



SUBMISSION

SOCIAL SECURITY (ADMINISTRATION) AMENDMENT (CONTINUATION OF CASHLESS WELFARE) BILL 2020

Introduction

The Family Responsibilities Commission (FRC) appreciates the opportunity to comment on the *Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020* (the Bill). The FRC supports the transition of FRC communities from the BasicsCard to the Cashless Debit Card (CDC), and welcomes the removal of trial parameters to establish the CDC as an ongoing program, with the Australian Government's commitment to maintaining the existing policy settings for CYIM in the FRC communities. The FRC is also pleased to see the extension of the voluntary component included in the Bill, particularly allowing voluntary participants to continue to volunteer for the CDC even if they no longer reside in a program area, and the application of the voluntary component of the CDC to allow people in the Bundaberg and Hervey Bay program area to participate in the program. FRC Local Commissioners particularly consider the number of Voluntary Income Management (VIM) agreements and Family Responsibility Commission Agreements (FRA) entered into as indicative of an improvement in community social norms

About us

Cape York Welfare Reform is a partnership between the Cape York Institute, the Queensland Government and the Australian Government. It is an initiative to support a positive change in social norms and community behaviours in response to chronic levels of passive welfare, social dysfunction and economic exclusion within the welfare reform communities. The reforms are designed to initiate early intervention in order to address issues and behaviours before they escalate with a strong emphasis on partnership, capacity building, respect and the use of local authority.

A key feature of the welfare reforms was the creation of the FRC, an independent statutory authority established by the *Family Responsibilities Commission Act 2008* (FRC Act). The Queensland Parliament passed the FRC Act on 13 March 2008 with bipartisan support. The Commission commenced operations on 1 July 2008. The FRC's registry and principal place of business is located in Cairns and services the five welfare reform communities of Aurukun, Coen, Doomadgee, Hope Vale and Mossman Gorge.

The FRC operates within a legal framework to assist clients and their families living in welfare reform communities to address complex antisocial behaviours. 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. The FRC can intervene when it receives notification (an agency notice) in the following circumstances:



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- a child of the person is either not enrolled at school, or not meeting designated school attendance requirements
 - there is an intake involving the person by the Department of Child Safety, Youth and Women in relation to alleged harm or risk of harm
 - the person, as a tenant, is in breach of a social housing tenancy agreement
 - a court convicts the person of an offence or makes a domestic violence protection order against the person.

The FRC applies a locally based and culturally relevant conference-style process delivered by a panel of Elders and respected community leaders, appointed as Local Commissioners, which is overseen by a legally qualified Commissioner. The principle of Indigenous local authority is a cornerstone of the FRC model and a primary example of self-determination. As at 30 June 2020 all members of the Commission's decision-making arm are Aboriginal – comprising of 29 Local Commissioners and now for the first time in the FRC's 12-year history, the Commissioner, arising from the appointment in September 2019 of Tammy Williams.

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 responsibility for their actions and take active steps to address inappropriate behaviour before it escalates and requires serious remedial action.

The FRC Act is to 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 promoted. The principles of natural justice and procedural fairness are to be observed, and the Commission must conduct its processes quickly and with as little formality as is consistent with the fair and proper consideration of the issues before it.

After assessing the community member's circumstances including the relevance of any contributing factors which caused the notifying behaviour, the FRC will attempt to enter into an agreement with the person to attend community support services or give Centrelink a notice for the partial management of a person's welfare payment for a period of no more than 12 months. If an agreement cannot be reached with the person, the FRC can decide to: give the person a reprimand; recommend or direct that the person attends community support services to help address their behaviours through case management; and/or give Centrelink a notice for the partial management of a person's welfare payment for a period of no more than 12 months.



The FRC Act provides a process to enable a person to request an amendment or termination of the Commission's decision before it is due to expire and further provides an avenue to appeal a decision in the Magistrates Court. The legislation also sets out the circumstances and process where there has been non-compliance with a case plan.

Cape York Income Management

The income management element of the FRC model is commonly referred to as Cape York Income Management (CYIM).¹ This term is used to distinguish it from the other models of income management operating in Australia, but it also refers to the broader approach of the FRC which encompasses conferencing and case management. Income management is just one tool in a suite of options available to Local Commissioners under the FRC Act and is generally used as a last resort. A brief description of the model and how it is applied by the Local Commissioners follows.

At conference, a decision may be made to issue a client with a Conditional Income Management (CIM) order. Due consideration is given firstly to the individual circumstances of the client and whether alternative action is more appropriate. CIM orders are considered as a last resort, with Commissioners endeavouring to enter into an agreement with the client to participate in an income management arrangement.

The Local Commissioners utilise CIM as a tool to support people and children at risk, promote socially responsible choices, and as an incentive to meet individual and community obligations by drawing together a network of support services to focus on the individual's skills gaps (social and economic). CIMs are issued for a defined period (no longer than 12 months) with the Commissioners determining whether 60, 75 or 90 percent of fortnightly welfare payments are managed. Clients may apply to the Commission to have their CIM amended or ended. Commissioners consider each application to ascertain whether the client has made sufficient progress to justify an amend or end decision.

A community member may also enter into a VIM agreement to assist them to manage their budget and meet the costs of everyday essentials. The Commissioners consider the number of VIM agreements entered into as indicative of a willingness of community members to take responsibility, to look after family members, and as a general improvement in community social norms. VIM agreements are a useful tool to assist elderly community members (who have not otherwise been referred to the FRC) to ensure their welfare payments are expended on their own needs.

¹ Income management was introduced in Aurukun, Coen, Hope Vale and Mossman Gorge as part of Cape York Welfare Reform in 2008. In 2015, Doomadgee opted into the FRC and the same model of income management. 'Cape York Income Management' is used to refer to income management used in the four Cape York communities as well as Doomadgee.



Importance of CYIM

Many of the current FRC Local Commissioners played a central role in the design of Welfare Reform and CYIM. It is a rare and significant achievement that the architects of an empowerment reform aimed at restoring local authority remain implementing and driving that reform 12 years later. CYIM has the full support of this remarkable group of community leaders, and it is their view that the transition of the BasicsCard to the Cashless Debit Card, sustaining the policy framework within which the FRC applies income management, is imperative to continuing their good work in these communities. In a letter dated 25 September 2019, the Local Commissioners made their own submission in this regard to the Standing Committee on Community Affairs, Legislation Committee.

The FRC considers that the Australian Government's commitment to maintain the existing policy settings for CYIM have been effectively met by this Bill. As noted in the Strategic Review of Income Management,² these policy settings may provide useful lessons for further rollout of the model, or similar models, both in Cape York and elsewhere. Successful passage of this Bill would ensure the continuation of CYIM until December 2021, providing much-needed stability for Local Commissioners to continue to support improved social outcomes in their communities.

Transition to the Cashless Debit Card

The FRC supports the transition from the BasicsCard to the Cashless Debit Card in FRC communities. It is considered that the improved technology available through the CDC will improve access to goods for FRC's income-managed clients. The increase in the number of outlets where the card can be used will assist clients who often move between communities, and to regional centres for shopping and schooling for example. The ability to purchase goods online and more flexible options for paying bills online will also assist clients living in remote communities. Feedback received from community members indicates that the changed appearance of the card could reduce any stigma associated with being income-managed.

A key component of the transition will be the engagement of community members well ahead of the planned transition date. Misconceptions about the operation of the BasicsCard and the FRC remain after 12 years of operation. It will be imperative that clear and consistent information is provided to community members that the operation of CYIM will not change, and that at a basic level the transition simply involves swapping one card for another. The proposed Bill acknowledges the existing legal framework and current arrangements in a way that ensures that the FRC maintains its functions and jurisdiction and avoids unnecessary administrative burdens.

² Scott, J., Higginson, A., Staines, Z., Zhen, L., Ryan, V., & Lauchs, M. A. (2018). Strategic review of Cape York Income Management (p.x).



As noted, the extension of CYIM to December 2021 under the Bill will allow the FRC and Local Commissioners the stability which is needed to continue to meet the objectives of supporting the restoration of socially responsible standards of behaviour and local authority, and will further allow sufficient implementation time for the transition from the BasicsCard to the CDC. Future alignment of the sunset date of the CDC with the FRC's funding provisions from the Australian and Queensland Governments would also promote better clarity and operational stability. To date statutory appointments and income management legislation has not always aligned with the funding parameters within which the FRC is required to function.

Notes on amendments

Items 1 and 2 – The change of terminology from 'trial participant' to 'program participant' is welcome and the FRC notes the Government's commitment to ensure a welfare system "fit-for-purpose" to deliver "positive outcomes for vulnerable people, families and communities". The FRC delivers positive outcomes to its participating communities by linking CYIM with a case management approach. The majority of clients placed on a CIM order are also placed on a case plan to address the issues which have brought them before the Commission.

Items 49 – 62 - The FRC is pleased to see comprehensive transitional amendments, and in particular item 61 which will specifically list each payment that will be a restrictable payment for FRC clients.

Items 63 – 65 – The insertion of a new subsection to provide that the Minister may determine an area for the purposes of the definition of Cape York area by notifiable instrument is consistent with Section 8A(1) of the FRC Act whereby "A welfare reform community area is an area prescribed by regulation as a welfare reform community area". The FRC considers, however, that as Doomadgee (a Gulf community) falls within the jurisdiction of the FRC, the following wording should be considered, "may determine an area for the purposes of the definition of an FRC (or Commission) participating community area".

The FRC considers that otherwise the Bill allows the FRC to ensure that the CDC application can operate seamlessly for people who usually reside in an FRC community area.

Item 74 – 75 – New subsection 124PGD(1) should be amended to refer to 'FRC participating communities' (or 'Commission participating communities') as opposed to Cape York area (e.g. (a) the person's usual place of residence is, becomes or was within an FRC (or Commission) participating community area). That would allow for the inclusion of Doomadgee which is a Gulf community within the FRC's jurisdiction. 'FRC (or Commission) participating communities' would also allay any further amendments should other communities be declared by regulation as FRC communities. The FRC would like to encourage consideration of CYIM being expanded to other communities (Indigenous and non-Indigenous) who may wish to garner the benefits afforded



through a holistic conferencing and case-management structured platform powered by local authority.

Further, 124PGD(1)(b) should be amended to “...is an eligible recipient of a category P or R welfare payment...” to be consistent with Section 8 of the FRC Act.

Subsection 124PGD(1)(d) further states, “If the person has a Part 3B payment nominee – that nominee is a CDC program participant or is subject to IM under Part 3B”. The FRC is considering the future use of this provision to benefit and safeguard vulnerable community members.

Subsection 124PGD(2) further clarifies that a program participant continues to be a participant even if their usual place of residence is no longer in the Cape York area. The FRC supports this subsection with the amendment “...is no longer in an FRC (or Commission) participating community area”.

The FRC notes subsection 124PGE(1) covers the parenting and participation measure (disengaged Youth) which applies solely to the Northern Territory. The FRC would welcome the inclusion of this criteria to be considered for FRC participating community areas.

The FRC supports that Age Pension recipients be able to volunteer for the CDC as a positive move for other income management programs. As stated, the FRC does not support the exclusion of Age Pension recipients from becoming compulsory program participants on the basis that it may (and does) put the elderly at risk of financial abuse and looks forward to working with the Government and other stakeholders in this regard.

Item 76 – 82 – The FRC notes the relevant transitional arrangements to maintain the legal parameters within which CYIM is applied. As stated, the application of CYIM by the Local Commissioners is a well thought out and considered process taking individual and family circumstances into account, and allowing for recipient/client input by way of the amend/end and appeal processes, it is quite unlike other income management models. The FRC supports the Government’s decision to maintain the CYIM model in FRC participating communities.

Item 84 – 86 – The FRC notes the default provision under subsection 124PJ(1A) that the restricted portion be set at 50 percent if the restricted portion is not specified by the FRC order or agreement, and will implement audit safeguards to ensure the integrity of future orders/agreements.

Item 93 – The FRC supports the replication of information sharing provisions and concurs that these powers are essential to ensure that the cashless welfare arrangements operate effectively. This item is consistent with sections 92 to 96 of the FRC Act which detail the provisions about information exchange and the interaction with other laws. Even with the powers afforded to the FRC through these provisions, there is still a gap in the provision of information sought by the Commission from agencies outside of those defined as ‘prescribed entities’ in the FRC Act. The



Commission welcomes the opportunity to work with the Australian and Queensland Governments in relation to a review of information exchange requirements necessary to best achieve the objects of the FRC Act.

Item 94 – 97 – The FRC recognises these provisions sufficiently support the effective and efficient transition of FRC clients from the BasicsCard to the CDC.

Item 114 – The FRC agrees that ongoing evaluations involving repeated contact with vulnerable individuals is problematical and supports a desktop evaluation process providing that the evaluation is undertaken in consultation with key stakeholders including the FRC.

Human rights implications – The FRC notes the Parliamentary Joint Committee on Human Rights review findings in regard to the *Social Services Legislation Amendment (Cashless Debit Card) Bill 2017* that the CDC engages and limits three human rights: the right to social security, the right to a private life and the right to equality and non-discrimination. The FRC concurs that the objectives of the CDC which are aimed at reducing self-harm translate into reducing violence, improving health outcomes, improving vulnerable community members’ and children’s wellbeing, improving employment opportunities and improving the right of children to participate in education.

The new objective to section 124PC, clarifying that the CDC is designed as a budgeting tool to support welfare recipients in managing their financial affairs and ensuring that they are able to purchase basics and essential items is consistent with CYIM and the holistic case-management provided by the FRC. Further the FRC supports the statement that the CDC program “does not affect people according to race, religion, ethnicity or any other factor. It is not a punitive measure, nor is it designed to stigmatise people”. CDC applies to welfare payment recipients and their dependents in designated areas. CYIM likewise does not specify Indigenous participants. Non-Indigenous community members have fallen within the FRC’s jurisdiction in the past and their matters have been considered by the Commission in the same manner as Indigenous community members.

FRC Local Commissioners apply income management orders as a last resort, and the FRC Act also allows for CYIM participants to seek to amend or end their income management. Sections 110 to 115 of the FRC Act specify appeal rights against a decision in the Magistrates Court on a question of law. There are no limitations on the number of applications or appeals under the FRC Act. There have been only two appeals lodged in 12 years of Commission operations, both of which were discontinued. No appeals of Commission decisions were lodged in the 2019/20 financial year.

The FRC notes the safeguards provided by sections 124PHA and 124PHB of the *Social Security Administration Act* protecting persons who can demonstrate reasonable and responsible management of their affairs and exempting them under wellbeing provisions. These provisions provide greater consistency with the provisions in the FRC Act cited above.



The right to social security – The reference to the UN Committee stating the right of individuals to a minimum essential level of benefits that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic form of education is noted. Those words form the crux of what welfare is about – ensuring essential health care and wellbeing of individuals. The CDC is aimed at safeguarding the intent of welfare which can otherwise be eroded by individuals spending their social security payments on alcohol, gambling and illegal drugs or substances, putting themselves and their families at risk of harm. It is on that basis that the FRC supports income management and the CDC. The FRC further strengthens the income management model by linking those on income management with support services to assist them to deal with the issues which brought them to the attention of the Commission.

As demonstrated in the following table the growing number of clients placed on a case plan without a CIM during the 2019-20 financial year clearly demonstrates that income management is delivered with a highly targeted and flexible approach nuanced to the client’s circumstances. It should be noted that the majority of the clients who were placed on a CIM without a case plan in the table below already had an existing case plan in place at the time they were placed on a CIM.

Clients placed on case plans and CIMs for the financial year³	2018-19	2019-20
Number of clients placed on a case plan and CIM	36	112
Number of clients placed on a case plan without a CIM	37	174
Number of clients placed on a CIM without a case plan	140	53

The FRC concurs with the statement that the Bill does not detract from the eligibility of a person to receive welfare, nor reduces the amount of a person’s welfare payment. The Bill protects vulnerable people by limiting what welfare payments can be spent on – ensuring food is on the table, clothing is provided, shelter is secure and social responsibility is exercised in regard to the family and community. In those circumstances it is considered that any limitation on the right to social security is reasonable and proportionate.

The right to a private life – Although the FRC agrees that reducing a person’s choice in how and where they spend their social security payments does limit the right to a private life, CYIM when

³ During conference the 23 agreements and 302 orders to attend community support services and the 219 CIM orders relate to 339 unique clients.



applied in accordance with the FRC Act, is a proportionate response and is done so to improve the welfare of the recipient, and/or the recipient's family. We note that Section 124PN of the Bill, whilst allowing the sharing of information in order to effectively achieve the legitimate objectives of Cashless Welfare, does still safeguard the individual's privacy through the secrecy provisions of the *Social Security Administration Act*. The FRC Act likewise has strict provision for the sharing of information under Sections 90 to 96 to not only allow the Commission to achieve its objectives, but also to protect the privacy of individuals by clearly defining what is relevant information and under what circumstances relevant information can be shared. Sections 141 and 147 of the FRC Act further stipulate that the Commission must destroy documents received about individuals found not within the jurisdiction of the Commission, and that a person must not record, disclose or use confidential information gained by the person through involvement in the administration of the FRC Act unless authorised under the Act. Further, the FRC notes that under the CDC the Government cannot see what items or products people are purchasing.

It is agreed that the limitation on a person's right to privacy is reasonable and proportionate in light of the social dysfunction present in the program areas and the legitimate objectives of the CDC in reducing the amount of funds spent on harmful activities and substances.

The rights of equality and non-discrimination – The Explanatory Memorandum to the Bill states that the UN Human Rights Committee acknowledged that *'not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective, and if the aim is to achieve a purpose which is legitimate under the Covenant'*. As with the CDC, CYIM is applied to specific locations identified by their social issues. It is not applied selectively within the locality but by jurisdictional parameters defined under the FRC Act. Extensive community consultation was undertaken prior to communities opting in to the Welfare Reforms, and all residents (whether Indigenous or non-Indigenous) who meet the criteria of a community member and welfare recipient fall within the FRC's jurisdiction. As stated previously, the aim of quarantining welfare is to safeguard the intention of welfare – that the funds be spent on the necessities of life, and not spent on harmful activities and substances. The FRC considers this is a legitimate purpose which protects vulnerable people of all ages and ethnicities.

Right to be free from self-incrimination – The FRC considers that the process of determining whether a person is or should be a CDC participant in FRC communities, or how payments are administered is reasonable, necessary and proportionate to achieving the legitimate objective of investigating the operation of the CDC, and that Section 197A of the Bill protects the individual by excluding information given on a compulsory basis from being admissible in a criminal proceeding. The Bill will enable the Secretary to ascertain facts and circumstances necessary to ensure a seamless transition for CYIM participants to become CDC participants.



The right to self-determination and an adequate standard of living – FRC communities participate in the Welfare Reforms through a process of self-determination to rebuild social norms in their communities. A primary mechanism to achieving improved social norms is by linking welfare payments to looking after the community children and not committing offences against other community members. The model is led by Indigenous Elders and respected community members for their own people. It is an empowerment that assists the communities to determine their own social expectations. CYIM and the CDC only restrict funds being spent on harmful behaviours and substances, they do not restrict a person’s right to pursue their economic, social or cultural development. Likewise, CYIM and CDC ensure through these restrictions that essential goods and services required to maintain an adequate standard of living are able to be provided.

The rights of children – The FRC Act is explicit about the rights of children. Section 5 (Principles of administering the Act) states that the Act is to be administered under the principle that the wellbeing and best interests of a child are paramount, and that in a conference about a notice involving a child, the child’s views and wishes should be taken into account in a way that has regard to the child’s age and ability to understand. The Commissioners apply income management with that outcome in mind and believe firmly that the following results are achieved:

- *Reducing stress* - individuals and families experience the benefit of reduced financial pressures
- *Capacity building* - If availing themselves of financial management support services, basic financial skills are acquired which remain once a CIM or VIM ends
- *Health* – Basic essentials (i.e. refrigerators and other white goods) can be afforded improving the health of families
- *Child safety* - children are appropriately fed and clothed reducing child safety concerns and the removal of children from community
- *Homelessness* - Income Management can work to assist with housing arrears (minimising homelessness)
- *Support services* - Income Management can draw together a network of support services to focus on an individual’s skill gaps (social and economic)
- *Welfare dependency* – Without the basic financial skills to increase the client’s capacity to manage their own financial situation and improve living standards, the client will remain welfare dependent
- *Education* – Children have a right to an education and stabilising the household through income management promotes a child’s ability to attend school



In 2018, the Australian Government commissioned independent researchers from the Queensland University of Technology to undertake a review of CYIM. The review was to assess the impact of CYIM in the Cape York Welfare Reform communities for the period 2008 to 2018 and was designed to analyse qualitative and quantitative data on income management to inform how it might be utilised in the future. The report, dated November 2018, stated:

“There is anecdotal evidence that the general circumstances and welfare of children has improved in the CYWR communities since the FRC and CYIM were introduced—particularly in terms of visible evidence of neglect. The FRC has likely played a role, particularly by role modelling and enforcing social norms. For example, reminding parents of their responsibilities to their children, and encouraging them to take children to medical appointments.

Where Child Safety Services have been involved, the FRC Local Commissioners have played an important role in helping some families navigate the system and fulfil their requirements. CYIM appears to be helpful to this end insofar as it offers a means through which some families can demonstrate to Child Safety that they are able to provide consistent food and accommodation for their children. There are some instances where this has meant that children have been able to remain with their families, rather than being removed.”⁴

The FRC considers that advancing the rights of children to essential goods, services and education by restricting discretionary welfare spending where appropriate is compatible with human rights.

Conclusion

A key component in fulfilling the FRC’s purpose of restoring socially responsible standards of behaviour, local authority, and supporting people to resume primary responsibility for the wellbeing of their community is the use of CYIM by Local Commissioners.

The FRC welcomes and supports the *Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020* and its removal of the trial parameters to establish the CDC as an ongoing program, with the Australian Government’s commitment to maintaining the existing policy settings for CYIM in FRC communities. The extension of CYIM to December 2021 provides stability to the operations of the Commission and allows the Local Commissioners to continue meeting the objectives of supporting the restoration of socially responsible standards of behaviour in Aurukun, Coen, Doomadgee, Hope Vale and Mossman Gorge. Future alignment of the sunset

⁴ Scott, J., Higginson, A., Staines, Z., Zhen, L., Ryan, V., & Lauchs, M. A. (2018). Strategic review of Cape York Income Management (p.x).



date of the CDC with the FRC's funding parameters would also promote better clarity and operational stability, as would the alignment of statutory appointments.

The FRC considers it particularly encouraging that the Bill also expands the element of voluntary participation to reflect the positive outcomes which are achievable from income management. Limiting the amount of welfare discretionary spending can reduce social harm caused by those recipients who abuse the privilege of receiving government assistance by spending it on drugs, alcohol and gambling at the expense of their families and other vulnerable community members. A coordinated response from all levels of government is necessary to ensure that the appropriate local supports are provided in conjunction with income management to improve social norms and the future of participating communities.