



Legal issues bulletin

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The law relating to the correction of children

The correction (i.e. corporal punishment) of children is dealt with by provisions within the Crimes Act 1900.

What is the law regarding the correction of children?

Traditionally, courts have held that if certain categories of person, such as teachers or parents, apply physical discipline to a child and as a consequence the person is charged with assault, there is a defence of lawful correction. The legislation provides that in any criminal proceedings against a person for using physical force against a child (a person under the age of 18), a defence of lawful correction can only apply if punishment of the child was:

- applied by a parent of the child or by a person acting for a parent of the child, and
- reasonable having regard to the age, health, maturity or other characteristics of the child and the nature of the alleged misbehaviour or other circumstances.

A "person acting for a parent of a child" is defined to mean:

- a person who is a step-parent, or
- a de-facto spouse of a parent of the child, or
- 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 who is authorised by a parent of the child to use physical force to punish the child; or
- in relation to children who are Aboriginal or Torres Strait Islanders, a person who is recognised by the Aboriginal or Torres Strait Island community to which the child belongs as being an appropriate person to exercise special responsibilities in relation to the child.

Unless it could reasonably be considered trivial or negligible, reasonable force will not include any force applied:

- to any part of the head or neck of the child, or
- 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.

The provisions do not alter any other common law defences (e.g. self defence) that may be available and do not alter common law principles concerning management, control or restraint of a child by physical contact or force for purposes other than punishment.

What is the practical effect of the legislation?

The practical effect of the legislation can be summarised as follows:

- Physical force can (and, where appropriate, should) still be used by staff to ensure that the department's duty of care to protect students from foreseeable risks of injury is met.
- Staff subject to criminal proceedings for assault involving students can continue to rely on a range of common law defences such as self-defence, defence of others and defence of property.
- Any class management techniques, physical restraint of students or other action that is directed to maintaining a safe, secure and effective learning environment and which is in accordance with relevant departmental policies or procedures dealing with student management and/or obligations of staff will not impinge the provisions of the legislation.

Staff should also note that the Education Act 1990 effectively prohibits corporal punishment in schools as does the [department's Code of Conduct](#) for school staff. Any enquiries regarding the information contained in this bulletin can be directed to the department's Legal Services unit.

About Legal Services

Legal Services is here to support our government schools. [Staff can contact Legal Services by email or phone.](#)

Legal Services can only provide legal advice to departmental staff. It is not able to provide legal advice or assistance to parents, students or members of the public due to the potential for a conflict of interest.

