

Time Children had the Same Protection from the Use of Physical Force as Adults



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In 1994, the Chief Justice David Malcom’s ‘Taskforce on Gender Bias’ recommended the government commence a ‘committed, co-ordinated and concentrated campaign of awareness’ about domestic violence.¹

It was to counter attitudes, still prevalent when the Taskforce reported, that ‘a man’s house was his castle’: that what happened behind closed doors, including the use of physical force, was between a man and his wife: that it was different from other crimes. The invisible line between the public and the private was so embedded, that the Taskforce recommended that police be **required** to actively collect evidence, interview witnesses and investigate allegations of crimes involving domestic violence. That police training must include a unit on domestic violence.²

A quarter of a century later, the majority of Australians now have a good understanding of violence against women. Few believe that violence of any kind against women can be justified, a change in attitudes believed to be essential to stemming the high rates of violence against women by partners and former partners.³ Governments too understand the scourge of ‘domestic terrorism’, as evidenced by their commitment of millions of dollars to support Australians experiencing domestic, family and sexual violence due to the fallout from Coronavirus.⁴

Australia’s response to domestic and family violence in the last decade has been propelled by the National Plan to Reduce Violence against Women and

their Children (2010-2022).

The National Plan’s vision is an Australia free from all forms of violence and abuse, including physical, sexual, emotional, social, verbal, spiritual and economic, by current or former intimate partners or family members against women and children. Challenging legal and social acceptance of violence, and turning a blind eye to violence in the home, has been a fundamental part of women’s struggle for equal rights. Integral to changing attitudes is building consensus that violence, including the use of physical force, is never acceptable or defensible whether perpetrated by a stranger or a family member. Not slapping, belting, hitting or even threatening it. A

It is an unqualified message that assaulting another is no longer tolerated in public or private.

It is why many people are surprised to learn that the use of physical force, ‘assault’, is acceptable and defensible in Australia when the person on the receiving end is a child. Australia’s children are specifically denied the legal protection from the use of physical force that adults take for granted when it is rebranded as corporal punishment, and is deemed to be “reasonable correction” or “reasonable chastisement”.

In Western Australia Section 257 of the

Criminal Code WA provides when the use of physical force against a child may be lawful.

Discipline of Children

‘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 reasonable correction, towards a child or pupil under his care, such force as is reasonable under the circumstances.’

‘Reasonable correction’, a term more suited to Gilead and *The Handmaid’s Tale*, than 21st Century Australia, is not defined in the *Criminal Code*. Only NSW has tried, defining what is not reasonable as physical force that is not trivial, or negligible and that is applied to a child’s head or neck, or any other part of the body that results in bruising, marking or other injury lasting longer than a ‘short period’.⁵

The use of physical punishment to ‘correct’ behavior has a long and ugly history. Underpinning it is the belief that certain human beings are the property of others, and they have the right to use physical force if needed to ‘bring them into line’. For wives their husbands. For slaves their owners. For children, adults, especially their parents.

Historically children have been regarded as the absolute possessions of adults as Thomas Hobbes explained in ‘The Elements of the Law’ in 1640:

‘Children therefore, whether they be brought up and preserved by the father, or by the mother, or by whomsoever, are in most absolute subjection to him or her,

that so bringeth them up, or preserveth them. And they may alienate them, that is, assign his or her dominion, by selling, or giving them, in adoption or servitude to others; or may pawn them for hostages, kill them for rebellion, or sacrifice them for peace, by the law of nature, when he or she, in his or her conscience, think it to be necessary.'

It fitted well with the belief that children were less than fully human. A 'blank slate', as another philosopher John Locke wrote in his famous work 'An Essay Concerning Human Understanding' in 1690. Either intrinsically evil and in need of improvement to become a virtuous adult, or born innocent, but vulnerable to corruption by the adult world.

Attitudes to children have changed significantly, especially in the last fifty years, but the notion of children as possessions is still baked into our culture. Research by the Valuing Children Initiative in 2016, reported that 70% of adults surveyed agreed that children 'belong' to their parents until they reach the age of 18.⁶ Perhaps it is not surprising then, that in 2017 Relationships Australia reported that 37% of men and 22% of women, said parents should be able to use corporal punishment to discipline their children.⁷

The United Nations Committee on the Rights of the Child defines corporal punishment or any physical punishment, as 'punishment that is used and intended to cause some degree of pain or discomfort, however light.'⁸ The United Nations Convention on the Rights of the Child says that children must be protected from all forms of violence, including physical force. Not for the first time, in 2019, the Committee on the Rights of the Child, that monitors how countries fulfil their obligations, recommended Australia explicitly prohibit corporal punishment in law in all settings, including in the home, in public and private schools, in detention centres and in alternative care settings, and repeal the legal defence of "reasonable chastisement".⁹ So too have organisations like the Royal Australasian College of Physicians, the National Commissioner for Children and Young People and the former Chief Justice of the Family Court of Australia, Alistair Nicholson.

Little is known about the prevalence, chronicity, severity and nature of corporal punishment in the Australian context.¹⁰ Like sexual abuse in institutions, it almost always occurs behind closed doors, without witnesses and where those in charge, namely parents, have almost unchallenged authority. What is known though is that there is no clear benefit,

or positive outcome using corporal punishment. Rather the evidence shows there are negative outcomes for children including mental health problems, anti-social behavior, low self-esteem and a greater likelihood that a child may develop aggressive behavior themselves.¹¹ Even mild physical punishment can reduce school engagement and cognitive performance.¹²

Shamefully, it is always an unfair fight. Adults are big. Children are small. And the smaller they are, the more vulnerable they are. Children aged three to five, whose developmental state and size makes them particularly vulnerable to physical and psychological harm, are more likely than other children to be physically disciplined. Children with disabilities, 3.6 times more likely.

When children are asked about their experience of physical punishment the common themes that emerge are that it hurts them physically; it arouses negative emotions including sadness, anger, fear and confusion; it models that using physical punishment is a means of resolving conflict; and occurs when parents are angry.¹³ Like the pattern of domestic violence, it carries the risk of escalating from a push or a slap and becoming progressively worse over time.

The reality is the undefined and opaque line between physical abuse of a child and acceptable physical discipline is impossible to draw. The Western Australian Department of Health tacitly acknowledges this in information published under the auspices of the WA Health Statewide Protection of Children Unit:

*'The point at which punishment begins to move into abuse is subjectively and culturally defined. In an effort to make this line objective many researchers and practitioners have used the presence, or absence of resultant physical injury to delineate the point at which punishment can be distinguished from abuse. However, this remains a contentious area and from the child's perspective punishment that does not result in physical injury may still be experienced as abusive.'*¹⁴

In 1979, Sweden became the first country to explicitly ban all forms of corporal punishment. It has led to a change in attitudes with support for corporal punishment among parents dropping from just above 50 percent to barely 10 percent since 1960.¹⁵ The most recent country to do so was Japan in 2019. To date 59 countries have prohibited all corporal punishment of children, including in the home.¹⁶

Condoning the use of physical force against children is not only harmful to children and infringes their human right to protection from harm, but is out of step and contradicts the message that violence is never acceptable. Yet remarkably, neither the National Framework for Protecting Australia's Children 2009 – 2020, nor the National Plan to Reduce Violence against Women and their Children (2010-2022) even address the issue of corporal punishment of children.

It is time the Western Australian Parliament took the lead in removing the defence allowing the use of physical force against children, and send a clear and unequivocal message that assaulting a child, for whatever reason, is as repugnant and out of step today as excuses used in the past to justify assaulting women.

Endnotes

- 1 Report of the Chief Justice's Taskforce on Gender Bias. 30 June 1994 Recommendation 75.
- 2 Recommendations 78 & 90.
- 3 2017 National Community Attitudes towards Violence against Women Survey. <https://www.anrows.org.au/NCAS/2017/home/> (20 May 2020) The NCAS provides comprehensive national data about Australia's attitudes towards violence against women; however, there are no comparable national data sources to measure attitudes about other forms of family and domestic violence, including against children or men.
- 4 Media Release 29 March 2020 <https://www.pm.gov.au/media/11-billion-support-more-mental-health-medicare-and-domestic-violence-services-0> (20 May 2020)
- 5 *Crimes Act 1900 No 40 (NSW)* Sect 61AA.
- 6 The Valuing Children Initiative Benchmark Survey: 2016. <http://valuingchildreninitiative.com.au/wp-content/uploads/2019/06/Australians-Attitudes-to-Children-The-Valuing-Children-Initiative-Benchmark-survey-2016.pdf> (20 May 2020).
- 7 Relationships Australia. April 2017 -Corporal Punishment <https://www.relationships.org.au/what-we-do/research/online-survey/april-2017-corporal-punishment> (20 May 2020).
- 8 UN Committee on the Rights of the Child (CRC), *General comment No. 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; and 37, inter alia)*, 2 March 2007, CRC/C/GC/8, available at: <https://www.refworld.org/docid/460bc772.html> (20 May 2020).
- 9 UN Committee on the Rights of the Child. Concluding observations on the combined fifth and sixth periodic reports of Australia. 2019 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/AUS/CO/5-6&Lang=En (accessed 5 May 2020).
- 10 Poulsen, A 2019, Corporal punishment of children in the home in Australia: a review of the research reveals the need for data and knowledge. *Children Australia*. https://www.researchgate.net/publication/333824904_Children_Australia_Corporal_punishment_of_children_in_the_home_in_Australia_a_review_of_the_research_reveals_the_need_for_data_and_knowledge (20 May 2020).
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- 12 Font SA, and Cage J. Dimensions of physical punishment and their associations with children's cognitive performance and school adjustment. *Science Direct Vol 75* pp 29-40 <https://doi.org/10.1016/j.chiabu.2017.06.008>.
- 13 Corporal Punishment Key Issues. AIFS CFCA Resource Sheet March 2017 <https://aifs.gov.au/cfca/publications/corporal-punishment-key-issues> (20 May 2020).
- 14 Government of Western Australia, Department of Health Information Sheet 5 <https://ww2.health.wa.gov.au/-/media/Files/Corporate/general%20documents/Child%20protection/PDF/InfoSheet05-Physical-abuse.aspx> (20 May 2020).
- 15 Modig, C 2009, Never Violence -Thirty Years on from Sweden's Abolition of Corporal Punishment <https://www.government.se/contentassets/6bfb214c582448b6ace4d32978361577/never-violence---thirty-years-on-from-swedens-abolition-of-corporal-punishment> (20 May 2020).
- 16 Global Initiative to End All Corporal Punishment of Children <https://endcorporalpunishment.org> (20 May 2020).