YOUTH AFFAIRS

The Children (Parental Responsibility) Act 1994 (NSW) and the rights of the child

On 11 March 1997, NSW Premier, Mr Bob Carr, announced his Government's intention to extend the operation of the *Children (Parental Responsibility) Act 1994* (NSW) (the Act). Part III of the Act allows police to remove any child under the age of 15 from a public place whenever that child is not under the direct supervision or control of a responsible adult. This power is limited only by the requirement that the police consider:

> that to take that action would reduce the risk of a crime being committed or of the person being exposed to some risk [s.12].

Under the legislation the police may request the names and ages of children and the residential address of the parents/carers of the children. The police may then escort the children home or if a parent/carer is not home, to a prescribed 'place of refuge'. Although places of refuge do not include police stations, a child may be delivered to a juvenile justice detention centre. The child may be held under the Act, without charge, for up to 24 hours. No provision is made for the young person to access legal advice and/or a court. It is an offence, punishable with detention and a $500 fine, for the child to attempt to leave or to leave the place of refuge.

Operation of the Act

In its operation the scope of this legislation is enormous. Police become the monitors of the non-criminal behaviour of children and young people in public places. The legislation renders police officers the arbiters of whether or not a child or young person is at risk, or whether or not he or she poses a risk. Determination that a possible 'risk' exists is subjective and entirely discretionary. Such a function is far outside the core business of policing and young people face the very real danger of being apprehended for behaviour which, although legal, offends police notions of appropriate behaviour and use of public space. The capacity for racial, gendered and ageist stereotypes to impact on the exercise of police discretion in this context is significant.

This type of 'preventative apprehension' legislation represents state intervention at its most extreme. Young people often hang out together in groups as a form of free entertainment and for important social interaction. The *Children (Parental Responsibility) Act* makes this behaviour the legitimate subject of police surveillance and intervention. The activities of young people in public places are constructed as potentially sinister and criminal and public places are imbued with danger for young people, especially children. While it is acknowledged that groups of young people, especially young men, may disturb some adults and challenge traditional authority structures, legislating to control such activities is inappropriate.

First, this Act tacitly presumes that young people in public places are threatening or are threatened. This presumption alone underpins the enactment of the *Children (Parental Responsibility) Act*. Second, in quasi-criminalising kids and codifying notions of parental responsibility the state fails in any way to acknowledge its role in contributing to the trend of young people gathering together and 'looking for trouble' (if indeed such a trend exists at all!). In particular, it ignores the reality that a dearth of community and youth services, particularly in rural NSW, may contribute significantly to the use of public spaces by young people. The underlying social, economic and cultural issues which see young children on the streets, another oft cited justification for the existence and now the expansion of this legislation, are also conveniently ignored by this Act. The legislation also denies the fact that for some young people home and parents do not provide a safe haven. Indeed, for some kids, their residences expose them to a significant risk of harm.

To date the legislation has been operating only in the towns of Orange and Gosford. In late 1996, in response to widespread community concern, an Evaluation Committee made up of representatives from the Attorney-General's Department, the Police Service, the Department of Community Services, The Cabinet Office and the Local Government and Shires Associations and Youth Justice Coalition was established to consider the *Children (Parental Responsibility) Act*. The impact of the legislation on Indigenous young people and Vietnamese youths was of particular concern.

Critiques of the Act

The report of the Committee found that the legislation breached international law as well as the principle that apprehension by the police requires the commission of a crime or a reasonable suspicion that a crime has been committed. It has been suggested that a complaint about the Act to the United Nations' Human Rights Committee on the grounds that the legislation breaches several articles of the International Covenant on Civil and Political Rights, to which Australia is a signatory, would be successful.[1] The legislation also offends certain articles of the Convention on the Rights of the Child and is in direct contravention of the recommendations of the Royal Commission into Aboriginal Deaths in Custody, specifically recommendation 62 which states:

> [t]hat governments and Aboriginal organizations recognize that the problems affecting Aboriginal juveniles are so widespread and have such potentially disastrous repercussions for the future that there is an urgent need for governments and Aboriginal organizations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems and, in particular, to reduce the rate at which Aboriginal juveniles are separated from their families and communities, whether by being declared to be in need of care, detained, imprisoned or otherwise.

The Evaluation Committee recommended the immediate repeal of the legislation.

Despite the damning findings of the evaluation, the NSW Government proposes to extend the application of the Act to other country towns. Communities wishing to have the legislation enforced in their local area will be required to apply to the Attorney-General. After consideration of the views of the Commissioner of Police, the level and nature of crime in the area, local

crime prevention planning and whether a Safer Community Compact has been developed, the Attorney-General will determine if the legislation will be extended to the community making the application.[2]

On top of its plans to extend the application of the *Children (Parental Responsibility) Act* the NSW Government intends to amend the legislation. These changes were identified as necessary by the report of the Evaluation Committee. Amendments will be made to ensure police inform a parent or guardian of a child's removal under the Act; young people may be taken to another relative if a parent/carer is not home; and the police must accompany a child *into* his or her home or the home of a relative if he or she has been picked up under the Act. It is envisaged that these amendments will be introduced during the coming parliamentary session.

Given the 'law and order' rhetoric associated with the 1995 NSW election, it is not surprising that the Labor Government has ignored the findings of the Evaluation Committee on this legislation and decided instead to extend its operation. Its approach to matters of juvenile justice has been characterised by 'a get tough on crime' strategy possibly even more extreme than some of those adopted in this and other jurisdictions by Liberal governments. In late 1996 the NSW Government proposed the enactment of anti-gang legislation which would allow police to break up groups of three or more young people on the suspicion that they may harass or intimidate others. Despite the moves to extend the *Children (Parental Responsibility) Act* this legislation may yet remain on the drawing board.

The irony of extending the operation of the *Children (Parental Responsibility) Act* while simultaneously calling, in the wake of the Wood Royal Commission, for tough measures to address paedophilia and the mistreatment of children within the NSW education system is apparently lost on the Government. While on the one hand the NSW Government relies on the status of children as vulnerable members of our community to justify initiatives to protect them from the illegal actions of adults, it has failed to acknowledge that under the *Children (Parental Responsibility) Act* it relies on this very vulnerability to justify its illegal incursions on the rights of children and young people and to threaten their freedom to use public space.

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References

1. The Youth Justice Coalition, 'Media Release: Carr's Law Against Children may be Tested in Geneva', 10 March 1997.
2. Safer Community Compacts refer to proposed agreements that will outline a community's strategy for preventing crime and addressing issues such as adequate street lighting. These compacts are an initiative of the Carr Government's $1.15m Safer Communities Development Program also announced on 11 March 1997.

Goldfam article continued from p.88.

A key element of the NT Government's push for Statehood is the 'patriation' of the Land Rights Act to the Territory. Perhaps to make this more palatable to the Commonwealth it is proposed that the patriated Land Rights Act be entrenched as an 'Organic Law' requiring a special majority of Parliament to repeal or substantially amend it.[10] However, as the Country/Liberal Party has been able to consistently maintain commanding legislative majorities since self-government, there is every possibility that it could muster the required special majority even without bi-partisan support. Moreover, with only a unicameral Parliament, there would be no Upper House to resist the excesses of a future NT State government hellbent on dismantling land rights legislation. If and when this occurs, the continuing contest between the Darwin cowboys and the Canberra suits would shift to a new phase, but the cowboys' grins would be as wide as the Gulf of Carpentaria.

References

1. *Northern Territory (Self-Government) Act 1978* (Cth), s.6.
2. See Renwick, J., 'Protection of Aboriginal Sacred Sites in the Northern Territory — A Legal Experiment' (1990) 4(19), *Federal Law Review* 378-419.
3. *Aboriginal Areas Protection Authority v Ben Tapp* (unreported decision No. 9311030 of McGregor SM, 21 September 1994, Northern Territory Court of Summary Jurisdiction, Katherine).
4. Section 50(1) of the *Northern Territory (Self-Government) Act 1978* (Cth) limits the power of the Northern Territory legislature in terms identical to those by which Article 51(xxxi) of the Constitution limits Commonwealth legislative power.
5. *An Invitation Document for the Private Development of Crown Land at Larapinta Stage 1 in Alice Springs NT Lot 6481 Town of Alice Springs,* Northern Territory Department of Lands, Darwin, n.d. (c.1981), 2.
6. *An Invitation Document for the Private Development of Crown Land at Larapinta Stage 1 in Alice Springs NT Lot 6481 Town of Alice Springs,* above.
7. See, for example, Toohey J, 'Seven Years On: Report by Mr Justice Toohey to the Minister for Aboriginal Affairs on the Aboriginal Land Rights (Northern Territory) Act 1976 and Related Matters', AGPS, Canberra, 1984; and Hon. Elizabeth Evatt, AC, 'Review of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984', Commonwealth of Australia, Canberra, 1996.
8. Steve Hatton, ABC Radio, 13 September 1994.
9. Shane Stone, NT News, 16 September 1994.
10. See Sessional Committee on Constitutional Development *Exposure Draft — Parts 1 to 7: A New Constitution for the Northern Territory and Tabling Statement,* Legislative Assembly of the Northern Territory, Darwin, June 1995.