

2008

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

MINISTER FOR JUSTICE AND ATTORNEY-GENERAL

YOUTH JUSTICE AMENDMENT (FAMILY RESPONSIBILITY) BILL 2008

Serial No 133

EXPLANATORY STATEMENT

GENERAL OUTLINE

The Youth Justice Amendment (Family Responsibility) Bill 2008

(“the Bill”) provides for the amendment of the *Youth Justice Act*

(“the Principal Act”). The principal features of the Bill are as follows:

- agencies can enter Family Responsibility Agreements with the parent or other person with parental responsibility for a youth, where that youth has demonstrated behavioural problems, engaged in repeated truancy, or has been involved in low level anti-social or criminal behaviour;
- agencies can bring a Court application for a Family Responsibility Order where the Family Responsibility Agreement has not rectified the youth’s behaviour;
- agencies can bring an application for a Family Responsibility Order where the parent or other person with parental responsibility for a youth, refuses to voluntarily enter into a Family Responsibility Agreement;
- Police can bring an application for a Family Responsibility Order where a youth has been charged with an offence or has breached a condition of bail;
- the Court may conduct an inquiry into the family circumstances of the youth and make a Family Responsibility Order if one is likely to improve the family’s situation;
- a penalty of up to \$2,200 where a parent or other person with parental responsibility for a youth fails to meet the conditions of a Family Responsibility Order;
- the enforcement of a penalty order on default of payment of fine, by way of seizure of non-essential household goods, or a community work order;
- a prohibition on publication of information that identifies the parties to a Family Responsibility Order, including the youth, or any third party named in a Family Responsibility Order;
- a review of the relevant legislation after 12 months.
- amendments to the diversion provisions of the Principal Act so as to limit youth conferencing or formal diversion programs where a youth has been referred to youth conferencing or formal diversion programs on two or more previous occasions in respect of two

or more situations. Despite this, the Commissioner for Police or a delegate may authorise a police officer to deal with a youth by youth conferencing or formal diversion programs on more than two occasions.

NOTES ON CLAUSES

Clause 1. Short title

This is a formal clause which provides for the citation of the Bill.

The Bill, when passed, may be cited as the *Youth Justice*

Amendment (Family Responsibility) Act 2008.

Clause 2. Commencement

The Act will commence on the date fixed by the Administrator by notice in the Northern Territory Government Gazette.

Clause 3. Act amended

The Act amends the *Youth Justice Act*.

Clause 4. Amendment of section 39 (Diversion of youth)

Clause 4 provides that the obligation under section 39(2) to consider a youth for conferencing or formal diversion does not apply if that youth has been referred to conferencing or formal diversion on two or more previous occasions in respect of two or more situations. Despite this the Commissioner for Police or a delegate may still authorise or approve conferencing or formal diversion on more than two occasions.

Clause 5. New Part 6A

Clause 5 inserts Part 6A, Responsible care and supervision within the family, into the *Youth Justice Act*.

Part 6A Responsible care and supervision within the family

Division 1 Preliminary

Clause 140A Definitions

Clause 140A sets out the definitions used in Part 6A.

Clause 140B Guiding Principles

Clause 140B sets out the guiding principles for the purposes of this Part. The first is that the best interests of the youth are to be treated as the paramount consideration. The other is that agencies with responsibilities for youths must work together cooperatively and effectively to help parents safeguard and promote the wellbeing of the youth, exercise appropriate control over the behaviour of the youth and comply with any relevant family responsibility agreement or order.

Clause 140C How Agency acts for the purposes of this Part

Clause 140C provides that an appropriate agency for the purposes of this Part acts through an authorised officer who is issued with an identity card certifying that officer's authority to act.

Division 2 Family responsibility agreements

Clause 140D Power to enter into family responsibility agreement

Clause 140D provides that an agency may enter into a family responsibility agreement with the parent or person who has parental responsibility for the youth, in circumstances where the youth has demonstrated behavioural problems and the youth's family circumstances may have caused or contributed to those behavioural problems and the agency believes that an agreement may assist to resolve the problems.

Clause 140E Family responsibility agreement

Clause 140E sets out the terms a family responsibility agreement may contain. These may require the parent or person with parental responsibility for the youth to undertake counselling, therapy or parental guidance counselling; join an appropriate support group or undertake any other appropriate personal development program. An agreement may also require the parent to ensure that the youth attends school, keeps away from certain persons or places and any other requirement that is appropriate in the circumstances. It also sets out that an agreement remains in force for the term stated in the agreement but cannot exceed 12 months or extend beyond the date a youth turns 18 years of age. The appropriate agency is also required, before entering into an agreement, to ensure that facilities and services reasonably required by the parents to comply with the agreement are available in the region where the parents live.

Clause 140F Family responsibility agreement not to give rise to enforceable obligations

Clause 140F provides that an agreement does not give rise to enforceable obligations.

Division 3 Family responsibility orders

Clause 140G Inquiries into family circumstances

Clause 140G sets out the circumstances that may lead to the Court conducting an inquiry into the family circumstances of a youth.

An inquiry is commenced on application by the agency or by the police where the youth has been charged with an offence or has breached bail. The Court may issue a summons to the youth and the parent or person with parental responsibility for the youth for this purpose and if the persons summonsed fail to appear the Court may issue a warrant for that person's arrest. It also provides that the Chief Magistrate may make rules of Court or issue practice directions for the purposes of conducting and inquiry.

Clause 140H General provisions about inquiry

Clause 140H provides that the purpose of any inquiry is to ascertain whether the family circumstances have caused or contributed to the youth's behavioural problems and whether those circumstances are likely to be improved by a family responsibility order. It also provides that the Court is not bound by the rules of evidence when conducting an inquiry.

Clause 140J Family responsibility orders

Clause 140J provides that the Court may make a family responsibility order if it forms the opinion that one is likely to improve the youth's family situation. Before doing so the Court is required to consider a number of relevant matters. These include whether the youth or parents suffer from a physical or mental disability that causes or contributes to a youth's behavioural problems, the extent to which the parents have attempted to manage or control the youth's behaviour and the extent to which the appropriate agency has made reasonable attempts to help and encourage the parents to manage the youth's behaviour and to improve their parenting skills.

An order may contain terms that compel the parent or person with parental responsibility for the youth, to undertake counselling, therapy or undertake parental guidance counselling; join an appropriate support group or undertake any other appropriate personal development program. An order may also compel the parent to ensure that the youth attends school, keeps away from certain persons or places and any other term that is relevant in the circumstances. Family responsibility orders cannot be made for a youth under 10 years of age. An order remains in force for the term stated in the order but cannot exceed 12 months or extend beyond the date the youth turns 18 years of age.

Clause 140K Variation or revocation of family responsibility orders

Clause 140K provides that the Court may vary or revoke a family responsibility order on its own or on application by the parties to the order or any other person with a proper interest in the matter if to do so is consistent with the best interests of the youth.

Clause 140L Explanation of orders

Clause 140L provides that where the Court makes, varies or revokes a family responsibility order it must explain the order to the parents and the youth in a language and in a manner they are likely to understand taking into account their ages, maturity, cultural background and English language skills. The explanation must include the purpose and effect of the order, the consequences of non-compliance and if appropriate that the Court has power to review the order. Failure to explain an order does not invalidate the order.

Clause 140M Non-compliance with family responsibility order

Clause 140M provides for the offence of non-compliance with a family responsibility order with a maximum penalty of 20 penalty units

(or \$2,200). Prosecution for an offence may only be commenced with the approval of the appropriate agency and only after reasonable attempts by the agency to secure compliance with the order have failed.

Division 4 Miscellaneous

Clause 140N Enforcement of fine

Clause 140N provides that the enforcement of a fine imposed for non-compliance with a family responsibility order, is limited to the seizure of non-essential household goods or a community work order.

Clause 140P Prohibition on publication of certain information

Clause 140P provides that it is an offence with a maximum penalty of 200 penalty units (or \$22,000) or one year's imprisonment for a person to publish information that identifies a party including a youth, to proceedings for a family responsibility order, or parties named in an order. The prohibition extends to a person named or identified in a family responsibility order.

Clause 140Q Geographical limitation of jurisdiction

Clause 140Q provides that regulations may be made that limit the exercise of the power to make family responsibility orders to particular regions or parts of the Territory.

Clause 140R Review of this Part

Clause 140R provides that a review of this amendment will commence around 12 months after its commencement with the report to be tabled in the Legislative Assembly.