

2023 Child Rights Progress Report on Physical Punishment

South Australia's progress on recommendations made
by the UN Committee on the Rights of the Child



About the CCYP

The [South Australian Commissioner for Children and Young People](#) is an independent position, established under the [Children and Young People \(Oversight and Advocacy Bodies\) Act 2016](#) (OAB Act). This legislation was introduced to the South Australian Parliament in response to the [Child Protection Systems Royal Commission 2014](#).

The Commissioner promotes and advocates for the rights, development and wellbeing of all children and young people in South Australia and seeks to change laws, policies, systems and practice to uphold children's rights.

The work of the Commissioner for Children and Young People is guided by the [United Nations Convention on the Rights of the Child](#) (UNCRC); the core international treaty established in 1989 to which Australia is a signatory. This important agreement sets out the civil, political, economic, social, and cultural rights of children around the world.

The Commissioner aims to ensure that as a part of the Australian Commonwealth, South Australia enacts its international obligations under this Convention.

Each year the Commissioner produces a series of Child Rights Progress reports measuring South Australia's progress against recommendations made by the UN Committee on the Rights of the Child (the Committee).

This year's progress reports comprise:

- Child Health
- Child Justice
- Child Protection
- Disability
- Education
- Environment
- Physical Punishment

Data reported in the data tables are the most accurate available at the time of writing.

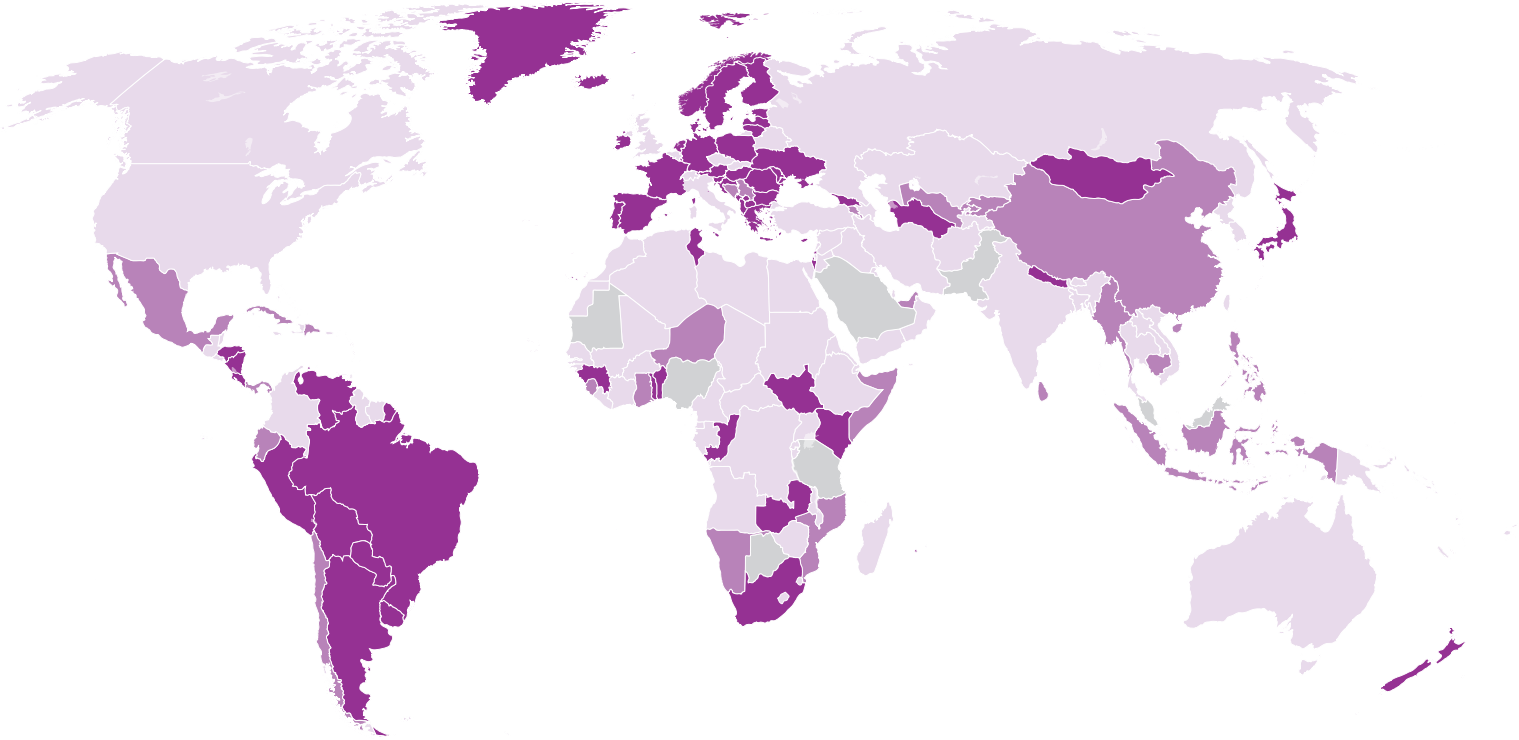


2023 Child Rights Progress Report on Physical Punishment



South Australia's progress on recommendations made by the UN Committee on the Rights of the Child

Physical punishment around the world



Map adapted from End Corporal Punishment, Global progress, <https://endcorporalpunishment.org/global-progress/>

As at May 2023, 65 sovereign states have achieved prohibition of physical punishment in all settings, including in the home – governments of at least 27 other sovereign states have expressed a commitment to enacting full prohibition. The countries that outlawed physical punishment in 2022 include Zambia, Mauritius, and Wales.

- Countries where physical punishment is prohibited in all settings
- Countries where governments are committed to full prohibition of physical punishment
- Countries where physical punishment is prohibited in some settings
- Countries where physical punishment is not fully prohibited in any setting

Area of concern:

- Despite considerable evidence identifying the harm caused by physical punishment and repeated calls by the UNCRC for full prohibition, state and federal governments continue to permit violence against children by their parents.

Children do not have the same protections as adults when it comes to assault and the experience of physical punishment by children remains unacceptably high.

Background

The UN Convention on the Rights of the Child (UNCRC) was the first international Convention to acknowledge that children have rights and that these rights should be protected. Australia ratified the UNCRC in 1990 and South Australia's *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (OAB Act) states that all government authorities must seek to give effect to the UNCRC.

The Convention sets minimum standards and obligations for the protection of children's and young people's rights, including their rights to have access to justice, education, health care and social services. All children have the right to have a say on all matters that affect them and for their views to be taken seriously. In making decisions about children their best interests should be the primary concern, as well as the right to be safe and to be free from discrimination.

Every five years, the Australian Government reports to the UNCRC Committee to explain how Australia is fulfilling its obligations in relation to child rights. In response to Australia's fifth and sixth periodic reports, the Committee highlighted key areas of concern and made recommendations to ensure governments at both the Federal and State levels fulfil their obligations under the Convention. One of the Committee's main areas of concern requiring urgent attention is physical punishment.

Rights in relation to Physical Punishment*

According to the Convention on the Rights of the Child, children should not be subjected to any form of violence. This includes children being safe from violence from parents/guardians (Art. 19) at school (Art. 28), and against cruel and degrading treatment (Art. 37). Specifically, the Committee on the Rights of the Child recommends:

- explicitly prohibiting physical punishment in law in all settings, including in the home, in public and private schools, in detention centres, and in alternative care settings, and to repeal the legal defence of 'reasonable chastisement'; and
- development of awareness-raising and education campaigns that promote positive and alternative forms of discipline and that underscore the adverse consequences of physical punishment.

* Also called 'corporal punishment'

Why should Physical Punishment be outlawed?

Adults often argue that physical punishment is justified to 'teach children a lesson'. However, there is now overwhelming evidence to suggest that physical punishment is not an appropriate teaching method or behaviour management strategy for children.

Research has found that physical punishment:

- has negative effects on children;
- does not reduce defiant or aggressive behaviour, nor does it promote long-term positive behaviour in children;
- has adverse effects on students in school, including on their academic performance and can lead to behavioural issues (for example, violent behaviour and aggressive conduct);
- can harm children's cognitive, behavioural, social and emotional development;
- can carry the risk of escalating into physical abuse (causing a physical injury) and have negative outcomes for children. This includes impacts on their mental health and emotional wellbeing; and
- can also result in lower self-esteem, more aggression, and negative relationships with parents.¹

The landmark Australian Child Maltreatment Study found that children who are smacked repeatedly by their parents are nearly twice as likely to develop anxiety depression later in life.² It surveyed 8,500 Australians aged 16 years and over to determine how they experienced child abuse and neglect, and is a first for Australia. It found child maltreatment is endemic in Australia with two thirds of participants being abused, neglected or exposed to domestic violence as children, resulting in long-term negative health outcomes.³

South Australia's progress on the latest recommendations made by the UN Committee in relation to physical punishment



No evidence that the UN Committee's recommendation is being addressed



Some evidence that the UN Committee's recommendation is being addressed



Clear evidence that the UN Committee's recommendation is being addressed

Current Status

Australia should 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 to repeal the legal defence of 'reasonable chastisement.'

In South Australia, parents and guardians can still physically punish children under section 20(2) of the *Criminal Law Consolidation Act 1935*.⁴ This Act provides for contact between persons that would generally be regarded as reasonable. There is also a common law defence of chastisement⁵ and the child's age, and the reason for the punishment (did it occur to 'teach the child a lesson' or 'because the person snapped') can be used in defence.

South Australia has prohibited physical punishment in all schools via the *Education and Children Services Act (2019)*, which outlaws physical punishment in pre-school services (s32) and in all South Australian schools (s83). The common law defence is, however, still available to educators if the conduct lies within "the limits of what would be generally accepted in the community as normal incidents of social interaction or community life."⁶ The Protective Practices Behaviour Guidelines for Staff and Volunteers Working with Children and Young People⁷ is adopted by all schools in the state and prohibits corporal punishment.

South Australia has adopted national provisions for early childhood services, enshrined in the *South Australian Education and Early Childhood Services (Registration and Standards) Act 2011*.⁸ Section 166 of this Act prohibits the use of physical punishment by providers, nominated supervisors, staff members, volunteers, and day care providers of an approved education and care service.

In residential care facilities, carers and employees are prohibited to physically punish a child under the *Family and Community Services Regulations 2009*.⁹ However the Commissioner has received reports of children being arrested by the police to manage behaviour, which has resulted in some physical handling that could amount to assault.¹⁰

To develop awareness-raising and education campaigns that promote positive and alternative forms of discipline and that underscore the adverse consequences of corporal punishment.

The Department for Education has some resources that can be accessed by educators on alternative behaviour management responses that attempt to promote positive and inclusive behaviour. This includes teachers promoting and modelling positive behaviour. There are also online courses for educators on positive behavioural management.

[Parenting SA](#)¹¹ has free Parent Easy Guides for parents covering a variety of topics, including respectful relationships, positive approaches to guiding behaviour, and being good role models. It also provides seminars that parents can attend.

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The new Adults Supporting Kids website, developed by the Department of Human Services (DHS) also provides information for parents, carers and guardians.

The government supported Families Growing Together program supports 'families by empowering them with the knowledge and skills they need to connect and grow together. This helps them lay strong foundations for their children and young people'.¹² There are a few workshops on offer and these can all be accessed online.

Endnotes

- 1 Child Family and Community Australia, *Physical punishment legislation. CFA resource sheet*, Australian Institute of Family Studies, 2021, accessed 20 November 2023, https://aifs.gov.au/sites/default/files/publication-documents/2107_physical_punishment_resource_sheet_0.pdf.
- 2 Haslam D, Mathews B, Pacella R, Scott JG, Finkelhor D, Higgins DJ, Meinck F, Erskine HE, Thomas HJ, Lawrence D, Malacova E., *The prevalence and impact of child maltreatment in Australia: Findings from the Australian Child Maltreatment Study: Brief Report*, 2023, Australian Child Maltreatment Study, Queensland University of Technology, accessed 1 December 2023, <https://www.acms.au/>
- 3 Australian Child Maltreatment Study, 2023, accessed 1 December 2023, <https://www.acms.au/>
- 4 *Criminal Law Consolidation Act (1935)*.
- 5 *Lumb v Police* [2008] SASC 198.
- 6 *Education and Children Services Act (2019)*.
- 7 Department for Education, *Protective practices for staff in their interactions with children and young people: Guidelines for staff working or volunteering in education and care settings 2017*, 2nd edn, Government of South Australia, 2019, accessed 4 December 2023, https://www.education.sa.gov.au/__data/assets/pdf_file/0008/260477/protective-practices-staff-interactions-children-young-people.pdf.
- 8 *Education and Early Childhood Services (Registration and Standards) Act 2011*.
- 9 Family and Community Services Regulations 2009 (SA).
- 10 P Wright, *Final report of the South Australian dual involved project: Children and young people in South Australia's child protection and youth justice systems*, Guardian for Children and Young People, 2022, accessed 20 November 2023, <https://gcyp.sa.gov.au/wordpress/wp-content/uploads/2022/07/OGCYP-Final-Report-of-the-South-Australian-Dual-Involved-Project.pdf>.
- 11 Government of South Australia, *Parenting SA*, 2023, accessed 4 December 2023, <https://parenting.sa.gov.au/>.
- 12 Department of Human Services, *Families Growing Together*, 2023, accessed 4 December 2023, <https://dhs.sa.gov.au/services/cfss/cfss-services/cfss-family-support-services/parenting-and-family-support-program>.