



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 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.

Children (Protection and Parental Responsibility) Bill 1997

Explanatory note

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

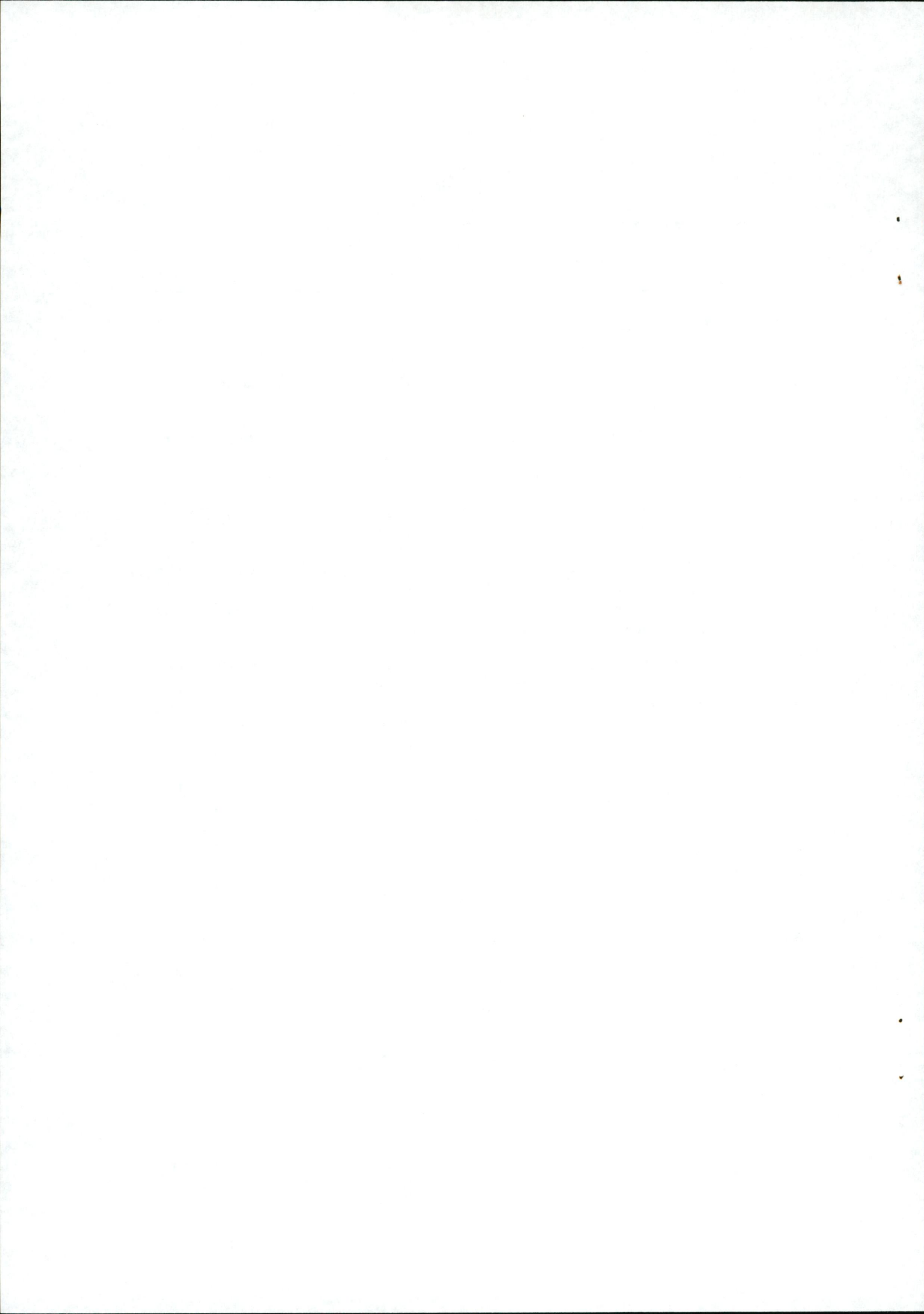
Clause 47 repeals the *Children (Parental Responsibility) Act 1994* and the *Children (Parental Responsibility) Regulation 1995*.

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*.





New South Wales

Children (Protection and Parental Responsibility) Bill 1997

Contents

	Page
Part 1 Preliminary	
1 Name of Act	2
2 Commencement	2
3 Definitions	2
4 Operation of Act	4
5 Notes	4
<hr/>	
Part 2 Parental responsibility	
6 Guiding principles for courts	5
7 Attendance of parents at proceedings	5
8 Undertakings by children	5
9 Undertakings by parents	6
10 Family counselling	7
11 Parents contributing to children's offences	7
12 Ancillary provisions	8

	Page
Part 3 Welfare of children in public places	
Division 1 Declaration of operational area	
13 Object of Division	9
14 Operational area	9
15 Duration of declaration	10
16 Amendment or revocation of declaration	10
17 Publication	11
Division 2 Removal of children from public places	
18 Children to whom Division applies	11
19 When action may be taken under this Division	11
20 Relationship to Children (Care and Protection) Act 1987	12
21 Guiding principles when taking action under this Division	12
22 Action that may be taken	13
23 Limitations on action that may be taken	14
24 Approved person	14
25 Notification requirements	15
26 Exercise of functions under Division by police officer	15
27 Police officer may request person to state name, age and address	16
28 Use of force	16
29 Removal of concealed weapons	16
Part 4 Local crime prevention	
Division 1 Preliminary	
30 Objects of Part	18
Division 2 Preparation of plans	
31 Preparation of draft local crime prevention plans	18
32 Guidelines	18
33 Content of draft local crime prevention plan	19
34 Public notice of draft local crime prevention plans	19
35 Adoption of local crime prevention plan	19

Children (Protection and Parental Responsibility) Bill 1997

Contents

	Page
36 Duration of local crime prevention plan	20
37 Amendment or revocation of local crime prevention plan	20
38 Public availability of local crime prevention plans	20
 Division 3 Safer community compacts	
39 Approval of local crime prevention plan	20
40 Effect of approval	21
41 Council to report periodically on implementation of compact	22
42 Duration and revocation of approval	22

Part 5 Miscellaneous

43 Delegation	23
44 Monitoring of complaints from community	23
45 Proceedings for offences	23
46 Regulations	23
47 Repeals	24
48 Amendment	24
49 Savings, transitional and other provisions	24
50 Review of Act	24

Schedules

1 Amendment	25
2 Savings, transitional and other provisions	26



New South Wales

Children (Protection and Parental Responsibility) Bill 1997

No. , 1997

A Bill for

An Act with respect to the responsibility of parents for the behaviour of their children; to enable police to escort certain children from public places to their parents' residences and other places; to make provision for local crime prevention plans and safer community compacts; to repeal the *Children (Parental Responsibility) Act 1994*; and for other purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Children (Protection and Parental Responsibility) Act 1997*.

5

2 Commencement

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

3 Definitions

In this Act:

10

Aboriginal means a person who:

- (a) is a member of the Aboriginal race of Australia, and
- (b) identifies as an Aboriginal, and
- (c) is accepted by the Aboriginal community as an Aboriginal.

Aboriginal child means a child of an Aboriginal.

15

approved person means a person chosen from a list of persons designated by the Director-General of the Department of Community Services under section 24.

area has the same meaning as it has in the *Local Government Act 1993* and includes part of an area.

20

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 (Wards and protected persons) of the *Children (Care and Protection) Act 1987*.

25

child means a person who is under the age of 18 years.

council has the same meaning as it has in the *Local Government Act 1993*.

court means a court exercising criminal jurisdiction.

cultural heritage includes beliefs, morals, laws, customs, religion, superstitions, art, language, diet, dress and race.

Department means the Attorney General's Department.

exercise a function includes perform a duty.

function includes a power, authority or duty. 5

local crime prevention plan means a local crime prevention plan adopted by a council under Part 4 and in force in relation to an area.

operational area means an area in respect of which a declaration under section 14 is in force. 10

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. 15

public place means:

- (a) a place (whether or not covered by water), or 20
- (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. 25

safer community compact—see section 39.

Torres Strait Islander means a descendant of an indigenous inhabitant of the Torres Strait Islands.

Torres Strait Islander child means a child of a Torres Strait Islander. 30

Clause 4 Children (Protection and Parental Responsibility) Bill 1997

Part 1 Preliminary

4 Operation of Act

- (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 section.

5

5 Notes

Notes included in this Act do not form part of this Act.

Part 2 Parental responsibility

6 Guiding principles for courts

- (1) In considering how a child should be dealt with under this Part, a court is to have regard to whether the taking of the action under consideration is in the best interests of the child. 5
- (2) Without limiting the matters that the court may take into account for the purposes of subsection (1), the court is to consider:
- (a) the nature of the relationship of the child with the child's parent or parents, and
 - (b) the attitude to the child, and to the responsibilities of parenthood, demonstrated by the child's parent or parents, and 10
 - (c) the welfare, status and circumstances of the child and of the child's parent or parents.

7 Attendance of parents at proceedings 15

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.

8 Undertakings by children 20

- (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 25
 - (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. 30

- (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. 5
- (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. 10
- (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. 15

9 Undertakings by parents

- (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 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, or 20
25
 - (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 8, 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 30
 - (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 security (whether by deposit of money or otherwise) for the good behaviour of the child for a period not exceeding 6 months, or in exceptional circumstances 12 months, but in no case extending beyond the child's eighteenth birthday. 5
- (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) A court must not take any action against a child for the failure of a parent of the child to comply with an undertaking under this section. 10
- (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. 15
- (5) The court may specify which parent or parents are subject to any condition imposed under subsection (1).
- 10 Family counselling**
- A court may require a child that it finds guilty of an offence and the child's parent or parents to undergo such specified counselling as the court considers would be beneficial in assisting the progress of the child. 20
- 11 Parents contributing to children's offences**
- (1) A parent who, by wilful default or by neglecting to exercise proper care and guardianship of the child, has contributed directly or in a material respect to the commission of an offence of which the child has been found guilty, is guilty of an offence. 25
- 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. 30

12 Ancillary provisions

- (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. 5
- (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. 10
15
- (4) A court may exercise all or any one or more of the functions under sections 7, 8, 9 and 10 in any particular matter.

Part 3 Welfare of children in public places

Division 1 Declaration of operational area

13 Object of Division

The object of this Division is to provide for the declaration of the areas (or portions of areas) in which the powers conferred by Division 2 of this Part on police officers to remove children from public places may be exercised. 5

Note. An *area* is defined in section 3 to mean a local government area and to include a part of a local government area.

14 Operational area

10

- (1) The council for an area may request the Minister to declare the area to be an operational area for the purposes of Division 2 of this Part.
- (2) The Minister may, by order, declare an area described in the order to be an operational area for the purposes of Division 2 of this Part in accordance with a request under subsection (1), or may declare a portion only of that area to be an operational area. 15
- (3) In considering a request under subsection (1) to declare an area (or a portion of an area) to be an operational area, the Minister is to have regard to the following: 20
 - (a) whether the council has adequately informed and consulted with the local community concerned, including young people and the Aboriginal community, and the views expressed,
 - (b) the extent and nature of crime in the area, 25
 - (c) the nature of any crime prevention or youth support initiatives that have been undertaken in the area, including whether any local crime prevention plan or safer community compact is in force for the area, or is in the course of being prepared by the council for the area, and the contents or proposed contents of that plan or compact, 30

- (d) the effect of making the declaration on young people in the area, including the availability of safe and appropriate recreational amenities for young people in the area,
 - (e) the practicality of applying Division 2 of this Part in the area, including (but not limited to) any advice given by the Commissioner of Police relating to the operational capacity of police to carry out functions under the Division in the area, 5
 - (f) without limiting paragraph (e), whether appropriate arrangements have been made, or are able to be made, to cater for the needs of young people who are removed from public places in the area under Division 2 of this Part and who are not able to be taken home, including culturally appropriate arrangements for Aboriginal and Torres Strait Islander young people. 10 15
- (4) The Minister is to consult with the Minister for Community Services and the Minister for Police before declaring an area (or a portion of an area) to be an operational area.

15 Duration of declaration

- (1) An order declaring an area (or a portion of an area) to be an operational area takes effect on a day specified in the order, being a day that is later than the day it is published in accordance with section 17. 20
- (2) Unless it is sooner revoked, the declaration of an operational area remains in force for such period as is specified in the order. 25
- (3) The declaration of a portion of an area as an operational area does not prevent the declaration of further portions of the same area as operational areas.

16 Amendment or revocation of declaration

- (1) The Minister may, by order, amend or revoke an order declaring an area (or a portion of an area) to be an operational area. 30
- (2) An order under subsection (1) may be made at the request of the council for the area to which the declaration relates or on the Minister's own initiative.

- (3) The Minister is to consult with the Minister for Community Services and the Minister for Police before revoking or, unless the Minister considers the amendments are not substantial, amending an order declaring an area to be an operational area.

17 Publication

5

As soon as practicable after making, amending or revoking an order declaring an area (or a portion of an area) to be an operational area, the Minister is to cause a copy of the relevant order to be published in the Gazette and in a newspaper circulating generally in the area (or the portion of the area).

10

Division 2 Removal of children from public places**18 Children to whom Division applies**

This Division applies to a person:

- (a) who is in a public place in an operational area, and
 (b) who a police officer believes on reasonable grounds is a child under the age of 16 years.

15

19 When action may be taken under this Division

- (1) A police officer may remove a person to whom this Division applies from any public place in an operational area if the police officer believes on reasonable grounds that the person:
- (a) is not subject to the supervision or control of a responsible adult, and
 (b) is in the public place in circumstances that place the person at risk.
- (2) A police officer who removes a person from a public place under this section must escort (or arrange for another police officer to escort) the person to a place and place the person in the care of a person in accordance with section 22.
- (3) For the purposes of this section, a person is at risk if:
- (a) the person is in danger of being physically harmed or injured, or

20

25

30

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

- 20 Relationship to Children (Care and Protection) Act 1987** 5
- (1) This Division has effect in addition to and does not derogate from the *Children (Care and Protection) Act 1987*.
 - (2) In particular, and without limiting subsection (1), nothing in this Division limits the powers conferred under section 60 (Removal of children without warrant) of the *Children (Care and Protection) Act 1987*. 10
 - (3) Before taking action under section 22 in relation to a person to whom this Division applies, a police officer is to consider whether it would be more appropriate to take action under the *Children (Care and Protection) Act 1987* to best meet the needs of the person. 15
 - (4) Section 22 (Notification of child abuse) of the *Children (Care and Protection) Act 1987* applies to a police officer while exercising functions under this Division as if the police officer were the holder of an office prescribed by the regulations under that Act for the purposes of that section. 20
- 21 Guiding principles when taking action under this Division**
- (1) A police officer who removes a person to whom this Division applies from a public place under this Division is to use his or her best endeavours to escort the person to the home of a parent, relative or other person who is responsible for caring for the person and to leave the person in the care of the parent, relative or other responsible person. 25
 - (2) Despite subsection (1), the police officer's paramount duty is to ensure that any action taken in respect of a person to whom this Division applies who is removed from a public place under this Division is in the best interests of the person and the police 30

officer is to take such action as the police officer considers appropriate in the circumstances to promote the person's best interests.

22 Action that may be taken

- (1) A police officer who removes a person to whom this Division applies from any public place may escort (or arrange for another police officer to escort) the person to the residence of a parent of the person or, if the person has a carer, his or her care residence and leave the person there. 5
- (2) A police officer who escorts a person to the residence of a parent of the person or his or her care residence must not leave the person at that residence unless: 10
- (a) the parent or carer of the person or some other responsible adult is present at the residence and is able and willing to care for the person, or 15
- (b) the police officer is satisfied that the person may safely be left at the residence in the absence of a responsible adult.
- (3) If the police officer is unable to escort the person to, or leave the person, at a place referred to in subsection (2), the police officer may escort (or arrange for another police officer to escort) the person to the residence of a close relative nominated by the person and leave the person there. 20
- (4) A police officer who escorts a person to the residence of a close relative must not leave the person at that residence unless the relative or some other responsible adult is present at the residence and is able and willing to care for the person. 25
- (5) If for any reason a police officer is unable to escort a person to, or leave a person at, a place referred to in subsection (2) or (4), he or she may: 30
- (a) place the person in the care of the Director-General of the Department of Community Services, or 30
- (b) if the police officer is unable to place the person in the care of the Director-General, place the person in the care of an approved person who is able and willing to have the care of the person. 35

- (6) A person in whose care a person is placed under subsection (5) may keep the person in his or her care for such 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 person to the care of a parent or carer. 5
- (7) If, on the expiration of the period referred to in subsection (6), a person has not been returned to the care of a parent or carer, the person is to be released or dealt with according to law.
- (8) The Director-General of the Department of Community Services may place a person who is placed in the care of the Director-General under this section in the care of any person in whose care a child might be placed under the *Children (Care and Protection) Act 1987*. 10

23 Limitations on action that may be taken

- (1) A police officer who removes a person to whom this Division applies from a public place must not in any circumstances escort (or arrange for another police officer to escort) the person to, or leave the person at, a police station. 15
- (2) A police officer must not leave a person to whom this Division applies at any place to which the person has been escorted under section 22 if the police officer considers it would be detrimental to the best interests of the person to do so. 20
- (3) Before escorting a person to a place under section 22, the police officer is to take into account any wishes or feelings of the person (considered in the light of the person's apparent age and understanding) that are volunteered by the person. However, nothing in this subsection permits a police officer to require a person to express his or her wishes or feelings in relation to this matter. 25

24 Approved person 30

- (1) The Director-General of the Department of Community Services may designate persons who reside in or in the vicinity of an operational area to be approved persons with whom a person to whom this Division applies (or a person within a specified class of such persons) removed from a public place in a specified operational area may be placed under section 22 (5) (b). 35

-
- (2) In deciding which persons should be designated under this section in respect of an Aboriginal child, the Director-General is to take into account (so far as they are applicable) the principles for placement of Aboriginal children set out in section 87 of the *Children (Care and Protection) Act 1987*. 5
- (3) In deciding which persons should be designated under this section in respect of children other than Aboriginal children, the Director-General is to take into account the principle that children with a particular cultural heritage should preferably be placed with persons who are of a similar background or who understand their special needs. 10

25 Notification requirements

- (1) A police officer who places a person to whom this Division applies in the care of a person other than a parent or carer of the person, or who leaves a person at a residence in the absence of a parent or carer, is required to notify a parent of the person or, if the person has a carer, the person's carer, if the parent or carer is known and notification is practicable. 15
- (2) This section does not require a police officer to notify a person's parent of the person's whereabouts if: 20
- (a) the person volunteers to the police officer that he or she does not wish his or her parent to be so notified, and
 - (b) the police officer is satisfied that it would not be in the person's best interests to so notify the parent.

26 Exercise of functions under Division by police officer 25

- (1) A police officer may exercise functions under this Division without further authority than that conferred by this Division, and is to act in conformity with any relevant directions issued by the Commissioner of Police.
- (2) The regulations may limit the circumstances, and regulate the manner, in which functions conferred on police officers by this Division may be exercised. 30

27 Police officer may request person to state name, age and address

For the purposes of enabling a police officer to escort a person removed from a public place under this Division to a place referred to in section 22, the police officer may request the person to state: 5

- (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.

28 Use of force 10

A police officer may use reasonable force for the purpose of removing a person from a public place under this Division or escorting the person under section 22.

29 Removal of concealed weapons

(1) A police officer who believes on reasonable grounds that a person to whom this Division applies may be carrying a concealed weapon may: 15

- (a) frisk search the person, and
- (b) take possession of any weapon found in the person's possession if the police officer considers it may endanger the person, the police officer or any other person if the person is permitted to keep it in his or her possession. 20

(2) In this section:

frisk search means:

- (a) a search of a person conducted by quickly running the hands over the person's outer garments, and 25
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

weapon includes: 30

- (a) a firearm (within the meaning of the *Firearms Act 1996*), or

- (b) a prohibited weapon or prohibited article (within the meaning of the *Prohibited Weapons Act 1989*), or
- (c) a syringe, or
- (d) a glass bottle or other instrument adapted for use for causing injury to a person.

5

Part 4 Local crime prevention

Division 1 Preliminary

30 Objects of Part

The objects of this Part 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 5
10
- (b) to assist in the funding of the development of safer community compacts and of certain initiatives under safer community compacts through grants made by the Minister.

Division 2 Preparation of plans

31 Preparation of draft local crime prevention plans 15

- (1) A council for an area may prepare a draft local crime prevention plan for the area.

Note. *Area* is defined in section 3 to include part of an area.

- (2) The Minister may, at the request of a council, give the council assistance in preparing a draft local crime prevention plan. 20
- (3) The council for an area may take such steps as it considers appropriate or necessary to publicise its intention to prepare a draft local crime prevention plan and may seek and consider submissions from members of the community of the area and the public generally. 25

32 Guidelines

The Minister may from time to time issue guidelines with respect to the preparation and content of local crime prevention plans.

33 Content of draft local crime prevention plan

Without limiting the matters for which a local crime prevention plan may make provision, it may include provisions relating to the following:

- (a) Aboriginal community development, 5
- (b) crime prevention,
- (c) drug and alcohol management,
- (d) open space planning and management,
- (e) parental education and family support programs,
- (f) youth development strategies, 10
- (g) consultation,
- (h) arrangements for reporting and co-ordination,
- (i) any matter specified in guidelines issued by the Minister.

34 Public notice of draft local crime prevention plans

- (1) A council must give public notice of a draft local crime prevention plan and place it on public exhibition in accordance with this section. 15
- (2) The period of public exhibition of the draft plan must not be less than 28 days.
- (3) The public notice must specify a period of not less than 42 days after the date on which the draft plan is placed on public exhibition during which submissions may be made to the council. 20
- (4) The council must, in accordance with its notice, publicly exhibit the draft plan together with any other matter that it considers appropriate or necessary to better enable the draft plan and its implications to be understood. 25

35 Adoption of local crime prevention plan

- (1) After considering all submissions received by it concerning the draft local crime prevention plan, the council may decide to amend the draft plan or to adopt it without amendment as a local crime prevention plan for the area or part of the area concerned. 30

- (2) If the council decides to amend the draft plan, it may publicly exhibit the amended plan or it may adopt the amended draft plan without public exhibition as a local crime prevention plan for the area or part of the area concerned.

36 Duration of local crime prevention plan 5

Unless it is sooner revoked, a local crime prevention plan has effect for such period as is specified by the council when it adopts the plan.

37 Amendment or revocation of local crime prevention plan

- (1) The council may, at any time, amend or revoke a local crime prevention plan adopted by it. 10
- (2) The council may, but is not required to, publicly exhibit any proposed amendment to the plan before adopting the amendment.

38 Public availability of local crime prevention plans

- (1) Within 14 days after adopting a local crime prevention plan for an area, the council is to publish the plan in: 15
- (a) a newspaper circulating generally in the area, and
 - (b) the Gazette.
- (2) Within 14 days after amending or revoking a local crime prevention plan, the council is to give notice of the revocation, or cause a copy of the amendments to be published in: 20
- (a) a newspaper circulating generally in the area, and
 - (b) the Gazette.

Division 3 Safer community compacts

39 Approval of local crime prevention plan 25

- (1) The Minister may, at the request of a council for an area, approve a draft local crime prevention plan prepared, or local crime prevention plan adopted, by the council as a safer community compact.

-
- (2) In deciding whether to approve a draft local crime prevention plan prepared, or local crime prevention plan adopted, by a council, as a safer community compact the Minister is to have regard to the following:
- (a) whether the plan was prepared in accordance with, and has contents consistent with, any guidelines issued by the Minister under section 32, 5
 - (b) whether the contents of the plan are appropriate having regard to the extent and nature of crime in the area (or part of the area) for which it is made or proposed to be made, 10
 - (c) whether the council has adequately consulted with the local community concerned, including young people and the Aboriginal community,
 - (d) the likely effect of the plan on crime and on the local community, including young people and the Aboriginal community, 15
 - (e) any other matter the Minister considers relevant.
- (3) The Minister is to consult, and have regard to the views of, the Minister for Community Services and the Minister for Police before giving an approval under this section. 20
- (4) The Minister may approve any amendments to a plan approved under this section.

40 Effect of approval

- (1) A local crime prevention plan, or a draft local crime prevention plan that is subsequently adopted by the council, that is approved by the Minister as a safer community compact comprises a safer community compact for so long as the approval of it remains in force. 25
- (2) The Minister may, on application by the council for an area for which there is or is proposed to be a safer community compact, grant such financial assistance as the Minister considers appropriate to the council. 30
- (3) The financial assistance is to be provided out of money to be appropriated by Parliament or that is otherwise legally available for the purposes of this Part. 35

(4) In this section:

financial assistance means assistance to cover:

- (a) expenses incurred in undertaking any initiative proposed by a safer community compact, and
- (b) any expenses incurred, or to be incurred, in developing a proposed safer community compact, or monitoring a safer community compact. 5

41 Council to report periodically on implementation of compact

The council of an area for which there is a safer community compact is to assess and report to the Minister, as and when required by the Minister, on the implementation, and effectiveness in reducing crime, of the compact. 10

42 Duration and revocation of approval

- (1) An approval of a draft local crime prevention plan, or local crime prevention plan adopted by a council, as a safer community compact remains in force (unless sooner revoked) for 3 years after it is given. 15
- (2) The Minister may revoke an approval by written notice given to the council concerned.
- (3) The Minister may revoke an approval: 20
 - (a) if the Minister considers any provisions of the safer community compact are no longer suitable for the needs of the area to which it applies, or
 - (b) if the Minister considers the safer community compact is not being implemented in a satisfactory manner, or 25
 - (c) on any other ground the Minister considers appropriate.

Part 5 Miscellaneous

43 Delegation

The Minister may delegate any of his or her functions under this Act (other than this power of delegation) or the regulations to any officer of the Department.

5

44 Monitoring of complaints from community

The council of an area or portion of an area that is declared to be an operational area or for which a safer community compact is in force is, if requested to do so by the Minister, to monitor, identify and advise the Minister on trends in complaints relating to action taken in the operational area under this Act or under the compact.

10

45 Proceedings for offences

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

15

46 Regulations

(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.

20

(2) In particular, the regulations may make provision for or with respect to the following:

(a) compelling the attendance of parents and children required under this Act to attend a place,

(b) the care of persons removed from a public place and escorted to another place under Part 3,

25

(c) reports to be provided and records to be kept under this Act.

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

30

Clause 47 Children (Protection and Parental Responsibility) Bill 1997

Part 5 Miscellaneous

47 Repeals

The *Children (Parental Responsibility) Act 1994* and the *Children (Parental Responsibility) Regulation 1995* are repealed.

48 Amendment

Schedule 1 has effect.

5

49 Savings, transitional and other provisions

Schedule 2 has effect.

50 Review of Act

- (1) The Minister is to review this Act to determine 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 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

10

15

Schedule 1 Amendment

(Section 48)

Community Welfare Act 1987 No 52

Section 5 Delegation

Omit section 5 (3). Insert instead:

5

- (3) In this section, a reference to the community welfare legislation includes a reference to each of the following Acts (and to any instrument under the Act) even though the Act may not be administered by the Minister within the Department:

10

Children (Criminal Proceedings) Act 1987

Children (Protection and Parental Responsibility) Act 1997

Schedule 2 Savings, transitional and other provisions

(Section 49)

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: 5
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date. 10
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 15
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 20

2 Saving of pilot scheme in Gosford

Any part of the area of Gosford in which Part 3 of the *Children (Parental Responsibility) Act 1994* applied immediately before the repeal of that Act is taken to be an area declared by order to be an operational area for the purposes of Part 3 of this Act until 31 December 1999, or until an order is made under section 16 revoking the order, whichever first occurs. 25

3 Saving of pilot scheme in Orange

Any part of the area of Orange in which Part 3 of the *Children (Parental Responsibility) Act 1994* applied immediately before the repeal of that Act is taken to be an area declared by order to be an operational area for the purposes of Part 3 of this Act until 31 December 1999, or until an order is made under section 16 revoking the order, whichever first occurs.

5



New South Wales

Children (Protection and Parental Responsibility) Act 1997 No 78

Contents

	Page
Part 1 Preliminary	
1 Name of Act	2
2 Commencement	2
3 Definitions	2
4 Operation of Act	4
5 Notes	4
<hr/>	
Part 2 Parental responsibility	
6 Guiding principles for courts	5
7 Attendance of parents at proceedings	5
8 Undertakings by children	5
9 Undertakings by parents	6
10 Family counselling	7
11 Parents contributing to children's offences	7
12 Ancillary provisions	8

	Page
Part 3 Welfare of children in public places	
Division 1 Declaration of operational area	
13 Object of Division	9
14 Operational area	9
15 Duration of declaration	10
16 Amendment or revocation of declaration	11
17 Publication	11
Division 2 Removal of children from public places	
18 Children to whom Division applies	11
19 When action may be taken under this Division	11
20 Relationship to Children (Care and Protection) Act 1987	12
21 Guiding principles when taking action under this Division	13
22 Action that may be taken	13
23 Limitations on action that may be taken	14
24 Approved person	15
25 Notification requirements	15
26 Exercise of functions under Division by police officer	15
27 Police officer may request person to state name, age and address	16
28 Use of force	16
29 Removal of concealed weapons	16
Part 4 Local crime prevention	
Division 1 Preliminary	
30 Objects of Part	18
Division 2 Preparation of plans	
31 Preparation of draft local crime prevention plans	18
32 Guidelines	18
33 Content of draft local crime prevention plan	19
34 Public notice of draft local crime prevention plans	19
35 Adoption of local crime prevention plan	19

Children (Protection and Parental Responsibility) Act 1997 No 78

Contents

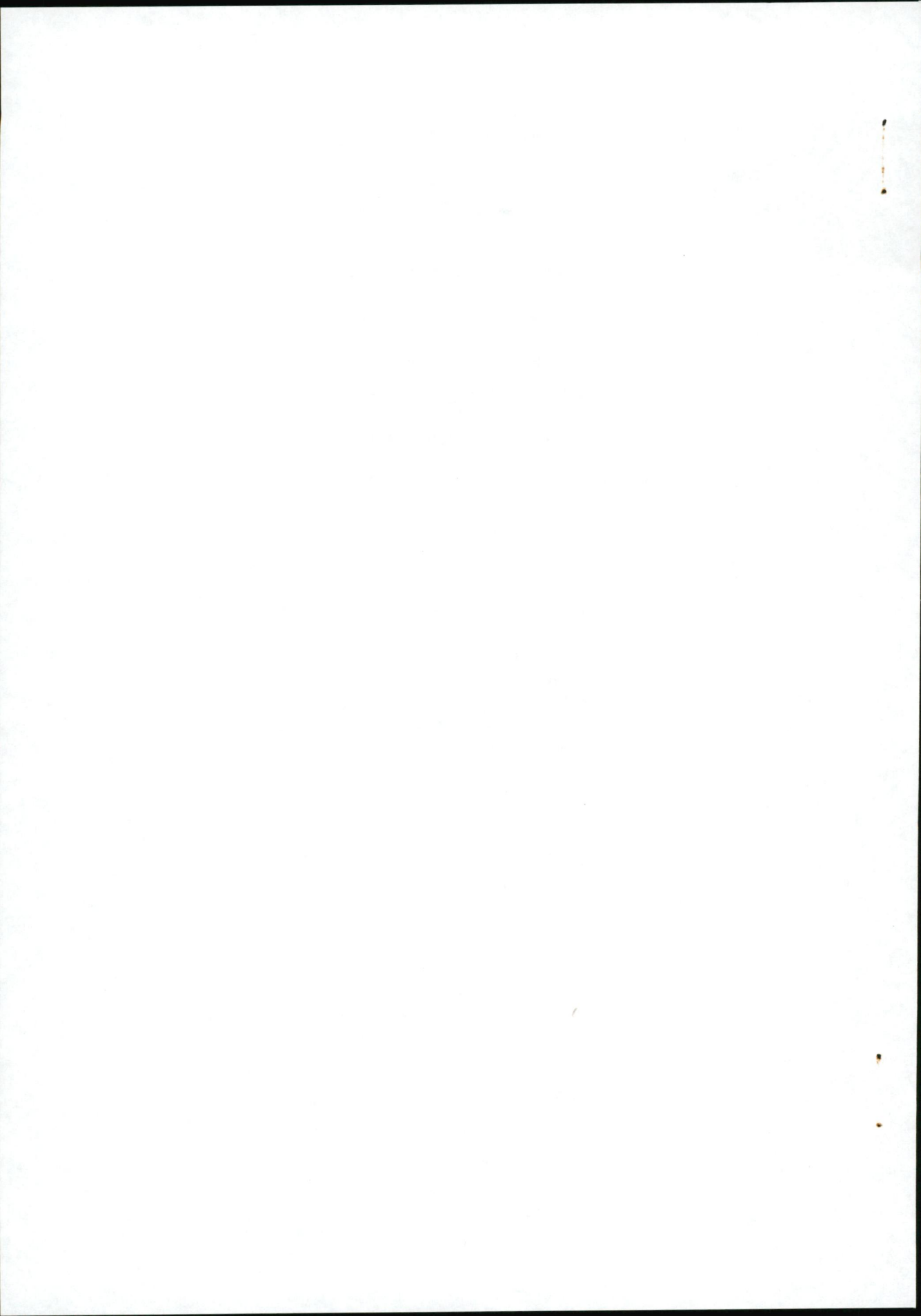
	Page
36 Duration of local crime prevention plan	20
37 Amendment or revocation of local crime prevention plan	20
38 Public availability of local crime prevention plans	20
 Division 3 Safer community compacts	
39 Approval of local crime prevention plan	20
40 Effect of approval	21
41 Council to report periodically on implementation of compact	22
42 Duration and revocation of approval	22

Part 5 Miscellaneous

43 Delegation	23
44 Monitoring of complaints from community	23
45 Proceedings for offences	23
46 Regulations	23
47 Repeals	24
48 Amendment	24
49 Savings, transitional and other provisions	24
50 Review of Act	24

Schedules

1 Amendment	25
2 Savings, transitional and other provisions	26





New South Wales

Children (Protection and Parental Responsibility) Act 1997 No 78

Act No 78, 1997

An Act with respect to the responsibility of parents for the behaviour of their children; to enable police to escort certain children from public places to their parents' residences and other places; to make provision for local crime prevention plans and safer community compacts; to repeal the *Children (Parental Responsibility) Act 1994*; and for other purposes. [Assented to 10 July 1997]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Children (Protection and Parental Responsibility) Act 1997*.

2 Commencement

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

3 Definitions

In this Act:

Aboriginal means a person who:

- (a) is a member of the Aboriginal race of Australia, and
- (b) identifies as an Aboriginal, and
- (c) is accepted by the Aboriginal community as an Aboriginal.

Aboriginal child means a child of an Aboriginal.

approved person means a person chosen from a list of persons designated by the Director-General of the Department of Community Services under section 24.

area has the same meaning as it has in the *Local Government Act 1993* and includes part of an area.

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 (Wards and protected persons) of the *Children (Care and Protection) Act 1987*.

child means a person who is under the age of 18 years.

council has the same meaning as it has in the *Local Government Act 1993*.

court means a court exercising criminal jurisdiction.

crime prevention includes, but is not limited to, strategies, initiatives and services that are likely to develop or enhance a safer community.

cultural heritage includes beliefs, morals, laws, customs, religion, superstitions, art, language, diet, dress and race.

Department means the Attorney General's Department.

exercise a function includes perform a duty.

function includes a power, authority or duty.

local crime prevention plan means a local crime prevention plan adopted by a council under Part 4 and in force in relation to an area.

operational area means an area in respect of which a declaration under section 14 is in force.

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.

safer community compact—see section 39.

Torres Strait Islander means a descendant of an indigenous inhabitant of the Torres Strait Islands.

Torres Strait Islander child means a child of a Torres Strait Islander.

4 Operation of Act

- (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 section.

5 Notes

Notes included in this Act do not form part of this Act.

Part 2 Parental responsibility

6 Guiding principles for courts

- (1) In considering how a child should be dealt with under this Part, a court is to have regard to whether the taking of the action under consideration is in the best interests of the child.
- (2) Without limiting the matters that the court may take into account for the purposes of subsection (1), the court is to consider:
 - (a) the nature of the relationship of the child with the child's parent or parents, and
 - (b) the attitude to the child, and to the responsibilities of parenthood, demonstrated by the child's parent or parents, and
 - (c) the welfare, status and circumstances of the child and of the child's parent or parents.

7 Attendance of parents at proceedings

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.

8 Undertakings by children

- (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.

9 Undertakings by parents

- (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 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, 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 8, 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 security (whether by deposit of money or otherwise) for the good behaviour of the child 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) A court must not take any action against a child for the failure of a parent of the child to comply with an undertaking under this section.
- (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 parent or parents are subject to any condition imposed under subsection (1).

10 Family counselling

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

11 Parents contributing to children's offences

- (1) A parent who, by wilful default, has contributed directly or in a material respect 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.

12 Ancillary provisions

- (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 7, 8, 9 and 10 in any particular matter.

Part 3 Welfare of children in public places

Division 1 Declaration of operational area

13 Object of Division

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

Note. An *area* is defined in section 3 to mean a local government area and to include a part of a local government area.

14 Operational area

- (1) The council for an area may request the Attorney General to declare the area to be an operational area for the purposes of Division 2 of this Part.
- (2) The Attorney General may, by order, declare an area described in the order to be an operational area for the purposes of Division 2 of this Part in accordance with a request under subsection (1), or may declare a portion only of that area to be an operational area.
- (3) The Attorney General must not make an order declaring an area (or portion of an area) to be an operational area unless the Attorney General is satisfied that adequate crime prevention or youth support initiatives will be available in the area before the order takes effect.
- (4) In considering a request under subsection (1) to declare an area (or a portion of an area) to be an operational area, the Attorney General is to have regard to the following:
 - (a) whether the council has adequately informed and consulted with the local community concerned, including young people and the Aboriginal community, and the views expressed,
 - (b) the extent and nature of crime in the area,

- (c) the nature of any crime prevention or youth support initiatives that have been undertaken in the area, including whether any local crime prevention plan or safer community compact is in force for the area, or is in the course of being prepared by the council for the area, and the contents or proposed contents of that plan or compact,
 - (d) the effect of making the declaration on young people in the area, including the availability of safe and appropriate recreational amenities for young people in the area,
 - (e) the practicality of applying Division 2 of this Part in the area, including (but not limited to) any advice given by the Commissioner of Police relating to the operational capacity of police to carry out functions under the Division in the area,
 - (f) without limiting paragraph (e), whether appropriate arrangements have been made, or are able to be made, to cater for the needs of young people who are removed from public places in the area under Division 2 of this Part and who are not able to be taken home, including culturally appropriate arrangements for Aboriginal and Torres Strait Islander young people,
 - (g) whether the council has undertaken steps to include young people's needs in its local planning processes.
- (5) The Attorney General is to consult with the Minister for Community Services and the Minister for Police before declaring an area (or a portion of an area) to be an operational area.

15 Duration of declaration

- (1) An order declaring an area (or a portion of an area) to be an operational area takes effect on a day specified in the order, being a day that is later than the day it is published in accordance with section 17.
- (2) Unless it is sooner revoked, the declaration of an operational area remains in force for such period as is specified in the order.
- (3) The declaration of a portion of an area as an operational area does not prevent the declaration of further portions of the same area as operational areas.

- (4) The council of an area (or a portion of an area) declared to be an operational area must report to the Attorney General when requested to do so by the Attorney General on the implementation, and effectiveness, of the powers conferred by Division 2 of this Part.

16 Amendment or revocation of declaration

- (1) The Attorney General may, by order, amend or revoke an order declaring an area (or a portion of an area) to be an operational area.
- (2) An order under subsection (1) may be made at the request of the council for the area to which the declaration relates or on the Attorney General's own initiative.
- (3) The Attorney General is to consult with the Minister for Community Services and the Minister for Police before revoking or, unless the Attorney General considers the amendments are not substantial, amending an order declaring an area to be an operational area.

17 Publication

As soon as practicable after making, amending or revoking an order declaring an area (or a portion of an area) to be an operational area, the Attorney General is to cause a copy of the relevant order to be published in the Gazette and in a newspaper circulating generally in the area (or the portion of the area).

Division 2 Removal of children from public places

18 Children to whom Division applies

This Division applies to a person:

- (a) who is in a public place in an operational area, and
- (b) who a police officer believes on reasonable grounds is a child under the age of 16 years.

19 When action may be taken under this Division

- (1) A police officer may remove a person to whom this Division applies from any public place in an operational area if the police officer believes on reasonable grounds that the person:

- (a) is not subject to the supervision or control of a responsible adult, and
 - (b) is in the public place in circumstances that place the person at risk.
- (2) A police officer who removes a person from a public place under this section must escort (or arrange for another police officer to escort) the person to a place and place the person in the care of a person in accordance with section 22.
- (3) For the purposes of this section, a person is at risk if:
- (a) the person is in danger of being physically harmed or injured, or
 - (b) the person is in danger of abuse (including assault and sexual assault, ill treatment and exposure to behaviour that may cause psychological harm to the person), or
 - (c) the person is about to commit an offence.

20 Relationship to Children (Care and Protection) Act 1987

- (1) This Division has effect in addition to and does not derogate from the *Children (Care and Protection) Act 1987*.
- (2) In particular, and without limiting subsection (1), nothing in this Division limits the powers conferred under section 60 (Removal of children without warrant) of the *Children (Care and Protection) Act 1987*.
- (3) Before taking action under section 22 in relation to a person to whom this Division applies, a police officer is to consider whether it would be more appropriate to take action under the *Children (Care and Protection) Act 1987* to best meet the needs of the person.
- (4) Section 22 (Notification of child abuse) of the *Children (Care and Protection) Act 1987* applies to a police officer while exercising functions under this Division as if the police officer were the holder of an office prescribed by the regulations under that Act for the purposes of that section.

21 Guiding principles when taking action under this Division

- (1) A police officer who removes a person to whom this Division applies from a public place under this Division is to use his or her best endeavours to escort the person to the home of a parent, relative or other person who is responsible for caring for the person and to leave the person in the care of the parent, relative or other responsible person.
- (2) Despite subsection (1), the police officer's paramount duty is to ensure that any action taken in respect of a person to whom this Division applies who is removed from a public place under this Division is in the best interests of the person and the police officer is to take such action as the police officer considers appropriate in the circumstances to promote the person's best interests.

22 Action that may be taken

- (1) A police officer who removes a person to whom this Division applies from any public place may escort (or arrange for another police officer to escort) the person to the residence of a parent of the person or, if the person has a carer, his or her care residence and leave the person there.
- (2) A police officer who escorts a person to the residence of a parent of the person or his or her care residence must not leave the person at that residence unless:
 - (a) the parent or carer of the person or some other responsible adult is present at the residence and is able and willing to care for the person, or
 - (b) the police officer is satisfied that the person may safely be left at the residence in the absence of a responsible adult.
- (3) If the police officer is unable to escort the person to, or leave the person, at a place referred to in subsection (2), the police officer may escort (or arrange for another police officer to escort) the person to the residence of a close relative nominated by the person and leave the person there.
- (4) A police officer who escorts a person to the residence of a close relative must not leave the person at that residence unless the relative or some other responsible adult is present at the residence and is able and willing to care for the person.

- (5) If for any reason a police officer is unable to escort a person to, or leave a person at, a place referred to in subsection (2) or (4), he or she may:
 - (a) place the person in the care of the Director-General of the Department of Community Services, or
 - (b) if the police officer is unable to place the person in the care of the Director-General, place the person in the care of an approved person who is able and willing to have the care of the person.
- (6) A person in whose care a person is placed under subsection (5) may keep the person in his or her care for such 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 person to the care of a parent or carer.
- (7) If, on the expiration of the period referred to in subsection (6), a person has not been returned to the care of a parent or carer, the person is to be released or dealt with according to law.
- (8) The Director-General of the Department of Community Services may place a person who is placed in the care of the Director-General under this section in the care of any person in whose care a child might be placed under the *Children (Care and Protection) Act 1987*.

23 Limitations on action that may be taken

- (1) A police officer who removes a person to whom this Division applies from a public place must not in any circumstances escort (or arrange for another police officer to escort) the person to, or leave the person at, a police station.
- (2) A police officer must not leave a person to whom this Division applies at any place to which the person has been escorted under section 22 if the police officer considers it would be detrimental to the best interests of the person to do so.
- (3) Before escorting a person to a place under section 22, the police officer is to take into account any wishes or feelings of the person (considered in the light of the person's apparent age and understanding) that are volunteered by the person. However, nothing in this subsection permits a police officer to require a person to express his or her wishes or feelings in relation to this matter.

24 Approved person

- (1) The Director-General of the Department of Community Services may designate persons who reside in or in the vicinity of an operational area to be approved persons with whom a person to whom this Division applies (or a person within a specified class of such persons) removed from a public place in a specified operational area may be placed under section 22 (5) (b).
- (2) In deciding which persons should be designated under this section in respect of an Aboriginal child, the Director-General is to take into account (so far as they are applicable) the principles for placement of Aboriginal children set out in section 87 of the *Children (Care and Protection) Act 1987*.
- (3) In deciding which persons should be designated under this section in respect of children other than Aboriginal children, the Director-General is to take into account the principle that children with a particular cultural heritage should preferably be placed with persons who are of a similar background or who understand their special needs.

25 Notification requirements

- (1) A police officer who places a person to whom this Division applies in the care of a person other than a parent or carer of the person, or who leaves a person at a residence in the absence of a parent or carer, is required to notify a parent of the person or, if the person has a carer, the person's carer, if the parent or carer is known and notification is practicable.
- (2) This section does not require a police officer to notify a person's parent of the person's whereabouts if:
 - (a) the person volunteers to the police officer that he or she does not wish his or her parent to be so notified, and
 - (b) the police officer is satisfied that it would not be in the person's best interests to so notify the parent.

26 Exercise of functions under Division by police officer

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

- (2) The regulations may limit the circumstances, and regulate the manner, in which functions conferred on police officers by this Division may be exercised.

27 Police officer may request person to state name, age and address

For the purposes of enabling a police officer to escort a person removed from a public place under this Division to a place referred to in section 22, the police officer may request the person 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.

28 Use of force

A police officer may use reasonable force for the purpose of removing a person from a public place under this Division or escorting the person under section 22.

29 Removal of concealed weapons

- (1) A police officer who believes on reasonable grounds that a person to whom this Division applies may be carrying a concealed weapon may:
- (a) frisk search the person, and
 - (b) take possession of any weapon found in the person's possession if the police officer considers it may endanger the person, the police officer or any other person if the person is permitted to keep it in his or her possession.

- (2) In this section:

frisk search means:

- (a) a search of a person conducted by quickly running the hands over the person's outer garments, and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

weapon includes:

- (a) a firearm (within the meaning of the *Firearms Act 1996*),
or
- (b) a prohibited weapon or prohibited article (within the
meaning of the *Prohibited Weapons Act 1989*), or
- (c) a syringe, or
- (d) a glass bottle or other instrument adapted for use for
causing injury to a person.

Part 4 Local crime prevention

Division 1 Preliminary

30 Objects of Part

The objects of this Part 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 Attorney General) 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 safer community compacts through grants made by the Attorney General.

Division 2 Preparation of plans

31 Preparation of draft local crime prevention plans

- (1) A council for an area may prepare a draft local crime prevention plan for the area.

Note. *Area* is defined in section 3 to include part of an area.

- (2) The Attorney General may, at the request of a council, give the council assistance in preparing a draft local crime prevention plan.
- (3) The council for an area may take such steps as it considers appropriate or necessary to publicise its intention to prepare a draft local crime prevention plan and may seek and consider submissions from members of the community of the area and the public generally.

32 Guidelines

The Attorney General may from time to time issue guidelines with respect to the preparation and content of local crime prevention plans.

33 Content of draft local crime prevention plan

Without limiting the matters for which a local crime prevention plan may make provision, it may include provisions relating to the following:

- (a) Aboriginal community development,
- (b) non-English speaking background community development,
- (c) crime prevention,
- (d) drug and alcohol management,
- (e) open space planning and management,
- (f) parental education and family support programs,
- (g) youth development strategies,
- (h) consultation,
- (i) arrangements for reporting and co-ordination,
- (j) any matter specified in guidelines issued by the Attorney General.

34 Public notice of draft local crime prevention plans

- (1) A council must give public notice of a draft local crime prevention plan and place it on public exhibition in accordance with this section.
- (2) The period of public exhibition of the draft plan must not be less than 28 days.
- (3) The public notice must specify a period of not less than 42 days after the date on which the draft plan is placed on public exhibition during which submissions may be made to the council.
- (4) The council must, in accordance with its notice, publicly exhibit the draft plan together with any other matter that it considers appropriate or necessary to better enable the draft plan and its implications to be understood.

35 Adoption of local crime prevention plan

- (1) After considering all submissions received by it concerning the draft local crime prevention plan, the council may decide to amend the draft plan or to adopt it without amendment as a local crime prevention plan for the area or part of the area concerned.

- (2) If the council decides to amend the draft plan, it may publicly exhibit the amended plan or it may adopt the amended draft plan without public exhibition as a local crime prevention plan for the area or part of the area concerned.

36 Duration of local crime prevention plan

Unless it is sooner revoked, a local crime prevention plan has effect for such period as is specified by the council when it adopts the plan.

37 Amendment or revocation of local crime prevention plan

- (1) The council may, at any time, amend or revoke a local crime prevention plan adopted by it.
- (2) The council may, but is not required to, publicly exhibit any proposed amendment to the plan before adopting the amendment.

38 Public availability of local crime prevention plans

- (1) Within 14 days after adopting a local crime prevention plan for an area, the council is to publish the plan in:
 - (a) a newspaper circulating generally in the area, and
 - (b) the Gazette.
- (2) Within 14 days after amending or revoking a local crime prevention plan, the council is to give notice of the revocation, or cause a copy of the amendments to be published in:
 - (a) a newspaper circulating generally in the area, and
 - (b) the Gazette.

Division 3 Safer community compacts

39 Approval of local crime prevention plan

- (1) The Attorney General may, at the request of a council for an area, approve a draft local crime prevention plan prepared, or local crime prevention plan adopted, by the council as a safer community compact.

- (2) In deciding whether to approve a draft local crime prevention plan prepared, or local crime prevention plan adopted, by a council, as a safer community compact the Attorney General is to have regard to the following:
- (a) whether the plan was prepared in accordance with, and has contents consistent with, any guidelines issued by the Attorney General under section 32,
 - (b) whether the contents of the plan are appropriate having regard to the extent and nature of crime in the area (or part of the area) for which it is made or proposed to be made,
 - (c) whether the council has adequately consulted with the local community concerned, including young people and the Aboriginal community,
 - (d) the likely effect of the plan on crime and on the local community, including young people and the Aboriginal community,
 - (e) any other matter the Attorney General considers relevant.
- (3) The Attorney General is to consult, and have regard to the views of, the Minister for Community Services and the Minister for Police before giving an approval under this section.
- (4) The Attorney General may approve any amendments to a plan approved under this section.

40 Effect of approval

- (1) A local crime prevention plan, or a draft local crime prevention plan that is subsequently adopted by the council, that is approved by the Attorney General as a safer community compact comprises a safer community compact for so long as the approval of it remains in force.
- (2) The Attorney General may, on application by the council for an area for which there is or is proposed to be a safer community compact, grant such financial assistance as the Attorney General considers appropriate to the council.
- (3) The financial assistance is to be provided out of money to be appropriated by Parliament or that is otherwise legally available for the purposes of this Part.

(4) In this section:

financial assistance means assistance to cover:

- (a) expenses incurred in undertaking any initiative proposed by a safer community compact, and
- (b) any expenses incurred, or to be incurred, in developing a proposed safer community compact, or monitoring a safer community compact.

41 Council to report periodically on implementation of compact

The council of an area for which there is a safer community compact is to assess and report to the Minister, as and when required by the Minister, on the implementation, and effectiveness in reducing crime, of the compact.

42 Duration and revocation of approval

- (1) An approval of a draft local crime prevention plan, or local crime prevention plan adopted by a council, as a safer community compact remains in force (unless sooner revoked) for 3 years after it is given.
- (2) The Attorney General may revoke an approval by written notice given to the council concerned.
- (3) The Attorney General may revoke an approval:
 - (a) if the Attorney General considers any provisions of the safer community compact are no longer suitable for the needs of the area to which it applies, or
 - (b) if the Attorney General considers the safer community compact is not being implemented in a satisfactory manner, or
 - (c) on any other ground the Attorney General considers appropriate.

Part 5 Miscellaneous

43 Delegation

The Attorney General may delegate any of his or her functions under this Act (other than this power of delegation) or the regulations to any officer of the Department.

44 Monitoring of complaints from community

The council of an area or portion of an area that is declared to be an operational area or for which a safer community compact is in force is, if requested to do so by the Attorney General, to monitor, identify and advise the Attorney General on trends in complaints relating to action taken in the operational area under this Act or under the compact.

45 Proceedings for offences

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

46 Regulations

- (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 the following:
 - (a) compelling the attendance of parents and children required under this Act to attend a place,
 - (b) the care of persons removed from a public place and escorted to another place under Part 3,
 - (c) reports to be provided and records to be kept under this Act.
- (3) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

47 Repeals

The *Children (Parental Responsibility) Act 1994* and the *Children (Parental Responsibility) Regulation 1995* are repealed.

48 Amendment

Schedule 1 has effect.

49 Savings, transitional and other provisions

Schedule 2 has effect.

50 Review of Act

- (1) The Attorney General is to review this Act to determine 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 3 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

Schedule 1 Amendment

(Section 48)

Community Welfare Act 1987 No 52

Section 5 Delegation

Omit section 5 (3). Insert instead:

- (3) In this section, a reference to the community welfare legislation includes a reference to each of the following Acts (and to any instrument under the Act) even though the Act may not be administered by the Minister within the Department:

Children (Criminal Proceedings) Act 1987

Children (Protection and Parental Responsibility) Act 1997

Schedule 2 Savings, transitional and other provisions

(Section 49)

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

2 Saving of pilot scheme in Gosford

Any part of the area of Gosford in which Part 3 of the *Children (Parental Responsibility) Act 1994* applied immediately before the repeal of that Act is taken to be an area declared by order to be an operational area for the purposes of Part 3 of this Act until 31 December 1998, or until an order is made under section 16 revoking the order, whichever first occurs.

3 Saving of pilot scheme in Orange

Any part of the area of Orange in which Part 3 of the *Children (Parental Responsibility) Act 1994* applied immediately before the repeal of that Act is taken to be an area declared by order to be an operational area for the purposes of Part 3 of this Act until 31 December 1998, or until an order is made under section 16 revoking the order, whichever first occurs.

[Minister's second reading speech made in—
Legislative Assembly on 21 May 1997
Legislative Council on 23 June 1997]

