

Physical Punishment of Children and the Child Discipline Law

This paper asks:

- what is the evidence against use of physical punishment?
- how is the 2007 law working?
- who supports the 2007 law and who opposes it?
- how will the safety and wellbeing of New Zealand children be best served now?

The answers to these questions form the basis for the following recommendations:

1. **Keep the law as it is:** Children in New Zealand will be very well served over time if the Government stays strong in its resolve not to re-introduce a statutory defence into section 59 Crimes Act 1961.
2. **Provide information about the law and positive, non-violent discipline of children:** There is an ongoing need for the dissemination of well-researched and supportive information about:
 - the law and its value
 - how the law is working in practice
 - positive non-physical discipline of children.
3. **Monitor the law and research its effects:** The application of the child discipline law should continue to be monitored both to ensure that parents are not investigated and/or prosecuted when these actions are unhelpful and to track attitudinal and behavioural changes and the safety and wellbeing of children over time.
4. **Deal with any changes needed through policy and procedures:** If inadequacies are found in the way the law is being applied then further protections should be developed *without* changing the law. Such protections should support family functioning but at the same time not encourage the use of physical discipline by implying that it is okay.

These four recommendations are endorsed by people listed. They are a sample of the well informed New Zealanders who do not want to see the law changed.

Introduction

Lobbyists opposed to repeal of section 59 Crimes Act 1961 continue to apply pressure on politicians to revisit the 2007 child discipline law² – specifically they urge the re-introduction of a statutory defence in section 59 Crimes Act 1961.

The result of the 2009 referendum on the question, *Should a smack as part of good parental correction be a criminal offence in New Zealand?* is presented by the lobbyists as evidence that most New Zealanders want the law reversed.

But the referendum did not resoundingly favour a new version of section 59 as has been suggested. Note:

- the voter turnout was 56%
- 44% of enrolled voters did not vote despite extensive official advertising and media coverage
- 49% of enrolled voters voted 'No'
- 6.7% of enrolled voters voted 'Yes'
- some people deliberately refused to vote because of the irrelevance of the question to the real issue of protecting children
- others might reasonably have voted 'No', while supporting the present law
- there is credible support for the 2007 law which comes from an impressive body of informed supporters.

Background

1 What is the evidence against use of physical punishment?

In 2005 the Office of the Children's Commissioner and the Children's Issues Centre at the University of Otago published *The Discipline and Guidance of Children: Messages from Research*.³ This was an extensive critical literature review and synthesis of the research evidence on family discipline and guidance. It found overwhelming and consistent evidence that using physical discipline is associated with *negative outcomes* for children. Use of physical punishment is a *risk factor* for poor developmental outcomes.

Recent studies confirm these findings and report that smacking increases unacceptable behaviours including aggression.⁴

Use of physical punishment is a risk factor for child abuse, i.e. not all children who are physically punished are abused but research shows that children exposed to physical punishment are more likely to be physically abused than those who are not exposed to physical punishment.⁵

The following individuals have read this paper and given permission to be listed as endorsers:

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Proponents of smacking defend the use of mild physical punishment citing the work of a very limited number of academics who advocate light-handed smacking, administered calmly, as a useful and necessary disciplinary tool at some specific ages. These academics are few in number and the most frequently quoted, Robert Larzelere, has known conservative Christian links.⁶ They do not address the fact that many parents who use physical discipline do so in anger, often from their children's babyhood into adolescence and unfortunately too frequently in very heavy-handed ways.

Proponents of smacking also cite longitudinal studies in which children who were only ever lightly smacked did not have worse outcomes than those who were never smacked. The fact that not all children are damaged by physical punishment, particularly mild physical punishment, does not justify its promotion as a useful disciplinary method.

A primary aim of many who supported the law change in 2007 was to reflect and accelerate the social change that is moving parents in New Zealand away from the use of force and towards more positive methods of discipline. Discouraging physical punishment of children is congruent with other efforts to reduce violence in the family. A statutory defence, intentionally or unintentionally, sends a message that it's okay to smack and hit.

There is strong and growing evidence against the use of physical punishment of children.

2 How is the 2007 law working?

Changing attitudes

It is very early in the life of the new law. So far there is very limited information available to show what impact the law is having on adult attitudes and behaviour. However, there are some indications that attitudes and behaviour are changing over time. The prolonged public debate that accompanied the law change, and increased availability of information about non-physical alternatives (e.g. Strategies with Kids, Information for Parents – SKIP) may be influencing behaviour and attitudes positively, as may the law itself.

Acceptance of physical punishment has decreased over time: New Zealand surveys

Survey (date, author/ commissioner, participants)	Results
1981, J Ritchie survey, Waikato University – parents	92% of men, 86% of women agreed <i>There are certain circumstances when it is alright for a parent to smack (or thrash) a child</i>
1993, G Maxwell survey, for Office of Commissioner for Children	87% of adults agreed there are <i>circumstances when it was all right for a parent to physically punish a child</i>
2006/07, New Zealand Health Survey ⁷ for Ministry of Health – primary caregivers	<i>Physical punishment, such as smacking, one of the forms of discipline least used in past four weeks</i>
2008, UMR survey, for Office of Commissioner for Children – adults ⁸	58% of adults agreed <i>There are certain circumstances when it is alright for parents to use physical punishment with a child.</i>
2009, J Lawrence and A Smith, for Families Commission – caregivers ⁹	9% found smacking an effective form of discipline

The following individuals have read this paper and given permission to be listed as endorsers:

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Abuse Research and Treatment Trust

Police activity

A widely-expressed fear associated with the 2007 law has been that parents who occasionally use light physical discipline, and technically may be breaking the law, could be prosecuted, convicted and punished. Police reports indicate that this is not happening as does the recently released report from the Chief Executive of the Ministry of Social Development.¹⁰ This review found no evidence to show that parents are being subject to unnecessary state intervention for occasionally lightly smacking their children. Nevertheless the fear apparently persists, possibly fuelled by unverifiable cases reported in advertisements published by the organisation Family First.¹¹

Clearly it is not in the interests of children and families to have parents prosecuted for minor infringements of the law – the family disruption involved would be counterproductive and prosecution a negative and uninformative remedy. The Government review to ensure that CYF and Police procedures provide adequate protections is therefore welcome. It is appropriate for such protections to lie outside statute law, providing opportunities for parents to be directed to appropriate guidance and support if indicated. Such protections should aim to ensure that families are not unnecessarily disrupted and stressed. But it is important that such measures do not imply that using physical punishment is desirable or sanctioned. The law itself should not imply that some forms of physical discipline are acceptable. This public standard should be clear.

It is likely that the 2007 law change and positive parenting information are already influencing parents against using physical discipline.

The 2007 law provided for police discretion; this appears to be working as intended to protect against unhelpful prosecution in cases of inconsequential assaults on children.

New Zealand appears to be in transition from an older view of children as legitimate targets of parental physical punishment, to a newer, more benign attitude toward them.

3 Who supports the 2007 law and who opposes it?

Support for the 2007 law

An impressive feature of both the campaign for law change before 2007 and of the Yes Vote Campaign preceding the 2009 referendum was the nature of those supporting an end to physical punishment of children. The Yes Vote website lists supporters (both organisations and individuals) of the present law¹² and those who gave public support for the law change in 2007.

These lists reveal supporters from a wide spectrum of interested organisations notable for their professions, access to evidence-based research, and knowledge of families gained from working alongside them. These are informed, credible, caring people with the interests of children and families at heart. Their views are informed by relevant experience, qualifications and information.

A review of news reports and opinion pieces on the Yes Vote website www.YesVote.org.nz illustrates support from well informed journalists and commentators, church leaders, academics, and other leaders, and children and young people.

Activists who led opposition to the law change in 2007 and promoted a 'no vote' in the 2009 referendum were primarily from religious fundamentalist groups. Although some are parents, they are mostly without formal qualifications in the child and family welfare professions. They publicly promote the alleged value of physical discipline, even to the extent of sometimes advocating the use of implements.¹³ This is a dangerous practice that is not inconsequential in its potential for harm. The agendas of some activists may include following religious beliefs that require 'beating the devil out of children' but it is also likely that the issue provides a handy opportunity to flex their political muscle.

Opponents of the 2007 law have capitalised on fears parents may have of unwarranted intrusions into their lives and possible criminalisation for minor assaults. Such parents may not even hit their children, but may be angered by the notion that the State is telling them what to do. It is a fact though that they have no absolute right to treat other family members as they see fit nor should they in a civilised society. The State and its law protect a number of classes of vulnerable citizens in a range of circumstances. Protecting children from assault is one of these circumstances.

The following individuals have read this paper and given permission to be listed as endorsers:

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The issue of democracy

Some lobbyists and commentators are now calling on the Government to honour democracy¹⁴ by acceding to the supposed wishes of the 49% of enrolled voters who voted No in the 2009 referendum.¹⁵ Setting aside the difficulties of interpretation of voters' motivation and the lack of overwhelming numbers, the outcome of the referendum could be seen as a call for a change to the present law so that parents will not be criminalised for occasionally giving a child 'a smack'. But as Prime Minister, John Key has wisely said there is no need to change the law to do this. There is, so far, no evidence that good parents are being criminalised for 'a smack'. He has gone as far as commissioning a review to ensure that Police and CYF procedures are adequate to ensure that good parents are not investigated and/or prosecuted for minor infringements of the law. That review is scheduled for completion in December.

The referendum results have been interpreted by promoters of the referendum as a public condemnation of the new law. However, the loaded and confusing nature of the referendum's wording, the fact that it did not refer directly to the law, the low voter turnout and survey results from the UMR Research commissioned in 2008 by the Children's Commissioner¹⁶ give strong reasons to question conflating the result of the referendum and opposition to the law.

Prime Minister John Key understands the importance of the message sent in the 2007 law.¹⁷

The 2007 law is supported by a very credible body of well-informed professionals, community leaders and commentators. It is actively opposed by some individuals and groups with religious and political agendas and by an unknown number of New Zealanders.

4 How will the safety and wellbeing of New Zealand children be best served now?

The wellbeing of New Zealand children will be best served if the confusing public debate is allowed to settle down and the implementation of the 2007 law is monitored and reported on accurately and quietly.

Lobbyists who oppose the law will do all they can to ensure that this does not happen. To counter this, the Government and supportive NGOs must provide accurate and supportive information about the law, its intention, and how it is working in practice.

If there are problems with the law's application (e.g. unhelpful investigations and prosecutions) these should be addressed in policy and procedures outside the statute. The message in the law should be clear – assaults on any citizens, whatever their age, for the purpose of correction or punishment are against the law and are unacceptable.

There are already many initiatives and programmes being implemented that inform parents about positive non-physical discipline; these must be maintained and adequately resourced and, where possible, expanded.

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Endnotes

- ¹ EPOCH New Zealand is a Charitable Trust established in 1997. Amongst its aims were the repeal of the old section 59 and achieving social change to end the tradition of physical punishment of children. Its trustees are mothers and grandmothers who do not support the use of physical discipline with children and who have relevant professional backgrounds. EPOCH New Zealand's primary role was the establishment of widespread professional support for the law change that happened in 2007. www.epochnz.org.nz
- ² For a full history of New Zealand's section 59 Crimes Act 1961 law change see: Wood B, Hassall I, Hook G and Ludbrook R. 2008. *Unreasonable Force: New Zealand's journey towards banning the physical punishment of children.* http://www.savethechildren.org.nz/new_zealand/nz_programme/section_59/unreasonable_force.pdf
- ³ Smith A, et al. 2005. *The Discipline and Guidance of Children; Messages from research.* http://www.occ.org.nz/__data/assets/pdf_file/0015/3318/OCC_Discipline_and_Guidance_Messages_from_Research.pdf
- ⁴ <http://www.telegraph.co.uk/health/healthnews/6188692/Smacking-makes-children-naughtier-research.html>; <http://yesvote.org.nz/2009/09/17/research-smacking-makes-children-naughtier/>; <http://yesvote.org.nz/2009/08/31/psychology-today-physical-punishment-is-a-serious-public-health-problem/>; <http://www.newscientist.com/article/dn17856-smacking-hits-kids-iq.html>
- ⁵ <http://yesvote.org.nz/files/2009/02/dr-j-durrant-children-50-20041.pdf> Zolotor AJ, Theodore AD, Chang J, Berkoff MC, Runyan DK. 2008. Speak Softly – and Forget the Stick: Corporal Punishment and Child Physical Abuse. *American Journal of Preventive Medicine* 35(4): 364–9. [http://www.ajpm-online.net/article/S0749-3797\(08\)00600-4/abstract](http://www.ajpm-online.net/article/S0749-3797(08)00600-4/abstract) <http://www.sciencedaily.com/releases/2008/08/080827210528.htm>

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Dr Russell Wills

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Beth Wood

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- ⁶ http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10437107&pnum=2
- ⁷ Ministry of Health. 2008. *A Portrait of Health – Key results of the 2006/2007 New Zealand Health Survey*. Wellington. Ministry of Health. [http://www.moh.govt.nz/moh.nsf/pagesmh/7601/\\$File/physical-punishment-ch2.pdf](http://www.moh.govt.nz/moh.nsf/pagesmh/7601/$File/physical-punishment-ch2.pdf)
- ⁸ Children's Commissioner. 2008. *Omnibus Survey Report. One Year On: Public Attitudes and New Zealand's Child Discipline Law*. http://www.occ.org.nz/__data/assets/pdf_file/0008/5669/OCC_UMR-Research_141108.pdf
- ⁹ <http://www.nzfamilies.org.nz/sites/default/files/downloads/discipline-in-context.pdf>
- ¹⁰ <http://police.govt.nz/sites/default/files/resources/latest/s59%202%20yr%20web%20report%20final.pdf>
20091110 CE Monitoring Report on s59
- ¹¹ http://www.familyfirst.org.nz/index.cfm/we_are_listening.html
- ¹² <http://yesvote.org.nz/resources/supporters/>
- ¹³ <http://yesvote.org.nz/2009/08/23/a-wooden-spoon-for-larry-baldock/>
- ¹⁴ <http://www.scoop.co.nz/stories/PO0910/S00382.htm>
- ¹⁵ Political parties in power would soon have problems governing if all policy and law relied on referendum to decide what is best for the country.
- ¹⁶ http://www.occ.org.nz/__data/assets/pdf_file/0008/5669/OCC_UMR-Research_141108.pdf
- ¹⁷ http://www.nzherald.co.nz/the-smacking-debate/news/article.cfm?c_id=1501165&objectid=10598289

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