

Review of particular criminal defences

Domestic discipline information sheet

Version November 2023

Domestic discipline is in section 280 of the Criminal Code.

The use of force without consent against another person, including a child, is unlawful unless it is 'authorised, justified or excused by law'.¹ If the use of force is covered by the defence of domestic discipline, it is lawful.

The defence of domestic discipline allows **such force as is reasonable under the circumstances** to be used to correct, discipline, manage or control a child. It applies to a parent or person in the place of a parent, schoolteacher or master in relation to a child or student under their care. A child is a person under 18 years old.² Section 280 provides a complete defence to an offence involving the use of force. This includes common assault but could also include more serious offences involving bodily harm. The key limitation is that the force used was reasonable in the circumstances.

280 Domestic discipline

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.

This defence was based on earlier common law and included in the Code when it first came into force in 1901. At that time, it referred to the use of force by way of 'correction' towards a 'child, pupil or apprentice'. In 1997 the words 'discipline, management or control' were added and the reference to an 'apprentice' was removed.³

In the early common law, the defence of 'lawful correction' was explained as a consequence of a parent's duty to protect and educate their child. Parental authority to discipline a child could be delegated to a schoolmaster.⁴ A parent or schoolmaster could lawfully use 'moderate and reasonable corporal chastisement,' on a child 'capable of appreciating the punishment'. But the force used could not exceed the bounds of moderation 'either in the manner, the instrument or the quantity of the punishment'.⁵

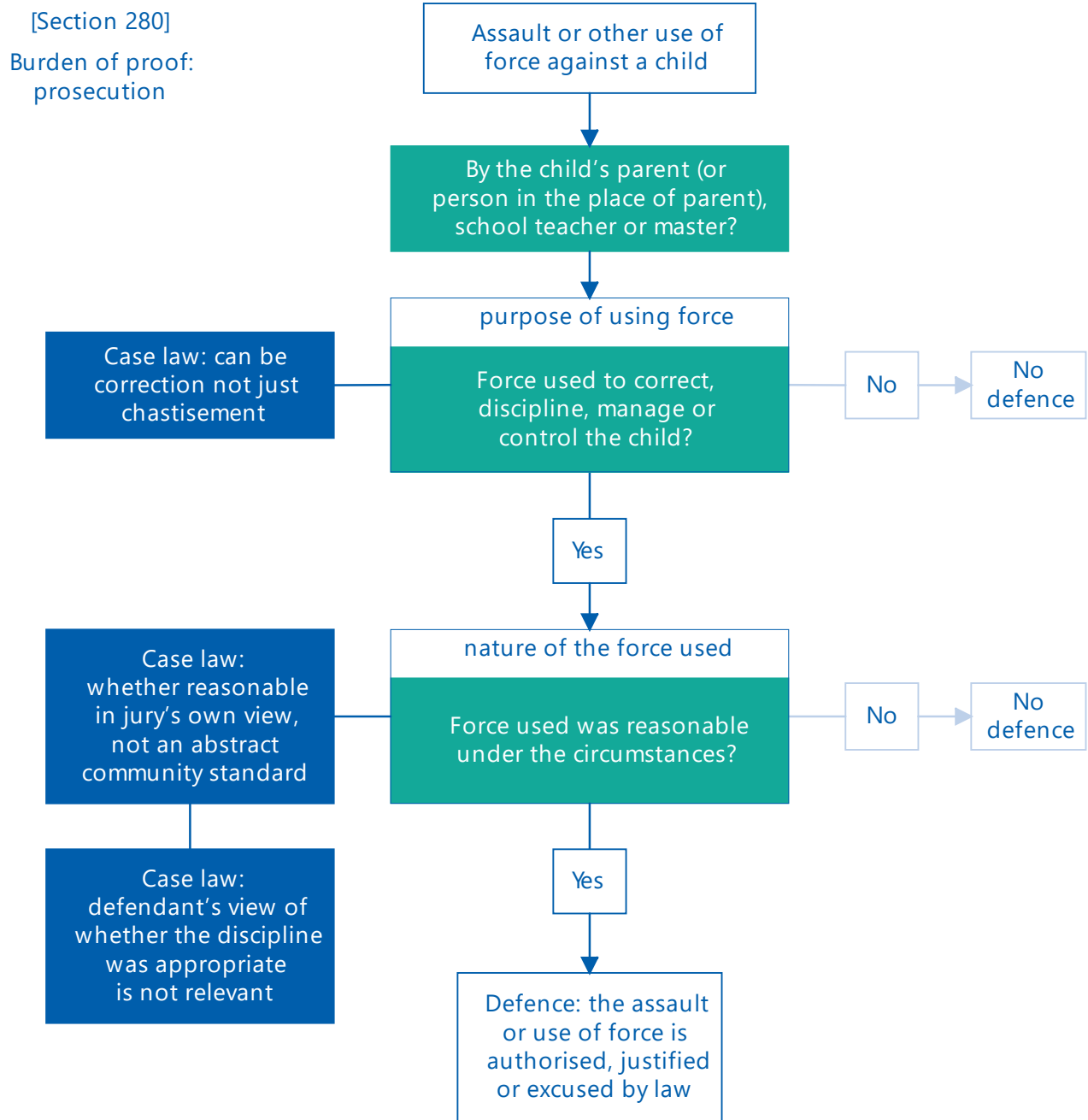
Most cases raising the defence relate to parents, although many earlier cases concerned schoolteachers.⁶

The defence of domestic discipline has attracted criticisms, for example, that:⁷

- the defence is unclear and open to different views about what is 'reasonable'
- physical (corporal) punishment of children is undesirable, is not effective and can result in long-term harm
- the defence is out of step with contemporary views against the use of violence and with the protection of the best interests and human rights of children, including their right to equal protection under the law.

Despite the criminal defence of domestic discipline in the Criminal Code, there are limits on physical punishment of children in other parts of the law in Queensland. Corporal punishment is prohibited for children in care, in youth detention, or at an early childhood education and care service (such as a long day care, family day care or outside school hours service).⁸ The defence of domestic discipline can apply in school settings, but corporal punishment is prohibited in government schools at a policy level.⁹

Figure 1: the domestic discipline provision in Queensland



As part of their duty to ensure a fair trial, judges in criminal trials are required to sum up the case and give the jury directions about the law and how to apply it, and how to assess the evidence. To help judges with this, suggested directions in the Queensland Supreme and District Courts Criminal Directions Benchbook offer guidance on the directions that should be given.

The following extract is the suggested direction in the benchbook on domestic discipline under section 280. View the full text on the [Queensland Courts website](#).¹⁰

Domestic discipline: section 280

The prosecution must satisfy you beyond reasonable doubt that any assault in this case was unlawful, which means not authorised, justified or excused by the law. The law permits a parent [or a person in the place of a parent, school teacher or master] to use by way of correction, discipline, management or control towards a child under that person's care, such force as is reasonable under the circumstances.

It is accepted here that [the complainant] was in her father's care at the time. It is for the prosecution to satisfy you beyond reasonable doubt either –

1. that the defendant's actions in [describe actions] were not by way of correction, discipline, management or control of his child; or
2. that the force he used was not reasonable.

It is for you to decide what is reasonable on an objective view of the circumstances as you find them to be. It is important that you understand that the defendant does not have to prove that he was disciplining [or controlling etc] his child or that the force used was reasonable; it is for the prosecution to prove either that he was not disciplining her, or that the force used was not reasonable under the circumstances.

If the prosecution has satisfied you beyond a reasonable doubt, either that the defendant was not disciplining the child or, alternatively, that the force he used was not reasonable under the circumstances, it has established that the defendant's actions were not lawful on this basis. If it cannot do so, the defendant is entitled to be acquitted.

Each of the other Australian jurisdictions has a domestic discipline defence, either in their criminal legislation or under the common law. The Model Criminal Code also includes a defence.¹¹ The provisions in Tasmania and Western Australia are similar to Queensland. In New South Wales, the defence excludes some conduct, such as force applied to the head or neck. In New Zealand, the use of reasonable force by a parent is protected for some purposes, such as preventing harm to the child, but not for the purpose of correction.¹²

Many countries around the world have prohibited corporal punishment of children, including in the home. Sweden was the first country to do so in 1979, with Zambia and Mauritius the most recent countries in 2022.¹³

Model Criminal Code

5.1.44 Correction of children

- (1) A parent of a child is not criminally responsible for an offence against Division 5 (Causing harm), 6 (Threats and stalking) or 8 (Kidnapping, child abduction and unlawful detention) committed against the child if the conduct of the parent constituting the offence amounted to reasonable correction of the child.
- (2) Any other person who has the care of a child is not criminally responsible for an offence against Division 5 (Causing harm), 6 (Threats and stalking) or 8 (Kidnapping, child abduction and unlawful detention) committed against the child if the conduct of the person constituting the offence amounted to reasonable correction of the child and:
 - (a) the parent of the child consented to such correction of the child by the person; or
 - (b) the person reasonably believed that the parent of the child consented to such correction of the child by the person; or
 - (c) the parent of the child consented to the person taking responsibility for the care and management of the child (but only in the case of an offence against Division 8).
- (3) Conduct can amount to reasonable correction of a child only if it is reasonable in the circumstances for the purposes of the discipline, management or control of the child. The following conduct does not amount to reasonable correction of a child:
 - (a) causing or threatening to cause harm to a child that lasts for more than a short period; or
 - (b) causing harm to a child by use of a stick, belt or other object (other than an open hand).

The Model Criminal Code is not in force as legislation, but is a draft of suggested provisions developed in the 1990s with the aim of providing for uniform or consistent criminal laws around Australia.¹⁴

Crimes Act 1900 (NSW)

61AA Defence of lawful correction

- (1) In criminal proceedings brought against a person arising out of the application of physical force to a child, it is a defence that the force was applied for the purpose of the punishment of the child, but only if—
 - (a) the physical force was applied by the parent of the child or by a person acting for a parent of the child, and
 - (b) the application of that physical force was reasonable having regard to the age, health, maturity or other characteristics of the child, the nature of the alleged misbehaviour or other circumstances.
- (2) The application of physical force, unless that force could reasonably be considered trivial or negligible in all the circumstances, is not reasonable if the force is applied—
 - (a) to any part of the head or neck of the child, or
 - (b) 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.
- (3) Subsection (2) does not limit the circumstances in which the application of physical force is not reasonable.
- (4) This section does not derogate from or affect any defence at common law (other than to modify the defence of lawful correction).
- (5) Nothing in this section alters the common law concerning the management, control or restraint of a child by means of physical contact or force for purposes other than punishment.
- (6) In this section—

child means a person under 18 years of age.

parent of a child means a person having all the duties, powers, responsibilities and authority in respect of the child which, by law, parents have in relation to their children.

person acting for a parent of a child means a person—

- (a) who—
 - (i) is a step-parent of the child, a de facto partner of a parent of the child, 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
 - (ii) is authorised by a parent of the child to use physical force to punish the child, or
- (b) who, in the case of a child who is an Aboriginal or Torres Strait Islander (within the meaning of the Children and Young Persons (Care and Protection) Act 1998), is recognised by the Aboriginal or Torres Strait Islander community to which the child belongs as being an appropriate person to exercise special responsibilities in relation to the child.

Note—

'De facto partner' is defined in section 21C of the Interpretation Act 1987.

Crimes Act 1900 (NSW) cont.

- (7) This section does not apply to proceedings arising out of an application of physical force to a child if the application of that force occurred before the commencement of this section.
- (8) The Attorney General is to review this section to determine whether its provisions continue to be appropriate for securing the policy objectives of the section. The review is to be undertaken as soon as possible after the period of 3 years from the commencement of this section. A report on the outcome of the review is to be tabled in each House of Parliament within 6 months after the end of the period of 3 years.

Crimes Act 1961 (NZ)

59 Parental control

- (1) Every parent of a child and every person in the place of a parent of the child is justified in using force if the force used is reasonable in the circumstances and is for the purpose of—
 - (a) preventing or minimising harm to the child or another person; or
 - (b) preventing the child from engaging or continuing to engage in conduct that amounts to a criminal offence; or
 - (c) preventing the child from engaging or continuing to engage in offensive or disruptive behaviour; or
 - (d) performing the normal daily tasks that are incidental to good care and parenting.
- (2) Nothing in subsection (1) or in any rule of common law justifies the use of force for the purpose of correction.
- (3) Subsection (2) prevails over subsection (1).
- (4) To avoid doubt, it is affirmed that the Police have the discretion not to prosecute complaints against a parent of a child or person in the place of a parent of a child in relation to an offence involving the use of force against a child, where the offence is considered to be so inconsequential that there is no public interest in proceeding with a prosecution.

Table 1: domestic discipline provisions in Queensland and other jurisdictions

Act name and jurisdiction	Domestic discipline defence	Who can rely on defence	What purpose the force can be used for	What type of force can be used
Criminal Code (Qld)	✓ domestic discipline: s 280	applies to a parent, person in place of parent, schoolteacher, or master	force can be used to correct, discipline, manage or control the child or pupil	force used must be reasonable under the circumstances
Australian Capital Territory	✓ lawful chastisement: common law	applies to a parent or person in the place of a parent	force can be used to punish or correct the child	see separate entry on common law below
Crimes Act 1900 (NSW)	✓ lawful correction: s 61AA	applies to a parent or person acting for a parent of the child	force can be used to punish the child	<ul style="list-style-type: none"> force used must be reasonable having regard to the child's age, health, maturity or other characteristics, the nature of the alleged misbehaviour, or other circumstances unless it is trivial or negligible, excludes force applied to any part of the child's head or neck, or to another part of the child's body if likely to cause harm that lasts for more than a short period
Criminal Code (NT)	✓ domestic discipline: ss 11, 27(p)	applies to a parent or guardian or person in their place, a school teacher of the child or other delegated person who has custody or control of the child	force can be used to discipline, manage or control the child	force used must be 'not unnecessary force', and not intended or likely to cause death or serious harm
Criminal Law Consolidation Act 1935 (SA)	✓ lawful chastisement: s 20 and common law	applies to a parent or person in the place of a parent	force can be used to punish or correct the child	conduct that is excused by law is not an assault: s 20(2)(b) see separate entry on common law below
Criminal Code (Tas)	✓ domestic discipline: s 50	applies to a parent or person in the place of a parent	force can be used to correct the child	force used must be reasonable in the circumstances

Act name and jurisdiction	Domestic discipline defence	Who can rely on defence	What purpose the force can be used for	What type of force can be used
Victoria	✓ lawful chastisement: common law	applies to a parent or person in the place of a parent	force can be used to punish or correct the child	see separate entry on common law below
Criminal Code (WA)	✓ domestic discipline: s 257	applies to a parent, person in the place of a parent or schoolmaster	force can be used to correct the child	force used must be reasonable under the circumstances
Commonwealth	*	-	-	-
Crimes Act 1961 (NZ)	✓ parental control: s 59	applies to a parent or person in the place of a parent	<p>force can be used to:</p> <ul style="list-style-type: none"> prevent or minimise harm to the child or another person prevent the child from engaging or continuing to engage in a criminal offence, or in offensive or disruptive behaviour perform the normal daily tasks that are incidental to good care and parenting <p>nothing in the section or the common law justifies force used to 'correct' a child</p>	force used must be reasonable in the circumstances

Act name and jurisdiction	Domestic discipline defence	Who can rely on defence	What purpose the force can be used for	What type of force can be used
United Kingdom	<p>✓ reasonable punishment: common law and statute in England and Northern Ireland</p> <p>✗ common law defence of reasonable chastisement abolished in Scotland and Wales</p>	applies to a parent or person in the place of a parent	force can be used to punish the child	<p>see separate entry on common law below</p> <p>defence does not apply to offences of wounding, causing grievous bodily harm, assault occasioning actual bodily harm, cruelty to persons under 16, or strangulation or suffocation</p>
<p>Children Act 2004 (UK) s 58; The Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006 (NI) art 2; Children (Equal Protection from Assault) (Scotland) Act 2019 (Scot) s 1; Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020 (Wales) s 1</p>				
<p>Canada Criminal Code RSC 1985 c C-46</p> <p>Limited by the Supreme Court of Canada in Canadian Foundation for Children, Youth and the Law v Canada (Attorney General) [2004] 1 SCR 76</p>	<p>✓ correction of child by force: s 43</p>	<ul style="list-style-type: none"> • applies to a parent, person standing in the place of a parent, or schoolteacher: s 43 • schoolteachers may apply force only to remove a child from a classroom or secure compliance with instructions: [2004] 1 SCR 76 	<ul style="list-style-type: none"> • force can be used to correct the child or pupil: s 43 • cannot be used against a child under the age of 2 or over the age of 12 • can be used only if the child is capable of benefiting from the discipline: [2004] 1 SCR 76 	<ul style="list-style-type: none"> • force used must not exceed what is reasonable under the circumstances: s 43 • cannot cause harm or raise a reasonable prospect of harm to the child • cannot involve the use of objects or blows or slaps to the head • degrading, inhuman or harmful conduct is not protected: [2004] 1 SCR 76
<p>Common law defence: the force used by a parent to correct the child in wrong behaviour must be moderate and reasonable, have a proper relation to the child's age, physique and mentality, and be carried out with reasonable means or instrument: see generally <i>R v Terry</i> [1955] VLR 114</p>				

References

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- 1 See Criminal Code (Qld) ss 245 (definition of 'assault'), 246 (assaults unlawful).
 - 2 See Acts Interpretation Act 1954 (Qld) s 36 sch 1 (definition of 'child').
 - 3 See Criminal Law Amendment Act 1997 (Qld) s 43. The same Act repealed the Criminal Code Act 1995 (Qld): see the 'Timeline of legislative reforms and proposals in Queensland' on our website <https://www qlrc.qld.gov.au/reviews/review-of-particular-criminal-defences>.
 - 4 See 'Chapter 16: of parent and child' in Blackstone's Commentaries on the Laws of England, 1765, Book 1, pp 434, 438, 440–41 <https://archive.org/details/lawsOfenglandc01blacuoft/page/n5/mode/2up>.
 - 5 *Smith v O'Byrne; Ex parte O'Byrne* (1894) 5 QLJ 126 at 126–7. See also *R v Hopley* [1860] 2 F&F 202 at [206].
 - 6 See e.g. *Sparkes v Martin; Ex parte Martin* (1908) 2 QJPR 12; *Horan v Ferguson* [1995] 2 Qd R 490.
 - 7 See e.g. SS Havinghurst et al, 'Corporal punishment of children in Australia: The evidence-based case for legislative reform', *Australian and New Zealand Journal of Public Health*, vol 47(3), 2023, doi:[10.1016/j.anzjph.2023.100044](https://doi.org/10.1016/j.anzjph.2023.100044); S McInnes-Smith, 'The inconsistency of the "lawful correction" of children defence with Queensland's new Human Rights Act 2019 (Qld)', *University of Queensland Law Journal*, vol 41(3), 2022, pp 327–62, doi:[10.38127/uqlj.v41i3.6439](https://doi.org/10.38127/uqlj.v41i3.6439); L Savage, 'Time children had the same protection from the use of physical force as adults', *Brief*, vol 47(6), 2020, pp 30–31; Tasmania Law Reform Institute, *Physical Punishment of Children*, Final report 4, October 2003, pp 22–6, 29–30, 32–6.
 - 8 See Child Protection Act 1999 (Qld) s 122(2); Youth Justice Regulation 2016 (Qld) s 16(4)(a); Education and Care Services National Law (Queensland) s 166.
 - 9 See Queensland Department of Education and Training, 'Standard of Practice', February 2016, p 7, <https://alt-qed.qed.qld.gov.au/working-with-us/induction/department/induction-programs-and-resources/code-of-conduct>.
 - 10 Queensland Courts, *Queensland Supreme and District Courts Criminal Directions Benchbook*, 14 September 2021, <https://www.courts.qld.gov.au/court-users/practitioners/benchbooks/supreme-and-district-courts-benchbook>. See ch 90 on domestic discipline (notes omitted).
 - 11 Model Criminal Code ch 5 pt 5.1 cl 5.1.44 (previously numbered cl 5.1.41). See Model Criminal Law Officers Committee of the Standing Committee of Attorneys-General, *Model Criminal Code: Chapter 5 non-fatal offences against the person*, September 1998, viewed 14 June 2023 <https://www.ag.gov.au/crime/publications/model-criminal-law-officers-committee-reports>.
 - 12 See Crimes Act 1961 (NZ) s 59; Crimes Act 1900 (NSW) s 61AA.
 - 13 See End Corporal Punishment, 'Progress', viewed 27 September 2023 <https://endcorporalpunishment.org/countdown/>. See also End Corporal Punishment, 'End Corporal Punishment now hosted by the World Health Organization', 18 September 2023 <https://endcorporalpunishment.org/ecp-hosted-by-who/>.
 - 14 See Australian Attorney-General's Department, 'Model Criminal Law Officers Committee Reports', viewed 14 June 2023 <https://www.ag.gov.au/crime/publications/model-criminal-law-officers-committee-reports>.