



New South Wales

Crimes Amendment (Child Protection—Physical Mistreatment) Act 2001 No 89

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Crimes Amendment (Child Protection—Physical Mistreatment) Act 2001 No 89

Act No 89, 2001

An Act to amend the *Crimes Act 1900* to limit the use of excessive physical force to punish children. [Assented to 5 December 2001]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Child Protection—Physical Mistreatment) Act 2001*.

2 Commencement

This Act commences on the day occurring 12 months after the date of assent.

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:

Defence of lawful correction

61AA Defence of lawful correction

- (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).

- (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.
- (6) In this section:
- child** means a person under 18 years of age.
- de facto spouse** means one of two adult persons:
- (a) who live together as a couple, and
 - (b) who are not married to one another or related by family.
- 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.
- person acting for a parent** of a child means a person:
- (a) who:
 - (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
 - (ii) is authorised by a parent of the child to use physical force to punish the child, or
 - (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.
- (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.
- (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.

[2] Second Schedule

Insert “, 61AA” after “40”.

[Member's second reading speech made in—
Legislative Council on 27 February 2001
Minister's second reading speech made in—
Legislative Assembly on 21 June 2001]