



# Physical punishment legislation

CFCA Resource sheet — August 2021



## Overview

This resource is designed to inform service providers and practitioners about physical punishment research and legislation. It outlines key state and territory legislation on the use of physical punishment as a means of disciplining children in Australia for parents, early education and child care centres, primary and secondary schools, and alternative care settings.

The information provided is to be used as a guide only and does not cover every piece of legislation or common law. Individuals are encouraged to check the currency of information and consider other legislation and common law that may overlap.

## What is physical punishment?

Physical (or corporal) punishment is the use of physical force with the intention of causing a child to experience pain or discomfort to correct or punish a child's behaviour (Rowland, Gerry, & Stanton, 2017; United Nations Committee on the Rights of the Child [UNCRC], 2006). Physical punishment commonly involves smacking, spanking, slapping or hitting (with a hard object such as a belt, stick or cane) (*Education Act 1994* (Tas.), s 3; Rowland et al., 2017). It can also include activities such as forcing a child to kneel, sit or stand in uncomfortable positions or on painful objects for a length of time (Rowland et al., 2017).



## What does the evidence tell us about physical punishment of children?

Internationally, around six in 10 children aged 2–14 years experience physical punishment by a caregiver (UNICEF, 2014). In Australia, there is an incomplete picture of the use of physical punishment (Durrant et al., 2020). Between 50% and 80% of Australian parents report using physical punishment to discipline their children (Poulsen, 2019). Surveys of the attitudes of Australian parents note the following:

- The majority (80%) experienced physical punishment when they were a child (Relationships Australia, 2017).
- Around half (51%) believe it is never acceptable to use physical discipline with a child (Rhodes, 2018).

Australian parents are often uncertain about what is reasonable and acceptable in physical punishment and where the line is for abuse.

There is strong evidence to suggest that physical punishment harms children. Research evidence consistently links physical punishment with negative effects on children (Alampay et al., 2017; Flouri & Midouhas, 2017; Gershoff et al., 2018; Maneta, White, & Mezzacappa, 2017; Piché, Huýnh, Clément, & Durrant, 2016). There is good evidence to suggest that physical punishment does not reduce defiant or aggressive behaviour nor does it promote long-term positive behaviour in children (Flouri & Midouhas, 2017; Ma & Grogan-Kaylor, 2017; MacKenzie, Nicklas, Brooks-Gunn, & Waldfogel, 2015). A systematic review of 53 studies on the use of physical punishment in schools found that it had negative effects on the academic performance of children and resulted in behavioural issues (e.g. violent behaviour and aggressive conduct) (Heekes, Kruger, Lester, & Ward, 2020).

Research links physical punishment to risks of harm to children's cognitive, behavioural, social and emotional development (Durrant & Ensom, 2017; Gershoff & Grogan-Kaylor, 2016; Maneta et al., 2017; Okuzono, Fujiwara, Kato, & Kawachi, 2017). A meta-analysis involving over 160,000 children found that physical punishment can carry the risk of physical abuse (causing a physical injury) and can have negative outcomes for children: mental health and emotional challenges, lower cognitive ability, lower self-esteem, more aggression, more antisocial behaviour and negative relationships with parents (Gershoff & Grogan-Kaylor, 2016). Other studies and reviews have added that stress from physical punishment can negatively affect children's brain development (Durrant & Ensom, 2017; Gershoff, 2016). In addition, physical discipline can quickly and unintentionally escalate into abuse (Afifi, Mota, Sareen, & MacMillan, 2017; Poulsen, 2018).

The adverse impacts from physical punishment during childhood may last into adulthood. Harsh physical punishment (smacking, shoving and pushing) has been linked to anxiety, depression, substance abuse and antisocial behaviours in adulthood in a similar way to child abuse (Afifi, Mota, Dasiewicz, MacMillan, & Sareen, 2012; 2019). Other studies have found associations between physical punishment in childhood and intimate partner violence as an adult, and an increased risk of physical abuse (Afifi et al., 2017; Poulsen, 2018).

## The Australian legal context

In Australia, physical punishment remains legally defensible in certain contexts. Reasonable chastisement (or lawful correction) remains an available legal defence to support the use of physical punishment under Australian common law and in legislation in some states and territories (Attorney-General's Department [AGD], 2019). Such a defence allows a parent or person acting in place of a parent (e.g. 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 (Poulsen, 2019).

In the sections that follow, information is presented about the current laws on the use of physical punishment. [Table 1](#) details current law by state and territory on the use of physical punishment by **parents**. [Table 2](#) and [Table 3](#) provide details of current law in **early childhood education and child care centres**, and **primary and secondary schools**. [Table 4](#) details current law in **alternative care settings**, including out-of-home residential care and foster care.

### Physical punishment by parents

It remains lawful for parents in all states and territories to use 'reasonable' physical punishment to discipline their children. A parent's right to use physical punishment is stated in some state and territory legislation (e.g. New South Wales), while in others it is provided for by the common law or 'judge-made law' (e.g. Victoria; see Table 1).

Common law helps to interpret and more clearly define legislation. For example, in Tasmania, legislation states that physical punishment is permitted when it is considered 'reasonable', and judges' decisions in common law support understandings of what 'reasonable' is.

**Table 1:** Current Australian law regarding the use of physical punishment by parents

Jurisdiction	Legislation Act or Criminal Code	Legislation and/or common law relating to physical punishment by parents
ACT	Common law	Legislation in the ACT does not explicitly refer to physical punishment by parents. However, there are common law decisions on what is considered reasonable punishment by parents. The defence of 'lawful chastisement' exists in common law.
NSW	<a href="#">Crimes Act 1900 (s 61AA)</a>  <a href="#">Crimes Amendment (Child Protection - Physical Mistreatment) Act 2001 No 89</a>	The <i>Crimes Amendment (Child Protection - Physical Mistreatment) Act 2001</i> (NSW) introduced an amendment to the <i>Crimes Act 1900</i> (NSW) to limit the use of excessive physical force to punish children. This amendment did not explicitly ban the use of physical force towards children but it did introduce clearer guidelines on what is acceptable, including that physical punishment by a parent should not harm a child more than briefly and listing parts of a child's body that cannot be subject to force (s 61AA).
NT	<a href="#">Criminal Code Act 1983 (s 11)</a>	On the basis of the <i>Criminal Code Act 1983</i> (s 11) and (s 27), it is lawful for parents to apply force to a child for the purposes of discipline and correction, provided the force is not 'unnecessary' and is not likely to cause serious harm.
Qld	<a href="#">Criminal Code Act 9 of 1899 (s 280)</a>	The <i>Criminal Code Act 1899</i> (s 280) states: 'It is lawful for a parent or a person in the place of a parent, or for a schoolteacher or master, to use, by way of correction, discipline, management or control, towards a child or pupil, under the person's care such force as is reasonable under the circumstances.'
SA	<a href="#">Criminal Law Consolidation Act 1935 (SA) (s 20(2))</a>  Common law	Legislation in South Australia does not explicitly refer to physical punishment by parents. There is a section in the <i>Criminal Law Consolidation Act 1935</i> (SA) (s 20(2)) that allows for contact between persons that would generally be regarded as accepted within the community or conduct that is excused by law. There is also a defence of 'reasonable chastisement' in common law when certain characteristics of the child and the physical correction are considered.
Tas.	<a href="#">Criminal Code Act 1924 (s 50)</a>	Physical punishment by a parent towards a child remains lawful under the <i>Criminal Code Act 1924</i> (s 50), which states: '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.'
Vic.	Common law	There is no legislation concerning physical punishment by parents in Victoria; however, there is a common law defence for parental use of physical punishment.
WA	<a href="#">Criminal Code Act Compilation Act 1913 (s 257)</a>	Under the <i>Criminal Code Act 1913</i> (WA) it remains lawful for parents to physically discipline their children. Section 257 of the code states: 'It is lawful for a parent or a person in the place of a parent ... to use, by way of correction, towards a child or pupil under his care, such force as is reasonable under the circumstances.'

## Physical punishment in early childhood education and child care settings

In 2011, the Education and Care Services National Law was introduced as an applied law system where the host jurisdiction (Victoria) passed the law (*Education and Care Service National Law Act 2010*) and other states and territories adopted that law or passed corresponding legislation (Australian Children's Education & Care Quality Authority [ACECQA], n.d.). Under this legislation (section 166), it is an offence for a provider, nominated supervisor, staff member, volunteer or family day care educator of an approved education and care service to subject a child to any form of physical punishment. This prohibition is also noted within the National Quality Standards (ACECQA, 2017).

These laws on physical punishment apply to education and care services that work with children under 13 years of age, and do not apply to all early childhood education and child care settings in all states and territories; variations are described in Table 2.



**Table 2:** Current Australian law regarding the use of physical punishment in early childhood education and child care settings

Jurisdiction	Legislation Act or Criminal Code	Legislation and/or common law relating to physical punishment in early childhood education and child care settings
ACT	<p><a href="#">Education and Care Services National Law (ACT) Act 2011 (s 166)</a></p> <p><a href="#">Children and Young People Act 2008 (s 741)</a></p>	<p>The ACT has adopted the <i>National Law Act 2011</i> prohibiting the use of physical punishment by providers, nominated supervisors, staff members, volunteers and family day care providers of an approved education and care service.</p> <p>The <i>Children and Young People Act 2008</i> (s 741) also states that a person responsible for a child care service commits an offence if they use unreasonable discipline in the form of physical punishment or any behaviour management strategy likely to cause physical harm to a child, which includes but is not limited to smacking.</p>
NSW	<p><a href="#">Children (Education and Care Services National Law Application) Act 2010 No 104 (s 166)</a></p>	<p>New South Wales has adopted the National Law Act prohibiting the use of physical punishment by providers, nominated supervisors, staff members, volunteers and family day care providers of an approved education and care service (see pt 6, s 166).</p>
NT	<p><a href="#">Education and Care Services (National Uniform Legislation) (NT) Act 2011 (s 166)</a></p> <p><a href="#">Criminal Code Act 1983 (s 11)</a></p>	<p>Physical punishment is prohibited in approved early childhood education and child care settings.</p> <p>The <i>Criminal Code Act 1983</i> (s 11) states it is lawful to use force 'to discipline, manage or control' a child. This law only applies to non-approved child care services or domestic situations.</p> <p>However, the Northern Territory has adopted the National Law Act (s 166) prohibiting the use of physical punishment by providers, nominated supervisors, staff members, volunteers and family day care providers of an approved education and care service.</p>
Qld	<p><a href="#">Education and Care Services National Law 2011 (s 166)</a></p> <p><a href="#">Child Protection Act 1999 (s 122)</a></p>	<p>Queensland has adopted the <i>Education and Care Services National Law 2011</i> (s 166) prohibiting the use of physical punishment by providers, nominated supervisors, staff members, volunteers and family day care providers of an approved education and care service.</p> <p>The <i>Child Protection Act 1999</i> (s 122) states that techniques for managing the child's behaviour in child care settings 'must not include corporal punishment or punishment that humiliates, frightens or threatens the child in a way that is likely to cause emotional harm.'</p>
SA	<p><a href="#">Education and Early Childhood Services (Registration and Standards) Act 2011 (s 166)</a></p> <p><a href="#">Education and Children's Services Act 2019 (s 32)</a></p> <p><a href="#">Children's Services (Child Care Centre) Regulations 1998 (s 39)</a></p>	<p>South Australia has adopted the National Law Act prohibiting the use of physical punishment by providers, nominated supervisors, staff members, volunteers and family day care providers of an approved education and care service (see pt 6, s 166).</p> <p>The <i>Education and Children's Services Act 2019</i> (s 32) prohibits the use of physical punishment in preschools or children's services.</p> <p>The Child Care Centre Regulations 1998 (s 39) state: 'Behaviour management techniques used should not include physical, verbal or emotional punishment, including, for example, punishment that humiliates, frightens or threatens the child.'</p>

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Jurisdiction	Legislation Act or Criminal Code	Legislation and/or common law relating to physical punishment in early childhood education and child care settings
Tas.	<p><a href="#">Education and Care Services National Law (Application) Act 2011</a></p> <p><a href="#">Criminal Code Act 1924 (s 50)</a></p> <p><a href="#">Education Act 2016 (s 248)</a></p>	<p>Physical punishment is prohibited in some, not all, early childhood education and child care settings.</p> <p>The <i>Criminal Code Act 1924</i> (s 50) states that physical punishment is lawful in child care settings under the authority to use force 'by way of correction'.</p> <p>However, the <i>Education and Care Services National Law (Application) Act 2011</i> adopts the Education and Care Services National Law (s 166) as Tasmanian law and prohibits the use of physical punishment by providers, nominated supervisors, staff members, volunteers and family day care providers of an approved education and care service.</p> <p>The <i>Education Act 2016</i> prohibits the use of physical punishment in all schools.</p>
Vic.	<p><a href="#">Education and Care Services National Law Act 2010 (s 166)</a></p> <p><a href="#">Children's Services Act 1996 (s 106)</a></p>	<p>In initiating the National Law Act, the Victorian <i>Education and Care Services Act 2010</i> (s 166) prohibits the use of physical punishment by providers, nominated supervisors, staff members, volunteers and family day care providers of an approved education and care service.</p> <p>The <i>Children's Services Act 1996</i> (s 106) also refers to the prohibited use of physical punishment in child services and family day care settings.</p>
WA	<p><a href="#">Education and Care Services National Law (WA) Act 2012 (s 166)</a></p> <p><a href="#">Child Care Services (Child Care) Regulations 2006 (s 85)</a></p>	<p>WA has adopted the National Law Act prohibiting the use of physical punishment by providers, nominated supervisors, staff members, volunteers and family day care providers of an approved education and care service (see pt 6, s 166).</p> <p>The Child Care Services (Child Care) Regulation 2006 (s 85) also refers to the prohibited use of physical punishment in child care settings.</p>

## Physical punishment in primary and secondary schools

With the exception of Queensland, all Australian states and jurisdictions have prohibited the use of physical punishment in all schools. While the ACT has not explicitly banned physical punishment in non-government schools, the current interpretation of the law is that the ban applies to all school contexts.

There remains some ambiguity in the Queensland and Western Australian law, where amendments have been made to education legislation that previously allowed for the use of physical punishment, but not to the criminal code, which still (in principle) gives authority to a parent, or a person in place of a parent, to 'use reasonable corrective force' (see Table 3).

**Table 3:** Australian law regarding the use of physical punishment in schools

Jurisdiction	Legislative Act or Criminal Code	Legislation regarding the use of physical punishment in primary and secondary government and non-government schools
ACT	<a href="#">Education Act 2004 (s 7)</a>	<p>Physical punishment was banned in schools in 1997 under the <i>Education Act 2004</i> (s 7).</p> <p>The purpose of the Act was to ban physical 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.</p>
NSW	<p><a href="#">Education Act 1990</a></p> <p><a href="#">Education Reform Amendment (School Discipline) Act 1995</a></p>	<p>Physical punishment was banned in government schools in NSW under the <i>Education Act 1990</i> (NSW). The <i>Education Reform Amendment (School Discipline) Act 1995</i> extended the ban on physical punishment to non-government schools.</p>

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Jurisdiction	Legislative Act or Criminal Code	Legislation regarding the use of physical punishment in primary and secondary government and non-government schools
NT	<a href="#">Education Act 2015 (s 162)</a>	<p>The <i>Education Act 2015</i> (s 162) prohibits the use of physical punishment in all schools by any person who is a member of staff, engaged to teach or support teaching in any school.</p> <p>Previously, the Criminal Code Act made it lawful for teachers in government schools to use physical punishment unless parents expressly withheld their consent to such forms of correction.</p>
Qld	<a href="#">Criminal Code Act 1899 (s 280)</a>	<p>Queensland prohibited the use of physical punishment in government schools in 1989 by repealing provisions that allowed for it in the <i>Education (General Provisions) Act 2006</i> (Qld).</p> <p>For physical punishment in non-government schools, the <i>Criminal Code Act 1899</i> (s 280) states it is lawful for 'a person in the place of a parent, or for a schoolteacher or master, to use, by way of correction, discipline, management or control, towards a child or pupil, under the person's care such force as is reasonable under the circumstances'.</p>
SA	<a href="#">Education and Children's Services Act 2019 (s 83)</a>  <a href="#">Education and Early Childhood Services (Registration and Standards) Act 2011 (s 166)</a>	<p>South Australia repealed provisions that allowed for physical punishment in schools in 1991 in the <i>Education (Amendment) Act 1991</i> (SA). In the <i>Education and Children's Services Act 2019</i>, all education settings are prohibited from using physical punishment.</p> <p>Prohibition of physical punishment is also included in the <i>Education and Early Childhood Services (Registration and Standards) Act 2011</i>.</p>
Tas.	<a href="#">Education Act 2016 (s 248)</a>	<p>The <i>Education Act 2016</i> (s 248) states that any staff member of a school 'must not administer, or threaten to administer, corporal punishment to a student of that school'.</p>
Vic.	<a href="#">Education and Training Reform Act 2006</a>  <a href="#">Education and Training Reform Regulations 2007 (reg 14)</a>	<p>Physical 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.).</p> <p>The prohibition of physical punishment in government schools is also outlined in the <i>Education and Training Reform Regulations 2007</i>.</p>
WA	<a href="#">School Education Regulations 2000 (s 40)</a>  <a href="#">Criminal Code Act Compilation Act 1913 (s 257)</a>	<p>Physical punishment was banned in government schools under the <i>School Education Regulations 2000</i> (s 40).</p> <p>The regulations banning physical punishment were extended to non-government schools in 2015 in accordance with the <i>School Education Act 1999</i> (s 159) and the <i>School Education Regulations 2000</i> (s 131).</p> <p>The <i>Criminal Code Act</i> (s 257) still states that it is lawful 'for a parent or a person in the place of a parent, or for a schoolmaster' to use 'such force as is reasonable under the circumstances'.</p>



## Physical punishment in alternative residential care settings

In residential care settings (residential centres and foster care), physical punishment is prohibited in the Australian Capital Territory, New South Wales, Queensland, Victoria and South Australia.

Physical punishment remains lawful in the Northern Territory, Tasmania and Western Australia (see Table 4).

**Table 4:** Current Australian law regarding the use of physical punishment in alternative care settings

Jurisdiction	Legislative Act or Criminal Code	Legislation regarding the use of physical punishment in alternative care settings
ACT	<a href="#">Children and Young People Act 2008 (s 741)</a>	The <i>Children and Young People Act 2008</i> (s 741) states that it is an offence to use physical punishment towards a child in a child care service.
NSW	<a href="#">Children and Young Persons (Care and Protection) Act 1998</a> <a href="#">Children and Young Persons (Care and Protection) Regulation 2012 (reg 41)</a>	The <i>Children and Young Persons (Care and Protection) Regulation 2012</i> (reg 41) under the <i>Children and Young Persons (Care and Protection) Act 1998</i> prohibits the use of physical punishment of a child in out-of-home care, specifying that only behaviour management practices approved by the designated agency are allowed.
NT	<a href="#">Criminal Code Act 1983 (s 27)</a>	The <i>Criminal Code Act 1983</i> (s 27) states it is reasonable to use force 'to discipline, manage or control' a child provided it is not unnecessary force that could cause serious harm.
Qld	<a href="#">Child Protection Act 1999 (s 122)</a>	The <i>Child Protection Act 1999</i> (s 122) prohibits the use of physical punishment of a child placed in care.
SA	<a href="#">Family and Community Services Regulations 2009</a>	The <i>Family and Community Services Regulations 2009</i> under the <i>Family and Community Services Act 1972</i> prohibits the use of physical punishment of a child placed in care (see pt 4, s 13).
Tas.	<a href="#">Criminal Code Act 1924 (s 50)</a>	The <i>Criminal Code Act 1924</i> (s 50) states that it is lawful for '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'.
Vic.	<a href="#">Children, Youth and Families Act 2005 (s 161)</a>	The <i>Children, Youth and Families Act 2005</i> (s 161) prohibits the use of physical punishment and limits the use of physical force unless it is 'reasonable and necessary' in an out-of-home care service.
WA	<a href="#">Criminal Code Act Compilation Act 1913 (s 257)</a>	The <i>Criminal Code Act</i> (s 257) states it is lawful 'to use, by way of correction, towards a child or pupil under his care, such force as is reasonable under the circumstances'.

## Conclusion and further reading

The acceptability, consequences and legality of using physical punishment towards children are dependent on the context in which the physical punishment takes place. Research evidence to support any positive outcomes associated with physical punishment is limited, and the evidence on negative outcomes is increasing. There are alternative disciplinary measures that can be used.

For more information on the issue of physical punishment, see: [Physical Punishment of Children – Bibliographies](#).



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