

CHILDREN (PARENTAL RESPONSIBILITY) ACT 1994 No. 89

NEW SOUTH WALES



TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Definitions
4. Operation of Act

PART 2—PARENTAL RESPONSIBILITY

5. Attendance of parents at proceedings
6. Undertakings by children
7. Undertakings by parents
8. Family counselling
9. Parents contributing to children's offences
10. Ancillary provisions

PART 3—WELFARE OF CHILDREN IN PUBLIC PLACES

11. Operation of Part
12. Police functions
13. Prescribed places of refuge

PART 4—MISCELLANEOUS

14. Proceedings for offences
 15. Regulations
 16. Review of Act
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CHILDREN (PARENTAL RESPONSIBILITY) ACT 1994 No. 89

NEW SOUTH WALES



Act No. 89, 1994

An Act with respect to the responsibility of parents for the behaviour of certain children; to enable police to escort certain children from public places to their parents' residences or other places; and for other purposes.
[Assented to 12 December 1994]

See also Summary Offences and Other Legislation (Graffiti) Amendment Act 1994.

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Children (Parental Responsibility) Act 1994.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. In this Act:

“**care residence**” of a person means the place where the person resides under the care or in the custody of a carer;

“**carer**” of a person means the person who has the care or custody of that person under Part 6 of the Children (Care and Protection) Act 1987;

“**child**” means a person who is under the age of 18 years;

“**court**” means a court exercising criminal jurisdiction;

“**custody**”, in relation to a child, means custody of the child to which a person is entitled by law;

“**exercise**” a function includes perform a duty;

“**function**” includes a power, authority or duty;

“**parent**” of a child includes:

(a) a guardian of the child; and

(b) a person who has custody of the child,

but does not include the Minister administering the Children (Care and Protection) Act 1987 or the Director-General of the Department of Community Services, or the father or mother of the child if the father or mother has neither guardianship nor custody of the child;

“public place” means:

- (a) a place (whether or not covered by water); or
- (b) a part of premises,

that is open to the public, or is used by the public, whether or not on payment of money or other consideration, whether or not it is ordinarily so open or used and whether or not the public to whom it is open consists of only a limited class of persons.

Operation of Act

4. (1) This Act does not affect any functions (including functions of a court or police officer) that may be exercised apart from this Act.

(2) This Act extends to acts, matters and things occurring, and proceedings instituted, before the commencement of this Act.

PART 2—PARENTAL RESPONSIBILITY

Attendance of parents at proceedings

5. A court exercising criminal jurisdiction with respect to a child may require the attendance, at the place where the proceedings are being or are to be conducted, of one or more parents of the child. The court may specify which parents are to attend.

Undertakings by children

6. (1) A court that finds a child guilty of an offence may, instead of dealing with the child in any other way permitted by law, release the child on condition that the child give an undertaking:

- (a) to submit to parental or other supervision as ordered by the court;
or
- (b) to participate in a specified program, or to attend a specified activity centre; or
- (c) to reside with a parent or other person, as directed by the court; or
- (d) to do such other thing as may be specified by the court.

(2) If it appears to a court that a child has failed to comply with an undertaking given by the child under this section, the court may direct that the child, and one or more parents of the child, be served with a notice to appear before the court at a specified time and place. The court may specify which parents are to attend.

(3) If the court is satisfied that the child has failed to comply with the undertaking concerned, the court:

- (a) may cancel the undertaking; or
- (b) may continue or vary the undertaking, but must not extend the period of the undertaking.

(4) If the court cancels the undertaking, the court:

- (a) may release the child; or
- (b) may impose any penalty that it could have imposed, or exercise any other function that it could have exercised, on finding the child guilty of the offence concerned.

Undertakings by parents

7. (1) A court that finds a child guilty of an offence may, instead of dealing with the child in any other way permitted by law, release the child on condition:

- (a) that one or more parents of the child give security (whether by deposit of money or otherwise) for the good behaviour of the child until the child attains the age of 18 years, or during such shorter period as the court may think sufficient; or
- (b) that one or more parents of the child give a Supplementary undertaking to the court:
 - (i) to guarantee the child's compliance with any undertaking given under section 6; and
 - (ii) to take specified action to assist the child's development and to guard against the commission by the child of any further offences; and
 - (iii) to report at intervals stated in the supplementary undertaking on the child's progress; or
- (c) that one or more parents of the child give an undertaking with or without conditions to do or refrain from doing the act or acts specified in the undertaking for a period not exceeding 6 months, or in exceptional circumstances 12 months, but in no case extending beyond the child's eighteenth birthday.

(2) No security is to be required from a parent under this section unless the parent has been required to attend before the court and has had an opportunity to be heard.

(3) If a parent fails to comply with an undertaking under this section, the court must not take any action against the child.

(4) Such part of any security required under this section as the court may determine is to be forfeited to the Crown if the person giving it fails to fulfil the obligation to ensure the child is of good behaviour.

(5) The court may specify which parents are subject to any such condition.

Family counselling

8. (1) A court may require a child that it finds guilty of an offence and the child's parent or parents to undergo such counselling as the court considers would be beneficial in assisting the progress of the child.

(2) The court is to have regard to the welfare, status and circumstances of the child and the parent or parents in considering making such an order.

Parents contributing to children's offences

9. (1) A parent who, by wilful default or by neglecting to exercise proper care and guardianship of the child, has contributed to the commission of an offence of which the child has been found guilty, is guilty of an offence.

Maximum penalty: 10 penalty units.

(2) The court may require a parent convicted of an offence under subsection (1) to undergo counselling or do such other things that would in the opinion of the court advance the welfare and best interests of the child instead of, or in addition to, imposing a penalty.

Ancillary provisions

10. (1) Rules of court may be made for or with respect to the attendance of parents and children required under this Act to attend a place and undertakings required to be given under this Part.

(2) Without affecting the generality of section 15 of the Justices Act 1902, the power to make rules under that section extends to matters arising under this Act.

(3) Without affecting the generality of subsection (1), the provisions of the Justices Act 1902 relating to warrants and summonses for the attendance of witnesses in proceedings before justices for offences punishable on summary conviction apply to the attendance of any person required under this Act to attend (before a Local Court or the Children's Court) at a place in the same way as those provisions apply to the attendance of witnesses in proceedings for such offences.

(4) A court may exercise all or any one or more of the functions under sections 5, 6, 7 and 8 in any particular matter.

PART 3—WELFARE OF CHILDREN IN PUBLIC PLACES**Operation of Part**

11. (1) This Part applies to a person:

- (a) who is in a public place; and
- (b) whom a police officer believes on reasonable grounds is a child of or under the age of 15 years and is not subject to the supervision or control of a responsible adult.

(2) A police officer may exercise functions under this Part without further authority than that conferred by this Part, and is to act in conformity with any relevant directions issued by the Commissioner of Police.

Police functions

12. (1) A police officer may request a person to whom this Part applies to state:

- (a) his or her name and age; and
- (b) his or her parent's residential address or, if he or she has a carer, the address of his or her care residence,

to the officer.

(2) A police officer may remove a person to whom this Part applies from any public place and escort the person:

- (a) to his or her parent's residence or, if he or she has a carer, to his or her care residence; or
- (b) if the parent's residence or care residence is not known or to do so is not-reasonably practicable, to a place of refuge prescribed by the regulations.

(3) A police station cannot be a prescribed place of refuge.

(4) A police officer may take action under subsection (2) only if

- (a) the officer knows or has requested the person's details referred to in subsection (1); and
- (b) the officer considers that to take that action would reduce the likelihood of a crime being committed or of the person being exposed to some risk.

(5) A police officer is required to notify:

- (a) a person's parent—if the person is escorted to a place other than the parent's residence; or

(b) if the person has a carer, the person's carer—if the person is escorted to a place other than the person's care residence, if the parent or carer is known and notification is practicable.

(6) A police officer may use reasonable force for the purpose of removing and escorting a person under this section.

(7) Section 22 (Notification of child abuse) of the Children (Care and Protection) Act 1987 applies to a police officer while exercising functions under this Part as if the police officer were the holder of an office prescribed for the purposes of that section.

Prescribed places of refuge

13. (1) If a person is taken to a prescribed place of refuge under this Part, the officer in charge of the place has, while the person is in the care of the officer, the same duties in respect of the person as if the officer had custody of the person.

(2) The person may be detained at that or another prescribed place of refuge for a period not exceeding 24 hours (or such shorter period as may be prescribed by the regulations either generally or in relation to any particular prescribed place of refuge or class of prescribed places of refuge), and thereafter is to be released or dealt with according to law.

(3) A person who is taken to a prescribed place of refuge under this Part must not leave the place without the consent of the officer in charge of the place.

Maximum penalty: 5 penalty units.

(4) The person must be released to a parent of the person if the officer in charge is satisfied that the parent is available to take the person and the person does not have a carer.

(5) If the person has a carer, the person must be released to the carer if the officer in charge is satisfied that the carer is available to take the person.

(6) The regulations may make provision for or with respect to the care and release of such persons at prescribed places of refuge.

(7) Such a person must be kept separately from any persons who are detained for committing offences or who are on remand.

PART 4—MISCELLANEOUS

Proceedings for offences

14. Proceedings for an offence under this Act may be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Regulations

15. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to compelling the attendance of parents and children required under this Act to attend a place and undertakings required to be given under Part 2.

(3) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

Review of Act

16. (1) The Minister is required to conduct a review of this Act to ascertain whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 1 year from the date of assent to this Act.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 1 year referred to in subsection (2).

*[Minister's second reading speech made in—
Legislative Assembly on 24 November 1994
Legislative Council on 2 December 1994]*