

resource sheet

NATIONAL CHILD PROTECTION CLEARINGHOUSE

Corporal punishment: Key issues

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Corporal punishment is a contentious and much debated issue within the community. This Resource Sheet provides a brief overview of research literature on the use of corporal punishment towards children and the legal landscape regarding corporal punishment as a means of disciplining children in Australia. We examine the distinction between corporal punishment and physical abuse, and the relationship between corporal punishment and discipline. Arguments for and against changes to the law in this area are also discussed.

What is corporal punishment?

Corporal punishment is defined as the use of physical force towards a child for the purpose of control and/or correction, and as a disciplinary penalty inflicted on the body with the intention of causing some degree of pain or discomfort, however mild. Punishment of this nature is referred to in several ways, for example: hitting, smacking, spanking, and belting (Cashmore & de Haas, 1995). Although most forms of corporal punishment involve hitting children with a hand or an implement (such as a belt or wooden spoon), other forms of corporal punishment include: kicking, shaking, biting and forcing a child to stay in uncomfortable positions (United Nations Committee on the Rights of the Child, 2006). The desired outcome of physical punishment is child compliance with adult directives (Gawlik, Henning, & Warner, 2002; Smith, Gollop, Taylor, & Marshall, 2004).

Corporal punishment is the use of physical force towards a child for the purpose of control, correction or discipline.

Corporal punishment or physical abuse?

The degree of physical punishment that a parent or carer can use with a child is subject to legal regulation in Australia. In most states and territories, corporal punishment by a parent or carer is lawful provided that it is carried out for the purpose of correction, control or discipline, and that it is “reasonable” having regard to:

- the age of the child;
- the method of punishment;
- the child’s capacity for reasoning (i.e., whether the child is able to comprehend correction/discipline); and
- the harm caused to the child (Bourke, 1981).

Corporal punishment that results in bruising, marking or other injury lasting longer than a 24-hour period may be deemed to be “unreasonable” and thus classified as physical abuse. As an example, the New South Wales *Crimes Act 1900* (NSW) establishes that corporal punishment is unreasonable if the force is applied to any part of the head or neck of a child or to any other part of the body of a child in such a way as to be likely to cause harm to a child that lasts for more than a short period. Corporal punishment that is unreasonable in the circumstances may lead to intervention by police and/or child protection authorities.

It is lawful in Australia to use corporal punishment to discipline children as long as the punishment is “reasonable” in the circumstances. Punishment that is “unreasonable” (e.g., punishment that causes harm to a child that lasts for more than a short period) may be classified as physical abuse and could lead to intervention by police and/or child protection authorities.

Are corporal punishment and discipline the same thing?

The main goal of any disciplinary strategy is to educate children about acceptable and unacceptable behaviour. Corporal punishment is one disciplinary technique. However, there are many other disciplinary techniques that parents can employ, such as:

- providing appropriate supervision;
- making rules (appropriate to the child's age and stage of development);
- setting and enforcing boundaries;
- firmly saying “no”;
- explaining why certain behaviour is inappropriate;
- giving consequences;
- withdrawing privileges; and
- using “time out” or quiet time.

Corporal punishment is one disciplinary technique. There are many other disciplinary techniques which parents can employ that are effective.

Discipline is only one part of educating children about acceptable and unacceptable behaviours. Other steps parents can take include:

- minimising the need for discipline or punishment by planning ahead to prevent problems from occurring (e.g., avoiding grocery shopping when a toddler is tired or irritable);
- being consistent with children;
- modelling desired behaviours; and
- praising, encouraging and rewarding children and providing them with warmth and affection (Parenting SA, 2009).

An important component in all disciplinary strategies is to maintain parental consistency. Parenting that is inconsistent can be confusing for children and lead to misbehaviour. Research from the Longitudinal Study of Australian Children shows that inconsistent parenting is strongly associated with behavioural problems in children, including conduct problems, low prosocial behaviour, hyperactivity, emotional difficulties and problems relating with peers (Smart, Sanson, Baxter, Edwards, & Hayes, 2008). When parents are consistent in their disciplinary strategies, children learn what to expect from their parents if they misbehave. Children are less likely to test boundaries or push limits that are firmly set when they know the consequences of poor behaviour (Beltran, 2002).

Other research from the Longitudinal Study of Australian Children showed that behavioural problems were strongly linked with higher levels of parental hostility, with children being four times more likely to have conduct problems and twice as likely to have hyperactivity problems when experiencing hostile parenting (Smart et al., 2008). Evidence suggests that warmth and affection in parent-child relationships is linked with more positive outcomes for children (Smart et al., 2008). Parental warmth has been shown to increase children's self-esteem and reduce the risk of psychological and behavioural problems (Berk, 2009). In the Longitudinal Study of Australian Children, higher parental warmth was shown to reduce the risk of conduct problems, peer problems and low prosocial behaviour in children 4-5 years of age (Smart et al., 2008).

For more information on discipline strategies see The Parenting Research Centre's *Raising Children Network* which provides helpful and practical advice about disciplining children of all ages: <http://raisingchildren.net.au/articles/discipline_introduction.html>.

What does research tell us about the use of corporal punishment towards children?

Research findings regarding the use of corporal punishment towards children point in different directions. Some reviews of the literature suggest that corporal punishment may lead to adverse child outcomes (Gershoff, 2002; Linke, 2002; Smith et al., 2004). For example, in a review of the research, Smith et al. (2004) reported a number of negative developmental consequences for children who had experienced corporal punishment, including: disruptive and anti-social behaviour; poor academic achievement; poor attachment and lack of parent-child warmth; mental health problems (particularly internalising problems such as depression); and substance and alcohol abuse.

Research has shown that corporal punishment is effective in achieving immediate child compliance. However, Gershoff (2002), Smith et al. (2004) and others have argued that the benefits associated with immediate child compliance can be offset by findings that indicate corporal punishment fails to teach a child self-control and inductive reasoning. Instead, corporal punishment teaches a child to avoid engaging in behaviour that is punishable by way of force while in an adult's presence (in contrast to teaching a child not to engage in the

undesirable behaviour at all). In addition, Linke (2002) argued that corporal punishment teaches a child that problems can be addressed through physical aggression.

Other research suggests that the relationship between corporal punishment and adverse child outcomes is not definitive, mainly due to inconsistent definitions of corporal punishment. Baumrind, Larzelere and Cowan (2002) argued that findings such as Gershoff's may misrepresent the relationship between corporal punishment and child outcomes. They argued that the studies are often simplistic, and include in their definition of corporal punishment children who have experienced arguably more mild forms of corporal punishment such as smacking as well as children who have experienced serious physical abuse.

There is also debate in the literature regarding whether findings such as low rates of child maltreatment and child deaths can be used to illustrate the benefits of banning corporal punishment and to call for the extension of bans on all forms of corporal punishment in other jurisdictions (e.g., see Durrant (2006) and Durrant and Janson (2005) in relation to the Swedish ban on corporal punishment). Beckett (2005) argued that Sweden's low rates of child maltreatment and child deaths predate the introduction of legislation banning the use of corporal punishment, thus should not be taken as illustrative of the benefits of such legislative reform. Beckett (2005) also argued that other nations without bans on corporal punishment report lower rates of child abuse deaths than Sweden.

In brief, both Baumrind et al. (2002) and Beckett (2005) argued that we are not in a position to presuppose a clear causal link between corporal punishment (particularly parental smacking) and adverse child outcomes, and as a result, should be wary of applying the findings of correlational research to social policy decisions.

While there are no clear answers regarding the consequences of using corporal punishment as a disciplinary strategy towards children, the effects are likely to be influenced by several factors, including:

- the quality of the parent–child relationship;
- how often and how hard a child is hit;
- whether parenting is generally “hostile”;
- clear boundary setting and consistency in use of discipline; and
- whether other disciplinary techniques are also used, particularly ones that are suited to a child's age, and are likely to enhance his or her learning and capacity for reasoning (Gershoff, 2002; Smart et al., 2008).

Research suggests that the use of corporal punishment may lead to adverse outcomes for children. However, there is some debate about how well existing research distinguishes between severe physical abuse and physical discipline, such as smacking.

In what circumstances are children more likely to experience corporal punishment?

Research shows that children between the ages of 3 and 5, and children who exhibit challenging behaviours and difficult temperaments are more likely than other children to be the recipients of corporal punishment (Smith et al., 2004). There are also clear gender differences, with boys more likely to experience corporal punishment than girls (Smith et al., 2004). Within the family setting, contextual factors such as family structure (e.g., number of children), economic disadvantage, and family stress increase the likelihood that parents will resort to physical punishment. In addition, Smith et al. argued that a wider social context that effectively sanctions the use of physical punishment contributes to its continuation.

The Australian legal context

The criminal defence of “reasonable chastisement” used by way of correction, exists (or has existed) in many countries. Such a defence allows a parent or person acting *in loco parentis* (that is, in place of a parent, for example, a teacher, carer or guardian) charged with assaulting a child in their care to argue that the assault was justified as they were using reasonable force to discipline or correct the child (Milfull & Schetzer, 2000; Saunders & Goddard, 2003; Smith et al., 2004).

Historically, all Australian states and territories had some form of policy or legislation, which allowed for “reasonable chastisement” by a parent or person in place of a parent (e.g., teachers) as a means of discipline (Cashmore & de Haas, 1995; Saunders & Goddard, 2003). For example, section 50 of the Tasmanian *Criminal Code Act (1924)* formerly read:

it is lawful for a parent or a person in the place of a parent, or for a school master, to use, by way of correction, towards a child or pupil respectively under his care, such force as is reasonable under the circumstance.

Legislation concerning the use of corporal punishment has been the subject of substantive review, particularly in relation to the lawfulness of corporal punishment in school settings.

Corporal punishment in schools

There has been considerable uniformity across Australian states and territories in either explicitly banning the use of corporal punishment in schools or

removing provisions in education acts that provided a defence to the use of reasonable chastisement by people acting in the place of a parent (such as teachers) (see Table 1). Legislation in Queensland and South Australia does not explicitly state that corporal punishment is banned in schools. However, the provisions that previously allowed for the use of corporal punishment in schools have been removed from the relevant education acts. There remains some ambiguity in Queensland and Western Australian law

Table 1: Australian law regarding the use of corporal punishment in schools

Jurisdiction	Legislation regarding the use of corporal punishment in government and non-government schools	Relevant legislative Acts
ACT	Corporal punishment was banned in schools in 1997 under the <i>Education (Amendment) Act 2004</i> (ACT). The purpose of the act was to ban punishment in "all schools". The Act does not explicitly state that it relates to both government and non-government schools, however the interpretation is that it applies to both.	<i>Education Act 2004</i> (ACT) s7(4): < www.legislation.act.gov.au/a/2004-17/default.asp >
NSW	Corporal punishment was banned in government schools in NSW pursuant to the <i>Education Act 1990</i> (NSW). An amendment to the Act (the <i>Education Discipline Act 1995</i> , which came into effect in 1997) extended the ban on corporal punishment to non-government schools.	<i>Education Act 1990</i> (NSW) s35 & s47(h): < www.legislation.nsw.gov.au >
NT	The Northern Territory does not have a provision in its Education Act banning or permitting the use of corporal punishment in schools. However, the <i>Criminal Code Act</i> (NT) makes it lawful for teachers to use corporal punishment unless parents expressly withhold their consent to such forms of correction.	<i>Criminal Code Act</i> (NT) s11: < www.austlii.edu.au/au/legis/nt/consol_act/cca115/ >
QLD	Queensland repealed provisions that allowed for corporal punishment in state schools in 1989 in the <i>Education General Provisions Regulation Act 2006</i> (Qld).	<i>Education General Provisions Regulation Act 2006</i> (Qld). < www.austlii.edu.au/au/legis/qld/consol_act/epa2006305 >
SA	South Australia repealed provisions that allowed for corporal punishment in schools in 1991 in the <i>Education (Amendment) Act 1991</i> (SA).	<i>Education (Amendment) Act 1991</i> (SA). < www.austlii.edu.au/au/legis/sa/consol_act/ea1972104 >
TAS	Corporal punishment was banned in both government and non-government schools in 1999 under the <i>Education Amendment Act 1999</i> (Tas). The amendment specified that the principals of both state and registered schools are responsible for ensuring that students under their care are not subjected to corporal punishment.	<i>Education Act 1994</i> (Tas) s82A. < www.thelaw.tas.gov.au > <i>Education Amendment Act 1999</i> (Tas) < www.austlii.edu.au/au/legis/tas/num_act/ea199956o1999230/ >
VIC	Corporal punishment was banned in government schools in 1985. It was banned in non-government schools in 2006 following the enactment of the <i>Education and Training Reform Act 2006</i> (Vic).	<i>Education and Training Reform Act 2006</i> (Vic) s2.4.60 & s4.3.1(6)(a). < www.austlii.edu.au/au/legis/vic/consol_act/eatra2006273 >
WA	Corporal punishment was banned in government schools in Western Australia under the <i>School Education Act 1999</i> (WA). The School Education Regulations 2000 state that a student at a government school is not to be disciplined by way of corporal punishment. Regulations banning corporal punishment do not extend to non-government schools.	School Education Regulations 2000 (WA) s40(2). < www.slp.wa.gov.au >

where amendments have been made to education acts that previously allowed for the use of physical punishment, but not to criminal codes that still (in principle) give authority to a parent, or a person in place of a parent, to use reasonable corrective force.

There is less consistency in the degree to which Australian jurisdictions have abolished the use of corporal punishment in non-government schools (see Table 1). New South Wales, Tasmania and Victoria are the only states where statutes clearly stipulate that corporal punishment is banned in both government and non-government schools. The Australian Capital Territory *Education Act 2004* does not explicitly ban corporal punishment in non-government schools, however, the interpretation of the Act, which states that corporal punishment is banned in “all schools”, is that the relevant provision applies to both.

Corporal punishment by parents

In relation to corporal punishment by parents, it remains lawful for parents in all jurisdictions to use reasonable corporal punishment to discipline their children. New South Wales is the only state to have made legislative amendments concerning corporal punishment by parents. In 2001, New South Wales introduced the *Crimes Amendment (Child Protection Physical Mistreatment) Act*. The Act states that physical punishment should not harm a child “more than briefly” and specifies the parts of a child’s body that can be subject to force. The development and implementation of the Act encouraged debate concerning the degree (if any) of physical force appropriate to use when disciplining children and, more generally, the status of children’s rights in Australia (Milfull & Schetzer, 2000). While the New South Wales amendment sought to constrain parental use of corporal punishment, it does not ban the use of corporal punishment altogether.

In some jurisdictions a parent’s right to use corporal punishment is provided for in legislation (e.g., New South Wales), while in others it is provided for by the common law (“judge-made law”) (e.g., Victoria) (see Table 2). All Australian states and territories condone (in principle) the use of force by a parent, by way of correction, towards a child.

The international picture

Internationally, 23 countries have prohibited corporal punishment in all settings in legislation: Austria (1989); Bulgaria (2000); Costa Rica (2008); Croatia (1998); Cyprus (1994); Denmark (1997); Finland

(1983); Germany (2000); Greece (2006); Hungary (2004); Iceland (2003); Israel (2000); Latvia (1998); Netherlands (2007); New Zealand (2007); Norway (1987); Portugal (2007); Romania (2004); Spain (2007); Sweden (1979); Ukraine (2003); Uruguay (2007); and Venezuela (2007). Corporal punishment is prohibited in Italy (1996) and Nepal (2005) by Supreme Court ruling (but not legislation) (Global Initiative to End All Corporal Punishment of Children, 2008).

Within these countries, the process of abolishing all corporal punishment typically began by legislating against the use of corporal punishment in schools. This was followed by the removal of the parental defence of “lawful correction” or “reasonable chastisement” from relevant criminal codes and finally the introduction of explicit bans on the use of corporal punishment in relevant civil codes. A number of other countries have partially abolished the use of corporal punishment in one or more settings and have expressed a commitment to enacting full prohibition (see Global Initiative to End All Corporal Punishment of Children 2008 for an overview).

Twenty-three countries have prohibited corporal punishment in all settings in legislation. Two other countries have prohibited corporal punishment by Supreme Court ruling.

Conclusion

The issue of corporal punishment is contentious. Some groups advocate for the abolition of corporal punishment arguing that it is damaging to children and a violation of children’s rights. Others argue in favour of retaining the right to use corporal punishment as a form of disciplining children. While a third group—which generally takes the view that there are better or alternatives to smacking—has raised concerns that banning corporal punishment could criminalise parents and, in the process, overburden the child protection system with reports of parents who have smacked their children.

Research findings regarding the damaging effects for children of corporal punishment have been critiqued for methodological reasons. However, the research is clear that there is limited evidence to support any positive outcomes associated with corporal punishment and that there are other more preferable techniques for disciplining children.

Table 2: Australian law regarding the use of corporal punishment by parents

State	Legislation and or common law relating to corporal punishment by parents	Legislative Act or Criminal Code
ACT	The ACT has no legislation concerning the use of corporal punishment by parents. The Child Welfare Ordinance 1957 allowed a person with the lawful care of a child to administer physical punishment, however the Act was repealed by the Children's Services Ordinance 1986. At present the defence of "reasonable chastisement" remains in common law.	ACT Child Services Ordinance, 1986. < www.legislation.act.gov.au/a/1986-13/default.asp >
NSW	The <i>Crimes Amendment Act 2001</i> (NSW) introduced an amendment specifying that physical punishment by a parent should not harm a child more than briefly and specifies the parts of a child's body that can be subject to force. This amendment to the <i>Crimes Act 1900</i> (NSW) did not entirely remove parental capacity for corporal punishment nor explicitly ban the use of physical force towards children, but it did introduce strict guidelines on what is acceptable.	<i>Crimes Act 1900</i> (NSW) s61AA: < www.legislation.nsw.gov.au/maintop/view/inforce/act+40+1900+cd+0+N >
NT	On the basis of the <i>Criminal Code Act</i> (NT), it is lawful for parents and teachers (unless parents expressly withhold their consent) to apply force to a child for the purposes of discipline and correction.	<i>Criminal Code Act</i> (NT) s27: < www.austlii.edu.au/au/legis/nt/consol_act/cca115 >
QLD	The <i>Criminal Code Act 1899</i> (Qld) states that: it is lawful for a parent or a person in the place of a parent . . . to use, by way of correction, discipline, management or control, towards a child or pupil, under the person's care, such force that is reasonable under the circumstances. It therefore remains lawful for a parent to physically punish/correct their child.	<i>Criminal Code Act 1899</i> (Qld) s280: < www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/CriminCode.pdf >
SA	There is no legislation that explicitly provides for the use of corporal punishment by parents in South Australia. However, there is a section in the <i>Criminal Law Consolidation Act 1935</i> (SA) that provides for contact between persons that would generally be regarded as accepted within the community. There also exists a common law defence of "reasonable chastisement".	<i>Criminal Law Consolidation Act 1935</i> (SA) s20(2): < www.austlii.edu.au/au/legis/sa/consol_act/clca1935262/ > and common law defence
TAS	Physical punishment by a parent towards a child remains lawful under the Tasmanian <i>Criminal Code Act 1924</i> (Tas). The Act reads: It is lawful for a parent or a person in the place of a parent to use, by way of correction, any force towards a child in his or her care that is reasonable in the circumstances.	<i>Criminal Code Act 1924</i> (Tas) s50: < www.thelaw.tas.gov.au/index.w3p >
VIC	There is no legislation concerning corporal punishment by parents in Victoria, however, there is a common law defence for parental use of corporal punishment. Victorian common law allows parents to administer corporal punishment to children in their charge provided the punishment is neither unreasonable nor excessive.	Common law defence
WA	Under the Criminal Code 1913 (WA) it remains lawful for parents to physically discipline their children. Section 257 of the code states that: it is lawful for a parent or a person in the place of a parent . . . to use, by way of correction, toward a child or pupil under his care, such force as is reasonable under the circumstances.	Criminal Code Act 1913 (WA) s257: < www.austlii.edu.au/au/legis/wa/consol_act/ccaca1913252 >

Further reading

For more information on the issue of corporal punishment, visit the National Child Protection Clearinghouse bibliography *Physical Punishment of Children* at <www.aifs.gov.au/nch/bib/punish.html>.

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Australian Government
Australian Institute of
Family Studies

First edition, *Corporal punishment: Key issues* (Prue Holzer & Alister Lamont), published April 2010.

ISSN 1448-9112 (Online)

ISBN 978-1-921414-28-2

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