

Act 1994 No. 89

**CHILDREN (PARENTAL RESPONSIBILITY) BILL 1994\***

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The Summary Offences and Other Legislation (Graffiti) Amendment Bill 1994 is cognate with this Bill.

The objects of this Bill are:

- (a) to enable courts to require parents to be present during criminal proceedings against children; and
- (b) to enable courts to require children to give undertakings as to future behaviour (including parental supervision) and to require parents to be present at court in the event of a breach of such an undertaking; and
- (c) to enable courts to require parents to give undertakings concerning the future behaviour of children and other matters; and
- (d) to enable courts to require family counselling when a child is found guilty of an offence; and
- (e) to make it an offence for a parent, by wilful default or by neglect to exercise proper care and guardianship, to contribute to the commission of an offence by a child; and
- (f) to provide for the safe escort of children from public places to their homes or certain other places, where police officers consider this action may reduce the likelihood of crime or the exposure of children to risk.

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

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**PART 1—PRELIMINARY**

**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the proposed Act to commence on a day or days to be appointed by the Governor by proclamation published in the Gazette.

**Clause 3** contains definitions used in the proposed Act. The expression “parent” is defined to include a guardian or person having the custody of a child, but as not including a public guardian.

**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 its commencement.

**PART 2—PARENTAL RESPONSIBILITY**

**Clause 5** enables a court to require one or more parents to be present during criminal proceedings against a child.

**Clause 6** enables a court to require a child to give an undertaking relating to the 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 7** 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 8** enables a court to require a child whom it finds guilty of an offence and the child’s parents to undergo family counselling.

**Clause 9** makes it an offence for a parent, by wilful default or by neglect to exercise proper care and guardianship, to contribute to the commission of an offence by a child.

**Clause 10** contains ancillary provisions enabling rules of court to be made compelling attendance of parents and children before a court for the purposes of the Part, and applies certain provisions of the Justices Act 1902 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 5, 6, 7 and 8 in any particular matter.

**PART 3—WELFARE OF CHILDREN IN PUBLIC PLACES**

**Clause 11** describes the application of the Part. The Part applies to a person who is in a public place and whom a police officer believes on reasonable grounds is a child of or under the age of 15 years and is not subject to supervision or control of a responsible adult. The clause also makes it clear that the powers conferred by the Part are exercisable without further authority than that conferred by the Part, and is to act in conformity with any relevant directions issued by the Commissioner of Police.

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**Clause 12** deals with police functions relating to children to whom the Part applies. Subclause (1) enables a police officer to request such a child to state his or her name and age and his or her parent's residential address or the address of his or her care residence. Subclause (2) empowers a police officer to escort such a child to the parent's residence or care residence or (if that is not practicable) to some other place prescribed by the regulations, but subclause (3) provides that this power can be exercised only if the police officer knows or has requested the child's details referred to in subclause (1) and considers that this action would reduce the likelihood of a crime being committed or of the child being exposed to risk. Subclause (4) requires the police officer to notify a parent or carer if the child is escorted to a place that is not the parent's residence or care residence. Subclause (5) authorises the police officer to use reasonable force.

**Clause 13** deals with the situation where a child is escorted to a prescribed place (as referred to in clause 12). Subclause (1) imposes general duties on the officer in charge of the place. Subclause (2) limits the period during which the child may be kept at that place to 24 hours or a shorter prescribed period, and thereafter the child must either be released or dealt with according to law. Subclause (3) makes it an offence for the child to leave that place without the consent of the officer in charge. Subclause (4) requires the child to be released to a parent, if and when available unless the child has a carer. Subclause (5) requires the child to be released to the carer in that case. Subclause (6) authorises the making of regulations to deal with the care and release of such children at prescribed places. Subclause (7) requires a child to be kept separately from persons who are detained for committing offences or on remand.

#### **PART 4—MISCELLANEOUS**

**Clause 14** provides for offences against the proposed Act to be dealt with before a Local Court.

**Clause 15** empowers regulations to be made for the purposes of the proposed Act.

**Clause 16** requires the proposed Act to be reviewed in 5 years time.

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