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Parental Responsibility Laws

by

Lenny Roth

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Lenny Roth

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EXECUTIVE SUMMARY

New parental responsibility laws

On 5 February 2006, NSW Premier, Hon Morris Iemma MP, announced that the Government will amend the *Children and Young Persons (Care and Protection) Act 1998* to enable the Department of Community Services to apply to the Children's Court to enter into parental responsibility contracts with parents of children who are at risk of neglect. The contracts could require parents to undertake a course of action such as attending a parenting program, attending counselling, or refraining from abusing illegal drugs or alcohol. Parents who refuse to enter into a contract or breach a contract would risk having their children removed on protection grounds. These laws are part of the Government's Respect and Responsibility plan and they aim to prevent juvenile crime. In August 2005, the Opposition also announced that it would introduce new parental responsibility laws if elected.

Parenting and juvenile crime

According to Dr Don Weatherburn, director of the NSW Bureau of Crime Statistics and Research (BOCSAR), research shows that factors associated with inadequate parenting, particularly factors associated with child neglect, are among the strongest predictors of juvenile involvement in crime. However, according to Australian academics, Richard Hil and Anthony McMahon, research studies examining the link between parenting and juvenile crime are analytically and conceptually flawed. Pia Salmelainen, also from BOCSAR, has identified three categories of risk factors associated with parental neglect of children, including: (1) Social and economic conditions in the community; (2) Family factors; and (3) Personal characteristics of the parents and of the children.

NSW care and protection laws

The *Children and Young Persons (Care and Protection) Act 1998* allows the Department of Community Services to intervene in families if the Department has received a report that a child is at risk of harm and the Department considers that the child is in need of care and protection. Interventions can range from providing support services to the family, to entering into agreements with the parents about how a child's need for care and protection will be met in the future, to - in serious cases - seeking an order from the Children's Court to remove the child from the family home and place the child under the parental responsibility of another suitable person or of the Minister for Community Services.

NSW laws concerning parents of juvenile offenders

In 1994, the Fahey Government introduced the *Children (Parental Responsibility) Act*, which allows a court to make various orders in relation to the parents of a child who has committed an offence. These orders include requiring the parents to attend the court proceedings, requiring them to give an undertaking to do certain things, or to give security for the good behaviour of the child. The Act also created an offence if a parent had, by wilful default or neglect, contributed to the child's commission of an offence. In 1997, a Committee that evaluated the Act recommended that it be repealed. However, in 1997, the Carr Government replaced the Act with the *Children (Protection and Parental Responsibility) Act 1997*, which contained the same provisions as well as some other provisions. In 2001, an Evaluation Committee recommended that the relevant provisions, except for the neglect offence, should be retained. That offence has not been repealed.

Parental responsibility laws in United Kingdom

Laws introduced in the UK in 1998 and 2003 provide for parenting contracts and parenting orders. Youth Offending Teams (YOTs) and Local Education Authorities (LEAs) can enter into parenting contracts with parents in order to prevent a child from engaging in criminal conduct or anti-social behaviour or to ensure that the child attends regularly at school. Contracts may require the parents to attend a counselling or guidance program and to ensure that the child is supervised and that the child stays away from certain places and people. If a parent refuses to enter into, or breaches, a parenting contract, YOTs and LEAs can apply to the court for a parenting order. A court may also make a parenting order if a child is convicted of an offence or if a child receives an anti-social behaviour order. Failure to comply with a parenting order can result in a fine of up to 1,000 pounds.

Parental responsibility laws in Western Australia

In June 2005, the West Australian Government introduced the *Parental Support and Responsibility Bill 2005*. The bill is similar to the UK laws and it would allow authorised officers from Departments for Community Development, Education and Training and Justice to enter into responsible parenting agreements with parents; and for the CEO of those Departments to apply to the court for responsible parenting orders if parents refused to enter into an agreement or if they breached an agreement. The requirements for parents to comply with in a contract or order are similar to those mentioned above in relation to the UK laws. Failure to comply with an order could result in a fine of up to \$2,000. The bill has passed the Legislative Assembly but not the Legislative Council. The Legislative Council Standing Committee on Legislation is currently inquiring into the bill.

Parental responsibility laws in other jurisdictions

A number of different parental responsibility laws exist in other jurisdictions within Australia and, in South Australia, a Parliamentary Committee report on the state's youth justice system recommended introducing parental responsibility orders but the Government has not implemented this recommendation. Ireland introduced new laws in 2001 that allow courts to order the parents of juvenile offenders to participate in a course to improve their parenting skills and to undergo treatment for alcohol or drug abuse. Many States in the United States have responsibility laws and in the 1990s a number of States introduced laws to allow courts to require parents of juvenile offenders to attend parent training courses.

The debate about parental responsibility laws

Parental responsibility laws aim to reduce juvenile crime and anti-social behaviour by getting parents to take proper responsibility for their children. Some laws attempt to do this by punishing parents, others by ordering parents to exercise better supervision, and others by encouraging or ordering parents to attend guidance counselling. Critics argue that the laws will not be effective for various reasons including because the laws do not address the underlying causes of inadequate parenting. Critics also contend that the laws will actually be counterproductive because they will increase tensions within families. Opponents also maintain that a better response would be to provide more support services for parents.

Parental education and support services in NSW

Aside from legislative measures, the State and Federal Governments are increasingly recognising the importance of developing early intervention and parental support services, and they have introduced a number of policies in this area in recent years.

1. INTRODUCTION

New laws proposed by NSW Government

On 5 February 2006, NSW Premier, Hon Morris Iemma MP, announced that the Government would introduce “parental responsibility contracts” to make parents more accountable in looking after their children. According to media reports, the *Children and Young Persons (Care and Protection) Act 1998* would be amended so that:

- The Department of Community Services would be able to apply to the Children’s Court for parental responsibility contracts in relation to parents of children who are at risk of neglect.
- The contracts could require parents to undertake a course of action such as attending a parenting program, attending counselling, or refraining from taking illegal drugs or from drinking excessive amounts of alcohol.
- Parents who refuse to enter into a contract, or who breach a contract, would risk having their child/ren removed by the Department of Community Services on protection grounds.¹

Premier Iemma said that this proposal is part of the Government’s new *Respect and Responsibility* policy and it aims to reduce juvenile crime.² The Premier explained that while “the majority of people take their responsibilities as parents very seriously”, “children who are failed in this regard are at risk of becoming adolescents and adults without respect”.³ The Minister for Community Services, Hon Reba Meagher MP, said that the proposed parenting contracts were part of the Government’s early intervention strategy to prevent children from coming to harm.⁴ The Minister stated, “there is plenty of evidence to show that children who are failed by their parents are more likely not to complete their schooling, to become involved in crime and to abuse their own children”.⁵

The Government has not yet introduced legislation to implement this proposal.

¹ See ‘NSW parents to face accountability test’, *Sydney Morning Herald online*, 5/2/06, ‘Laws will force bad parents to sign contracts’, *The Sunday Telegraph*, 5/02/06, ‘Parent contracts criticised as too punitive’, *Sydney Morning Herald*, 6/2/06.

² The Government announced its *Respect and Responsibility* policy on 22 January 2006. See ‘It’s a question of respect’, *The Sunday Telegraph*, 22/01/06. On 24 March 2006, the Premier launched the Government’s *Respect and Responsibility* policy action plan in relation to education: see ‘Tolerant societies stem from school’, *The Australian*, 25/03/06.

³ ‘Laws will force bad parents to sign contracts’, *The Sunday Telegraph*, 5/02/06.

⁴ ‘NSW parents to face accountability test’, *Sydney Morning Herald online*, 5/02/06.

⁵ ‘Laws will force bad parents to sign contracts’, *The Sunday Telegraph*, 5/02/06.

New laws proposed by NSW Opposition

The NSW Opposition also indicated recently that it would introduce new parental responsibility laws if elected to Government. On 10 August 2005, former Opposition leader, John Brogden, announced plans for new laws, stating, “in the case where you have a parent whose child is misbehaving, [or] engaging in anti-social behaviour, we want those parents made directly more responsible”.⁶ According to a media report of the announcement, under the proposed measures:

- Police would be required to notify parents when their child received a warning;
- Courts could require parents to pay for damage caused by their child;
- There would be tougher penalties for parents who breached orders made under parental responsibility laws that were introduced in NSW in 1994. Fines would double to \$2,200 and community service orders could be imposed.
- Courts and police could refer parents who consistently fail to stop their child from committing crimes to the Department of Community Services for action.⁷

Outline of this paper

This paper begins by looking at the research evidence on the link between parenting and juvenile crime. Next, it examines the Department of Community Services’ current powers to intervene in a family situation when a child is at risk of harm, including its powers to enter into agreements with parents and to seek orders from the court. This paper then discusses laws that were introduced into NSW in 1994, which give courts the power to make various types of orders in relation to the parents of juvenile offenders. Sections that follow outline parental responsibility laws that have been introduced in a number of other jurisdictions, including laws enacted in the United Kingdom in 1998 and 2003 that provide for the making of parenting contracts and orders, and similar laws recently proposed in Western Australia. Next, this paper presents a summary of the debate about parental responsibility laws. The final section of this paper discusses parental education and support services in NSW, including recent State and Federal Government policies.

⁶ ‘Make parents share blame’, *The Daily Telegraph*, 10/08/05.

⁷ ‘Make parents share blame’, *The Daily Telegraph*, 10/08/05.

2. PARENTING AND JUVENILE CRIME

Link between parenting and juvenile crime

Dr Don Weatherburn, director of the NSW Bureau of Crime Statistics and Research, has commented recently on the link between parenting and juvenile crime:

Factors associated with, or indicative of, inadequate parenting are among the strongest predictors of juvenile involvement in crime. This is hardly surprising. Children are not born courteous, respectful of others and disinclined to violence. As anyone with children would know, they learn that (if they learn it at all) primarily from their parents.⁸

Referring to US research published in 1986 by Loeber and Stouthamer-Louber, Dr Weatherburn states that, “the parenting factors that are related to delinquency can be usefully grouped into four categories”.⁹ These are outlined in the Table below:

Category	Examples
1. Neglect	Poor parental supervision Inadequate parent-child interaction.
2. Conflict and discipline	Nagging Harsh, erratic or inconsistent discipline
3. Deviant parental behaviours and attitudes	Parental criminality Parental violence or tolerance of violence
4. Family disruption	Chronic spousal conflict Marriage break up

Dr Weatherburn summarises the results of this US research as follows:

Strong independent relationships have been found between factors in all four of these categories and juvenile involvement in crime. As a general rule, however, factors associated with neglect are among the strongest predictors, factors associated with deviant parental attitudes and values and family conflict are of intermediate strength and factors associated with family disruption are the weakest predictors...

As might be expected, the children of families with several risk factors, whether from the same or different categories, are more likely to become involved in crime than the children of families with just one risk factor.¹⁰

⁸ Weatherburn D, *Law and Order in Australia: Rhetoric and Reality*, The Federation Press, Sydney, 2004, p62.

⁹ *Ibid*, p63.

¹⁰ *Ibid*, p63.

In 1997, Dr Weatherburn and Bronwyn Lind published the results of a research study into social and economic stress, child neglect and juvenile delinquency in NSW. One of the study's findings was that juvenile participation in crime was positively correlated with rates of reported child neglect and abuse.¹¹ The results indicated that:

Assuming the level of reported child abuse and the levels of poverty, single parent families and crowded dwellings all remain constant, an increase of 1,000 additional neglected children would result in an additional 256 juveniles involved in crime.¹²

A number of other researchers from the United States, the United Kingdom and Australia have also found that inadequate parenting (including neglect, rejection, lack of support, and lack of parental supervision) is a predictor of juvenile involvement in delinquency.¹³

Richard Hil and Anthony McMahon, academics from Australia in the respective fields of criminal justice and social work, have criticised research studies in this area as being "both analytically and conceptually flawed".¹⁴ They also concluded that:

Despite an abundance of research, there is little evidence to support a simple or unilinear link between particular family characteristics and juvenile crime.¹⁵

Factors leading to neglect of children

If there is a link between inadequate parenting and juvenile crime, then it is important to consider what factors lead to inadequate parenting. Pia Salmelainen, from the NSW Bureau of Crime Statistics and Research, summarises the risk factors for child neglect as follows:

Based on the available research literature, risk factors for child neglect can be organised into three broad categories. The first category concerns social and economic conditions in a community. The second category includes factors associated with the family in which the neglectful parent and

¹¹ Weatherburn D and Lind B, *Social and Economic Stress, Child Neglect and Juvenile Delinquency*, New South Wales Bureau of Crime Statistics and Research, 1997, pvii.

¹² Weatherburn and Lind, *ibid*, p43.

¹³ See Salmelainen P, 'Child Neglect: Its causes and its Role in Delinquency', NSW Bureau of Crime Statistics and Research, *Crime and Justice Bulletin: Contemporary Issues in Crime and Justice*, No. 33, December 1996, p3-4; See also Weatherburn D and Lind B, *Delinquent-Prone Communities*, Cambridge University Press, United Kingdom, 2001, p47-51. See also Homel R et al, *Pathways to Prevention: Developmental and Early Intervention Approaches to Crime in Australia*, National Crime Prevention, Commonwealth Attorney General's Department, Commonwealth of Australia, March 1999, p158-163. See also Stewart A et al, 'Pathways from Child Maltreatment to Juvenile Offending', Australian Institute of Criminology, *Trends and Issues in Crime and Criminal Justice*, No. 241, October 2002. See also Utting D et al, *Crime and the family: Improving child-rearing and preventing delinquency*, Family Policy Studies Centre, London, June 1993, Chapters 1 and 2.

¹⁴ Hil R and McMahon A, *Families, Crime and Juvenile Justice*, Peter Lang Publishing Inc, New York, 2001, p2-3. See also Chapter 4.

¹⁵ Hil R and McMahon A, *Families, Crime and Juvenile Justice*, Peter Lang Publishing Inc, New York, 2001, p187. See also the discussion on p62-63.

neglected child belong. This category includes factors that impact on family functioning and includes structural factors, such as family size, as well as social factors, such as family conflict. The third category concerns the personal characteristics of the caretakers of neglected children (primarily parents), as well as characteristics of the children themselves.¹⁶

Commenting on the research evidence relating to economic factors, Salmelainen states:

Economic hardship, brought about by poverty or unemployment, may affect the emotional well-being of parents and, in turn, lead to changes in parenting behaviour. Some parents faced with economic pressure become less nurturing, less responsive, and more rejecting of their children...¹⁷

Salmelainen also discusses the link between social factors and child neglect:

This review has presented strong evidence to the effect that a rich social network can act as a protective buffer against neglect. Mothers who have numerous people available to them to offer child care advice and relief, and provide emotional support, are less likely to neglect their children than mothers who do not. Neighbourhoods which are characterised by poor child care resources, a high turnover of residents and weak neighbour ties provide conditions which increase the risk of neglect.¹⁸

In relation to family and individual characteristics, Salmelainen comments:

Whilst in comparison to research on societal factors, a relatively small amount of research has been conducted into the role of family, parental and child characteristics in child neglect, the available evidence indicates that some of these characteristics can be regarded as risk factors. In particular, the presence of larger numbers of children in a family has consistently been shown to increase the risk of neglect...

Parents who have inadequate knowledge about child development and who are unaware of the demands involved with being a parent also appear to be at higher risk of neglecting their children than other parents. Given this, it is perhaps not surprising that a parent's educational level is also related to the risk of child neglect...

Some groups of children appear to be at heightened risk of neglect. Commonly these children have special developmental needs and display behaviour which is difficult for the parents to manage...¹⁹

¹⁶ See Salmelainen P, 'Child Neglect: Its causes and its Role in Delinquency', NSW Bureau of Crime Statistics and Research, *Crime and Justice Bulletin: Contemporary Issues in Crime and Justice*, No. 33, December 1996, p4

¹⁷ *Ibid*, p12.

¹⁸ *Ibid*, p12

¹⁹ *Ibid*, p12.

3. NSW LAWS FOR CARE AND PROTECTION OF CHILDREN

Introduction

As part of providing the context to the proposal to introduce “parental responsibility contracts”, this section of the paper presents a brief outline of the existing powers of the NSW Department of Community Services under the *Children and Young Persons (Care and Protection) Act 1998*. In summary, the NSW Department of Community Services has the power to intervene in families if children are considered to be in need of care and protection. Interventions can range from providing support services to the family to – in very serious cases – removing the child or young person from the family home and placing the child or young person under the parental responsibility of the Minister for Community Services. A brief summary of the relevant provisions in the Act is presented below.

Children and Young Persons (Care and Protection) Act 1998

Definition of children and young persons²⁰

Child means a person who is under the age of 16 years.

Young Person means a person who is of the age of 16 or 17.

Reports to DOCS about children and young persons at risk of harm

A person who has reasonable grounds to suspect that a child or young person is at risk of harm may make a report to the Department of Community Services (DOCS).²¹ Police officers and professionals who deliver services to children such as health care and welfare services *must* make a report to DOCS if they suspect that a *child* is at risk of harm.²²

A child or young person is “at risk of harm” if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence of circumstances specified in the Act. For example, because the child or young person’s basic physical or psychological needs are not being met or are at risk of not being met.²³

Action by DOCS in response to reports

If DOCS receives a report that a child or young person is at risk of harm:

- (a) DOCS must make such investigations and assessment as it considers necessary

²⁰ Section 3.

²¹ Section 24.

²² Section 27.

²³ Section 23.

to determine whether the child or young person is at risk of harm; or

- (b) DOCS may decide to take no further action if, on the basis of information provided, it considers that there is insufficient reason to believe that the child or young person is at risk of harm.²⁴

Action by DOCS if child or young person in need of care and protection

If DOCS forms the opinion, on reasonable grounds, that a child or young person is *in need of care and protection*, it must take whatever action is necessary to safeguard or promote the safety, welfare and well-being of the child or young person.²⁵ This may include:

- (1) Providing support services for the child or young person and their family;
- (2) Developing, in consultation with the parents, a Care Plan to meet the needs of the child or young person and their family;
- (3) Exercising its emergency protection powers; or
- (4) Seeking appropriate orders from the Children's Court.²⁶

Actions referred to in (2), (3), and (4) above are discussed in more detail below.

Care Plans²⁷

A Care Plan is a written document that sets out agreements reached between DOCS and a family about how a child or young person's need for care and protection will be met in the future. A Care Plan is written by DOCS after discussion with the family of the child or young person, and sometimes also the child or young person. A Care Plan includes:

- What a parent should do to ensure that a child or young person is safe and/or well cared for (eg attending a rehabilitation program or counselling);
- Where a child or young person will live while a parent does some of the things that might be required;
- Who will be responsible for making some or all decisions about the child or young person;

²⁴ Section 30.

²⁵ Section 34(1).

²⁶ Section 34(2).

²⁷ This information about Care Plans is taken from Children's Court of NSW and Legal Aid Commission of NSW, 'Consent orders based on a Care Plan', *Fact Sheet*.

- How DOCS or other agencies will help the family to ensure the safety, welfare and well-being of the child or young person (eg, by arranging counselling, making visits to the home, and providing financial assistance).

A Care Plan does not have legal force unless it is approved by a consent order made by the Children's Court. If no orders have been made, breach by a parent of a Care Plan will have no legal consequences but DOCS may then decide to apply to the Court for a Care Order.

DOCS emergency protection powers

If DOCS is satisfied on reasonable grounds that a child or young person is at immediate risk of serious harm, and that the making of an apprehended violence order would not be sufficient to protect the child or young person from that risk, DOCS may remove the child or young person from the place of risk.²⁸ If a child is removed from a place or risk, DOCS must apply to the Children's Court by no later than the next sitting day of the Court for an Emergency Care and Protection Order or any other Care Order.²⁹ The Children's Court can make an Emergency Care and Protection Order if it is satisfied that the child or young person is at risk of serious harm. The order places the child or young person in the care responsibility of DOCS for a maximum period of 14 days.³⁰

Care Orders

The Children's Court may make a *Care Order* in relation to a child or young person if it is satisfied that he or she is in need of care and protection for one of the prescribed reasons listed in the Act: eg his or her basic physical, psychological or educational needs are not being met by his or her parents.³¹ The Court may make the following orders:

- (1) *Undertakings*: An order accepting such undertakings given by a parent of the child or young person, as the court thinks fit;³²
- (2) *Support services*: An order directing a specified person or organisation to provide support services to the child or young person for a period of up to 12 months.³³ The note to section 74 states that, "the parents of a child or young person cannot be compelled to accept the provision of support services, particularly if the services relate to the parents rather than to the child or young person".
- (3) *Supervision by DOCS*: An order placing the child or young person under the

²⁸ Section 43.

²⁹ Section 45.

³⁰ Section 46.

³¹ Section 71.

³² Section 73.

³³ Section 74.

supervision of DOCS for a period of up to 12 months.³⁴ While such an order is in force, DOCS may inspect the premises in which the child or young person resides and DOCS may also meet and talk with the child or young person³⁵;

(4) *Allocating parental responsibility*: An order allocating parental responsibility for the child or young person, or specific aspects of it, to another suitable person.³⁶ This would mean that child or young person lives with someone other than his or her parents (eg, another family member or a family friend) and/or that someone other than the parents has responsibility for making decisions about them.³⁷

(5) *Minister to have responsibility*: An order placing the child or young person under the parental responsibility of the Minister for Community Services³⁸ This is an order that the child or young person should live in a place arranged by DOCS (eg, foster care or a group home) and that the Minister for Community Services should have responsibility for making decisions about the child or young person.³⁹ This used to be called being made a ward of the State.

The orders referred to in (4) and (5) above are the most serious types of orders that can be made. The Court must not make either of these orders unless it is satisfied that any other order would be insufficient to meet the needs of the child or young person.⁴⁰

DOCS Early Intervention Program

DOCS is in the process of implementing across NSW a new Early Intervention Program, which targets families who have a child under the age of 9 and who are facing problems, such as domestic violence, drug and alcohol issues, mental health issues, or child behaviour management problems, which are likely to escalate and impact adversely on the capacity to parent adequately. DOCS assesses reports of low to medium risk of harm that come through its Helpline and refers eligible families to the Program. Participation in the program is voluntary. The program involves a DOCS case worker working with the family, developing a tailored support package, and connecting the family to relevant services. The Early Intervention Program is outlined in more detail in Section 9 of this paper.

³⁴ Section 76

³⁵ Section 77.

³⁶ Section 79(1)(a)

³⁷ Children's Court of NSW and Legal Aid Commission of NSW, 'Care Applications', *Fact Sheet*.

³⁸ Section 79(1)(b).

³⁹ Children's Court of NSW and Legal Aid Commission of NSW, 'Care Applications', *Fact Sheet*.

⁴⁰ Section 79(3).

4. NSW LAWS CONCERNING PARENTS OF JUVENILE OFFENDERS

Introduction of laws in 1994

In November 1994, the Fahey Government in NSW introduced the *Children (Parental Responsibility) Bill 1994* as one of a number of measures to address the incidence of juvenile crime. Hon John Fahey MP stated:

The [bill] constitutes the first serious attempt in this State to recognise the role that family responsibility should play in the criminal justice system's dealing with juvenile offenders... We... firmly believe in the capacity of the family to deal with complex issues such as protecting juveniles from crime. The community's obvious desire to feel safe will only be realised if individual families face up to their responsibilities. It is not acceptable for families to turn their backs on young people who are at risk of engaging in antisocial or criminal behaviour.⁴¹

The bill was assented to in December 1994 and the Act came into force in March 1995.

Summary of Children (Parental Responsibility) Act 1994⁴²

Definition of child and parents

For the purposes of the Act, *child* was defined to mean a person who was under the age of 18. *Parent* was defined to include: (a) a guardian of the child; and (b) a person who had custody of the child. However, parent did not include the Minister for Community Services or the Director-General of the Department of Community Services.⁴³

Parental responsibility provisions

Attendance of parents at proceedings

A court exercising criminal jurisdiction with respect to a child could require the attendance at court of one or more of the child's parents.⁴⁴

Undertakings by child offenders

If a court found a child guilty of an offence, the court could release the child on condition that the child give an undertaking:

- (a) To submit to parental or other supervision as ordered by the court;
- (b) To participate in a specified program, or to attend a specified activity centre;

⁴¹ Hon John Fahey MP, *NSW Parliamentary Debates*, 24/11/94.

⁴² As noted below, this Act was replaced by the *Children (Protection and Parental Responsibility) Act 1997*, which contains the same provisions with some amendments and additions.

⁴³ Section 3

⁴⁴ Section 5.

- (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.⁴⁵

Undertakings by parents of child offenders

If a court found a child guilty of an offence, the court could release the child on condition that the child's parent(s):

- (a) Give an undertaking to do or refrain from doing the 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 18th birthday; or
- (b) Give a supplementary undertaking:
 - (ii) To guarantee the child's compliance with an undertaking given by the child;
 - (iii) To take specified action to assist the child's development and to guard against the commission by the child of any further offences;
 - (iv) To report at intervals stated in the undertaking on the child's progress; or
- (c) Give security (whether by way of deposit of money or otherwise) for the good behaviour of the child not exceeding 6 months, or in exceptional circumstances 12 months, but in no case extending beyond the child's 18th birthday.⁴⁶

Require child and parents to attend counselling

If a court found a child guilty of an offence, the court could require the child and the child's parent(s) to undergo such specified counselling as the court considers would be beneficial in assisting the progress of the child.⁴⁷

Convict parents of child offenders of an offence

A parent who, by wilful default, or by neglecting to exercise proper care and guardianship of the child, had contributed to the commission of an offence of which the child had been found guilty, was guilty of an offence.⁴⁸ The maximum penalty was a fine of \$1,100.

The court could require a parent convicted of a such an offence 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.⁴⁹

⁴⁵ Section 6(1).

⁴⁶ Section 7(1).

⁴⁷ Section 8(1).

⁴⁸ Section 9(1)

⁴⁹ Section 9(2).

Other provisions relating to welfare of children in public places

The Act also contained provisions under which police were given the power to remove a child under the age of 16 from a public place if the child was not supervised by a responsible adult and if removal would reduce the likelihood of a crime being committed or of the child being exposed to some risk.⁵⁰ The police were required to escort the child to his or her parent's residence or to a prescribed place of refuge. These powers of removal were initially confined to the Orange and Gosford police districts.⁵¹

Review of 1994 laws by Evaluation Committee

The Act provided for a review to be undertaken after one year of operation. In 1995, the Government established an Evaluation Committee, comprising representatives from NSW Government, local government and non-government agencies to oversee the review of the Act.⁵² Independent consultants, Kearney, McKenzie and Associates were appointed to evaluate the operation of the Act.⁵³ This evaluation was completed in August 1996.⁵⁴ The Evaluation Committee considered the consultant's report and published its own report in February 1997. The Committee recommended that the Act be repealed, stating (in part):

The Committee is of the view that the Act is neither an appropriate nor an effective means of dealing with issues relating to juvenile crime...

The Committee acknowledges the role of family dysfunction in contributing to juvenile crime...However, the...Act addresses this issue in only the most superficial way, and in many cases might exacerbate family problems and place children at further risk. The Committee considers that family issues are more effectively addressed by programs aimed at early intervention and support, including counselling and other services for parents and children. The Committee considers that the goal of involving and empowering parents in problems and decisions concerning their children would be more effectively served by the introduction of Family Group Conferencing for young offenders.⁵⁵

The Committee also recommended that general social support measures, including family support programs and family and youth counselling services, be expanded. In addition, the Committee recommended that the Government assist and support local communities to

⁵⁰ See Part 3 of the Act.

⁵¹ These provisions are not discussed further in this paper. For further information on these provisions, see Swain M, 'The Children (Parental Responsibility) Act 1994: An update', NSW Parliamentary Library Research Service, *Briefing Paper No 6/97*.

⁵² Co-ordination and Evaluation Committee, *Review of the Children (Protection and Parental Responsibility) Act 1997: Report of the Co-ordination and Evaluation Committee*, July 2001, p4.

⁵³ *Ibid*, p4.

⁵⁴ *Ibid*, p4.

⁵⁵ Evaluation Committee, *Report from the Evaluation Committee on the Children (Parental Responsibility) Act 1994*, February 1997, p69.

develop community action plans to deal with juvenile crime issues.⁵⁶

Replacement of 1994 laws in 1997

The Carr Government did not adopt the Committee's recommendation to repeal the laws. Instead, in 1997, the Government replaced the 1994 Act with the *Children (Protection and Parental Responsibility) Act 1997*. The 1997 Act contains the same provisions, with some amendments, as well as a new set of provisions that is "aimed at encouraging the development of community-based crime prevention and support strategies through the facilitation of local crime prevention plans and safer community compacts".⁵⁷ The amendments to the parental responsibility provisions included: (1) a new section specifying matters to be taken into account by the court when considering exercising its powers; and (2) qualifying the offence of contributing to a child's offence by specifying that there must be a direct or material relationship between the parent's default and the child's offence.⁵⁸

Review of 1997 laws by Evaluation Committee

Review by Evaluation Committee

In May 1999, the Attorney General established an inter-departmental Co-ordination and Evaluation Committee to provide guidance and support in relation to the evaluation of the Act. The Committee requested the Legislation and Policy Division of the Attorney General's Department to review the parental responsibility provisions in the Act. The Legislation and Policy Division published its report in 2001. The Evaluation Committee considered this report when it published its review of the Act in June 2001. A summary of the findings and conclusions of the review process are presented below.

Summary of conclusions of review process

Use of the provisions⁵⁹

The review found that the parental responsibility provisions had been used in few cases. Only four (13%) of the magistrates sitting on the Children's Court who responded to the survey made orders under these provisions. The most common reason given for not using the provisions was that other legislation (eg the *Young Offenders Act 1997*) was more appropriate and effective in dealing with young offenders.

⁵⁶ Ibid, p71-72.

⁵⁷ Hon Paul Whelan MP, *NSW Parliamentary Debates*, 21/5/97.

⁵⁸ See sections 6(1) and 11(1), *Children (Protection and Parental Responsibility) Act 1997*

⁵⁹ This summary is taken from Co-ordination and Evaluation Committee, *Review of the Children (Protection and Parental Responsibility) Act 1997*, July 2001, p12.

View of other stakeholders⁶⁰

Most of the stakeholders who made written submissions expressed concerns about the parental responsibility provisions, including in relation to the following:

- Because the causes of juvenile crime are complex, making parents responsible for the crimes committed by their children is simplistic and unlikely to be effective in reducing juvenile crime.
- It is likely to increase tensions within families which are already in crisis, particularly in relation to parents being required to guarantee their child's performance of an undertaking. Existing financial difficulties for the family may be exacerbated if the child fails to perform an undertaking. Parents may also become vengeful which may lead to physical or emotional abuse of the child...
- It is impractical where young people are no longer living with their parents as a result of abuse, neglect, family violence or severe conflict with parents and are living independently.⁶¹

Stakeholders generally considered that “the objective of [the provisions] would be more appropriately and effectively achieved through non-legislative means such as increased youth and family services”.⁶² About half of them called for the provisions to be repealed.

Conclusions and recommendations

The Evaluation Committee concluded as follows:

While the Committee has carefully considered the concerns of stakeholders in relation to [the parental responsibility provisions], particularly in relation to [their] impact on families and the calls of some for [their] repeal, the review found no evidence that the use of [the provisions] had an adverse effect on families. The Committee is also aware that there is considerable support amongst some sections of the community for the [provisions].

...having considered the views expressed by magistrates and other stakeholders, the Committee considers that while most of the provisions of the Act should be retained they should be transferred to other legislation, such as the *Children (Criminal Proceedings) Act 1987*.

The review found that section 11, which relates to parents being found guilty of an offence if they are considered by the court to have by “wilful default” contributed to their child committing an offence, had not been used. The review also found that this section was widely criticised by stakeholders, particularly as it contravenes a fundamental principle of the rule of law that only the person who commits an offence can be held accountable for it.⁶³

The Committee recommended that the Government consider: (1) Repealing section 11; and (2) Transferring the other provisions into another Act such as the *Children (Criminal Proceedings) Act 1987*.⁶⁴ The Government has not adopted these recommendations.

⁶⁰ This summary is taken from Evaluation Committee's report, *ibid*, p12-13.

⁶¹ Evaluation Committee report, *ibid*, p13.

⁶² Evaluation Committee report, *ibid*, p13.

⁶³ Evaluation Committee's report, *ibid*, p13-14.

⁶⁴ Evaluation Committee's report, *ibid*, p14.

5. PARENTAL RESPONSIBILITY LAWS IN UNITED KINGDOM

Fines and security for good behaviour

Since 1933, legislation in the UK has allowed for the imposition of financial penalties upon parents of children who have committed an offence.⁶⁵ In the 1990s, in an effort to reduce growing levels of juvenile crime, the Government introduced further provisions to increase parental responsibility for juvenile offenders.⁶⁶ These laws were as follows:

The *Criminal Justice Act 1991* stated that in cases where a young person under the age of 16 has been convicted of an offence, the parents should be bound over to exercise 'proper' care and control of him...Parents are bound over for a sum of money up to \$1,000 which is to be forfeited if the child re-offends...The second major piece of legislation (this time passed under the conservative administration of John Major) was the *Criminal Justice and Public Order Act 1994*. The Act built on the 1991 legislation by requiring parents who are bound over to ensure that the child complies with the sentence of the court. Under the Act, parents would be required to forfeit monies if the child failed to meet the conditions of an order, let alone if the adolescent re-offended.⁶⁷

Introduction of parenting orders and contracts

Introduction of parenting orders in 1998

In 1998, the Blair Government introduced parenting orders as part of a number of youth justice reforms contained in the *Crime and Disorder Act 1998* (UK). This followed the publication in 1997 of a Government white paper entitled, *No More Excuses: A New Approach to Tackling Youth Crime in England and Wales*. When the Home Secretary, Hon Jack Straw MP, announced the release of the White Paper, he said:

We know that the single most important factor associated with youth criminality is the quality of a young person's home life--crucially, the relationship between parents and children, and the level of parental supervision. The parents of young people who offend or who are at risk of offending need particular support and guidance. They should be made to face up to their own responsibilities. A new parenting order will therefore require parents to attend guidance sessions and to comply with requirements specified by the court to help them to control the behaviour of their children.⁶⁸

Under the *Crime and Disorder Act 1998*, a court could make a parenting order in proceedings where a child had been convicted of an offence or had been made the subject of an anti-social behaviour order, a sex offender order or a child-safety order.

⁶⁵ Arthur R, 'Punishing Parents for the Crimes of their Children', (2005) 44(3), *The Howard Journal* 233 at 234.

⁶⁶ Hil R and McMahon A, *Families, Crime and Juvenile Justice*, Peter Lang Publishing Inc, New York, 2001, p161.

⁶⁷ *Ibid*, p161.

⁶⁸ Hon Jack Straw MP, *UK Parliamentary Debates*, 27 November 1997.

Implementation of parenting orders

Pilots of parenting orders were run in a number of areas from September 1998 to April 2000.⁶⁹ On 1 June 2000 parenting orders were implemented nationally (in England and Wales). By the end of September 2002, 3,121 parenting orders had been made.⁷⁰

The development of parent support services

The *Crime and Disorder Act 1998* required every local authority in England and Wales to establish a Youth Offending Team (YOT) for the area, made up of representatives from the police, probation service, social services, health, education, drugs and alcohol misuse and housing officers.⁷¹ YOTs were made responsible for coordinating the provision of youth justice services in the area, including providing or identifying parenting support services to cater for parents who were made the subject of a parenting order.⁷²

The Youth Justice Board, which was established under the Act to oversee the national youth justice system, funded the development of 42 new parenting projects across England (known as the Parenting Programme), set up and run by YOTs in partnership with other local agencies, both voluntary and statutory.⁷³ The Youth Justice Board asked that parenting support services also be open to other parents who might benefit from them – eg parents of young people identified as being ‘at risk’ though not yet known as offenders.⁷⁴

The Parenting Programme “was innovative because it marked the first formal incursion of the youth justice system into family support provision, formerly the preserve of health and social care agencies”.⁷⁵ The model for the Programme has been described as follows:

Few, if any, ‘tried and tested’ models existed for service delivery before the Parenting Programme, and most [YOTs] were entering uncharted territory when they wrote their initial bids for funding. No parameters were imposed as to the design of the projects, other than that they should offer parenting support services to parents of young people who were either known to be offending, or thought to be at risk of offending, and that they should utilise a multi-agency approach. Beyond this, the general model for the Parenting Programme is best described as ‘let a hundred flowers bloom’, and only loosely described as a ‘Programme’ in an integrated sense.⁷⁶

⁶⁹ House of Commons Library, *The Anti-Social Behaviour Bill*, Research Paper 03/34, 4 April 2003, p17.

⁷⁰ *Ibid*, p17.

⁷¹ Section 39, *Crime and Disorder Act 1998* (UK).

⁷² Ghate D and Ramella M, *Positive Parenting: The National Evaluation of the Youth Justice Board's Parenting Programme*, Policy Research Bureau, September 2002, p2.

⁷³ *Ibid*, pi

⁷⁴ *Ibid*, p1.

⁷⁵ *Ibid*, p75.

⁷⁶ *Ibid*, p8.

Evaluation of the Parenting Programme

The evaluation

The Policy Research Bureau conducted a three-year national evaluation of the Youth Justice Board's Parenting Programme. The research took place between June and December 2001. Thirty-four parenting projects were included in the national evaluation. The Policy Research Bureau published its evaluation report in September 2002.⁷⁷ The main findings and conclusions in the report are outlined below.

Findings of evaluation

The report made the following findings:⁷⁸

- *Referrals:* During the evaluation period over 4,000 parents were referred to the 34 projects. Two thirds of parents were referred on a voluntary basis, while one in six parents were referred as the result of a parenting order.
- *Participation:* Nearly 3,000 of these parents (over 71%) started a parenting program during the evaluation period. The remaining 29% did not take up any program. Some reasons for this included inappropriate referral (e.g. parent in need of mental health support rather than parenting support), parents subsequently declining to take part, service access problems (e.g. transport, child minding or time inconveniences) and service provision problems (e.g. 'waiting list' for joining parenting groups).
- *Characteristics of parents:* Most of the parents who attended were white British (96%); most were female (81%) and half were single parents (49%). Parents reported very high levels of need, ranging from problems with debt and housing to problems with health and relationships. More than eight in ten said they particularly wanted help in managing difficult behaviour by their child.
- *Characteristics of children:* Most of the young people whose parents were referred to the program were male (77%). Almost all of them were over the age of 11 (90%) and most were aged between twelve and fourteen (50%). They were a very high need, difficult group. Three quarters had behavioural and emotional difficulties that would probably be rated as abnormal by a clinician. Almost all of the young people (95%) had committed an offence in the year before their parents took part in the parenting program, and 89% of young people had been convicted of an offence.
- *Programs:* Most projects found that existing courses for working with parents needed adapting for the special challenges presented by parents of young offenders.

⁷⁷ Ghate D and Ramella M, *Positive Parenting: The National Evaluation of the Youth Justice Board's Parenting Programme*, Policy Research Bureau, September 2002.

⁷⁸ Unless otherwise indicated, these findings are taken from the Executive Summary.

Many projects offered a mix of group-work interventions and one-to-one tailored work. This represented a pragmatic development – most intended to offer mainly group programs at the outset but families’ needs often meant one-to-one crisis intervention was needed before group work could start. The programs usually lasted for six to eight weeks and involved no more than a couple of hours each week.⁷⁹

- *Impact on parents:*⁸⁰ By the time parents left their programs, they reported significant positive changes in parenting skills and competencies including improved communication, improved supervision and monitoring, reduction in frequency of conflict, better relationships, and feeling better able to cope with parenting in general. Though some parents had mixed expectations at the outset of what a program would be like and parents on Parenting Orders were especially likely to feel negative, ‘exit’ ratings at the end of the program were very positive. Over nine in ten parents would recommend the program to other parents in their situation. There was no difference in the level of benefit reported by parents who were referred voluntarily as opposed to being referred via a Parenting Order.
- *Impact on young people:* There was some mild (but mostly statistically non-significant) evidence of positive change for young people in various aspects of their relationship with their parent during the time their parent participated in the program.⁸¹ For example, young people reported perceptions of slightly improved communication, supervision, and reduction in frequency of conflict with parents. In addition, in the year after their parents left the program, reconviction rates of young people had reduced from 89% to 61.5% (a reduction of nearly one third).⁸² The average number of offences per young person also dropped by 50%.

Conclusions

Referring to the findings in relation to the impact on young people, the report stated that:

These are encouraging signs, especially given the very high levels of behavioural difficulties and offending that was reported for these young people. However, it was unclear to what extent these improvements were associated with the Parenting Programme or to other things that the young people were doing, such as participating in their own ‘change programmes’ provided by [YOTs]. On balance, it seems unlikely that the Parenting Programme would show up as having [a] large impact on young people in the short term, given that most projects did not have direct contact with young people themselves, that the interventions were short, and that they were taking place at a comparatively late stage in young people’s lives. Parenting Programmes are unlikely to provide a ‘quick-fix’ for entrenched anti-social behaviour by young people, though they may perhaps have the effect of applying the brakes on what are often very fast downward trajectories....⁸³

⁷⁹ Evaluation report, note 77, p77.

⁸⁰ Note that this data was obtained from a sub sample of around 250 parents.

⁸¹ Note that this data was obtained from a sub sample of 78 children.

⁸² Note that this data was obtained from a sub sample of 296 children.

⁸³ Evaluation report, note 77, p79.

The report also noted that “there were indications that both parents and staff thought that the Parenting Programme might have a longer term, preventative effect, especially in terms of impact on the parenting of younger siblings in the family”.⁸⁴

The Policy Research Bureau concluded generally that:

There does seem to be a place, in both policy and practice terms, for Parenting Orders. These may be a powerful way of reaching some parents who might otherwise never manage to set foot over the threshold of a parenting support service. However, a system which privileged a genuinely voluntary route but with Parenting Orders held in reserve where voluntary engagement failed might prove more acceptable to family support providers, opinion formers and parents themselves. This would help to reduce the initial barriers to engagement with a service arising out of parents’ distress at receiving a court order, and help minimise the number of parents drawn into the criminal justice system.⁸⁵

Introduction of parenting contracts and widening of orders in 2003

In March 2003, the Home Office published another white paper entitled, *Respect and Responsibility – Taking a Stand Against Anti-Social Behaviour*. This paper proposed the introduction of parenting contracts and a widening of the availability of parenting orders. Under the heading “parents needing more support”, the white paper stated:

At the local level Youth Offending Teams (YOTs) have been running parenting classes for parents whose children are starting to get into trouble with the police, both on a voluntary basis and for those who have a Parenting Order. The Youth Justice Board (YJB) evaluation indicates that the Parenting Order contributed to a 50% reduction in reconviction rates [note: there was only a 30% reduction in reconviction rates – see above] in children whose parents take up classes. Many of the parents would like to have been offered help years earlier. We want the benefits of parenting support to be an option for more parents on a voluntary basis in the first instance, through Parenting Contracts. We will also ensure that we have mechanisms for parents who are not willing to address their child’s behaviour and we will be increasing the circumstances in which Parenting Orders can be made.⁸⁶

Youth Offending Teams and Local Education Authorities would be able to enter into parenting contracts with the parents of a child in certain circumstances. They would also be able to apply to the court for a parenting order if parents failed to cooperate in relation to a parenting contract. These new measures were included as part of the *Anti-Social Behaviour Act 2003*. The relevant provisions in that Act commenced in February 2004.

Numbers of parenting contracts and orders since April 2004⁸⁷

Between 1 April 2004 and 30 September 2005, Youth Offending Teams entered into 773 parenting contracts. In addition, between September 2004 and 21 July 2005, there were

⁸⁴ Ibid, p79.

⁸⁵ Ibid, pvi.

⁸⁶ Home Office, *Respect and Responsibility – Taking a Stand Against Anti-Social Behaviour*, White Paper, March 2003, p24-25.

⁸⁷ This data was supplied by the Secretary of State for Home Department, Hon Fiona MacTaggart MP, *UK Parliamentary Debates*, Written Answers for 19 January 2006, Column 1580W.

5,717 parenting contracts for truancy and 410 for exclusion from school. Data is not collected on the number of parenting contracts that are not complied with and result in a parenting order being made. However, Youth Offending Teams successfully applied for 151 parenting orders in the period from 1 April 2004 to September 2005.

Summary of parenting contracts and orders provisions

Who can enter into a parenting contract with a parent?

(1) Youth Offending Teams

A Youth Offending Team (YOT) may enter into a parenting contract with the parent(s) of a child who has been referred to the team if a member of the team has reason to believe that the child has engaged, or is likely to engage, in criminal conduct or anti-social behaviour.⁸⁸

(2) Local Education Authorities and School Governing Bodies

A local education authority (LEA) or the governing body of a school may enter into a parenting contract with a parent of a child if:

- (a) The child has been excluded on disciplinary grounds from the school for a fixed period or permanently; or
- (b) A child of compulsory school age has failed to attend regularly at a relevant school at which he or she is a registered pupil.⁸⁹

What is a parenting contract?

A parenting contract is a document that contains:

- (i) A statement by the parent that he or she agrees to comply with such requirements as may be specified;
- (ii) A statement by the YOT or LEA/School Body that it agrees to provide support to the parent so that the parent can comply with those requirements.⁹⁰

Purpose of requirements specified in contract

The purpose of the requirements specified in the contract is:

- (i) In the case of a contract made by a YOT - to prevent the child from engaging

⁸⁸ Section 25(2), *Anti-Social Behaviour Act 2003*.

⁸⁹ Section 19(1)-(3), *Anti-Social Behaviour Act 2003*.

⁹⁰ Sections 25(3), 19(4), *Anti-Social Behaviour Act 2003*.

in, or persisting in, criminal conduct or anti-social behaviour⁹¹; and

- (ii) In the case of a contract made by a LEA/School body- to improve the behaviour of the pupil or ensure that the child attends regularly at school.⁹²

What kind of requirements may be specified in contract

The requirements may include attending a counselling or guidance program.⁹³ Examples of other requirements that may be specified include ensuring that the child:

- Stays away unless supervised from a certain area;
- Is effectively supervised at certain times;
- Avoids contact with certain individuals;
- Attends school regularly.⁹⁴

Can a parent refuse to enter into a parenting contract?

Parents are not obliged to enter into a parenting contract. However, refusal may result in a YOT member or LEA/school governing body applying to the court for a parenting order. In deciding whether or not to make a parenting order, the court is required to take into account a parent's refusal to enter into a parenting contract.⁹⁵

What happens if a parent does not comply with the contract?

There is no penalty if a parent fails to comply with the requirements specified in a parenting contract. However, failure to comply with a contract may result in a YOT member or LEA/school governing body applying to the court for a parenting order. In deciding whether or not to make a parenting order, the court is required to take into account any non-compliance by a parent with a parenting contract.⁹⁶ The Home Office guidance indicates that a YOT should not apply for a parenting order unless there are repeated failures to comply with the contract that are not adequately explained by the parent.⁹⁷

⁹¹ Section 25(5), *Anti-Social Behaviour Act 2003*.

⁹² Section 19(6), *Anti-Social Behaviour Act 2003*.

⁹³ Sections 25(4), 19(5), *Anti-Social Behaviour Act 2003*.

⁹⁴ Home Office, Youth Justice Board, Department for Constitutional Affairs, *Parenting Contracts and Orders: Guidance*, February 2004, p9.

⁹⁵ Sections 27(1)(a), 21(1), *Anti-Social Behaviour Act 2003*.

⁹⁶ Sections 27(1)(b), 21(1)(b), *Anti-Social Behaviour Act 2003*.

⁹⁷ See Home Office, Youth Justice Board, Department for Constitutional Affairs, *Parenting Contracts and Orders: Guidance*, February 2004, p10-11.

What is a parenting order?

A parenting order is an order that requires the parent of a child:

- (a) To comply, for up to 12 months, with the requirements specified in the order; and
- (b) To attend, for up to 3 months, such counselling or guidance program as may be specified in directions given by the responsible officer.⁹⁸

Examples of requirements other than attending counselling that may be specified in a parenting order are the same as mentioned above in relation to parenting contracts.

The requirements specified in a parenting order must, as far as practicable, be such as to avoid (a) any conflict with the parent's religious beliefs; and (b) any interference with the times at which the parent normally works or attends an educational establishment.⁹⁹

When can a parenting order be made?

There are four situations in which a court may make a parenting order:

- (1) If a Youth Offending Team applies for a parenting order;
- (2) If a Local Education Authority applies for a parenting order;
- (3) If a parent is convicted of offence relating to school non-attendance;
- (4) If a child is convicted of an offence or made subject to a relevant order.

YOTs and LEAs should normally only apply to the court for a parenting order if a parent has refused to enter into or failed to comply with a parenting contract.¹⁰⁰

(1) Application by Youth Offending Team

A member of a YOT may apply to a Magistrate's Court for a parenting order in respect of a parent of a child.¹⁰¹ The court may make a parenting order if it is satisfied that:

- (a) The child has engaged in criminal or anti-social behaviour; and
- (b) Making the order would be desirable in the interests of preventing the child from engaging in further criminal conduct or anti-social behaviour.¹⁰²

⁹⁸ Sections 26(4), 20(4), *Anti-Social Behaviour Act 2003*. Responsible officer is defined in s 8(8).

⁹⁹ Section 9(4), *Crime and Disorder Act 1998* and ss 27(3), 21(3) *Anti-Social Behaviour Act 2003*.

¹⁰⁰ In relation to YOTs, see Home Office, Youth Justice Board, Department for Constitutional Affairs, *Parenting Contracts and Orders: Guidance*, February 2004, p 11.

¹⁰¹ Section 26(2), *Anti-Social Behaviour Act 2003*.

¹⁰² Section 26(3), *Anti-Social Behaviour Act 2003*.

(2) Application by Local Education Authority

An LEA may apply to the Magistrate's Court for a parenting order in respect of a parent of a pupil who has been excluded on disciplinary grounds from a relevant school for a fixed period or permanently.¹⁰³ The court may make an order if it is satisfied that the order would be desirable in the interests of improving the behaviour of the pupil.¹⁰⁴

(3) Parent convicted of offence in relation to non-attendance at school

A court may make a parenting order if a parent is convicted of an offence in relation to the failure to ensure that their child regularly attends school.¹⁰⁵ The court may only make a parenting order if it is satisfied that doing so would be desirable in preventing the commission of any further offence.¹⁰⁶

(4) Child convicted of offence or made subject to relevant order

A court may make a parenting order in proceedings where:¹⁰⁷

- A child aged 10-17 is convicted of an offence;
- A child aged 10-17 is made the subject of an anti-social behaviour order¹⁰⁸,
- A child aged 10-17 is made the subject of a sex offender order;
- A child under the age of 10 is made the subject of a child safety order.¹⁰⁹

The court may only make a parenting order if it is satisfied that doing so would be desirable in preventing the commission of any further offence or, as the case may be, in preventing a repetition of behaviour of the kind that led to one of the above orders being made.¹¹⁰

If a child under the age of 16 is convicted of an offence or is made the subject of an anti-social behaviour order the court *must* make a parenting order if it is satisfied that a

¹⁰³ Sections 20(1), (2), *Anti-Social Behaviour Act 2003*

¹⁰⁴ Section 20(2), *Anti-Social Behaviour Act 2003*

¹⁰⁵ Sections 8(1)(d), 8(2) *Crime and Disorder Act 1998*

¹⁰⁶ Section 8(6)(c), *Crime and Disorder Act 1998*

¹⁰⁷ Section 8(1), *Crime and Disorder Act 1998*

¹⁰⁸ An anti-social behaviour order may be made if a person has acted in a manner that caused or was likely to cause harassment, alarm or distress to another person and such an order is necessary to protect persons in the area from further anti-social acts: s 1, *Crime and Disorder Act 1998*

¹⁰⁹ A child safety order, which places a child under the supervision of a responsible officer, may be made if a child under the age of 10: (a) has committed an act which would have been an offence if the child was older; or (b) has engaged in anti-social behaviour; or (c) has breached a ban imposed by a curfew notice: s 11, *Crime and Disorder Act 1998*.

¹¹⁰ Section 8(6)(a), (b), *Crime and Disorder Act 1998*

parenting order would be desirable in preventing the commission of any further offence or in preventing a repetition of the relevant behaviour.¹¹¹ If the court is not satisfied of the desirability of making a parenting order, it must explain why in open court.¹¹²

Matters that court must consider before making order

Family circumstances: In the case of a child who is convicted of an offence, or a child who is under the age of 16, a court must obtain and consider information about the child's family circumstances and the likely effect of the order on those circumstances.¹¹³

Refusal to enter into or to comply with a parenting contract: If a YOT or LEA applies for a parenting order, the court must consider (a) any refusal by the parent to enter into a parenting contract; and (b) any failure by the parent to comply with a parenting contract.¹¹⁴

Variation or discharge of parenting order

The court may vary or discharge a parenting order that is in force.¹¹⁵ The Home Office guidance states, "parenting orders may be varied for a number of reasons, for example where the family moves to another area or where the original requirements are not proving effective".¹¹⁶ It also states that an order may be discharged "for instance if the parent has fully complied with the requirements and the behaviour of the child has improved".¹¹⁷

Consequences for failing to comply with a parenting order

If a parent without reasonable excuse fails to comply with any requirement included in the parenting order, or specified in directions given by the responsible officer, the parent is liable to a fine not exceeding 1,000 pounds and/or a community sentence.¹¹⁸ In relation to the enforcement of parenting orders, the Home Office guidance states:

...if there is more than one unacceptable failure to comply within three months the responsible officer should meet the parent to review the order and how it can be made to work. It may be appropriate to draw up a new plan with the parents better suited to their needs and circumstances. If the responsible officer cannot make contact with the parents or agree a positive way forward the

¹¹¹ Section 9(1), *Crime and Disorder Act 1998*

¹¹² Section 9(1), *Crime and Disorder Act 1998*

¹¹³ Section 9(2), *Crime and Disorder Act 1998*; and ss 27(2), 21(2), *Anti-Social Behaviour Act 2003*

¹¹⁴ Section 27(1), 21(1), *Anti-Social Behaviour Act 2003*

¹¹⁵ Section 9(5), *Crime and Disorder Act 1998*; and ss 27(3), 21(3) *Anti-Social Behaviour Act 2003*

¹¹⁶ Home Office, Youth Justice Board, Department for Constitutional Affairs, *Parenting Contracts and Orders: Guidance*, February 2004, p19.

¹¹⁷ *Ibid*, p19.

¹¹⁸ Section 9(7), *Crime and Disorder Act 1998*; and ss 27(3), 21(3) *Anti-Social Behaviour Act 2003*.

responsible officer should consider whether the failure should be reported to the police for investigation.¹¹⁹

Changes to laws announced in 2006

On 10 January 2006, the Prime Minister, Tony Blair, launched the Government's new *Respect Action Plan*, which sets out a wide-ranging program to deal with the causes of anti-social behaviour, including measures to support parents and to "tackle irresponsible parents".¹²⁰ The *Respect Action Plan* summarises the changes as follows:

We will develop parenting services nationally and focus help on those parents who need it most. We will expand national parenting provision and establish a new National Parenting Academy for front line staff. We will legislate to increase the circumstances and organisations that can apply for a parenting order, where a child's behaviour requires it.¹²¹

The Action Plan stated that parenting orders would be extended in the following ways:

- Local authorities will be given powers to extend the range of agencies that can enter into parenting contracts and orders where anti-social behaviour occurs in the community: eg community safety officers and housing officers;
- Schools will also be able to seek parenting orders;
- 'Serious misbehaviour' will be added to the existing trigger of exclusion from school, so that a parenting order can be made before a child is excluded.¹²²

On 6 March 2006, the Government introduced into the House of Commons the *Police and Justice Bill* which will allow local authorities (ie councils) and registered social landlords (not-for-profit bodies that provide social housing) to enter into parenting contracts and to apply to the court for parenting orders in order to prevent a child from engaging in anti-social behaviour.¹²³ The legislation will also allow the Secretary of State to make an order to enable local authorities to contract out their powers to a specified person.¹²⁴ The bill does not contain any provisions relating to schools entering into parenting contracts/orders.

¹¹⁹ Home Office, Youth Justice Board, Department for Constitutional Affairs, *Parenting Contracts and Orders: Guidance*, February 2004, p20-21.

¹²⁰ UK Home Office, *Respect Action Plan*, 2006, p19. See also Home Office, 'Respect Drive Targets Troublesome Families', *Media Release*, 10/01/06.

¹²¹ *Respect Action Plan*, *ibid*, p3.

¹²² *Respect Action Plan*, *ibid*, p19.

¹²³ Part 3, *Police and Justice Bill*.

¹²⁴ Clause 18, *Police and Justice Bill*.

6. PARENTAL RESPONSIBILITY LAWS IN WESTERN AUSTRALIA

Fines, compensation and security for good behaviour

Under the *Young Offenders Act 1994 (WA)*, if a young person is found guilty of an offence and a fine is imposed or the payment of compensation, restitution or costs is ordered, the court, having regard to the financial circumstances of the young person and the young person's parent(s), may order that payment of the fine or other amount be made by the young person, by the parent(s), or by any of them in such proportions as the court may determine.¹²⁵ The Act also provides that if a young person is charged with an offence, the court may order the young person's parents to give security for the good behaviour of the young person in addition to any order made in disposing of the matter.¹²⁶

Proposal for parental responsibility contracts and orders

Discussion paper

In January 2004, the WA Office of Crime Prevention published a discussion paper on the possible introduction of Parental Responsibility Contracts and Orders in Western Australia.¹²⁷ The Office received fifty-five submissions in response to the paper.¹²⁸

Introduction of new laws

In November 2004, the Government released draft legislation providing for the making of responsible parenting agreements and orders.¹²⁹ In June 2005, the Government introduced the *Parental Support and Responsibility Bill 2005*. Hon Ms M Quirk MP said (in part):

Parents are the first and most powerful teachers in every child's life, playing a significant role in shaping opportunities and life outcomes for their children. Although most parents and families manage to deal with the day-to-day challenges of raising children, there are times when parents do not know what to do or where to go for help. Some parents, for a variety of reasons, may be unable or unwilling to care for their children, to make sure they go to school; to monitor where they are, who they are with and whether they are safe; or to manage their behaviour. Some of these parents do not access appropriate assistance to help them to do a better job. This bill addresses such incapacity or reluctance by introducing a system of responsible parenting agreements and orders.

¹²⁵ Section 58(2), *Young Offenders Act 1994 (WA)*.

¹²⁶ Section 58(5), *Young Offenders Act 1994 (WA)*.

¹²⁷ Office of Crime Prevention, WA, *Discussion Paper: Parental Responsibility Orders*, January 2004. This paper can be accessed on Office of Crime Prevention's website: <http://www.crimeprevention.wa.gov.au/html/index.cfm>

¹²⁸ Standing Committee on Legislation, *Parental Support and Responsibility Bill 2005*, Evidence of Ms Wendy Attenborough, Principal Policy Officer, Office of Crime Prevention, 14/12/05, p7.

¹²⁹ 'Parents to be made more responsible for anti-social and offending behaviour of children', *Media Statement*, 29/11/04.

...When the Gallop Labor government was first elected we said we would be tough on crime and on the causes of crime. We said there must be more focus on preventing crime from occurring in the first place and more attention given to finding the causes of crime and anti-social behaviour and developing preventative strategies to address these problems. Supporting and improving the skills of parents is a significant early intervention in preventing the development of anti-social behaviour, truanting from school and juvenile offending...¹³⁰

Hon Ms M Quirk MP also stated that, “importantly, this legislation will allow us to work with the families of children under 10 years of age who are engaging in behaviour that, if they were over 10 years of age, would be regarded as criminal”.

The Opposition supported the bill.¹³¹ The bill has passed the Legislative Assembly but not the Legislative Council. On 30 November 2005, the bill was referred to the Legislative Council Standing Committee on Legislation for inquiry.¹³² The Committee has received written submissions and it has taken oral evidence but it has not yet reported.¹³³

Parental (Support and Responsibility) Bill 2005

Objects

The objects of the legislation are:

- (a) To acknowledge and support the primary role of parents in safeguarding and promoting the wellbeing of children;
- (b) To support and reinforce the role and responsibility of parents to exercise appropriate control over the behaviour of their children.¹³⁴

Definition of child and parents

Child means a person who is under the age of 15.¹³⁵

Parent means a person who has the legal responsibility for the day-to-day or long-term care, welfare and development of the child.¹³⁶

¹³⁰ Hon M Quirk MP, *Western Australia Parliamentary Debates*, 1/6/05,p2585.

¹³¹ Mr A J Simpson, *WA Parliamentary Debates*, 22/02/06.

¹³² Details of the Committee inquiry are available from the WA Parliament website: <http://www.parliament.wa.gov.au>

¹³³ The Committee is not required to report by a specified date.

¹³⁴ Section 5.

¹³⁵ Section 3. As to the reasons for limiting the legislation to children under the age of 15, see Standing Committee on Legislation, *Parental Support and Responsibility Bill 2005*, Evidence of Ms Wendy Attenborough, Principal Policy Officer, Office of Crime Prevention, 14/12/05, p16.

¹³⁶ Section 3.

Responsible parenting agreements

Who can enter into responsible parenting agreements?

Authorised officers from the following government departments may enter into a responsible parenting agreement with one or both parents of a child:

- (a) Department for Community Development;
- (b) Department of Education and Training;
- (c) Department of Justice.

What is a parenting agreement?

A responsible parenting agreement is an agreement about one or more of the following:

- (a) The parent attending parenting guidance counselling, a parenting support group or any other relevant personal development course or group;
- (b) The parent taking all reasonable steps to ensure that the child:
 - i. Attends school;
 - ii. Avoids contact with a particular person or persons; and/or
 - iii. Avoids a particular place or places.
- (c) Other matters relating to the effective parenting of the child
- (d) The assistance to be given to the parent or child by a government agency to help the parent comply with the agreement.¹³⁷

What if a parent refuses to enter into a responsible parenting agreement?

Parents are not obliged to enter into a parenting agreement. However, refusal to enter into an agreement may give rise to an application to the court for a parenting order and the court is required to take into account a parent's refusal when making its decision.¹³⁸

What are the consequences of failing to comply with a responsible parenting agreement?

There is no penalty for failing to comply with a parenting agreement. However, non-compliance may give rise to an application to the court for a parenting order and the court is required to consider the parent's failure to comply in making its decision.¹³⁹

¹³⁷ Section 10(2).

¹³⁸ Section 18(2)(d).

¹³⁹ Section 18(2)(e).

Responsible parenting orders

What is a responsible parenting order?

A parenting order is an order that requires the parent to do one or more of the things that are outlined above in relation to the contents of parenting agreements: eg attending parenting guidance counselling and taking reasonable steps to ensure that the child avoids contact with a particular person or that the child avoids a particular place.¹⁴⁰

Who may apply for a responsible parenting order?

The Chief Executive Officer of one of the above-mentioned government departments may apply to the Children's Court for parenting order.¹⁴¹

Grounds for making a responsible parenting order

The court must not make a parenting order unless one of the following applies:

- (a) The child has been found guilty of an offence;
- (b) The child has been referred to a juvenile justice team under the *Young Offenders Act 1994*;
- (c) The child is engaging in, or has engaged in, behaviour likely:
 - (i) to cause harm to the child or any other person
 - (ii) to harass or intimidate other persons
 - (iii) to cause damage to property,

and that behaviour is part of a pattern of behaviour or is, of itself, of a kind that is sufficiently serious to justify the court making an order.

- (d) A School Attendance Panel, or a School Disciplinary Advisory Panel, has recommended that an application for a parenting order be made.¹⁴²

Matters that court must be satisfied of before making an order

The Court may only make a parenting order if satisfied of *all* of the following matters:

- The parent has refused to enter into a responsible parenting agreement or the parent has not made a reasonable attempt to comply with a parenting agreement;

¹⁴⁰ Section 13.

¹⁴¹ Section 12.

¹⁴² Section 17.

- Making the order is in the best interests of the child;
- Making the order is desirable in the interests of (i) preventing the child committing an offence or (ii) repeating the behaviour that gave rise to the application, or (iii) ensuring that the child attends school:
- The parent understands the order and the consequences of non-compliance.¹⁴³

Matters that the court must consider in deciding whether to make an order

In deciding whether to make a parenting order, the court must take into account:

- (a) the circumstances of the child's family and the likely effect on those circumstances of making the proposed order;
- (b) whether or not the behaviour of the child that gave rise to the application for the order is the result of a disability or a mental, medical or psychological condition of the child or of a parent of the child;
- (c) the extent to which the parent has made efforts to manage the behaviour of the child;
- (d) whether or not the parent has unreasonably refused to enter into a responsible parenting agreement in respect of the child;
- (e) the extent to which the parent has attempted to comply with a responsible parenting agreement in respect of the child;
- (f) whether or not the relevant government agency has or agencies have made reasonable efforts to assist and encourage the parent
 - (i) to manage the behaviour of the child; and
 - (ii) to improve his or her parenting skills;
- (g) the extent to which the relevant government agency has or agencies have given the assistance provided for in any relevant responsible parenting agreement;
- (h) whether the necessary facilities, counselling, groups or courses will be available for the parent to comply with the order; and
- (i) what assistance the relevant government agency or agencies will provide to assist the parent to comply with the order.¹⁴⁴

Order cannot be made if child subject to protection order

The court may not make a parenting order in relation to a child who is the subject of a protection order made pursuant to the *Child Welfare Act 1947*.¹⁴⁵

Duration of responsible parenting orders

A parenting order remains in force for the period specified in it, which cannot be longer than 12 months.¹⁴⁶ The order ceases to be in force if the child reaches 15 years of age.¹⁴⁷

¹⁴³ Section 18(1).

¹⁴⁴ Section 18(2).

¹⁴⁵ Section 18(1)(c). See also subs (1)(d).

¹⁴⁶ Section 19(1).

¹⁴⁷ Section 19(2).

Variation and revocation of orders

The court may vary or revoke a parenting order if it is satisfied that there are sufficient grounds for doing so and that it is in the best interests of the child to do so.¹⁴⁸

Penalties for failure to comply with responsible parenting orders

If a parent fails to make reasonable efforts to comply with a parenting order the parent commits an offence.¹⁴⁹ The maximum penalty is a fine of \$2,000. Default in paying a fine can result in the seizure of non-essential household goods or a work and development order but it cannot result in imprisonment or suspension of a driver's licence.¹⁵⁰

A prosecution for an offence cannot be commenced without the approval of the CEO who applied for the order; and the CEO cannot give approval unless satisfied that all reasonable efforts to assist and encourage the parent to comply with the order have failed.¹⁵¹

Cooperation among government agencies

The bill states that government agencies work together cooperatively and effectively so as to give parents the best chance of:

- (a) Safeguarding and promoting the well-being of their children;
- (b) Exercising appropriate control over the behaviour of their children;
- (c) Complying with any responsible parenting agreement they may enter or any responsible parenting order directed towards them.

The Act allows certain government agencies to share relevant information with other government agencies, in accordance with guidelines issued pursuant to the Act.¹⁵²

New parent support service to support legislation¹⁵³

In November 2004, the Government launched a new *ParentSupport* service in the southeast metropolitan area. The service includes one-on-one counselling, parent mentoring, training courses, and home support. Various government agencies can refer to the new service parents of children under the age of 15 who have been identified as not attending school, or

¹⁴⁸ Section 22.

¹⁴⁹ Section 20(1).

¹⁵⁰ See section 35 and the Second Reading speech on the bill.

¹⁵¹ Section 20(2), (3).

¹⁵² See section 9.

¹⁵³ The information in the first two paragraphs is primarily sourced from Western Australia, Office of Crime Prevention, *ParentSupport: A Guide for Agencies*, available on the office of crime prevention website: <http://www.crimeprevention.wa.gov.au/html/docs/ocp-psa.pdf>

engaging in anti-social behaviour or criminal activities.

If the bill is enacted, *ParentSupport* will provide support to parents who enter into a parenting agreement, or who become subject to a parenting order. The availability of parenting agreements and orders will initially be confined to the southeast metropolitan area, where the *ParentSupport* service has been set up. Availability will be extended to other areas when the *ParentSupport* service is operational in those areas.

In evidence to the Standing Committee inquiry into the bill, Mr Michael Thorn, Director of the Office of Crime Prevention explained the reason for developing this new service:

Our response has been that if we have these statutory powers, we will need to do the right thing and ensure that we back up the public policy positions that have been adopted by providing purpose-designed services to meet the needs that will arise from intervening with those families.¹⁵⁴

The Parent Support Service in the southeast metropolitan area has been in operation since April 2005 and has received referrals from various government departments and the police.¹⁵⁵ According to Ms Hilary McWilliam, Manager of the Responsible Parenting Initiative, Office of Crime Prevention, the *ParentSupport* service has “worked with over 30 families to resolve issues and they have been highly successful in their efforts”.¹⁵⁶

¹⁵⁴ Standing Committee on Legislation, *Parental Support and Responsibility Bill 2005*, Evidence of Mr Michael Thorn, Director, Office of Crime Prevention, 14/12/05, p18. See also Evidence of Ms Hilary MacWilliam, Manager of the Responsible Parenting Initiative, 14/12/05, p18 and p3.

¹⁵⁵ Evidence of Ms Hilary MacWilliam, *Ibid*, p3.

¹⁵⁶ Evidence of Ms Hilary MacWilliam, *Ibid*, p3.

7. PARENTAL RESPONSIBILITY LAWS IN OTHER JURISDICTIONS

Australian States and Territories¹⁵⁷

The NSW and West Australian laws have been referred to above. Laws have also been enacted in most other States and Territories in Australia that allow courts to make certain types of orders in relation to the parents of children who have committed an offence. The types of orders that can be made in these other States and Territories include:

Types of orders against parents	States
Payment of compensation	Queensland ¹⁵⁸
Undertakings by parents to do certain things	South Australia ¹⁵⁹ ; Victoria ¹⁶⁰
Contribution to costs of child's detention	Northern Territory ¹⁶¹

In January 2004, former Federal Opposition leader, Mark Latham, said that he supported the proposal to introduce parental responsibility orders in Western Australia and that the Labor Party would introduce a national plan for such orders, which would allow courts to require the parents of unruly or truant children to attend classes to learn how to discipline their children more effectively.¹⁶² The Prime Minister rejected this proposal.¹⁶³

In July 2005, a South Australian Parliamentary Select Committee report on the state's youth justice system recommended the introduction of parental responsibility orders.¹⁶⁴ The South Australian Government has not implemented this recommendation. In February 2006, the Opposition announced that, if elected, it would introduce parenting contracts and orders.¹⁶⁵ However, the Government was returned in the 2006 election.

¹⁵⁷ Parental responsibility laws in Australia (as they existed in 1996) are discussed in detail in Hil R, *Making Them Pay: A Critical Review of Parental Restitution in Australian Juvenile Justice*, Centre for Social and Welfare Research and James Cook University of North Queensland, 1996, p9-19.

¹⁵⁸ See sections 258, 259, *Juvenile Justice Act 1992* (Qld).

¹⁵⁹ See section 27, *Young Offenders Act 1993* (SA).

¹⁶⁰ See section 140, *Children and Young Persons Act 1989* (Vic).

¹⁶¹ See section 55A, *Juvenile Justice Act* (NT).

¹⁶² 'Latham set to coach parents and citizens', *Sydney Morning Herald*, 27 January 2004.

¹⁶³ Ibid

¹⁶⁴ Parliament of South Australia, *Report of the Select Committee on the Youth Justice System*, 4 July 2005, Recommendation 25. See pp84-93.

¹⁶⁵ 'Parents have responsibility to care for their children', *Policy Statement*, Liberal Party of Australia (SA Division), released 6/2/06.

Ireland

The *Children Act 2001* allows for the making of *parental supervision orders* in relation to the parents of child offenders.¹⁶⁶ Such orders can be made if the court is satisfied that a wilful failure by the parents to take care of or control the child contributed to the child's criminal behaviour. The court can order the parents to:

- Undergo treatment for alcohol or other substance abuse, where facilities for such treatment are reasonably available;
- Participate in any course that is reasonably available for the improvement of parenting skills;
- Adequately and properly control or supervise the child to the best of their ability;
- Comply with any other instructions of the court that would in its opinion assist in preventing the child from committing further offences.

Parental supervision orders can be made for a period of up to 6 months. The court must appoint a probation and welfare officer to supervise the parents, to assist them in complying with the order and to monitor compliance with it. If a parent fails to comply with an order, the officer can apply to the court and the court may revoke the order, make a compensation or recognisance order, or treat the failure as a contempt of court.

The *Children Act* also introduced other types of parental responsibility orders including orders that parents or guardians pay compensation; and orders that the parents or guardians enter into a recognisance to exercise proper and adequate control of the child.¹⁶⁷

United States

Since early last century, many States in the United States have had laws allowing courts to hold parents criminally responsible for "contributing to the delinquency of a minor".¹⁶⁸ Parents found guilty of this offence could be fined or even imprisoned.¹⁶⁹

Since the late 1980s a number of States have amended these laws or have enacted new parental responsibility laws.¹⁷⁰ In 1988, California enacted the *Street Terrorism*

¹⁶⁶ Sections 111 and 112.

¹⁶⁷ Sections 113 and 114. Note that the Act has been implemented on a staged basis and note that as at October 2005, the parental responsibility laws discussed above had not yet come into force. See the Irish National Children's Office website: <http://www.nco.ie/>

¹⁶⁸ Bates S, 'The possibilities and methods of increasing parental responsibility for juvenile delinquents', (1922) 12 *Journal of the American Institute of Criminal Law and Criminology* 61 at 63ff.

¹⁶⁹ Cahn N, 'Pragmatic Questions about Parental Liability Statutes', (1996) *Wisconsin Law Review* 399 at p406-407.

¹⁷⁰ See Cahn, *ibid*, p408. See also Yee A, 'Parental Responsibility in Juvenile Justice, National Conference of State Legislatures, *LegisBrief*, Vol 7 No. 3, January 1999.

Enforcement and Prevention Act, which, amongst other measures, imposed criminal responsibility on parents if they had contributed to their child's offence by failing to exercise reasonable care, protection, and control over the child.¹⁷¹ Parents found guilty would be liable for a fine of up to \$2,500 and/or imprisonment for up to one year.

Some States in the US have recently enacted laws that allow courts to order the parents of a juvenile offender to attend counselling or other programs. A report on juvenile justice initiatives in the States in the period from 1994 to 1996 notes:

...new laws in Arizona, Florida, Indiana, Kansas, Kentucky, North Carolina, North Dakota, and Oregon require parents to attend counselling or other court-ordered treatment programs. Recent legislation in Arkansas, Colorado, Texas and Wisconsin requires adult participation in parent training and responsibility courses. Often, involvement in these types of programs is a diversion option, with participation deferring any further punitive sanction from the court.¹⁷²

Some States in the US now have laws that allow courts to make the following types of orders in relation to the parents of juvenile offenders:

- An order that the parents pay the costs of the court proceedings;
- An order that the parents reimburse the State for the costs of child's detention.
- An order that the parents pay compensation for damage caused by the offence.¹⁷³

Many States also have parental civil liability statutes, which allow a victim of a child's destructive act to recover damages from the child's parents in *civil* proceedings.¹⁷⁴

Canada

Canada no longer has laws that impose criminal responsibility on the parents of juvenile offenders.¹⁷⁵ However two provinces, Manitoba and Ontario, have recently (1996 and 2000, respectively) enacted parental civil liability statutes, which impose civil liability on the parents of a child who has deliberately destroyed another person's property.¹⁷⁶ Parents will not be liable if they can show they were exercising reasonable supervision over the child at the time when the child engaged in the activity that caused the damage.

¹⁷¹ See *California Penal Code*, sections 272(a)(1), (a)(2).

¹⁷² US Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice Initiatives in the States 1994-1996*, October 1997, p20.

¹⁷³ See Yee A, note 170.

¹⁷⁴ See Davidson H, 'No consequences – Re-examining Parental Responsibility Laws', (1995-96) 7 *Stanford Law and Policy Review* 23 at 26.

¹⁷⁵ See Roy M 'When all else fails, blame the parents: An analysis of Parental Responsibility Laws in Canada', (2001) 10 *Dalhousie Journal of Legal Studies* 142 at 144.

¹⁷⁶ Roy M, *ibid*.

8. DEBATE ABOUT PARENTAL RESPONSIBILITY LAWS

Arguments for parental responsibility laws

Arguments for parental responsibility laws generally

Proponents of parental responsibility laws rely on research evidence showing that inadequate parenting is one of the strongest predictors of juvenile crime and delinquency.¹⁷⁷

The main argument for these laws is that they are a necessary and effective measure for getting parents to take proper responsibility for their children, particularly in terms of exercising proper supervision over them and controlling their behaviour. By doing this, these laws will help to prevent juvenile crime and anti-social behaviour.

Most parental responsibility laws rely on the imposition or threat of legal sanctions, namely fines, to get parents of juvenile offenders to take proper responsibility for their children. Parental responsibility contracts and orders are in a slightly different category.

Arguments for parental responsibility contracts and orders

The arguments put forward for introducing parental responsibility contracts and orders in the UK and WA have been referred to above.¹⁷⁸ In summary, the rationale is that many parents of children who have engaged in criminal or anti-social behaviour, or truanting, need guidance in order to take proper responsibility for their children. To this end, the government should encourage parents to attend parental guidance counselling and to take certain steps to monitor their children. If some parents are not willing to cooperate, in appropriate cases, a court should have the power to compel them to take these courses of action. The evaluation of the UK National Parenting Programme¹⁷⁹, and other academic research, shows that parental guidance can reduce juvenile delinquency.¹⁸⁰

Outlined below are some comments made by representatives of the Office of Crime Prevention (WA) in support of the proposal to introduce parental responsibility agreements and orders in WA. The comments were made in evidence to the Committee inquiry.¹⁸¹

¹⁷⁷ See Section 2 of this paper.

¹⁷⁸ As to arguments for UK laws, see p15, 19 above. As to arguments for WA laws, see p26-27 above. See also Standing Committee on Legislation (WA), *Inquiry into Parental Support and Responsibility Bill 2005*, Transcript of Evidence, 14/12/05, p2-5.

¹⁷⁹ This evaluation is discussed on p17-19 above.

¹⁸⁰ See, for example, Farrington D and Welsh B, 'Family-based Prevention of Offending: A Meta-analysis', (2003) 36(2) *The Australian and New Zealand Journal of Criminology* 127.

¹⁸¹ These comments were made in oral evidence to the Committee inquiry into the bill. See Standing Committee on Legislation, *Inquiry into Parental Support and Responsibility Bill 2005*, Transcript of Evidence, 14/12/05; and Transcript of Evidence, 8/2/06.

It is necessary to allow for the making of orders as well as agreements

Mr Michael Thorn, Director of the Office of Crime Prevention, stated:

If you remove the order component and make it, therefore, entirely voluntary, you then allow people that option of whether they are going to be part of it. I would put to you that those people who volunteer to be part of these services are not the ones whom we are really keenly interested in; it is the people who resist, for whatever reason. Some might resist because it is a lack of knowledge or understanding of what we are talking about, or there might be people who are totally opposed to the state having any say over their lives. The fact of the matter, of course, is that the state is always curtailing people's activities, for whatever reason...¹⁸²

Ms Hilary MacWilliam, Manager of the Responsible Parenting Initiative, stated:

We are not suggesting that the order will be used extensively...Most people will voluntarily comply, but there will be instances in which there needs to be a change in the child's behaviour. It is in the interests of the community, the child and the child's siblings that the parents lift their parenting skills and demonstrate that they have made changes to how they deal with their family. In those instances, orders may be well be sought by agencies.¹⁸³

Orders will not be sought or made if they are not likely to be effective

Mr Thorn stated:

In terms of the order component of the legislation, the bill does refer to whether, in the view of the people who are making the application, parenting is identified as the issue that could change the circumstances around the antisocial, offending and school attending behaviour of the young person. Therefore, we will not be seeking an order in circumstances in which clearly environmental or other circumstances mean that all the efforts of parent support will not result in any change. It would be pointless seeking an order in such circumstances...¹⁸⁴

Ms Wendy Attenborough, Principal Policy Officer, Office of Crime Prevention, added:

...clause 18(2) of the bill...sets out the matters that the court must consider when making an order. A pretty high threshold is set there in terms of the matters that must be considered. Certainly the social and environmental factors and circumstances of a family are directly pertinent. It is unlikely that an application for an order would be brought forward in circumstances in which we were setting somebody up to fail. [An] agency would not be seeking an order in circumstances in which we knew that the surrounding situation of the family would make it impossible for it to comply.¹⁸⁵

The Committee Chairman, Hon Graham Giffard MP, referred to a submission that parents with drug and alcohol problems or mental illness may not have the skills or resources to make their children behave more appropriately. The Chairman asked the witnesses whether they wanted to add anything to their earlier evidence. Ms MacWilliam noted that clause

¹⁸² Transcript of Evidence, 14/12/05, p14. See also evidence of Ms Attenborough on p15.

¹⁸³ Transcript of Evidence, 14/12/05, p15.

¹⁸⁴ Transcript of Evidence, 8/2/06, p10.

¹⁸⁵ Transcript of Evidence, 8/2/06, p10

18(2) of the bill required these types of issues to be considered. Mr Thorn added:

That said, that does not mean that you do not try – and the circumstances are assessed – to see whether some improvements can be secured. The parents support program has been built up in partnership with our drug and alcohol services as well as other welfare services. If part of the program that needs to be put together to help those parents improve their parenting capacity means being referred to drug and alcohol programs, that is what will happen...¹⁸⁶

Response to criticism that punishing parents will aggravate parent-child relationships

Responding to the suggestion that punishing parents would “aggravate already dysfunctional parent-child relationships”, Mr Thorn said:

...I do not think that that type of circumstance should cause us to not tackle the issue of parenting. The risk that that might further contribute to a breakdown in the relationship between a parent and a child should not be the basis upon which we make a decision about whether an order is sought. We must look at this in a realistic way in the sense of what are the likely outcomes and circumstances, and that must be based on what [WA] and other places have experienced. Our experience in [WA] is that we are trying to go to the heart of this particular problem of what is a parent’s responsibility. To be afraid to tackle that issue because of some special instances or because of a minority of circumstances or cases would be to fail in our responsibility to deal with the issue.¹⁸⁷

Ms Attenborough stated that the evaluation of the program in the UK found that it improved parent-child relationships. Ms MacWilliam added:

Another point is that when a court makes an order, it is not a punishment of the parent in any way. An order requires the parents to participate in services and assistance that are offered to them. The clinical framework that is being used is very much a strengths-based approach. It is a persistent attempt to engage with parents, even when they are subject to an order, to assist them to find better ways to create better outcomes for their families and their children.¹⁸⁸

However, Ms MacWilliam did accept that some parents might experience it as a penalty.¹⁸⁹

Response to suggestion legislation may not be appropriate for indigenous families

Committee member, Hon Giz Watson MP, asked whether any consideration had been given to the fact that the circumstances of Aboriginal people in Western Australia are totally different from parents who have participated in the UK model.¹⁹⁰ Mr Thorn replied:

I think what you say is absolutely right; that the experience of Aboriginal families will be completely different. That is why we are engaged in very intensive policy and program development work to come up with solutions and models for dealing with that problem. I think the point is important,

¹⁸⁶ Transcript of Evidence, 8/2/06, p15.

¹⁸⁷ Transcript of Evidence, 8/2/06, p12.

¹⁸⁸ Transcript of Evidence, 8/2/06, p12.

¹⁸⁹ Transcript of Evidence, 8/2/06, p14.

¹⁹⁰ See Transcript of Evidence, 8/2/06, p8.

however, that Aboriginal families have as much responsibility for their children as European families. I do not think we should run away from that fact. The fact that it is a difficult and tough nut to crack does not mean that we should not have a go at it...¹⁹¹

Arguments against parental responsibility laws

Arguments against parental responsibility laws generally

Some of the main arguments against parental responsibility laws are as follows:¹⁹²

1. Legal sanctions will not be the solution to inadequate parenting because inadequate parenting is often the result of incapacity to parent properly because of problems such as poverty, long working hours, drug abuse, and mental illness.
2. Punishing parents is likely to increase tensions and financial hardship in families already in crisis. This is likely to be counterproductive in attempting to prevent juveniles from offending. It may also result in a parent harming their child.
3. Better parenting is unlikely to prevent a child from continuing to offend because:
 - a. There is often a range of other factors that cause children to offend.
 - b. At this stage, many parents are unlikely to be able to control their children.
4. Instead of blaming parents for being irresponsible it would be more effective to provide them with support, at an early stage, and to reduce socio-economic disadvantage.

Arguments against parental responsibility contracts and orders

Outlined below are some of the criticisms made of the proposed laws in WA.

Guidance counselling will not have much impact on parenting in many families

The Youth Affairs Council of WA has submitted that the bill introduced in WA:

...fails to address the myriad of interconnected factors that influence parents' capacity to provide consistent and 'effective' parenting to their children. These factors include socio-economic and cultural issues, the life experiences of parents including the way they were parented, drug and alcohol issues, mental health issues, and problems within parental relationships.¹⁹³

¹⁹¹ Transcript of Evidence, 8/2/06, p8. See also p10.

¹⁹² See Evaluation Committee, *Report from the Evaluation Committee on the Children (Parental Responsibility) Act 1994*, February 1997; Arthur R, 'Punishing Parents for the Crimes of their Children', (2005)44(3) *The Howard Journal* 233; Hil R and McMahon A, *Families Crime and Juvenile Justice*, Peter Lang Publishing Inc, New York, 2001; Cahn N, 'Pragmatic Questions about Parental Liability Statutes', (1996) *Wisconsin Law Review* 399 at 415ff

¹⁹³ Youth Affairs Council of WA, *Submission to the Standing Committee on Legislation Inquiry into the Parental Support and Responsibility Bill 2005*, January 2006, p3.

Its submission also refers to evidence, which “shows that it’s difficult for stressed families to benefit from parenting programs when they face multiple disadvantages”.¹⁹⁴

Forcing parents to attend guidance counselling will not lead to better parenting

Ms Karyn Lisignoli, from the Youth Affairs Council of WA, has stated:

We do not believe that compulsion works in these matters...When people are compelled to do things, they dig in their heels because they think it is inappropriate. They will not take the matter seriously or they might not take it on board because they have been told to do it... I do not believe that forcing parents to go to parenting skills programs will make them realise that they must begin to take responsibility for their children...¹⁹⁵

Orders imposed on parents will increase family tension and may result in abuse

A number of stakeholders have expressed concern that orders will increase family tension and that this may lead to children being harmed by their parents. Ms Karyn Lisignoli, from the Youth Affairs Council of WA, has commented on the likely consequences:

I think the harm that will definitely happen is that there will be an increase in friction in the families where these parental responsibility orders are imposed. I think that increase in friction can result in quite real increased abuse for those young people, whether it be physical, emotional, sexual or whatever. Certainly, there will be increased stresses in the household...¹⁹⁶

Penalties for breaching orders will make the family situation worse

A number of stakeholders have argued that fines for parents who breach parental responsibility orders will make matters worse for the family. Judge Jackson, the Chairman of the Ministerial Advisory Council on Child Protection in WA, states:

We have concerns about how a single mother under stress, trying to bring up kids is helped by being fined a few hundred dollars. How does that help her parenting?¹⁹⁷

Judge Jackson also questions what would happen if a parent did not pay a fine:

...If you have a single mother and the court fines her \$1000 and she has three kids at home...and she does not pay the fine, what do you do then? Do we put her in prison? That would be good help for the kids, would it not? Do we make her do some community work? She will not do that either. There are limits on the usefulness of fining people in these situations. That is not to say there is never a case. If it were my kid, probably a fine would be a useful way to make me do what you want me to

¹⁹⁴ Ibid, p4. As to the evidence relied upon, see UK Policy Research Bureau in 2004. *What Works in Parenting Support? A Review of the International Evidence*, p 132 and p127-128.

¹⁹⁵ Standing Committee on Legislation (WA), *Inquiry into Parental Support and Responsibility Bill 2005*, Transcript of Evidence, 8/03/06, Session 2, p7.

¹⁹⁶ Ibid, p4.

¹⁹⁷ Standing Committee on Legislation (WA), *Inquiry into Parental Support and Responsibility Bill 2005*, Transcript of Evidence, 8/03/06, Session 1, p2.

do, but I do not think most of these cases are in that category.¹⁹⁸

Parental responsibility orders are inappropriate for indigenous families

Some stakeholders have expressed the view that parental responsibility laws are particularly inappropriate for indigenous families. The Aboriginal Legal Service of WA submitted:

The ALS agrees with the government's position insofar as it is a priority that children be raised well. It is a priority also those children should not truant, commit crime or engage in anti-social behaviour. Most families want that but some families need help to achieve it. The ALS disagrees with the government that this bill is an appropriate mechanism to achieve that so far as Aboriginal and Torres Strait Islander...are concerned...[Previously] the government's involvement with family life was well intentioned. However, the outcome of those good intentions was the stolen generations, the effects of which continue to be felt today. The results of those intentions render Aboriginal [and Torres Strait Islander] families less likely to comply with the [new laws]. That is one of our concerns and it is why we do not think the legislation would work. We consider also that it would be a bitter irony if children who were parented under those previous arrangements and who carried out what they had learnt on their own families were then penalised under fresh legislation.¹⁹⁹

Government should instead focus on improving parental support services

Critics argue that the government should instead focus on improving the range, accessibility and quality of parenting programs and other parental support services; and on making parents aware of them. The Children's Court of WA has submitted:

...whilst we appreciate the desire to assist parents who are experiencing difficulties in fulfilling their parental responsibilities, we believe that a thorough review and better resourcing of programs within the existing legislative framework is likely to be more productive in the long term.²⁰⁰

Similarly, the Youth Affairs Council of WA argues:

YACWA does agree that there is a need to address family problems and to increase the proportion of parents accessing support services and assistance but believes [the bill] is an inappropriate approach that will be ineffective and harmful. Rather, an increase in resources to provide a wider range of services, strategies that empower parents and reduce the barriers to accessing services and additional support for young people experiencing problems would be more effective.²⁰¹

¹⁹⁸ Standing Committee on Legislation (WA), *Inquiry into Parental Support and Responsibility Bill 2005*, Transcript of Evidence, 8/03/06, Session 1, p4.

¹⁹⁹ Standing Committee on Legislation (WA), *Inquiry into Parental Support and Responsibility Bill 2005*, Transcript of Evidence, 8/03/06, Session 4, p1. See also the following pages of that evidence. See also Brajcich T, 'The WA Proposed Parental Responsibility Contracts and Orders: An Analysis of their Impact on Indigenous Families', (2004) 5(30) *Indigenous Law Bulletin* 11.

²⁰⁰ Children's Court of Western Australia, *Submission in response to discussion paper on parental responsibility orders*, 16/02/04, p4.

²⁰¹ Youth Affairs Council of WA, *Submission to the Standing Committee on Legislation Inquiry into the Parental Support and Responsibility Bill 2005*, January 2006, p6.

Debate about parental responsibility contracts in NSW

Justification for proposed laws

The NSW Government's justifications for introducing parental responsibility contracts in NSW were outlined in the introduction to this paper.

Criticisms of proposed laws

Hon Lee Rhiannon MLC has criticised the proposal to introduce parental responsibility contracts, arguing that it “puts even more pressure on struggling parents and may force more children into a foster care system that is already in crisis”.²⁰² Instead, Hon Lee Rhiannon MLC argued that the Government “needs to address the cause of parenting problems and develop sound education and early intervention responses”.²⁰³

The NSW Association of Child Welfare Agencies has also criticised the proposal. The chairwoman of the Association, Jane Woodruff, is reported as stating:

This is not a very well thought-through strategy...I can't see why you would start by being punitive to people rather than trying to engage them in a positive way. I am not aware of any research evidence that tells you that forcing parents to do things results in better outcomes for them and their children than working with them in other ways.²⁰⁴

The Association also “questioned the Government's ability to provide the extra services parents would need to meet the contract requirements”.²⁰⁵ The Association was also concerned about the possibility of an influx of children needing out-of-home care, without adequate foster and residential care programs in place”.²⁰⁶

The National Council of Social Services (NCOSS) has also expressed concern about the proposal. It issued a press release stating that there was no evidence supporting the proposal and that it blames victims for poor social outcomes.²⁰⁷ The press release also stated:

“Most front line child and family services that NCOSS has spoken to since Sunday's announcement [of the proposal] suggest that the Parental Responsibility contracts will be counterproductive. They will drive a wedge between at risk families and the new early intervention services that the Department of Community Services is seeking to establish.”²⁰⁸

²⁰² ‘Premier lemma is leading parents up the wrong path’, *Media Release*, 6/02/06.

²⁰³ *Ibid.*

²⁰⁴ ‘Parent contracts too punitive’, *Sydney Morning Herald*, 6/02/06.

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*

²⁰⁷ National Council of Social Services, ‘What is the NSW Government respect and responsibility plan?’, *Media Release*, 7/02/06.

²⁰⁸ *Ibid.*

9. PARENT EDUCATION AND SUPPORT SERVICES IN NSW

Introduction

Having discussed legislative measures that have been introduced and proposed in NSW, which are designed to force parents to take proper responsibility for their children, it is relevant to now look at what the State and Federal governments are doing to fund and provide education and support services for parents in NSW. This section begins by looking at the findings of a 1997-98 Parliamentary Committee inquiry into the state of parent education and support services in NSW. This section then refers to relevant State and Government policies that have been introduced in recent years.

NSW Parliamentary Committee inquiry in 1997-98

In 1997-1998, the Legislative Council Standing Committee on Social Issues inquired into education and support programs for parents of children aged 0 to 12 years. In September 1998, the Committee published a 268-page report. In the report, the Committee identified a number of problems with the existing state of services and it made 89 recommendations.²⁰⁹ Some of the main findings and problems mentioned in the report are outlined below.

Government policy: Although there were very clear policy commitments to the provision of support for families, there was an overwhelming theme in submissions and evidence that these policies had not resulted in adequate services to families and children. The issues most commonly raised in these submissions were the failure of government to:

- Adequately fund prevention services;
- Maintain continuity of funding for services;
- Address broader social issues which increase the stress on families.²¹⁰

In relation to the third point, the Committee stated that unless the broader social and economic conditions which hamper family functioning were addressed, the provision of parent education and support programs would only have limited utility.²¹¹

Provision and funding of services: The NSW Government via a number of its Departments provided, and funded non-government agencies to provide, a range of parent education and support services in NSW.²¹² The Federal Government also provided funding for parent education and support programs in relation to its policy responsibilities for child care

²⁰⁹ Parliament of NSW, Legislative Council Standing Committee on Social Issues, *Working for Children: Communities Supporting Families: Inquiry into Parent Education and Support Programs*, Report No. 14, Parliament of NSW, September 1998.

²¹⁰ *Ibid*, p58-59.

²¹¹ *Ibid*, p64.

²¹² *Ibid*, Chapter 3.

services, disability services, child abuse prevention initiatives and family health services.²¹³

Planning and coordination: While there were a number of mechanisms designed to promote the co-ordination of service planning and provision, arrangements for the planning, funding and co-ordination of education and support programs were not adequate to ensure that services were available to parents who needed or wished to use such programs.²¹⁴

Use, access and availability of services: The available research indicated that parents rarely sought professional assistance on parenting issues, and that only a very small proportion of parents participated in formal parenting courses. Disadvantaged parents were very poorly represented, even with services which were universally available. In some cases, these parents experienced difficulties in using existing programs due to practical barriers such as cost or transport, as well as more subtle barriers associated with distrust or cynicism about professionals. In addition, mainstream programs were not always able to meet the more intense or very specific needs of parents. In some instances, the Committee found that parents were unable to receive education and support due to lack of services.²¹⁵

Access and availability for parents with particular needs: The Committee heard evidence from various groups of parents who were unable to access an appropriate range of parent support services. These included parents who, through personal circumstances or characteristics, faced additional challenges in their parenting role, yet were not adequately catered for in existing programs. These challenges were due to reasons such as culture, poverty, disability, or age. It also included parents who were unable to access services due to isolation. The lack of resources outside of metropolitan areas, and the isolation of rural and remote families meant that even mainstream services were difficult to access. Parents with specific needs living in rural or remote areas were doubly disadvantaged.²¹⁶ Although it was outside the terms of reference, the Committee received evidence indicating that there was a lack of education and support services for parents of adolescents.²¹⁷

Quality assurance and accountability: The Committee found that there were no standards, accreditation or other regulation which specifically addressed parent education and support programs, resulting in variable quality of programs, and the risk that some programs might not effect any change in parenting. The Committee also found that there were no requirements or guidelines regarding program evaluations, and that the nature and frequency of evaluations were determined at the discretion of the provider.²¹⁸

²¹³ Ibid, p75-76.

²¹⁴ Ibid, p85.

²¹⁵ Ibid, pvii

²¹⁶ Ibid, pviii.

²¹⁷ Ibid, p126.

²¹⁸ Ibid, pix.

Recent NSW Government policies

Families First

The policy

In May 1998, the NSW Government launched the *Families First* policy, which aims to “increase the effectiveness of early intervention and prevention services in helping families to raise healthy, well-adjusted children”.²¹⁹ The *Families First* policy attempts to take a “whole of government” approach to early intervention, by bringing together a number of government departments and non-government agencies. The policy is targeted at families with children under the age of 8 and it is based on research showing that “early intervention services can produce a sustained improvement in children’s health, education and welfare...[and] that early intervention programs which are designed to reduce the risk of child neglect have an important role to play in long term crime prevention”.²²⁰

The Government stated that *Families First* would:

...better link [existing support services for families] and help them to expand and remodel themselves into a co-ordinated service-delivery network centred around the following fields of activity:

- Supporting parents who are expecting or caring for a new baby;
- Supporting parents who are caring for infants and young children;
- Assisting families who need extra support;
- Linking families to communities and communities to families.²²¹

Three key features of the *Families First* service network are:

- (a) A combination of universal and targeted services;
- (b) Home visiting as a core component of universal early childhood health services;
- (c) Developing universal programs where volunteers support parents at home.²²²

Funding and implementation of *Families First*

The Government initially invested \$54.2 million in the *Families First* policy²²³ and it then allocated \$117 million to the policy for the period from 2002-2006.²²⁴ The policy was first

²¹⁹ NSW Government, *Families First Policy Framework*, 1/09/02, p1.

²²⁰ *Ibid*, p1.

²²¹ *Ibid*, p4.

²²² *Ibid*, p9-10.

²²³ Hon Faye Lo Po MP, *NSW Parliamentary Debates*, 24/10/01, p17892.

²²⁴ Hon Carmel Tebbutt MLC, *NSW Parliamentary Debates*, 31/10/02, p6299.

implemented in 1999-2000 in South-West Sydney, the Far North Coast and Mid North Coast.²²⁵ By October 2003, *Families First* had been implemented throughout the State.²²⁶

Achievements under *Families First*

In October 2003, Hon Carmel Tebbutt MLC, then Minister for Community Services, outlined the following achievements in the first five years of the policy:

- Over 220 new Families First service networks statewide have received funding – one year ahead of schedule – with more to come over the next year.
- Home visiting by nurses provided to over 30,000 babies annually – with nurses set to visit the 87,000 babies born each year in NSW by the end of next year [2004].
- Over 450 trained volunteers and 26 new volunteer home visiting services – linking parents with volunteers to share their experiences of parenting and provide support – are visiting more than 600 families.
- 51 supported playgroups reaching over 700 children and parents have been set up in local communities – giving parents the chance to build parenting skills, access specialist services and information and improve child development.
- 62 new family workers are visiting over 240 families in their home to offer support to parents to develop social and parenting skills and link families to services and group activities for families and children.
- An estimated 68,000 families benefiting every year from the more than 20 Schools as Community Centres – centres located in primary schools providing a range of programs such as playgroups, parenting skills courses, transport and breakfast clubs.
- Families living on many public housing estates can more easily access services and specialist services for pregnant women and young mothers have been extended.²²⁷

Criticism of *Families First* by Opposition

In November 2003, Hon Brad Hazzard MP, who had previously been the Shadow Minister for Community Services, said (in part):

...I have been told that Families First can work well but that it does not work well very often because it does not have the resources or the staff that are necessary to deliver the services that are needed across the State.

... Families are still not able to access all the services they need in the areas in which the Families First program has been implemented. Preventative models work well and parenting classes, toddler training, budgeting classes and mothers' groups all contribute to a safer and more protected environment. However, very few families who are experiencing those problems are able to access those services.²²⁸

²²⁵ Hon Graham West MP, *NSW Parliamentary Debates*, 11/11/03.

²²⁶ '5th Anniversary Marks Early Success of Putting Families First', *Media Release*, 9/10/03.

²²⁷ *Ibid.*

²²⁸ Hon Brad Hazzard MP, *NSW Parliamentary Debates*, 11/11/03.

UNSW evaluation of *Families First*

The Cabinet Office commissioned a University of NSW Evaluation Consortium to conduct Area Reviews of *Families First* in three areas: South West Sydney, Orana Far West and Illawarra. The consortium consists of academics and representatives of a number of research centres and universities and it is managed by the University of NSW Social Policy Research Centre. The consortium has published a number of reports, culminating in the Final Summary Report, which was published in January 2006.²²⁹ This report identified a number of issues relating to the implementation of *Families First* but concluded:

Overall Families First has made significant gains towards developing structures and processes to support and extend the existing service network system that is coordinated and focused on prevention and early intervention support for families and children.²³⁰

Better Futures²³¹

The policy

The NSW Government launched the *Better Futures* policy in 2001, which is the Government's "prevention and early support strategy for children and young people aged 9-18. It aims to improve outcomes for children and young people by encouraging their development, improving family and community support and getting them involved in the community".²³² The policy is based on a number of principles including that "connections to family, friends, school and community are key protective factors for young people".²³³

Funding and implementation

The NSW Government is spending \$12.6 million over five years on the *Better Futures* strategy. Since 2002, it has been implemented in six regions across NSW: Nepean, Illawarra, Central Coast, South East Sydney and Orana Far West. Each region has developed a youth plan to boost the development of networks to support children, young people, families and communities. In 2005/06, *Better Futures* will be implemented in four new areas: South West Sydney, New England, Far North Coast and Mid North Coast.

²²⁹ University of New South Wales Consortium, *Families First Area Review: Final Summary Report, Final Report for the Cabinet Office of NSW*, SPRC Report 1/06, January 2006.

²³⁰ Ibid, p21.

²³¹ This information on the *Better Futures* policy was sourced from NSW Department of Community Services' website http://www.community.nsw.gov.au/html/communities/better_futures.htm; and also from the Department's Annual Report for 2004/05.

²³² NSW Department of Community Services' website, Ibid.

²³³ NSW Department of Community Services' website, Ibid.

Aboriginal Child, Youth and Family Strategy

The policy

The Government has described this policy as follows:

Together with Families First and Better Futures, the Aboriginal Child, Youth and Family Strategy aims to develop more responsive and integrated service networks that better support families and communities in bringing up healthy babies, children and young people.

The emphasis is on better coordination and targeting of existing resources, ensuring mainstream services are meeting the needs of Aboriginal people and testing new ways of supporting these communities.²³⁴

Funding and implementation

The Strategy has been allocated \$12.3 million over four years from 2002-03 to 2005-06.²³⁵ It is being coordinated through the regional structures of the *Families First* initiative.²³⁶ In 2004/05 “the regional implementation of the strategy has resulted in the purchasing of more than \$2 million in services such as after school holiday programs, youth groups, transition to school programs, resilience building programs, parental support and development through household budgeting and family nutrition, and a parenting program for young Aboriginal girls in the juvenile justice system”.²³⁷

DOCS Early Intervention Program²³⁸

The Program

The Department of Community Services (DOCS) Early Intervention Program targets families who are expecting a child or who have a child under the age of 9 and who are facing one or more of the following problems which are likely to escalate and impact adversely on their capacity to parent adequately and/or on their child(ren)’s wellbeing:

- Domestic violence;
- Parental drug and alcohol misuse;
- Parental mental health issues;
- A lack of extended family or social supports;
- Parents with significant learning difficulties or an intellectual disability;

²³⁴ NSW Government, *Aboriginal Child, Youth and Family Strategy Resource Kit*, 25/06/04, p1.

²³⁵ Hon Carmel Tebbutt MLC, *NSW Parliamentary Debates*, 24/6/04, p10072

²³⁶ Hon Carmel Tebbutt MLC, *NSW Parliamentary Debates*, 24/6/04, p10072.

²³⁷ NSW Department of Community Services, *Annual Report: 2004/05*.

²³⁸ This information about the Early Intervention Program is primarily sourced from NSW Department of Community Services, *Early Intervention Program: Brief Overview* – available on the Department’s website: http://www.community.nsw.gov.au/documents/EIP_overview.pdf

- Child behaviour management problems (eg: parent/child conflict, school problems, parenting difficulties).

DOCS assesses reports of low to medium risk of harm that come through its Helpline and refers eligible families to the Program.²³⁹ In the future, lead community agencies will also be able to refer families to the program. DOCS Early Intervention Teams receive all referrals and make decisions about eligibility.

Eligible families that are willing to participate in the program will be linked with an early intervention worker who will work with the family to identify their strengths and needs and develop a tailored support package. The early intervention worker will support the family throughout their involvement in the program and connect them with services.

Support packages will include one or more services that are funded by DOCS under the Program including quality child care, home visiting and parenting programs. Families may also be linked with community-based, government and non-government services not funded under the Program, such as mental health and drug and alcohol services.

Each family support package will be reviewed by the early intervention worker and adjusted regularly as the family's needs change or as progress is made. It is anticipated that a family's average participation in the Program will be approximately 2 years.²⁴⁰

Funding and implementation

The Program is being rolled out across NSW over five years from 2003 to 2008. During this period, DOCS will recruit 350 early intervention case workers and provide funding of \$150 million for services such as quality child care, home visiting and parenting programs.

Early intervention case workers began working in five areas: Epping, Maitland, Tweed, Blacktown and Bankstown. In November 2005, the Government issued a press release stating that the Program had helped more than 200 families in its first six months of operation.²⁴¹ The Minister for Community Services, Hon Reba Meagher MP, said:

...the response to the program from families, experts and the community has been positive.

Families don't always welcome DoCS caseworkers into their home, but staff are now telling me that regular telephone contact and visits to the family home is making a real difference...

The parents they work with are getting better access to specialist health services, improved parenting skills, advice from DoCS' psychologists and support to manage everyday issues like childcare,

²³⁹ See information about eligibility and referrals on the Department's website: http://www.community.nsw.gov.au/html/comm_partners/EIP_eligibility.htm

²⁴⁰ Department of Community Services, 'Early Intervention Program – Frequently Asked Questions', available on the Department's website: http://www.community.nsw.gov.au/documents/EIP_FAQs.pdf

²⁴¹ NSW Premier, Hon Morris Iemma MP, 'Early Intervention Specialists Boosted for Families', *Media Release*, 17/11/05.

doctors' appointments and nutrition.²⁴²

The press release also stated that 39 new early intervention workers would begin work in seven new areas: Coffs Harbour, Wagga, Batemans Bay, Broken Hill, Parkes, St George and Shellharbour.²⁴³ The program is expected to be available across NSW by 2008.

Recent Federal Government policies

*National Crime Prevention Programme*²⁴⁴

In 1997, the Prime Minister launched the *National Crime Prevention Programme* to identify and promote innovative ways of reducing and preventing crime and the fear of crime. The Federal Government committed \$38 million towards this programme (1997 to 2004), which initiated a wide range of policy, research and practical projects. Under the programme, \$8 million was specifically allocated for early intervention initiatives with young people and their families under the *Youth Crime and Families Strategy*.

To build on this programme, in May 2004, the Prime Minister launched the *National Community Crime Prevention Programme*. The Government has committed \$64 million to this programme, which features a national community grants programme and another specifically for the Greater Western Sydney region. The programme provides funding for local projects designed to enhance community safety and crime prevention. One of the 11 priority areas for projects is “early intervention projects with families, children and schools”.²⁴⁵ The Guidelines state that projects can focus on “individuals, families or communities”.²⁴⁶ Family-oriented strategies include “projects that provide parenting support and training to the parents of young, at-risk children and youth”.²⁴⁷

²⁴² Ibid.

²⁴³ Ibid.

²⁴⁴ Information about the National Crime Prevention Programme and the National Community Crime Prevention Programme is sourced from Attorney General's Department, *National Community Crime Prevention Programme: Guidelines for Funding*, October 2005; and from the Attorney General's Department's crime prevention website: <http://www.ag.gov.au/agd/www/ncphome.nsf>

²⁴⁵ Attorney General's Department, Guidelines For Funding, *ibid*, p6.

²⁴⁶ *Ibid*, p6.

²⁴⁷ *Ibid*, p6.

Stronger Families and Communities Strategy: 2000-2004**The policy**²⁴⁸

The Prime Minister, John Howard, launched the *Stronger Families and Communities Strategy* on 16 April 2000. The four-year, \$225 million strategy aimed to help build family and community capacity to deal with challenges and take advantage of opportunities. It consisted of seven linked initiatives, including three family focused initiatives and four community focused initiatives, which provided funding for projects in the community.

Family focused initiatives

- (1) Stronger Families Fund
- (2) Early Intervention Parenting and Family Relationship Support
- (3) Early Childhood Initiative

Community focused initiatives

- (4) Potential leaders in local communities
- (5) Local solutions to local problems
- (6) National skills development for volunteers program
- (7) Can Do Community

The Stronger Families Fund supported locally developed programs to help families with parenting during early childhood years. The Early Intervention Parenting and Family Relationships Support initiative funded locally developed services in parenting support, playgroups, marriage and relationship education and family counselling.

Implementation

The Strategy funded 660 local projects nationally, including:

- 142 early childhood programs;
- 99 parenting skills programs;
- 51 relationships skills programs;
- 188 mentoring and leadership programs;
- 97 community building programs;
- 63 volunteering programs.²⁴⁹

²⁴⁸ This information was taken from Department of Family and Community Services and Royal Melbourne Institute of Technology, *Evaluation of the Stronger Families and Communities Strategy 2000-2004: Early Intervention- particularly in Early Childhood*, Issues Paper, June 2004, p4; and from Stern G, 'Stronger Families and Communities Strategy', *Stronger Families Exchange*, Bulletin No.1, Autumn 2002.

²⁴⁹ Liberal Party of Australia and The Nationals, *A Stronger Economy, A Stronger Australia: The Howard Government Election 2004 Policy, Stronger Families and Communities*, p7. As to projects based in NSW, see the Department of Families and Community Services website: http://www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/programs/sfsc-projects_nsw.htm.

Almost a quarter of these projects were delivered in Indigenous communities and more than half were delivered in rural and remote communities.²⁵⁰

Projects relating to national agenda for early childhood

In May 2003, the Prime Minister announced funding of \$8.8 million under the Stronger Families and Communities Strategy for initiatives under the National Agenda for Early Childhood (the National Agenda is discussed below). This included \$3.2 million towards the *Parenting Information Project*, which aims to inform government and the community sector on what improvements in parenting information and support would make the biggest difference for parents and their children. The project involves two phases:

- Developing the evidence base around early childhood and positive parenting by finding out what parenting information is currently available, what parents want, at what transition points, and how best to get it.
- Developing and testing parenting information products and/or approaches based on these findings.²⁵¹

The Department of Family and Community Services engaged the Centre for Community Child Health to undertake phase one of the project. In June 2004 the Centre published a report, which completed phase one.²⁵² The report contains a literature review of best practice parenting programs and information, it gives examples of current parenting programs in Australia and it identifies gaps in information provision. The report also documents consultations with professionals, policy makers and parents across Australia to identify what information and programs would support parents more effectively, and when and how this information is best provided. The report also contains a conceptual model for the provision of parenting support and it contains some recommended strategies.

Renewal of Stronger Families and Communities Strategy: 2005-2009²⁵³

On 7 April 2004, the Prime Minister announced the renewal and refocusing of the *Stronger Families and Communities Strategy*. Funding of \$490 million has been committed for the five years from 2004-2009. The new strategy has four streams:

- (1) Communities for Children (\$140 million)
- (2) Early Childhood – Invest to Grow (\$70 million)

²⁵⁰ Liberal Party of Australia and The Nationals, *A Stronger Economy, A Stronger Australia: The Howard Government Election 2004 Policy, Stronger Families and Communities*, p7.

²⁵¹ Department of Family and Community Services, National Agenda for Early Childhood, *Parenting Information Project: Main Report*, June 2004, p1. The report can be located at: http://www.facs.gov.au/family/early_childhood_pip/volume1/volume1.pdf

²⁵² Ibid.

²⁵³ This information was sourced from the Department of Families and Community Services website: <http://www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/programs/sfsc-sfcs.htm>

- (3) Local Answers (\$137 million)
- (4) Choice and Flexibility in Child Care (\$125 million)

Under the *Communities for Children* stream, non-government agencies are funded in 45 community sites around Australia to develop and implement a whole of community approach to early childhood development, in consultation with local stakeholders. Examples of activities being implemented include home visiting, parenting and family support programs, and early learning and literacy programs.

The *Early Childhood-Invest to Grow* stream funds a range of successful established programs as well as a number of developing early childhood programs. Funding will also support the development of tools and resources for use by families, professionals and communities supporting families and young children. This includes a national parenting information website, was launched in May 2006.²⁵⁴

Local Answers aims to help strengthen disadvantaged communities by funding local, small-scale, time limited projects that help communities build skills and capacity to identify and take action for the benefit of their members. Funding will support a range of projects including those that build effective parenting and relationship skills.

National Agenda for Early Childhood²⁵⁵

In September 2002, the Federal Government announced plans to develop a *National Agenda for Early Childhood*. In February 2003, the Government released a consultation paper, *Towards the Development of a National Agenda for Early Childhood*. In October 2003, the Government released a document summarising the results of consultations with a wide range of stakeholders. In August 2004, the Government released *The National Agenda for Early Childhood: A Draft Framework*. The Draft Framework document states:

Early childhood is widely acknowledged as crucial period of physical, emotional, intellectual and social growth. How we as a society respond to the needs of young children can have a profound impact on their development and life pathways. This in turn has consequences for the economic and social growth of Australia as a whole.²⁵⁶

The need for a national agenda for early childhood is explained in more detail:

Early childhood development is very complex and no single agent acting on its own will be able to make the difference needed for outcomes. In Australia, this is complicated by the fact that we have three different levels of government, each with different roles and responsibilities in the area of early childhood. International experience suggests that the best outcomes for children will have achieved by a national approach that involves collaboration and cooperation between those with a stake in the future of children. This means coordination across government departments, across levels of

²⁵⁴ See the Australian Parenting Website: <http://www.raisingchildren.net.au/>

²⁵⁵ The information in this section was primarily sourced from the National Agenda for Early Childhood information on Department of Families and Community Services website: http://www.facs.gov.au/internet/facsinternet.nsf/family/early_childhood.htm

²⁵⁶ Australian Government, *National Agenda for Early Childhood: A Draft Framework*, June 2004, p2.

government, between the government and non-government sectors; and in partnership with families, communities and businesses.²⁵⁷

A primary aim of a National Agenda will be to better align the early childhood services system so that it “efficiently and effectively improves outcomes for children”.²⁵⁸ The types of system outcomes the National Agenda hopes to achieve includes:

- More integrated planning across and between levels of government for a sustainable long-term ‘whole of nation’ approach to issues of importance to the early years;
- Clarity about the roles of key stakeholders, including the Australian, state and territory and local governments;
- Genuine commitment to build on current effort and make additional investments in the early years that maximise links and encourage partnerships between stakeholders.
- Agreement on priorities and improved focus on the areas of major risk for children’s development, health and well-being
- Gaps, disparities and duplication in early childhood policy, services and support programs identified and addressed
- Better integration of services and supports on the ground to ensure timely and seamless access to appropriate assistance for young children and their families
- Flexibility in the delivery of services and supports to respond to the diversity of children and families and to local needs and issues, including mainstream responses to issues specific to Aboriginal and Torres Strait Islander Australians;
- Promotion of best practice and national consistency, further implementation of successful models and improved Australian evidence base for prevention and early intervention during early childhood;
- Improved monitoring and reporting of national effort in early childhood
- Improved capacity and valuing of the early childhood early learning, care, health and family support workforce to provide quality, consistent and skilled support for optimal child development.²⁵⁹

The Draft Framework for the National Agenda lists four priority areas to focus on:

- (1) Healthy young families;
- (2) Early learning and care;
- (3) Supporting families and parents;
- (4) Creating child-friendly communities.²⁶⁰

²⁵⁷ Ibid, p5.

²⁵⁸ Ibid, p13.

²⁵⁹ Ibid, p14.

²⁶⁰ Ibid, p15.

The objectives of the third priority area, supporting families and parents, include, for example, “improved access for all parents to quality and culturally appropriate support services which help them provide their child with a safe and secure environment, emotional warmth, stability, good nutrition and consistent discipline”, “increased access to and uptake of parenting programs”, and “better coordination and referral mechanisms between family support and children and specialist intervention services”.²⁶¹

The Government has not yet developed a final framework for the national agenda.

Indigenous Parenting and Family Well-being program²⁶²

The Federal Government developed the *Indigenous Parenting and Family Well-being* initiative in response to the May 1997 report of the *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*. The program was allocated funding of \$1.9 million per annum and it aimed to:

- Recognise and promote the importance of strong families among Aboriginal and Torres Strait Islander people;
- Provide information about parenting and family well-being;
- Promote culturally appropriate quality family support mechanisms that recognise the diversity of Aboriginal and Torres Strait Islander families; and
- Provide support and assistance for the younger generation of Aboriginal and Torres Strait Islander people to participate in family life and build strong families and communities for the future.

As at 1 March 2004, more than 20 projects had been funded across Australia under the program. The program was reviewed in 2004. As a result of the review, the program was merged with the Aboriginal and Islander Child Care Agencies program from 1 January 2006. It is now known as the *Indigenous Children Programme*.

²⁶¹ Ibid, p18.

²⁶² This information was taken from the Department of Family and Community Services' website: http://www.facs.gov.au/internet/facsinternet.nsf/family/parenting-parenting_early_childhood.htm

10. CONCLUSION

Parental responsibility laws became a controversial issue in NSW when the *Children (Parental Responsibility) Act 1994* was enacted 12 years ago. These laws are still controversial and there is likely to be significant debate about the NSW Government's proposal to introduce new laws that allow for the making of parental responsibility contracts; and regarding the laws proposed by the NSW Opposition.

The details of the new laws proposed by the NSW Government have not yet been released and it is unclear how they will fit in with existing care and protection laws and with the Department of Community Services' Early Intervention Program.

The NSW Government's proposal is similar to laws that have been introduced, or proposed, in a number of other jurisdictions in recent years. Most notably, the introduction of parenting contracts and orders in the UK and the introduction of a bill by the West Australian Government, which is modelled on the UK laws. This bill is currently the subject of a lengthy inquiry by a Parliamentary Committee.

There appear to be some differences between the NSW Government's proposal and the UK and WA model. First, the NSW proposal would target the parents of children who are at risk of neglect whereas the UK and WA laws target parents of children who have engaged in criminal or anti-social behaviour or truanting. Secondly, breaches of contracts in NSW could result in a child being removed from the family home, whereas under the UK and WA models, parents who breach parenting orders are liable to be fined.

Parental responsibility laws aim to reduce juvenile crime and anti-social behaviour by getting parents to take proper responsibility for their children. Some laws attempt to do this by punishing parents, by ordering parents to exercise better supervision, or by encouraging or ordering parents to attend guidance counselling. Critics argue that the laws will not be effective for various reasons including because the laws do not address the underlying causes of inadequate parenting. Critics also contend that the laws will actually be counterproductive because they will increase tensions within families. Opponents also maintain that a better response would be to provide more support services for parents.

Aside from legislative measures, the State and Federal Governments are increasingly recognising the importance of developing early intervention and parental support services, and they have introduced a number of policies in this area in recent years.

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