked achieving the case plan goal. These stakeholders included: the Department of Child Safety, Apunimpima, the principal of the local school, Queensland Health, Probation and Parole, the local Justice Group coordinator, the Courts and the officer-in-charge of the local police. The FRC was able to play a pivotal role in coordinating a multi-disciplinary approach to support this family to achieve the case plan goals, by sharing information with certain stakeholders, as allowable under the FRC Act.

The client and her family were subsequently approved for admission to the [redacted] Centre for an initial three-month residential placement. Feedback from key stakeholders about this result recognised the value of having a coordinated approach to case management led by the FRC stating “this is the outcome we [the service provider] had wanted and it was what the family needed ... but it has been difficult to achieve this when working in isolation [from other providers]. It has needed someone like the FRC to pull this together.”

- 3.13 ICM has proven to be a successful strategy building trusting and supporting relationships with both clients and service providers outside the more formal conference setting. The success of these approaches is inextricably linked to the training and professional development of our Local Registry Coordinators and Local Commissioners, who represent a diverse range in age, gender, clan affiliation, knowledge, and experience.
- 3.14 Client and stakeholder feedback has been positive. Local Commissioners who are involved in the delivery of ICM also report that the more frequent and intensive interactions with clients outside of conference seemed to reinforce the supportive nature of FRC interventions, and increased clients’ willingness to access services and work towards their goals.

An enhanced Income Management program fit-for-purpose for the needs of FRC communities.

- 3.15 The FRC worked closely throughout 2022-23 with the Australian Government and Australian Parliament to ensure that the new enhanced Income Management (eIM) arrangements contained in the *Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Bill* (the ‘Bill’) were fit-for-purpose for communities operating as part of the FRC model.
- 3.16 The legislative amendments preserved the FRC’s independence as a statutory body under the FRC Act empowered to make agile and highly nuanced decisions. Under the FRC model, eIM is only applied as a matter of last resort, where it is warranted and to the least intrusive extent, as is appropriate in the individual’s circumstances. Indeed, the Explanatory Memorandum to the Bill noted the compatibility of the FRC model with human rights and the right to self-determination pursuant to Article 1 of the International Covenant on Economic, Social and Cultural Rights. Income management arrangements may be voluntary (VIM) or conditional (CIM).

3.17 CIM can be made by agreement or order, are always time limited, for a period between 3 to 12 months and can be made at different percentage levels of 60%, 75% and 90% of eligible income payments to reflect the client's circumstances. During the reporting period there were a total of only 64 CIMs relating to 60 clients, which reflects the judicious application of eIM by the Commission. Yet, almost twice as many community members volunteered for eIM (see below).

Increased levels of voluntary client engagement and personal agency.

3.18 The Commission is seeing a growing cohort of clients who self-refer and engage with the support of the FRC on an entirely voluntary basis. In the 2022-23 reporting period there were a total of 170 voluntary engagements by community members. These engagements are made up of 118 voluntary income management (VIM) agreements and 52 voluntary case plans (VCPs) for referrals to support services. As noted, the number of 118 voluntary agreements on eIM represents almost double the number of orders for eIM. It is notable that only four years ago, that the FRC reported in its annual report that only 20 VIMs and no VCPs were entered into by community members.

3.19 The increase in voluntary engagements in recent years is consistent with a broader, and well-established trend identified by the Commission of an increased willingness by clients to take steps towards personal accountability. This is best illustrated by clients at conference entering into Family Responsibilities Agreements (FRAs) for a case plan and who are willing to accept a referral to a community support service for a period of between 3 to 12 months, as opposed to being ordered to do so, by the FRC. In the 2022-23 financial year, there were 265 agreements entered into by clients for referrals from FRAs compared to 147 orders made by the Commission for referrals.

Quality assurance and compliance measures to ensure quality decisions.

3.20 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 justice²⁰ and avenues for review and appeal,²¹ alongside ensuring that 'Aboriginal tradition' is taken into account in administering the Act.²² There has never been any suggestion the FRC has acted outside its powers.

3.21 Throughout the 2022-23 financial year, 1,143 conferences and hearings were held, with no appeals against the Commission's decisions by community members.

3.22 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.

4. COST BENEFITS TO THE COMMUNITY

4.1. Operationalising the Children's Court trigger under the FRC Act would enable the FRC to make a real difference to the life trajectory of young offenders and their families and contribute significantly to addressing the youth crime crisis in FRC communities.

²⁰ s56(1)(a) of the FRC Act

²¹ Parts 9 and 11 of the FRC Act

²² s5(2)(c) of the FRC Act

- 4.2. There are significant benefits to the communities within the FRC's jurisdiction and the wider community should the FRC be able to begin conferencing families in relation to youth justice matters. It is relevant to consider cost efficiency through the lens of broader government and service systems designed to address extreme disadvantage.
- 4.3. The FRC's ability to provide tailored and culturally appropriate early intervention has changed the trajectory of some of our clients' lives. When considering the cost to the Queensland Government of every child in out of home care is approximately \$250, 000²³ and every prisoner costs \$111,000 in direct costs each year, with another \$48,000 per year in indirect costs, then if the FRC impacts the lives of even a small proportion of its clients each year, it is clearly a worthwhile and value for money intervention.
- 4.4. There is a simple and effective legislative solution available, should the Queensland Parliament take this opportunity to make the change the FRC and our communities have called for.

Submitted by: Tammy Williams, FRC Commissioner

²³ See costs of out of home care provided in 2013 [Queensland Child Protection Commission of Inquiry](#)