

[Act 2001 No 89]



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:

* Amended in committee—see table at end of volume.

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- (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

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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 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.