



FRC Response to Questions on Notice from Senator Thorpe

The FRC appreciates Senator Thorpe's interest in our work and is pleased to provide the following further information to explain the work of the Commission.

- 1. Feedback from the community is ultimately that they want to engage with income management on an entirely voluntary basis if at all. Is it correct that the FRC model has a non-voluntary component i.e., it can be compulsory or mandatory to be on income management under the FRC model?**

It is correct that the FRC model includes conditional income management as one of a range of graduated decision-making options from a conference. After holding a conference, the Commission may, under section 68 or 69 of the *Family Responsibilities Commission Act 2008* (Qld) (**FRC Act**), decide to either enter into an agreement with or direct a person to be subject to income management for a period of not more than 1 year.

Part 10 of the FRC Act also provides for voluntary referrals to the Commission. This may occur independently of the conference process. As noted in oral evidence to the Parliamentary Joint Committee on Human Rights (**PJCHR**), cumulatively since March 2021, 65 per cent of all income management arrangements administered by the FRC have been voluntary. At 1 July 2024, there were 63 voluntary income management (VIM) arrangements in place, and 13 conditional income management (CIM) agreements or orders. This represents over 82 per cent of the income management orders at that point in time being voluntary.

- 2. My office has been informed that the FRC model leads to some First Nations community members moving away from the Cape to try and escape the program, because there are no stores, job opportunities, and no control. They live in shacks and tents on edges of other towns such as Cairns, Kuranda, Mareeba, to try and escape the FRC's program. Is the FRC aware of this and does the FRC have any data on what effect their scheme has on the residency, location and continuing connection to the country for their participants and other community members in the region?**

The Commission is not aware of individuals moving out of their communities in order to avoid the FRC, and our data does not suggest this is so. To answer this question, the FRC has retrieved address data on clients subject to a CIM order in 2023-24. Of the 54 clients subject to a CIM order over the financial year, five had addresses outside the welfare reform communities on 11 July 2024. Of those five, two clients CIM orders remain active. The other three clients each moved out of the communities some time (the shortest time being approximately 10 weeks) after their CIM order ended. The address data shows all these clients currently residing in regional centres (e.g. Mt Isa and Cairns) which is not unusual for those in remote communities needing to access health facilities, education and job opportunities. The FRC contends that this data cannot be said to be indicative of community members leaving their home communities because of the FRC or the model's element of income management.

The FRC Act's jurisdiction requirements are designed to apply to individuals and families who are community members.¹ That is, where an FRC community is their usual place of residence, or where their address is outside the community they maintain a continuing connection to the community. The

¹ See section 7 of the FRC Act.

FRC Act provides for a range of matters to be taken into account in determining whether the person is a community member, including having regard to the person's family or kinship relationships, and the frequency and duration of, and reasons for, any periods the person spends outside the community.² The Commission is only concerned with, and legally permitted to intervene, where a person's actions are impacting on members of the FRC communities.

Recognition of the cultural rights of First Nations people is embedded in the FRC Act. Section 5(c) of the FRC Act provides that Aboriginal tradition and Torres Strait Islander custom must be taken into account in matters involving Aboriginal or Torres Strait Islander people. Ancestral languages are explicitly used in conferences where that is appropriate. The FRC is able to utilise the Local Commissioner's understanding of community members relationships and cultural connectedness to others and to places. These elements mean that the FRC can conduct its business in an appropriate and meaningful way in each of the FRC communities' local context.

3. You state the FRC proposed model is human rights compliant, but you don't mention the UNDRIP in your submission. How does your model for income management comply with the UNDRIP around principles of free, prior and informed consent, and self-determination?

The FRC considers that its holistic model advances the right of self-determination and meets the requirement of consultation as set out in the United Nations Declaration on the Rights of Indigenous People (**UNDRIP**).

Article 3 of UNDRIP protects the right of Indigenous peoples to self-determination. That is, the right to freely determine their political status and freely pursue their economic, social and cultural development. The main objects of the FRC Act³ are to:

- a. Support the restoration of socially responsible standards of behaviour and *local authority* in welfare reform areas;
- b. to help people in welfare reform community areas to *resume primary responsibility* for the wellbeing of their community and the individuals and families of the community.

(Emphasis added)

The FRC and associated welfare reforms were designed to assist in achieving racial substantive equality by addressing disadvantage and dysfunction. It is aimed at deterring destructive behaviour that is harmful to the rights of children, vulnerable people and other community members, including by quarantining welfare as a last resort. As noted in the FRC's submission to the PJCHR, these decisions are made locally by First Nations community leaders and accordingly promotes local authority and self-determination.

Article 19 of UNDRIP requires the free, prior, and informed consent of Indigenous peoples before states adopt and implement legislative or administrative measures that affect them. As noted in the FRC's submission to the PJCHR, the establishment of the FRC was a result of approximately two years of consultations with the Cape York participating communities. Doomadgee opted-in to joining the FRC in 2014. The submission also details the ongoing government led and independent evaluative processes, involving consultation with participating communities, to determine whether the FRC should continue.

4. How can the FRC program comply with free, prior, and informed consent and self-determination when the Commissioner holds the power to quarantine someone's income without their consent, and deny requests to be taken off even a voluntary program if the Commissioner believes it is not in the 'best interests' to do so?

By seeking to participate in the FRC, communities have opted-in to a higher standard. The communities agreed to have some of their rights limited in favour of protecting the rights of children and other vulnerable community members in limited circumstances where that is required. The Commission does not dispute that it's model of income management limits some human rights. Rather the FRC's model of income management limits rights in such a way that is reasonable,

² Section 48 of the FRC Act.

³ See section 4 of the FRC Act

necessary and proportionate, and in circumstances where the rights of other community members, particularly children, are impacted.

The Commission notes that the requirement for consent in Article 19 of UNDRIP applies to consultation prior to adopting or implementing legislative and administrative measures that affect First Nations people. It does not require seeking individual consent prior to any action that is then undertaken in accordance with the measure.

By contrast, voluntary income management under the FRC Act is an agreement between the individual concerned and the Commission. The agreement can be made if the community member asks the Commission to be subject to income management, and the Commissioner is satisfied that it is in the best interests of the person, a child of the person or another member of the person's family.⁴ The Commissioner must take reasonable and appropriate steps to ensure the terms of the agreement are fully understood by the person.⁵ Accordingly, the community member is aware that the Commissioner must amend or end the agreement when requested, unless the Commissioner is satisfied that the amendment or ending of the agreement would be detrimental to the interests, rights and wellbeing of children and other vulnerable persons living in the welfare reform community area.⁶

5. Could you explain how and why the 'conditional' aspect of the FRC program is different from any other non-voluntary or compulsory income management scheme, in that at its heart, the commissioner holds the power to make decisions around people's income without their consent?

As noted in the FRC submission, a key tenet of the policy proposal for welfare reform was to develop reformed incentives and enabling supports, by making welfare payments conditional on certain social obligations being upheld.

The original policy design document states as follows:⁷

'To rebuild social norms, incentives and laws must support the values of the communities. A potentially powerful mechanism for doing this is through linking welfare payments to community members acting in the best interests of children in the community.'

In contrast to 'blanket' approaches where all people in a geographic area who are in receipt of certain payments are compulsorily subject to income management, the FRC model of income management is only applied where the pre-determined conditions linked to the wellbeing of children are not being met.

FRC communities have agreed to some of their rights being limited in favour of ensuring that children are safe. The decisions about when that is necessary, as a last resort, are made by Local Commissioners.⁸ The FRC's submission and oral evidence to the PJCHR demonstrate that those decisions are made in a limited, reasonable and proportionate way.

6. I understand the FRC models include the delivery of important community service programs. Do you see it necessary to have these services tied to income management?

As noted in the FRC's submission to the PJCHR, the Commission considers that income management alone is not a solution to the entrenched disadvantage experienced in FRC communities. It is the view of the FRC that income management, as part of a holistic and client-

⁴ Section 108(1) of the FRC Act.

⁵ Section 108(5) of the FRC Act.

⁶ Section 109(2) of the FRC Act.

⁷ Cape York Institute, 2007. From Hand Out to Hand Up.

http://web.archive.org/web/20080724085355/http://www.cyi.org.au/WEBSITE%20uploads/Welfare%20Reform%20Attachments/From%20Hand%20Out%20to%20Hand%20Up_Welfare%20Reform%20Report.pdf

p.45

⁸ Sections 50 and 50A of the FRC Act sets out the constitution of the Commission for conference

centred approach, can be an effective tool when complemented by a range of specialist support services.

For clarity, support services in the FRC communities are not necessarily tied to income management. Clients of the Commission may be referred to support services whether or not they are on income management, either voluntarily or as a result of an agreement or order made a conference.

When a CIM agreement or order is made, it is often accompanied by a referral to a support service. There are many more referrals to support services that are made without income management.

7. Would you support a policy move that invested in programs that create real jobs, with proper award wages and conditions, adequate training and skills, and rebuilding local community decision-making without being tied to income management?

The Commission would certainly support further investment in evidence-based programs that achieve the outcomes mentioned. The FRC's responsibilities agenda was always designed to be delivered alongside substantial opportunities under the Cape York Welfare Reform program, including real jobs and home ownership. The Commission will continue to work with its tripartite partners to progress the evolution of opportunities that must accompany responsibility for real empowerment.

In the FRC's submission to the PJCHR, we contend that where extreme and entrenched disadvantage continues to exist in FRC communities some element of conditional income management is required. The flexibility of the FRC model enables the Local Commissioners to harness varying levels of clients' motivation for change. Where clients' behaviour is impacting on children and other vulnerable people, and they are unwilling to seek support, income management is one tool to help people to walk through the doors of support services.

Recent history has shown that the service delivery system alone does not lift people out of extreme and entrenched disadvantage. It is our hope that when parity of outcomes is achieved, and our most vulnerable clients are able to simply walk through the door of a support service and engage in job readiness training. We know that is unfortunately not yet the case. The gap is far from closed. The FRC's model of conditional income management can provide scaffolded support, which can be removed once capabilities and corresponding opportunities are built.

8. Why does FRC want to expand the definition of a community member?

In a significant operational analysis published in 2022,⁹ the FRC recommended that the Commission be enabled to administer voluntary income management in other geographic locations. Importantly, this is only in relation to voluntary income management, as was noted in evidence given at the public hearing. Accordingly, the FRC would only seek to expand the definition of community member for the purposes of voluntary interactions with the Commission.

The reason for this recommendation is to allow VIM to be applied on request in any location in Queensland, or elsewhere, where a person, considers the tool will assist them to manage their income so that money is available for essentials despite challenging factors such as addictions or relationships with others. For example, women in FRC communities have found VIM helpful in protecting their income in situations of domestic violence or coercive control.

The FRC's administration of VIM across the state, or to other locations as required, would provide an additional tool for those experiencing disadvantage and allow for the efficient implementation and delivery of this tool using the existing back-end support of the FRC. No conferencing process involving Local Commissioners would be required, but rather, a simplified process could be supported by the FRC Registry to put a VIM in place for individuals on request.

9. Who designed the FRC program? Was it First People who were or are currently income management considering they are the ones most impacted, and know best what they need?

⁹ Family Responsibilities Commission, 2022. The FRC: A model of self-determination. An Operational Analysis of the Family Responsibilities Commission, p.138.

The FRC was designed as part of the Welfare Reform Project. The Welfare Reform Project was undertaken by the Cape York Institute for Policy and Leadership, (now the Cape York Institute) in partnership with the four Cape York communities of Aurukun, Coen, Hope Vale and Mossman Gorge, the Australian and Queensland Governments.

As noted in the FRC's submission to the PJCHR, the establishment of the FRC was the result of approximately two years of consultations with the participating communities.

10. The FRC Commissioner noted in oral evidence Friday that a determining factor in whether conditional Income Management was applied, was the attitude of the participant. That participants must take ownership and responsibility for their own trauma. Could the FRC detail more about this component of the FRC model?

The FRC respectfully notes that there were no comments made, or implied, during the PJCHR hearing that participants must take responsibility for their own trauma. The FRC has revisited the Proof copy of the Hansard of proceedings to confirm. The Commissioner's comments were that the aim of FRC conferences is to understand the underlying causes of certain behaviours. The personal responsibility that clients are encouraged to take is to recognise the impacts of their behaviour on others in their community.

As explained in the FRC's submission,¹⁰ and reiterated in evidence at the public hearing, where clients show limited insights into the impacts of their behaviour and that behaviour presents a risk to children and other vulnerable people, conditional income management may be used as a lever to encourage clients to seek support and as a stabilising factor for children.

11. How can we challenge the premise that compulsory income management is needed to correct 'problem behaviour,' and instead develop policy and legislation that recognize and support the resourcefulness and economic aspirations of our People and communities, which are often overlooked and unexamined?

As noted in response to Question 7, the FRC was implemented as part of broader reforms, which aim to move from developing responsibility, then capability and opportunities in our communities. The FRC's role in this program logic is illustrated on p.15 of the FRC's submission to the PJCHR. As community members needs and aspirations have evolved, the Commission's operations have also evolved within the parameters of its legislative framework.

In contrast to other approaches, the FRC starts from the position that all people are capable and valued members of their communities. Behaviour that falls within the Commission's jurisdiction, and indeed the principles for administering the FRC Act, is considered in light of the principle that the wellbeing and best interests of a child are paramount.¹¹ Income management is just one element that the FRC employs to support people to resume primary responsibility for their own wellbeing and their family.

12. How does the FRC place modern income management within historical context, considering its legacy comes from the practice of controlling the finances of First Peoples throughout this country's colonial history and legacy, and the use of income management as a measure of paternalistic, apartheid-style, racist control programs as enacted by John Howard during the NT intervention?

The FRC respectfully disagrees that the Commission's model of income management is rooted in measures of control. Its genesis was born of the desire of First Nations peoples and communities for systemic welfare reform to counteract the effects of oppression, disempowerment and trauma. Its aim is to rebuild social norms and restore local authority, to free people from passive welfare and engage in the real economy.

¹⁰ See section 3.8, p.10.

¹¹ Section 5 of the FRC Act.