

Introduced by the Hon A G Corbett, MLC

First print



New South Wales

Crimes Amendment (Child Punishment) Bill 1997

Explanatory note

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

Overview of Bill

The object of this Bill is to limit the use of physical force to discipline, manage or control a child. The Bill does so by defining the circumstances in which the use of physical force 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:

- (a) the use of force to any part of the body above the shoulders, or
 - (b) the use of force by any means other than an open hand, or
 - (c) the use of force to inflict actual bodily harm.
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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 2 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 punishment is reasonable. Whether the punishment 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 by limiting the defence to a parent or a person acting for a parent and by excluding the application of force above the shoulders, the application of force by any means other than by an open hand or the application of force that inflicts actual bodily harm. The 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 or relatives who have the express or implied authority of a parent to use physical force.

Schedule 1 [2] makes a consequential amendment to section 1 of the *Crimes Act 1900* (short title and contents of Act).

Schedule 1 [3] 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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New South Wales

Crimes Amendment (Child Punishment) Bill 1997

No. , 1997

A Bill for

An Act to amend the *Crimes Act 1900* with respect to the use of physical force to discipline, manage or control children.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Child Punishment) Act 1997*.

2 Commencement

This Act commences on the day occurring 2 months after the date of assent. 5

3 Amendment of Crimes Act 1900 No 40

The *Crimes Act 1900* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 61AA

Insert after section 61:

Corporal punishment defence

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61AA Corporal punishment defence

- (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 discipline, management or control of the child, but only if: 10
- (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 in the circumstances. 15
- (2) Without limiting the circumstances in which the application of physical force is not reasonable, the application of physical force is not reasonable if: 20
- (a) the force is applied to any part of the body above the shoulders of the child, or
- (b) the force is applied by any means other than an open hand, or
- (c) the force inflicts actual bodily harm.
- (3) The defence of the application of force for the purpose of the discipline, management or control of a child is not available to a person other than a parent of the child or a person acting for a parent of the child. 25
- (4) In this section:
- child* means a person under 18 years of age. 30
- parent* of a child includes a guardian or other person who has lawful custody of the child.

person acting for a parent of a child means a person over 18 years of age:

- (a) who is a step-parent of the child, a de facto spouse of a parent of the child or a relative (by blood or marriage) of a parent of the child, and 5
- (b) who is authorised by a parent of the child to use physical force to discipline, manage or control the child, or who reasonably believes that he or she has that authority.

- (5) 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. 10

[2] Section 1 Short title and contents

Insert “(8A) *Corporal punishment defence—s. 61AA*” after “(8) *Common assault—s. 61*” in Part 3. 15

[3] Second Schedule

Insert “, 61AA” after “40”.