

[Act 1997 No 78]



New South Wales

Children (Protection and Parental Responsibility) Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to establish a legislative basis:

- (a) for action directed at lessening juvenile crime and assisting young persons who may be at risk, and
- (b) for fostering community involvement in the preparation of local crime prevention plans and safer community compacts for local government areas that set out measures to be taken in those areas to reduce crime generally.

The Bill repeals the *Children (Parental Responsibility) Act 1994 (the 1994 Act)* and re-enacts Parts 2 and 3 of that Act, with a number of modifications. The changes effected by the Bill include the following:

Part 2 of the 1994 Act supplements existing powers regarding children found

* Amended in committee—see table at end of volume.

guilty of committing offences by enabling the courts to require children and parents to enter undertakings as to future behaviour, to undertake counselling, and to require parents to become involved in the proceedings. Clause 6 of the Bill gives greater guidance to the courts as to the matters to be taken into consideration in deciding to take such action and emphasises that the best interests of the child are the paramount consideration.

Part 3 of the 1994 Act provides for the safe escort of children from public places to their homes or certain other places, where police officers consider the action may reduce the likelihood of crime or exposure of children to risk. Part 3 of this Bill provides instead for the safe escort of children from public places to their homes or certain other places, where police officers consider the children are not subject to the supervision or control of a responsible adult and are in public places in circumstances that place, or are likely to place, the children at risk.

The powers conferred by the new Part will be exercisable only in local government areas (or portions of areas) declared, after wide community consultation, to be operational areas.

Part 3 of the 1994 Act permitted children to be taken to places of refuge. The new Part establishes a hierarchy of places (described in greater detail in the Outline of Provisions of this Bill below) to which a child may be taken and emphasises that the first preference is to take a child to the child's home.

The proposed Part makes it clear that the powers are intended only to provide care on a very short term basis for children at risk and do not affect the provision of longer term assistance for children in need of care under the *Children (Care and Protection) Act 1987*.

The proposed Part emphasises that the best interests of the child are the paramount consideration. Provision is also made to require the child's wishes to be taken into consideration and to take into account the special needs of Aboriginal children, Torres Strait Islander children and children of other particular cultural heritages. The proposed Part also contains more detailed provisions than the 1994 Act to describe, and limit certain of, the powers that may be exercised under the Part.

The Bill also includes provisions (Part 4) to establish a framework for the adoption by local government councils, following community consultation, of local crime prevention plans setting out measures to be taken in their areas to reduce crime generally. Such plans may be approved by the Minister administering the Act (*the Minister*) as safer community compacts if they accord with guidelines issued by the Minister and certain other requirements. The Minister is given the power to assist such councils in the funding of the development, and in undertaking initiatives proposed by, safer community compacts.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act, including definitions of *parent* and *carer*. *Area* is defined to mean an area within the meaning of the *Local Government Act 1993* and to include part of an area.

Clause 4 deals with the operation of the proposed Act. Subclause (1) makes it clear that the proposed Act does not affect any functions exercisable apart from the Act. Subclause (2) extends the Act to matters arising before the commencement of the proposed section.

Clause 5 provides that notes included in the Act do not form part of the Act.

Part 2 Parental responsibility

Clause 6 states that the guiding principle for a court in determining whether to take action under the proposed Part is the best interests of the child and gives some examples of matters a court may take into consideration.

Clause 7 enables a court to require one or more parents to be present during criminal proceedings against a child.

Clause 8 enables a court to require a child to give an undertaking relating to his or her future behaviour (including undertakings requiring parental supervision) and to require parents to be present at court in the event of a breach of such an undertaking.

Clause 9 enables a court to require a parent or parents to give undertakings relating to the future behaviour of a child, including undertakings guaranteeing compliance with an undertaking given by the child, undertakings relating to acts of the parents, and the giving of security for the good behaviour of the child.

Clause 10 enables a court to require a child whom it finds guilty of an offence and the child's parent or parents to undergo specified counselling.

Clause 11 makes it an offence for a parent, by wilful default or by neglecting to exercise proper care and guardianship of a child, to contribute directly or in a material respect to the commission of an offence by the child.

Clause 12 contains ancillary provisions enabling rules of court to be made compelling attendance of parents and children before a court for the purposes of, and undertakings required to be given under, the Part, and applies certain provisions of the *Justices Act 1902* relating to warrants and summonses. It also enables rules of court to be made with respect to undertakings. It also makes it clear that a court may exercise all or any one or more of the functions under clauses 7, 8, 9 and 10 in any particular matter.

Part 3 Welfare of children in public places

Proposed Part 3 provides for the safe escort of children from public places to their homes or certain other places, where police officers consider the children are at risk.

Part 3 of the proposed Act will enable police officers to remove children from public places in local government areas (or portions of areas) that have been declared to be operational areas for the purposes of the Part and to escort them to a number of alternative places. The first preference is to escort them to the home of their parents (or, in the case of a child who is in care or custody under Part 6 of the *Children (Care and Protection) Act 1987*) to their care residence. If the child cannot be escorted to, or it would be inappropriate to leave the child at, his or her parent's residence or care residence, the child may be escorted to and left at the home of a close relative nominated by the child. If the child cannot be escorted to, or it would be inappropriate to leave, the child with a relative, the child is to be placed in the care of the Director-General of the Department of Community Services. If the child cannot be placed in the care of the Director-General the child is to be placed in the care of a person approved by the Director-General.

The Part includes provisions to describe the circumstances in which a police officer may remove a child from a public place and to delineate and limit the action the police officer may take. It also includes provisions to ensure the special needs of Aboriginal children, Torres Strait Islander children and children of a particular cultural heritage are recognised.

Division 1 Declaration of operational area

Clause 13 states that the object of Division 1 is to provide for the declaration of the areas (or portions of areas) in which the powers conferred by Division 2 of the proposed Part on police officers to remove children from public places may be exercised.

Clause 14 enables the Minister, at the request of the council for an area (or a portion of an area), to declare the area or a portion as an operational area for the purposes of Division 2 of the proposed Part by an order. The Minister is required to consult with the Minister for Community Services and Minister for Police before declaring an area or a portion of the area to be an operational area and to have regard to a number of stated relevant considerations, including the extent and nature of crime in the area, the community consultation that has been undertaken and the facilities and initiatives that have been taken to provide youth with support in the area.

Clause 15 provides for the duration of orders declaring areas (or portions of areas) as operational areas.

Clause 16 provides for the amendment or revocation by order of orders declaring areas (or portions of areas) to be operational areas.

Clause 17 requires orders under the proposed Division to be published in the Gazette and in a newspaper circulating generally in the area (or a portion of the area) concerned.

Division 2 Removal of children from public places

Clause 18 describes the persons to whom the proposed Division will apply. The Division applies to a person who is in a public place and who a police officer believes on reasonable grounds is a child under the age of 16 years.

Clause 19 provides that a police officer may remove a child to whom the Division applies from a public place in an operational area if the officer believes on reasonable grounds that the child:

- (a) is not subject to the supervision and control of a responsible adult, and
- (b) is in the public place in circumstances that place the child at risk.

A child is at risk for the purposes of clause 19 if:

- (a) the child is in danger of being physically harmed or injured, or
- (b) the child is in danger of abuse (including assault and sexual assault, ill treatment and exposure to behaviour that may cause psychological harm to the child), or
- (c) the child is about to commit an offence.

The clause requires a child who is removed from a public place to be escorted to another place and placed in the care of a person in accordance with clause 22.

Clause 20 makes it clear that the proposed Act has effect in addition to the *Children (Care and Protection) Act 1987*. The Part enables police officers to make temporary arrangements for the care of children. It will not affect the powers conferred on police officers and the Director-General of the Department of Community Services and others in relation to children under that Act.

Clause 21 states the guiding principle to be taken into account by a police officer who removes a child to whom the Division applies from a public place. It makes it clear that the paramount duty of a police officer is to ensure that any action taken is in the best interests of the child concerned.

Clause 22 describes the places to which and persons in whose care a child removed from a public place under the proposed Division may be taken or placed. A child who cannot be left with a parent or carer or close relative may be placed in the care of the Director-General of the Department of Community Services or with a person approved by the Director-General under clause 24 for a period not exceeding 24 hours (or such shorter period as may be prescribed by the regulations) as may be necessary for arrangements to be made to return the child to a parent or carer. After the expiration of that period, the child is to be released or otherwise dealt with according to law.

Clause 23 prevents a police officer from escorting (or arranging for another police officer to escort) a child removed from a public place under the Division to, or leaving the child at, a police station. It also prevents a police officer from leaving a child at any place if the police officer considers it would be detrimental to the best interests of the child to do so. It also requires the police officer to take into account any wishes or feelings expressed by the child.

Clause 24 provides for the Director-General to approve persons residing in, or in the vicinity of, an operational area as suitable persons with whom a child who cannot be left at his or her home, with a relative or in the care of the Director-General can be left. The Director-General will be able to designate persons who are of a similar background to, or understand the special needs of, Aboriginal children and children of any other particular cultural heritage as persons with whom children of that background may be left.

Clause 25 requires a police officer who places a child in the care of a person other than a parent or carer, or who leaves a child at a residence in the absence of a parent or carer, to notify the child's parent or carer unless this would be contrary to the wishes of the child and the police officer considers it would not be in the child's best interests to do so.

Clause 26 makes it clear that the powers conferred by the proposed Division are exercisable without further authority than that conferred by the Division, and that a police officer is to exercise functions under the Division in conformity with any relevant directions issued by the Commissioner of Police and subject to any limitations imposed by the regulations.

Clause 27 facilitates the escort of children to whom the proposed Division applies who are removed from public places to their homes by enabling a police officer to request such a child to state his or her name and age and parent's or carer's residential address.

Clause 28 authorises a police officer to use reasonable force in removing and escorting a child under the proposed Division.

Clause 29 enables a police officer to search for, and remove, concealed weapons from children to whom the proposed Division applies.

Part 4 Local crime prevention

Division 1 Preliminary

Clause 30 states the objects of proposed Part 4. The objects are:

- (a) to work towards a safer environment by fostering community involvement in the development of local crime prevention plans prepared on the initiative of local government councils (with the assistance, at the request of the councils, of the Minister) for measures to be taken within their areas to reduce crime, and
- (b) to assist in the funding of the development of safer community compacts and of certain initiatives under the safer community compacts through grants made by the Minister.

Division 2 Preparation of plans

Clause 31 provides for the preparation of draft local crime prevention plans for an area by the council of the area. The Minister may, at the request of the council, assist in the preparation of the draft plan.

Clause 32 enables the Minister to issue guidelines with respect to the preparation and content of local crime prevention plans.

Clause 33 sets out examples of some matters for which provision may be made by a local crime prevention plan.

Clause 34 requires a council to give public notice of a draft local crime prevention plan.

Clause 35 provides for the adoption of a draft local crime prevention plan by the council.

Clause 36 provides that a local crime prevention plan has effect for the period specified by the council in adopting the plan.

Clause 37 provides for the amendment or revocation of local crime prevention plans.

Clause 38 requires a council to publish a local crime prevention plan for an area in a newspaper circulating generally in the area and in the Gazette. The council is also required to give notice if it revokes or amends a plan.

Division 3 Safer community compacts

Clause 39 enables a council to seek the Minister's approval, as a safer community compact, of a local crime prevention plan prepared by it either before or after it is adopted by the council. The Minister may approve the plan after having regard to certain relevant matters specified in the clause and after consultation with the Minister for Community Services and the Minister for Police.

Clause 40 states the effect of approval of a safer community compact. An approved plan is to comprise a safer community compact for so long as the approval remains in force. The Minister is authorised to make grants to a council for an area for which a safer community compact is in force to cover expenses incurred in undertaking any initiative proposed by a compact and to make grants to a council developing a proposed compact or monitoring a compact.

Clause 41 requires a council for an area for which a safer community compact is in force to report to the Minister as to implementation of the compact and its effectiveness in reducing crime.

Clause 42 provides for revocation of the approval of a safer community compact in certain circumstances.

Part 5 Miscellaneous

Clause 43 enables the Minister to delegate to any officer of the Attorney General's Department any of his or her functions under the proposed Act or the regulations,

Clause 44 requires a council of an area that is declared to be an operational area or for which a community compact is in force to monitor complaints relating to action taken under this Act or under the compact and to report to the Minister if requested to do so by the Minister.

Clause 45 provides for offences against the proposed Act or regulations to be dealt with before a Local Court.

Clause 46 empowers regulations to be made for the purposes of the proposed Act.

Clause 47 repeals the *Children (Parental Responsibility) Act 1994* and the *Children (Parental Responsibility) Regulation 1995*.

Clauses 48 and **49** are formal provisions giving effect to the amendment set out in Schedule 1 and the savings, transitional and other provisions set out in Schedule 2.

Clause 50 requires the proposed Act to be reviewed as soon as possible after 5 years from its enactment.

Schedule 1 amends the *Community Welfare Act 1987* to enable the Director-General of the Department of Community Services to delegate to other persons functions imposed on the Director-General under the proposed Act in accordance with section 5 of that Act.

Schedule 2 enables the making of regulations of a saving or transitional nature consequent on the enactment of the proposed Act and contains savings provisions relating to the pilot schemes in Gosford and Orange under the *Children (Parental Responsibility) Act 1994*.