



New South Wales

Crimes Amendment (Child Protection—Excessive Punishment) Bill 2000

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to limit the use of excessive physical force to discipline, manage or control a child. The Bill does so by defining the circumstances in which the defence of lawful correction can be raised as a defence in any criminal proceedings relating to the use of physical force against a child. The defence is to be limited to the parents of the child and certain persons acting for a parent. The Bill retains the existing requirement that the use of physical force must be reasonable in the circumstances, but specifically excludes the application of force:

- (a) by the use of a stick, belt or other object (other than an open hand or other than in a manner that could reasonably be considered trivial or negligible in all the circumstances), or

- (b) to any part of the head or neck of a child (other than in a manner that could reasonably be considered trivial or negligible in all the circumstances), or
- (c) to any part of the body of a child in such a way as to cause, or threaten to cause, harm to the child that lasts for more than a short period.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the day occurring 12 months after the date of assent.

Clause 3 is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

Schedule 1 [1] inserts into the *Crimes Act 1900* proposed section 61AA. At present, an act is not an assault if it is done by a parent or certain other persons in the course of lawfully correcting a child, provided the act is reasonable. Whether the act is reasonable depends on all the relevant circumstances, including (but not limited to) the nature of the alleged misbehaviour, the type of physical force used, the age and health of the child and the harm caused by the use of that physical force. The proposed section will limit the defence currently available:

- (a) by limiting the defence to a parent or a person acting for a parent, and
- (b) by excluding:
 - the application of force by the use of a stick, belt or other object (other than the open hand or other than in a manner that could reasonably be considered trivial or negligible in all the circumstances), or
 - the application of force to any part of the head or neck of a child (other than in a manner that could reasonably be considered trivial or negligible in all the circumstances), or
 - the application of force to any part of the body of the child in such a way as to cause, or threaten to cause, harm to the child that lasts for more than a short period.

The proposed section leaves untouched other defences that may be available at common law. The proposed section makes it clear that the existing limitation (that is, that force was reasonable in the circumstances) remains. The persons who are authorised to act for a parent are limited to step-parents, de facto spouses who live together as a couple or relatives who have the express authority of a parent to use physical force or, in the case of a child who is an Aboriginal or Torres Strait

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Islander, a person recognised by the child's community as being as appropriate person to exercise special responsibilities in relation to the child.

Schedule 1 [2] amends the Second Schedule to the *Crimes Act 1900* to make it clear that the proposed section 61AA will apply to all offences and all courts.



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This PUBLIC BILL, originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Legislative Council

Clerk of the Parliaments.



New South Wales

Crimes Amendment (Child Protection—Physical Mistreatment) Bill 2001

Act No , 2001

An Act to amend the *Crimes Act 1900* to limit the use of excessive physical force to punish children.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Crimes Amendment (Child Protection—Physical Mistreatment) Act 2001</i> .	3 4
2 Commencement	5
This Act commences on the day occurring 12 months after the date of assent.	6 7
3 Amendment of Crimes Act 1900 No 40	8
The <i>Crimes Act 1900</i> is amended as set out in Schedule 1.	9

Schedule 1 Amendments

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(Section 3)

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[1] Section 61AA

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Insert after section 61:

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Defence of lawful correction

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61AA Defence of lawful correction

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- (1) In criminal proceedings brought against a person arising out of the application of physical force to a child, it is a defence that the force was applied for the purpose of the punishment of the child, but only if:
- (a) the physical force was applied by the parent of the child or by a person acting for a parent of the child, and
- (b) the application of that physical force was reasonable having regard to the age, health, maturity or other characteristics of the child, the nature of the alleged misbehaviour or other circumstances.
- (2) The application of physical force, unless that force could reasonably be considered trivial or negligible in all the circumstances, is not reasonable if the force is applied:
- (a) to any part of the head or neck of the child, or
- (b) to any other part of the body of the child in such a way as to be likely to cause harm to the child that lasts for more than a short period.
- (3) Subsection (2) does not limit the circumstances in which the application of physical force is not reasonable.
- (4) This section does not derogate from or affect any defence at common law (other than to modify the defence of lawful correction).

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- (5) Nothing in this section alters the common law concerning the management, control or restraint of a child by means of physical contact or force for purposes other than punishment. 1
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- (6) In this section: 4
- child** means a person under 18 years of age. 5
- de facto spouse** means one of two adult persons: 6
- (a) who live together as a couple, and 7
- (b) who are not married to one another or related by family. 8
- parent** of a child means a person having all the duties, powers, responsibilities and authority in respect of the child which, by law, parents have in relation to their children. 9
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- person acting for a parent** of a child means a person: 12
- (a) who: 13
- (i) is a step-parent of the child, a de facto spouse of a parent of the child, a relative (by blood or marriage) of a parent of the child or a person to whom the parent has entrusted the care and management of the child, and 14
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- (ii) is authorised by a parent of the child to use physical force to punish the child, or 19
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- (b) who, in the case of a child who is an Aboriginal or Torres Strait Islander (within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*), is recognised by the Aboriginal or Torres Strait Islander community to which the child belongs as being an appropriate person to exercise special responsibilities in relation to the child. 21
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- (7) This section does not apply to proceedings arising out of an application of physical force to a child if the application of that force occurred before the commencement of this section. 28
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- (8) The Attorney General is to review this section to determine whether its provisions continue to be appropriate for securing the policy objectives of the section. The review is to be undertaken as soon as possible after the period of 3 years from the commencement of this section. A report on the outcome of the review is to be tabled in each House of Parliament within 6 months after the end of the period of 3 years. 31
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Amendments

Schedule 1

[2] Second Schedule	1
Insert “, 61AA” after “40”.	2