THE CHILDREN (PROTECTION AND PARENTAL RESPONSIBILITY) ACT 1997 (NSW) - IMPLEMENTATION ISSUES

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Introduction

The Children (Protection and Parental Responsibility) Act 1997 enables local police to remove young people at risk in public places and return those young people to their parents. These powers can only be granted when a local council has provided an application to the NSW Attorney General and fulfilled a number of criteria which include consultation with the local community and the demonstration of adequate crime prevention and youth support activities. The Act also provides a framework for the endorsement and support of local crime prevention plans submitted to the Attorney General by local councils.

This paper will report on the current response by NSW councils to this legislation and a number of implementation issues in regard to the establishment of the police powers to remove young people at risk including:

- the application process;
- the establishment of effective protocols between local agencies;
- the need for adequate youth and social support services to support the police powers; and
- the recruitment of approved persons who care for young people removed from public places.

The Structure of the Act

The Children (Protection and Parental Responsibility) Act 1997 is an Act:

- With respect to the responsibility of parents for the behaviour of their children;
- To enable police to escort children (under certain conditions) from public places to their parents’ residences and other places; and
- To make provision for local crime prevention plans and safer community compacts.

Part Two of the Act provides a range of measures that courts may employ to encourage or promote parental responsibility or actions in the best interests of the child when that child has been found guilty of an offence. These measures can include:

- A court requiring the attendance of parents at the place where the proceedings are being conducted;
- Undertakings by children (to submit to parental supervision, or participate in a specified program, or reside with a parent, or do other things as specified by the court);
- Undertakings by parents (to do or refrain from doing acts specified by the court, or take specified action to assist the child’s development, or the giving of security for the good behaviour of the child);
- Family counselling; and
- The capacity to fine parents who, by wilful default have contributed directly or in a material respect to the commission of an offence of which the child has been found guilty.
The Act also provides two options which local councils may seek to employ to address crime in the local community.

Part Four of the Act seeks to promote community involvement in the development of local crime prevention plans prepared on the initiative of local government councils through:

- the establishment of a framework for the endorsement of plans as Safer Community Compacts by the Attorney General; and
- the provision of financial support for endorsed plans.

Part Three of the Act enables local councils to apply for additional powers which can be employed by local police to remove young people from public places when those young people are at risk.

This paper is principally concerned with implementation issues associated with the extension of police powers under Part Three of the Act. However it will discuss the relative uptake of Parts Three and Four by local councils as a potential indicator of the capacity of Part Three to effectively address local crime issues.

**Removal of Young People from Public Places Under the Children (Protection and Parental Responsibility) Act 1997**

Part Three of the Act provides for the removal of young people (believed by police on reasonable grounds to be under the age of 16 years) from public places by police. Such powers can only be exercised in a local government area, or part of a local government area, that has been declared as an operational area by the Attorney General.

Police in an operational area have the power to remove a young person when they believe, on reasonable grounds, that the young person:

- is not subject to the supervision or control of a responsible adult; and
- is in the public place in circumstances that place the person at risk.

A young person is considered at risk if:

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

If it is possible or appropriate, the young person who is removed from a public place is taken to the residence of a parent of the young person, or if the person has a carer, his or her care residence. The police must not leave a young person at that residence unless the parent or carer or some other responsible adult is present at the residence, or the police officer is satisfied that the person may safely be left at the residence in the absence of the responsible adult.
If the police are unable to escort or leave a young person at a parent’s or carer’s residence they may escort the young person to a residence of a close relative nominated by the young person. The young person may not be left at the close relative’s residence unless the relative or some other responsible person is present and able and willing to care for the young person.

If for any reason a police officer is unable to escort or leave a young person to the residence of a parent or close relative they may place the young person in the care of:

- the Director-General of the Department of Community Services (DoCS); or
- a person approved by the Director-General of the Department of Community Services.

An “approved person” may keep a young person in his or her care for a period not exceeding 24 hours as may be necessary for arrangements to be made to return the young person to the care of a parent or carer.

A police officer who removes a young person from a public place must not in any circumstances escort the person to, or leave the person at a police station. Before escorting a young person from a public place police must take into account any wishes or feelings of the young person considered in the light of the person’s apparent age and understanding.

**Application Process**

Local councils can request the Attorney General to declare a local government area, or part thereof, to be an operational area under Part 3 of the Act. If the request is approved, local police will have the power to remove young people from a public place in the operational area, under the conditions outlined above. The Act requires the Attorney General have consideration about the following issues before approving an application for an operational area:

1. Local consultation;
2. The extent and nature of crime in the local area;
3. The nature and adequacy of local crime prevention initiatives;
4. The nature and adequacy of local youth support initiatives; and
5. Complaints monitoring.

Local councils must prepare an application which includes information and supporting documentation about the following.

1. Local Consultation

The application must demonstrate that the council has adequately informed and consulted with the local community, including young people and the Aboriginal community, about becoming an operational area. Information and supporting documentation that describes the consultation process and the outcomes of that process are required.
2. The Extent and Nature of Crime in the Local Area

In considering the extent and nature of crime in the area, the Attorney General principally relies on advice provided by the NSW Police Service. However, councils can also inform the Attorney General about both council’s and the community’s perceptions of crime in the area. This information is best provided in the form of a crime profile report (the format required for local crime prevention plans that are endorsed as Safer Community Compacts).

3. Nature of Local Crime Prevention Initiatives

Information and supporting documentation about any local crime prevention initiatives in the area must be provided. Any evidence that council has actively engaged existing resources, and initiated new strategies, in a co-ordinated manner that is likely to reduce those crimes that require the establishment of an operational area will assist an application. The development of a local crime prevention plan, or the intention to develop a plan, will also assist an application. However, it should be noted that the Act does not require the development of a plan as a prerequisite to approval of an operational area. In assessing the appropriateness of existing or new strategies, the Attorney General will take into account the size and resources of a local council.

4. Nature of Local Youth Support Initiatives

Information and supporting documentation about any local youth support initiatives in the local area must be provided. Any evidence that council has actively engaged existing resources, and initiated new strategies, in a co-ordinated manner that is likely to provide support and development opportunities for young people will assist an application. In assessing the appropriateness of existing or new strategies, the Attorney General will take into account the size and resources of a local council.

5. Complaints Monitoring

Complaints arising from the exercise of powers under the Act will be dealt with by existing Police Service or DoCS complaint mechanisms. However, councils may be required to monitor, identify and advise the Attorney General on trends in complaints relating to action taken in the operational area. This is normally achieved through council participation in “local operational committees” that are established by Police and DoCS.

Councils are also required to specify whether an operational area is being sought for all or part of the Local Government Area.

Protocols for the Establishment of an Operational Area

The successful operation of Part Three of the Act does not rest solely with either the Police or DoCS. There are a number of key stakeholders who need to work in cooperation to achieve a safe and viable operational area. These stakeholders include the Attorney General’s Department, the local council, NSW Health, other government agencies, youth services, local community groups and local Aboriginal or ethnic organisations.

The NSW Police Service and DoCS have developed joint protocols that guide the establishment and maintenance of operational areas. The protocols describe the process of
establishing a Local Operational Committee (LOC) which can provide the local support and guidance to the establishment of an operational area (if an application is favourably assessed by the Attorney-General).

There are three stages in the development of the LOC:

- Stage 1: Application and Assessment
- Stage 2: Application Approved - Declaration Pending
- Stage 3: Area Declared Operational

**Stage 1: Application and Assessment**

Upon receipt on an application for an operational area the Attorney General seeks advice from the Minister for Police and the Minister for Community Services regarding their support and readiness for the establishment of an operational area.

To facilitate the provision of advice from the local agencies to their respective Ministers the LOC is jointly convened by senior Area officers from the Police Service and DoCS. These officers will also consider other organisations that may need to be represented on the LOC at this stage. Normally this would include representatives from local Aboriginal organisations and local youth services or advocates.

Membership of the LOC tends to be small at this stage as the principal purpose of the LOC is to consider a number of key issues and determine the capacity of local agencies to support an operational area. These issues for consideration may include:

- the geographic boundaries of the proposed operational area;
- the demographic features of the area;
- training requirements and arrangements for local Police and DoCS staff;
- the provision of community education;
- preventative strategies to avoid the need for children to be removed from public places;
- the number of people who will volunteer to be “approved persons”;
- resource issues; and
- any other matters relevant to the local area.

As a result of these consideration the Police Local Area Commander and DoCS Area Manager prepare submissions to their respective Ministers indicating if the establishment of an operational area is viable.

If the LOC has determined that an operational area is viable local protocols will also be developed at this stage. These protocols will describe the local procedures for the exercise of police powers under the Act. It has been the experience of the authors that these local procedures can vary markedly from area to area. For example, in one community, approved persons were recruited from the general community and young people were placed with them in their residence. In another community local volunteers on a Night Patrol were recruited as approved persons enabling expeditious placement of young people, in most cases returning them to their own homes.
Stage 2: Application Approved - Declaration Pending

When the declaration for an operational area is pending the LOC invites other key stakeholders to join the committee including: the local council; the Health Department; the Education Department and others as appropriate to local circumstances.

The LOC is required to undertake a number of key tasks to prepare for the implementation of the operational area including:

• Community education about the operation of the Act;
• The establishment of youth/community support initiatives to enable the establishment of the operational area;
• Recruitment, screening and training of approved persons; and
• The establishment of mechanisms for monitoring the local implementation of the operational area.

Stage 3: Area Declared Operational

If the area is declared operational by the Attorney General the LOC continues to meet regularly (at least once every two months) for ongoing monitoring of the operation of the Act. It is essential that Aboriginal representatives be included in the LOC as key stakeholders. The Aboriginal representatives will have an important role in advising the LOC of culturally appropriate responses to the needs of Aboriginal children and young people under the Act.

The Aboriginal representatives will also report on any complaints from Aboriginal people regarding the local operation of the Act, to ensure that these are promptly dealt with and that effective measures can be taken at the local level to prevent any circumstances or local practices by the Police or DoCS which may be contributing to such complaints.

Education About the Operation of the Act

A number of training and education activities need to occur prior to the establishment of an operational area, namely:

1. Training of Police and DoCS staff about the Act and its implementation;
2. Provision of information to the community about the operational area;
3. Provision of information to young people about the operational area; and
4. Training of approved persons.

The joint protocols state the Police and DoCS will consult with each other regarding resource material which will be used in training of their respective officers who are likely to be involved in the operation of the Act. In particular the training materials cover the interface between the Children (Protection and Parental Responsibility) Act and the Children (Care and Protection) Act and other legislation (such as the Young Offenders Act), as well as aspects of quality control in the implementation of the legislation.

The Police, DoCS and local council also work with local schools and youth services to provide promotional and information activities to educate all children and young people about how
they may be affected by the legislation. A pamphlet produced by the Attorney General’s Department “The Children (Protection and Parental Responsibility) Act: What the new law means for you and your community” is also used for talks to community groups, schools, public education or training sessions.

The Establishment of Youth/Community Support Initiatives to Enable the Establishment of the Operational Area

In a number of the operational areas established it has proved necessary to establish particular services, or enhance existing services, to ensure that the operational area was viable. Most commonly the service that needed to be enhanced or established was a detached youth worker service at night and the provision of suitable transport for young people. In one case this service was established to provide a ready pool of “approved persons” on the streets at night to enable the expeditious placement of young people when their parents were not home. In another community the Night Patrol/Youth Service was not involved in the direct operation of the Act. Rather it was maintained to reduce and prevent the number of young people at risk in public places.

It is anticipated that in other communities different initiatives will be required to increase the viability of the operational area. These services may include: the establishment of an extended hours youth service; alternate recreation activities for young people; the establishment of liquor accords; or the provision of a crisis accommodation space.

Recruitment, Screening and Training of Approved Persons

DoCS is responsible for the recruitment, assessment, training, approval and support of “approved persons” under the Act. Police contribute to this process as required.

The procedures for the recruitment, assessment and approval of approved persons under the Act is similar to that process used for DoCS foster carers. However, in addition to the usual probity check, Police may run frequent police criminal history checks. Police may also undertake criminal history checks on other members of the approved person’s household. All applicants to be approved persons and other members of their household must be informed of, and consent to, this process.

Local DoCS staff arrange a special carer training program to inform approved persons of their responsibilities under the Act. The training also focuses on:

- Adolescent issues;
- Aboriginal issues; and
- Any other significant community issues.

Approved persons may be invited to attend other foster care training programs, but their attendance is not compulsory.

Approved persons are supplied with a Receival Form Book which is signed by the Police Officer who delivers the child to their care. The approved person should forward the original to the supervising (DoCS) Community Service Centre as soon as possible and keep the carbon
copy for their own records. The Receival Form is filed at the Community Service Centre as the form of invoice for any payments to which the approved person is entitled.

A flat payment of $20 per placement event (ie. $20 per child, per 24 hours or part thereof) will be paid to the approved person each time a child is placed with them. This rate equates to the current Special Needs (Disability) Allowance, Category 1 for 12 - 14 year olds. Approved persons may also claim establishment costs up to a maximum of $500.

**Lessons Learnt**

**Uptake**

To date, four operational areas have been established in New South Wales since the Act was proclaimed in December 1997. These areas are in the communities of: Orange; Ballina; Moree and Coonamble. At the time of writing no other councils have applied for an operational area. By contrast the Attorney General’s Department is aware of forty councils across New South Wales that are developing crime prevention plans for endorsement or implementing Safer Community Compacts. Currently there are four Safer Community Compacts in New South Wales: Hastings; Hawkesbury; Moree and Ballina.

The Crime Prevention Division of the NSW Attorney General’s Department has observed that many councils have declined to apply for an operational area once it is recognised that the extension of police powers will not necessarily address complex crime and social problems involving children and young people. Rather many councils have recognised that a more sophisticated local crime prevention approach is required to address the causes of crime.

**Benefits and Dilemmas of Collaboration**

In a number of instances there were clear benefits due to the collaboration between the Police, DoCS, local councils, local youth services, Aboriginal organisations and other community organisations in support of an operational area. In a number of cases the collaboration around this issue enhanced a number of related services and interagency linkages. In particular, the engagement of local government with State government agencies produced improved understanding of the role and responsibilities of the respective agencies.

On the other hand, the requirement to collaborate in the provision of advice to Ministers and the establishment of operational areas also carries the risk that DoCS and Police Officers may be diverted from other priority activities in the establishment of the area. In particular, local agencies required the local protocols to ensure that there was expeditious removal and placement of young people under the Act to ensure that DoCS and Police Officers’ existing responsibilities were not compromised. It was only when such requirements were addressed it was not possible to establish the operational areas in the four existing sites.
Community Perceptions of Crime

In the four operational sites the authors tended to find that there was a prevailing community perception that young people in public places were the principal causes of crime in the area. In most circumstances such perceptions were rarely accurate. As a result of such perceptions there was an unrealistic expectation that the establishment of an operational area would effectively address a number of key concerns about local crime.

In the authors’ experience the process of establishing an operational area required a range of key stakeholders in the community to carefully examine and consider the particular incidence of crime in the community. As a result of this process all four councils that have applied for operational areas have also determined to develop and implement local crime prevention plans, recognising that an extension of police powers (alone) cannot effectively address the range of factors which influence local crime.

The Efficacy of a Problem Solving Approach to Local Problems

There is evidence from a number of operational areas that the establishment of the Youth/Community Support Initiatives in support of the operational area have been more effective than the extended police powers in preventing young people being at risk in public places. This may indicate that a problem solving crime prevention approach may be more effective than the act of removing young people at risk from public places through the use of enhanced police powers.

An analysis of juvenile curfews in the United States conducted by the Crime Prevention Division concluded that “there was evidence that the use of juvenile curfews in the United States has been successful in reducing juvenile crime rates. However because of a statutory obligation to locate curfews in comprehensive youth support programs (health, recreation, education etc) it was not demonstrated that curfews, in the absence of such support services, are an effective crime deterrent….There is no rigorous scientific evidence that the imposition of a curfew in the absence of comprehensive prevention and early intervention strategies is an effective crime prevention measure.”

The experience of establishing operational areas would indicate that, similar to the U.S. experience, the establishment of local crime prevention initiatives may be as, if not more, effective than an operational area in reducing crime. Many councils appear to be reaching that conclusion in New South Wales by determining to adopt a crime prevention plan before considering the need for an operational area.

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Overview of the Children (Protection and Parental Responsibility) Act 1997

Part One Preliminary Information

(Name of Act; Definitions; Operation of Act)

Part Two Parental Responsibility

(Guiding principles for courts; attendance of parents at proceedings; undertakings by children; and parents; family counselling; parents contributing to children’s offences.)

Part Three Welfare of Children in Public Places

(Operational area; children to whom Act applies; when action can be taken; approved persons; use of force.)

Part Four Local Crime Prevention

(Preparation and content of draft local crime prevention plans; Safer Community Compacts)

Part Five Miscellaneous
Operational Areas - Police Powers

Police have the power to remove a young person when they believe that the young person:

- is not subject to the supervision or control of a responsible adult; and
- is in the public place in circumstances that place the person at risk.

A young person is considered at risk if:

- in danger of being physically harmed or injured; or
- in danger of abuse; or
- about to commit an offence.

The police officer can only do this when:

- the public place is in an operational area; and
- they believe, on reasonable grounds, that the young person is under the age of 16 years.
Operational Areas - Where Can the Young Person be Taken?

If it is possible or appropriate the young person is taken, in the following order of preference, to:

- the home of a parent or carer of the person; or
- the home of a close relative they nominate.

If it is not possible or appropriate, they are placed in the care of:

- the Director-General of the Department of Community Services; or
- a person approved by the Director-General of the Department of Community Services.
Application for an Operational Area

The local council’s application must include information about:

consultation with the local community;

the extent and nature of crime in the area;

the nature of crime prevention activities in the area;

the nature of youth support activities in the area; and

the monitoring of complaints in an operational area.
Critical Events

Establishment of local operational committees and local protocols.

Community Education about the operation of the Act.

Establishment of Youth/Community Support Initiatives

Recruitment, Screening and Training of Approved Persons
Lessons Learnt

Uptake of the police powers by local councils.

Benefits and dilemmas of consultation.

Community perceptions of crime.

The efficacy of a problem solving approach to local problems.