Barnardos NZ submission to the Justice and Electoral Committee

Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill

Submission

February 2006

Contents

Executive summary

1. Barnardos is one of New Zealand's largest providers of services to children. In 2005 it provided a range of services to approximately 10,000 children and their families. A number of these services related to good child development and child rearing practice. It is this wide experience with children over many years which gives cogency and authority to our submission supporting the repeal of section 59 of the Crimes Act.

2. Our guiding principle is *'Ko Nga Tamariki i Te Tuatahi; Children come first'*. Our services apply the principles of evidence-based best practice. We offer the select committee these principles as providing the best philosophical framework in which to consider the repeal of section 59 of the Crimes Act. We specifically argue that in a modern secular society to use other concepts or values is to risk retreating from the fundamental secular principles of tolerance and rational decision-making.

3. The law as it stands needs to change for a number of reasons –
   - The best interests of the child are not its paramount consideration.
   - Its purpose is not the protection of a child but to provide a defence for the child-abusing parent who, in disciplining a child, has crossed the boundary from minor use of force, such as a smack, into child abuse with instruments such as pieces of wood or riding crops.
   - It provides the extraordinary spectacle of being probably the only law in the statute book which offers a defence to the assailant rather than a protection to the victim.
   - It constitutes a subjective standard which has resulted in varying court interpretations of the meaning of the words 'reasonable in the circumstances'. (Consideration of relevant court cases is contained in Appendix One.)
   - It is inconsistent with the definition of domestic violence in S.3 of the Domestic Violence Act 1995.

4. In briefly considering the history of punishment we point out that its primary use by the state has been retribution and deterrence of others. Applications of

these two principles have resulted in some atrocious punishments through history — all of which have since been abandoned as ineffective in changing behaviour.

5. This is an important point. If history tells us that the widespread use of physical force was for the purpose of retribution and deterrence by public intimidation, and *not* correction or discipline, why do were persist in protecting its use in the home?

6. The legal protection of punishment in the home has a different purpose from retribution and deterrence of others. It derives from archaic laws protecting the male citizen in the use of physical force in punishing wives, servants and children. Only Section 59 today survives; in short, it is an ancient relic protecting a former privilege and not a contemporary good child rearing practice.

7. Modern child rearing best practice does not support the use of physical punishment and research has shown that physical punishment —
   - Teaches children to avoid being caught
   - Endorses inflicting pain to change other people's behaviour
   - Reduces the possibility of influencing children by example and discussion
   - Makes the forbidden more attractive
   - Teaches children to be egocentric (because they learn through avoiding pain)
   - Is associated with a range of negative developmental outcomes (antisocial aggressive, disruptive behaviour along with other forms of antisocial behaviour; poorer intellectual development; poorer child-parent relationships; the development of various mental health problems; lessened chances of children internalising parental rules and values.)

8. If physical punishment of children is no longer supported by research as a useful child rearing practice then there is no point in the law persisting in protecting the practice.

9. By international standards, New Zealand has appalling child abuse statistics and our rate of child deaths by homicide is one of the worst in the developed world.

Such deaths are at one extremity of family violence against children with smacking at the other mild extremity of the continuum. In practice Section 59 provides a protection for the middle to severe range of violence as exemplified by the cases summarised in Appendix One. In doing so it provided an ambiguous message to parents concerning the acceptability or otherwise of such physical violence. This is to be contrasted with the unambiguous zero tolerance message which the law gives on spousal violence.

10. In looking for the best way forward for New Zealand we caution against the approach which seeks to define 'reasonable' as it creates more difficulties than it resolves and can result in increased parental prosecution which is the opposite of what was intended.

11. It is concluded that the Swedish experience is the best model for the Select Committee to consider. In Sweden the parental defence was removed a generation ago. Law reform was only one prong of a programme of change with the other two prongs being well-resourced parental education and family support services for families under stress. Today Sweden's rate of child deaths by homicide is half ours. Although their population is more than twice the size of ours, the total number of children killed intentionally in Sweden is less than the total number killed each year in New Zealand. Furthermore, the majority of Swedish politicians and public now support non-violent methods of child rearing. In short law change has been an integral part of their programme of reducing child maltreatment.

Introduction

1. Barnardos is one of New Zealand's largest community providers of services to children. Our core work involves advocating for children and working with families, whānau and communities in the care, support and education of children and young persons. We employ 728 paid staff, 800 caregivers and many volunteers work for Barnardos around the country.

2. In 2004/05 we delivered early childhood services to approximately 4,500 children and out of school care services to approximately 1,100 children (data collected from Ministry of Education reference week); as well as a range of child and family services (foster care, supervised contact, rural social work, etc.) to a further 4,500 children. In total, around 10,000 New Zealand children passed through our care in 2004/05.[1]

3. Barnardos' guiding principle *is 'Ko Nga Tamariki i Te Tuatahi; Children come first'*. Our strategic direction includes advocating for children and, when doing so, we ensure that our advocacy is based upon our experience and on established best practice.

4. Our constitution states in its preamble that —

> ***BARNARDOS*** *is an organisation whose inspiration and values derive from the Christian faith. These values, enriched and shared by many people of other faiths and philosophies provide the basis of our work with children and young people, their families and communities.*

5. Our guiding principle and our constitution are supported by two fundamental concepts — the best interests of the child and a secularism which acknowledges our Christian heritage. We commend these two principles to the Select Committee as a basis for the consideration of the repeal of section 59 of the Crimes Act.

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[1] Barnardos (2005) *Barnardos annual report 2005*. Wellington, Barnardos: 12.

6. In making our submission on this Bill, we wish to emphasise that it is grounded in our experience over many years of working with tens of thousands of children and families in the context of early childhood care and education, family support and parent education throughout New Zealand. We come with one commitment, namely, to tell the Select Committee what we know, from extensive practical experience, is in the best interests of children.

Part one

A philosophical framework for the consideration of Section 59.

7. We urge the Justice and Electoral Committee to consider the Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill in the context of two principles, namely —
   - The best interests of the child
   - Secularism.

Best interests of the child

8. In being a signatory state to the United Nations Convention on the Rights of the Child since 1993, New Zealand has accepted the best interests of the child as the starting point of legislation and policy relating to children. This is explicitly stated in S.6 of the Children, Young Persons and Their Families Act 1989:

> In all matters relating to the administration or application of this Act (other than Parts 4 and 5 and sections 351 to 360), the welfare and interests of the child or young person shall be the first and paramount consideration, having regard to the principles set out in sections 5 and 13 of this Act.

9. The best interests of the child should be the first and paramount consideration in reviewing the proposed amendment to the Crimes Act.

10. By giving paramountcy to the best interests of the child, the legislature is not pitting children's rights against parents' rights. Rather, it is recognising that by providing the best opportunity for the full development of each child in a supportive, loving and trusting family context it is providing the best opportunity for that child to grow into a mature, caring and productive adult contributing to the society of the future.

Secularism

11. New Zealand is a secular society. Central to the concept of a modern secular society is the notion of rational decision-making as against decisions made on

the basis of any dominant collective faith. This is of vital importance in any consideration of Section 59 as some of the vocal opponents of repeal base their opposition on their particular Biblical beliefs.

12. As a pluralistic society of many cultures and viewpoints, it is essential that we retain the twin secular principles of tolerance of other points of view and rational decision making. A retreat from secularism poses very serious risks to our modern way of life. This is best exemplified by contemporary international political discourse and activity which is dominated at the present time by what is loosely called religious fundamentalism. Witness the Taleban in Afghanistan, Hindu fundamentalists burning widows and attacking mosques in India, Israeli fundamentalists arguing for the expansion of Israel's to the Biblical borders at the time of King David, or the US general, of fundamentalist Christian belief, arguing that his God is more powerful than the Muslim God. Such extremism, based upon and inspired by, a variety of religious beliefs, places at risk the tolerant pluralistic secular society which is our heritage and which we take for granted.

13. In considering submissions on Section 59 we urge the Select Committee to distinguish between those submissions which, either explicitly or by implication, base their argument on divine injunction, and those which are based upon rational discussion of evidence and best practice.

14. As we noted in our introduction, Barnardos itself reflects in microcosm this fundamental principle of a modern society. Thomas Barnardo, our founder, was a devout nineteenth century evangelical Christian motivated by his Christian beliefs when establishing a child welfare organisation. His belief in compassion, social justice, and special consideration of the needs of vulnerable children imbue the organisation to this day, but not his personal religious beliefs. We have been enriched by the beliefs of other faiths and philosophies and while we acknowledge freely our Christian heritage, our organisation is secular with all decisions made on the basis of rationality and not religious belief.

15. The application of rational discussion and decision-making in the consideration of section 59 of the Crimes Act *means the conscious application of evidence-*

based research and best practice in child guidance. There is an ample body of such research for the Committee to consider which has been reviewed specifically for the New Zealand context by the Children's Issues Centre of the University of Otago[2].

16. We urge the members of the Select Committee to consider the bill from the perspective of secular rationality and to recognise the risks involved in arguing the physical discipline of children as a God-given Biblical precept.

[2] Smith, Anne B, Megan M. Gollop, Nicola J. Taylor, Kate A. Marshall (2004) *The discipline and guidance of children: a summary of research*. Dunedin, Children's Issues Centre and the Office of the Children's Commissioner.

Part Two:

Why the law needs to change

17. If Section 59 is considered from the perspective of what is in the best interests of the child and evidence-based best practice, then it must be recognised that Section 59 needs to be repealed because —

    1) The best interests of the child are not its paramount consideration.
    2) Its purpose is not the protection of a child but to provide a defence for the child abusing parent who, in disciplining a child, has crossed the boundary from minor use of force such as a smack into child abuse with instruments such as pieces of wood or riding crops.
    3) It provides the extraordinary spectacle of being probably the only law in the statute book which offers a defence to the assailant rather than a protection to the victim.
    4) It constitutes a subjective standard which has resulted in varying court interpretations of the meaning of the words 'reasonable in the circumstances'. (Consideration of relevant court cases is contained in Appendix One.)
    5) It is inconsistent with the definition of domestic violence in S.3 of the Domestic Violence Act 1995.

Domestic Violence Act 1995

18. The Domestic Violence Act 1995 provides no justification under any circumstances for physical violence and provides that

> "A number of acts that form part of a pattern of behaviour may amount to abuse for that purpose, even though some or all of those acts, when viewed in isolation, may appear to be *minor or trivial*…" (our italics).

19. This act, further, defines a person as psychologically abusing a child who *"causes or allows the child to see or hear the physical, sexual, or psychological abuse of a person with whom the child has a domestic relationship."*

20. Such a definition reflects a zero tolerance of violence in the domestic context. It is intended to provide complete protection from any form of violence to all family members and explicitly includes children. In the context of this act, even minor and trivial acts can be deemed to be abusive. It is inconsistent for one law to prohibit children from witnessing violence, while another law makes it possible for children to be subject to assault with substantial implements.

Part three

How effective is physical punishment?

21. At the core of any rational defence of section 59 must be evidence that physical punishment is effective. In this section we briefly review the evidence.

History of physical punishment in law

22. Physical punishment for the purpose of discipline has a long history in western law. In all societies the infliction of pain by the state for the twin goals of retribution and deterrence from crime and public disorder goes back at least to the very beginnings of recorded history. There is no need to dwell at length on the various barbarities that have been used in the discouragement of crime through the centuries. It is sufficient however to note that the purpose of the use of physical force was the infliction of pain with the goal, not to change the behaviour of the individual criminal, but to be a deterrent to others. To achieve this, the punishment needed to be –

- *Harsh*

  Frequently punishment was cruel to the point of such barbarities as crucifixion, impalement, maiming, etc. The purpose was intimidation and coercion, not encouragement or training in good behaviour.

- *Public*

  By making a public spectacle of the punishment, the intention again was to intimidate others from committing the crime. Traitors' heads were displayed rotting on London Bridge. Felons' corpses were left to rot on crosses, impaling poles and gibbets. In the 18th and 19th century children were publicly hung in the UK for stealing bread, without consideration of their age or the reasons why they stole the bread. Ironically, we read of pickpockets working the crowds at the public execution of other pickpockets — surely evidence of the ineffectiveness of harsh physical punishment as deterrent.

23. Our society no longer publicly executes or flogs, uses the stocks or publicly displays criminals as punishment because of our recognition of the human rights of the criminal. We have also learnt the lesson that no matter how harsh the punishment and public the spectacle, physical punishment never reduced the

crime rate. It is for this reason that the use of physical punishment by the state has progressively been illegalised in penal codes, in the military, and in educational institutions. Apart from capital punishment for a limited number of capital offences, by the mid-19th century physical punishment of crime had been limited to the use of corporal punishment which, even a casual reading of the literature and newspapers of the time shows, was harsh, accepted and normal.

24. It was only in the later 19th century that the notion of prison as a non-violent form of punishment and the reformation of the individual criminal developed significantly. At this point new 'model' prisons were developed based upon contemporary scientific principles for the correction of behaviour.

25. Today we no longer hang criminals, flog soldiers and sailors, birch adolescents in borstals or strap or cane students in our schools. The legislature has long ago recognised the futility of such forms of punishment in the correction of behaviour. Now we look to alternatives to change anti-social behaviour. It is only in the home that we persist in legally protecting the use of physical force against children in the name of discipline and training.

26. This is an important point. If history tells us that the widespread use of physical force was for the purpose of retribution and deterrence by public intimidation, and *not* correction or discipline, why do we persist in protecting its use in the home? If the legislature has long recognised the futility of physical punishment in state institutions as a means of correcting behaviour, why then does the legislature persist in protecting its use in the home? If the rationale for the penal use of physical punishment was retribution and deterrence by intimidation, do we really think these are good principles upon which to base child discipline and training? Obviously, not. How then do we justify the continued legal protection of physical punishment in the home?

Physical punishment in the domestic context

27. The equivalent of section 59 occurs, or has occurred, in most western penal codes. Often the wording is strikingly similar: there are several key elements. First the force must be intentional and used in the correction, disciplining or chastisement of the child. Second it is deemed to be reasonable in the

circumstances. Third, it can only be exercised by a parent or one in the place of a parent.

28. The origin of this concept common to many western penal codes can be traced back to Roman law where the head of the household, the *paterfamilias*, had the power (*podestas*) of life and death over wife, children and slaves of the household. It was primarily a property right. The wife, children and slaves were owned property, not full citizens, and without voice in the courts and assemblies. The use of this power, for example, in the practice of exposure and abandonment of unwanted female babies in Roman society, was an exercise of a property right by the *paterfamilias* and had nothing at all to do with discipline.

29. As recently as the 18th century a limited version of these householder's rights still existed, thus Blackstone*: "Parents have the right to use reasonable force against their children for the purpose of correction and punishment, as do Masters against their servants and husbands against their wives."* [3] Note the critical elements: 'parents', 'reasonable force' and 'correction and punishment'. Thus we have a progression from the absolute power of the Roman male citizen (who could, and did, order death) exercised over property to the more limited disciplinary power of the English male citizen (force must now be 'reasonable'). Underpinning this right is the belief that the infliction of pain will act as a deterrent. See Appendix Two for a survey of the progressive constraint in the legal use of corporal punishment.

30. Since the 18th century however those male legal rights have been changed so that there is now zero tolerance, legal and social, of the use of physical 'correction' against women and employees. Thus the Domestic Violence Act 1995 is clear in its definition of domestic violence that it encompasses acts which "…when viewed in isolation, may appear to be *minor or trivial*…" Only children today have limited protection in law with parents of both genders retaining a legal defence no longer available elsewhere. In short s.59 is a statutory fossil, not a provision relevant to contemporary good child rearing practice.

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[3] Blackstone, W. *Commentaries on the laws of England, 1765-69.* (www.lonang.com/exlibris/blackstone/)

31. Sometimes comparisons are made between Section 59 and Section 60 of the Crimes Act which provides a defence for the master of a ship or pilot of an aircraft who uses reasonable physical force. But the history and purpose of the two sections are quite different. The defence offered the parent is in the 'correction' of the child; the defence offered the ship's master or aircraft's pilot is the maintenance of public good order and discipline. In the latter case the use of force is comparable to that of the Police acting as an organ of the state in maintaining public order. In contrast Section 59 relates to the responsibility of the parent to provide effective child guidance and has its origins in archaic laws relating to punishment.

Problems with physical discipline

32. Physical discipline of children in the home is just as ineffective as its use in the penal system and in the military. At best it achieves short term compliance only. Contemporary research shows that in the long term physical punishment of children -

- Teaches children to avoid being caught
- Endorses inflicting pain to change other people's behaviour
- Reduces the possibility of influencing children by example and discussion
- Makes the forbidden more attractive
- Teaches children to be egocentric (because they learn through avoiding pain)
- Is associated with a range of negative developmental outcomes (antisocial aggressive, disruptive behaviour along with other forms of antisocial behaviour; poorer intellectual development; poorer child-parent relationships; the development of various mental health problems; lessened chances of children internalising parental rules and values.)[4]

Effective discipline

33. There is general acceptance among researchers and practitioners that a warm loving relationship between parent and child provides the best context for the guidance of a child's behaviour. Criticism, a lack of acceptance and qualified love tends to provoke defiance and aggression. On the other hand positive rewards for good behaviours, attention and interest in the child's point of view,

[4] Smith, Anne B. *et al* (2004)*:* 14-17

and tolerant affection, create a context in which the child is most likely to comply with the parent's expectations of good behaviour[5].

34. Other elements of positive discipline include
    - Parental warmth and involvement
    - Clear communications and expectations
    - Realistic explanations and rationales for the behavioural standards
    - Rules, boundaries and demands
    - Consistency and consequences
    - Context – structuring the situation[6].

35. It is these principles which parent education and family support programmes promote.

Cultural norms

36. If all the historical forensic and psychological evidence points to the ineffectiveness of physical punishment, why then do we persist with it? Why do our laws set an unequivocal standard of no intentionally applied force, no matter how slight, for adults and animals, yet sets an equivocal standard for children?

37. These are central questions for rational consideration and discussion.

38. The persisten belief in the right of a parent to use force in disciplining, in defiance of evidence-based best practice, seems to be a deep-seated belief in our society. Thus, a 2001 survey by the Ministry of Justice found that 80 percent of parents believed smacking with the hand was acceptable[7]. On the face of it, therefore, it does seem that in our society there is a conviction that limited physical punishment has its place in the home.

39. Other surveys, asking different questions, have found other results however. Thus, for example, the Littlies Lobby's survey of parents in 2005 found that 71 percent thought "smacking when they do things wrong" was the least effective way to guide children to behave well. Ninety-six percent said praising and

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[5] *ibid*.: 19-27
[6] *ibid*.: 19-26
[7] Carswell, Sue (2001) *Survey on public attitudes towards the physical discipline of children.* http://www.justice.govt.nz/pubs/reports/2001/children/index.html

encouraging good behaviour is the most effective way to guide children to behave well[8]. This survey is interesting because it did not pose questions which tested acceptability of traditional practices but instead questioned parents about what works. Thus, while the Ministry of Justice survey asked questions which tended to reinforce the traditional view, the Littlies Lobby questionnaire explored the views of parents on the effectiveness of various childrearing practices.

40. Even those who support the use of physical punishment of children support only its limited use. One of the strongest advocates, the Christian organisation, Family Integrity, argues for a "methodology of controlled, measured, judicial smacks on the clothed bottom"[9]. Repeatedly through their publications they use words such as "controlled", "judicial", "measured". And therein is a difficulty. Most physical punishment of children is *not* an expression of a loving, measured response to a child's misbehaviour. Most people find repugnant the notion of a loving parent detachedly and emotionlessly deciding to use physical force. We also know that 71 percent of parents consider it the least effective way of correcting behaviour. The decision to use it, therefore, is not in the main, judicious and measured, but rather, is an expression of frustration and even anger. That is why physical punishment can and does spiral out of control on occasion into child abuse.[10] James Whakaruru, Tangaroa Matiu and other children are dead today because of physical punishment which got right out of hand.

The need for cultural change

41. New Zealand has appalling child abuse statistics. Internationally, our statistics are among the worst in the developed world. The statistics are well known but need again to be placed on record. An average nine children every year are killed intentionally. Whereas in over half the countries of the developed world, the rate of child deaths by homicide is reducing, in New Zealand it is increasing slightly[11]. In a Unicef study of deaths between 1994-1998, New Zealand ranked

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[8] Littlies Lobby (2005) *Summary of key research findings.* (www.littlieslobby.org.nz/documents/Summary_Of_Key_Research_Findings%20_4_.pdf)

[9] Family Integrity (2006) *Ban smacking?* Palmerston North, Family Integrity: 6

[10] Fergusson, D.M. and M.T.Lynskey. "Physical punishment/maltreatment during childhood and adjustment in young adulthood." *Child abuse and neglect* vol. 21. no. 7.Denver, International Society for Prevention of Child Abuse and Neglect: 628

[11] Innocenti Centre (2003) *A league table of maltreatment deaths in rich nations.* (Florence, Innocenti Centre: 9

25th out of 27 developed countries of the OECD.[12] Parents were overwhelmingly responsible for these fatalities. Approximately two thirds were of children less than five years of age with 26 percent being under one year of age. In all but six to ten of the cases, the perpetrator knew the child they killed. Fatal head injuries and death by battering accounted for almost half of the deaths.[13]

42. We wish to emphasise that child deaths by homicide and minor physical punishment of a child, such as smacking, are not at all the same thing. They are however the extremities of a continuum of family violence. Section 59 actually condones a level of violence in the middle to severe range by having successfully been used to defend severe thrashings with unacceptable instruments and even chaining of an older child. Repeal of section 59 therefore has an integral role in promoting cultural change – just as law reform has promoted cultural change in attitudes to violence against women and servants.

[12] *ibid*.: 4

[13] Doolan, Mike (2004) 'Child death by homicide: an examination of incidence in New Zealand 1991-2000." *Te Awatea review*, vol 2 no.1: 7-10.

Part four

The way forward

43. A steadily increasing number of states are repealing laws comparable to our section 59. In 15 states now children are legally protected from all forms of corporal punishment while in Belgium a new clause has been added to the constitution confirming children's right to moral, physical, psychological and sexual integrity. In Italy, the Supreme Court has declared all corporal punishment to be unlawful. Similarly a Supreme Court decision in Portugal has ruled that parents do not have the right to raise their children through "physical aggression"[14].

Attempts at defining 'reasonable'

44. Several states, including England, Scotland and Wales and New South Wales, Australia, have avoided repeal by attempting a definition of what is 'reasonable'. Thus in New South Wales, section 61AA was inserted into the Crimes Act (1900) in 2001 making physical punishment by a parent or caregiver unreasonable if the force is applied to a child's head or neck, or the force is applied to any part of the body in such a way as to cause, or threaten to cause, harm to the child which last more than a short period.

45. In England and Wales, parents are able since 2005 to claim that common assault of their child constitutes 'reasonable punishment' while the defence may not be used in cases of more serious assault charges such as Actual Bodily Harm and Grievous Bodily Harm[15].

46. Such approaches have serious shortcomings —

- They define an acceptable threshold of violence towards children thus continuing to limit the child's right to the full protection of the law
- They convey a dangerous and misleading message that violence towards children can be justified.
- They do not protect children from the most dangerous forms of physical punishment that do not leave marks (such as shaking).

[14] www.endcorporalpunishment.org
[15] www.endcorporalpunishment.org

- They can encourage the parental use of forms of corporal punishment that do not leave marks (but which can be more dangerous).
- They remain a subjective test as some children bruise or bleed more easily than others. Such subjectivity is unfair on the parents since they could be treated differently by the Police and courts for the same level of force used.
- They fail to encourage the use of positive non-violent forms of child guidance.

47. Similarly age-related rules are inherently defective also as they fail to take account of individual differences and stages of development. Why, for example, should it be illegal to strike a 23 month toddler but legal to smack a 24 month old one? What of children with various impairments? Will it be OK, for example, to smack a 10 year old with Asperger's Syndrome but illegal to strike a child of the same age with Down's Syndrome?

48. A particular risk of age-related definitions of what is 'reasonable' is that it can actually increase the risk of parental prosecution since it removes all discretion relating to the prohibited age groups. Following a Supreme Court decision, the Canadian experience has been Police discretion in laying charges in the case of minor or technical common assaults has changed as a consequence of an age-related definition. It has come to act as a *de facto* ban resulting in prosecutions of parents which would not formerly have occurred.[16]

49. The option of defining 'reasonable' may be superficially attractive then, but it must be recognised for what it is — "the politician's solution", providing a compromise acceptable to some voting parents, but failing the test of either being in the best interests of the child or reflecting evidence-based best practice. Some issues, particularly rights issues, are not capable of compromise. There can be no compromise on the issues of slavery, assault of an adult, for example. The reputed 18th century attempt at defining 'reasonable' in the physical chastisement of a wife, the so-called 'rule of thumb', is today viewed as merely grotesque.

[16] Durrant, Joan (2006) Oral presentation. *Blossoming of our children: kia Puwai nga Tamariki: 10th Australasian Conference on Child Abuse & Neglect, Wellington.*

50. The notion of defining 'reasonable' should also be put in historical context. When corporal punishment in schools was illegalised in 1989, it was unpopular with many arguing that it would be the end of our education system. Today, the absence of the use of corporal punishment is an unremarkable irrelevancy with few advocating its restoration. That too is the experience of those countries which have banned all physical punishment of children. Sweden withdrew the parental exemption from prosecution in 1959 and then 20 years later totally banned all forms of physical punishment of children. "A generation ago 55 per cent of Swedes supported the use of physical punishment. Today support has fallen to just over 10 per cent (and only to 6 per cent among those under 35)."[17]

Repeal, parent education and family support

51. Logic inevitably draws one to the conclusion that full repeal is the only law reform option which is in the best interests of the child. It will provide children with full human rights in law in terms of protection from violence and it will avoid continuance of some of the more grotesque decisions which have occurred in our courts. It will also remove inconsistencies between the Crimes Act and laws designed to eliminate domestic violence and protect children.

52. But, on its own, repeal is no panacea for our worsening child abuse. Public and parental education programmes and improved family support systems also are required.

53. The law is unequivocal in its intolerance of any form of common assault of an adult or spousal violence, but that does not in itself stop assault, murder or spousal violence — public education and changing cultural standards do that. The law does however set the standard without equivocation. So too, repeal of section 59 would remove an ambiguity and a subjectivity from the law which can only confuse parents as it conflicts with all the good parenting messages. In this regard the Swedish experience is instructive.

The Swedish experience

54. In 1958 physical punishment was banned in all schools and by 1960 in all child care institutions. In 1966 the Penal Code was amended to withdraw any special right of parents to use violence against children. This was the equivalent to

[17] Innocenti Centre (2003) op.cit: 24

repealing our section 59 and was *not* a ban of physical punishment. Following a widely publicised case in the mid 1970s, when a father was acquitted after severely beating his three year old daughter, Sweden did then ban all forms of physical punishment of children in 1979. The law change was not a stand-alone measure but has been described as the symbolic centrepiece of a public education campaign.[18] It needs to be emphasised that Sweden accompanied legal reform with good public investment in education and in family support services to ensure speedy response to stressed families.

55. While it is possible to debate the precise impacts of these initiatives several general conclusions have been drawn by UNESCO. First, the fears of those who oppose banning physical punishment have not been realised. "…although problems with young people continue to exist, the scale and severity of those problems is at a level that most other OECD nations can only aspire to."[19] Second, a clear majority of Swedes continue to support the ban while successive governments have upheld the law, arguing that hitting children violates their human rights and that serious child abuse will be difficult to eradicate without making it perfectly clear that violence must not be used in any form in the upbringing of children.[20]

56. In the critical measure of child abuse — child deaths by maltreatment — New Zealand compares most unfavourably with Sweden. That country has a population of just over nine million yet has fewer child homicide deaths than New Zealand. It has a child deaths by maltreatment rate of only 0.6 for children under the age of 15 years per 100,000 children in the age group, averaged over 5 years. New Zealand's rate was 1.3.[21]

57. On each occasion that another child dies in New Zealand at the hands of its parents and in the name of discipline gone wrong, we wring our collective hands in despair. Yet the way forward is clear: unambiguous law, together with adequate resourcing of parent education and family support programmes. Well-resourced parent education programmes are needed to ensure that all New Zealand parents are trained in good parenting techniques including the use of

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18 Innocenti Research Centre (2003): 24
19 *ibid.*: 25
20 *ibid.*
21 *ibid.*: 4

positive parenting methods. Well-resourced family support programmes are needed to ensure early intervention when families are under stress or not coping well in their child nurturing.

58. At present, our law delivers an ambiguous message to parents. On the one hand, the Domestic Violence Act 1995 allows no justification for the use of force, the threat of force or the witnessing of the use of force in the home. On the other hand, Section 59 tells parents that in certain circumstances 'reasonable force' is alright. Inevitably, that ambiguous message leads to confusion for parents, for the Police and for the courts.

59. But above all, Section 59 is a sad message which the law, on behalf of us all, delivers to children. As the Governor-General, Dame Sylvia Cartwright, has said —

> *"…as a nation, we need candidly and honestly to search our souls about all acts of violence, and the way we deal with each other. We must ask ourselves whether the right to smack children is so precious a right, so necessary to parenting, that we are willing to sacrifice the James Whakarurus, the Lillybings, and the many, many children who are assaulted in the name, or using the excuse of discipline, and who survive."*[22]

[22] Cartwright, Dame Sylvia (2002) *[Speech] to the Save the Children AGM NZ Programme session, Wellington, June 2002.* Typescript: 4

Part five:

Recommendations

60. It is recommended that the Justice and Electoral Committee —

i. *Consider* the Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill in terms of the two principles of
   - The best interest of the child
   - Evidenced-based child guidance best practice;

ii. *Support* full repeal of section 59 of the Crimes Act 1961;

iii. *Reject* attempts at defining ‘reasonable’ physical force in the disciplining of a child.

Appendix one

Court decisions

A full summary and analysis of relevant court cases, *"Parental corporal punishment of children in New Zealand"* compiled by John Hancock, has been published by Action for Children and Young People of Aotearoa (ACYA) and can be viewed on the internet at: www.acya.org.nz/site_resources/library/Documents/Reports_to_UN/S59_report_UNCROC_28Aug2003.rtf

The summary highlights inconsistencies in the interpretation of what constitutes "reasonable" force. Hancock notes that

> *"The section 59 defence has been successfully raised in cases where parents has been prosecuted for hitting their child with a bamboo stick, hitting their child with a belt, hitting their child with a hosepipe, hitting their child with a piece of wood and chaining their child in metal chains to prevent them leaving the house (media reports of these cases are attached to this document)."*

Media reports

Media reports of cases in which the application of Section 59 has been used successfully are instructive in showing how Section 59 can provide a defence for a manifestly abusive act.

"Man who chained stepdaughter goes free" *
Reported: *New Zealand Herald* 17/11/99

A jury in the High Court at Palmerston North acquitted a man accused of chaining his wayward 14-year-old stepdaughter to himself, from charges of kidnapping and cruelty to a child.

The report states that the defendant's counsel successfully utilized a defence of "tough love" without having to call evidence.

*"**Belting okay for wild boys says jury"** *
Reported: *New Zealand Herald* 21/6/02

“Man acquitted of spanking” *

A jury in the North Shore District Court cleared an Auckland man of assault after he took a belt to his hyperactive stepchild as punishment for continually running on to the road in front of cars.

“Father acquitted in pipe beating” *
Reported: *New Zealand Herald* 3/11/01

“Jury acquits thrasher dad” *

A jury in the Hamilton District Court decided a father who struck his 12-year old daughter with a hosepipe was within his rights to do so and acquitted him from assault charges.

“Smacking father discharged” *

Reported: *The Dominion* 22/02/2001

A jury in Napier District Court acquitted a man who struck his son several times on the buttocks with a piece of wood. A pediatrician stated that the injuries the boy received must have been caused by “considerable force”.

“Smacking laws stay unchanged for now” *
Reported: *The Dominion* 21/12/2001

This article refers to the above cases in Hamilton and Napier and also refers to a case heard in the Christchurch District Court, where the judge, Judge Graeme Noble, acquitted a man for hitting his daughter with a doubled over belt, finding that the man used reasonable force.

More recently —

Jury clears mother over 'six of the best'
Reported from the *NZ Herald*, 27 May 2005

A mother who admitted hitting her son with a horse whip and a bamboo cane based on her Christian beliefs has been found not guilty of assaulting the boy.

The 39-year-old, who received final name suppression, was on trial in the Timaru District Court before a jury on two charges of assaulting her son, then aged under 14.

It took the jury one hour and 10 minutes yesterday to reach a decision.

Family Court decisions

A number of Family Court cases highlight the conflict between Section 59 and the best interests of the child principle to which the Family Court is required to give paramountcy.

Re MM & PM (FP 079-002-00, 8/3/02, FC Judge Inglis) *

This matter concerned a Family Court application to approve a revised care and protection plan, where the child concerned would remain in Child Youth and Family Services (CYFS) care for another 6 months).

Although the mother and stepfather applicants had been acquitted form a charge of assault in the District Court for caning the child with a bamboo stick, the Family Court Judge held that continued CYFS care was justified, as the mother and stepfather seemed to be under the impression the acquittal vindicated their behaviour. The Judge observed that it was necessary for the child to be protected from adult excesses.

Wilton v Hill (FP 069/11/92, 26/7/01, FC Judge Whitehead) *

In this matter, the Family Court had to consider whether it had jurisdiction to hear an application for discharge or suspension of access of a parent to child, in circumstances where the alleged abuse that occurred may be defendable in criminal law under section 59.

Judge Whitehead found that the Family Court clearly did have jurisdiction, referring to the Court's obligation under section 23 of the Guardianship Act 1968 to give paramount consideration to the best interests and welfare of the child in question.

M v M (FP 083-240-00, 27/11/00, FC Walsh J) *

This Family Court case concerned an application for a final protection order by a 17-year-old girl against her father. The applicant had a temporary protection order granted, following her father punching her in the face, head and arm causing injuries including a black eye. The issue before the Court was whether the force used by the father was reasonable in the circumstances.

The Judge held that a parent is entitled to use corporal punishment but the force used must be reasonable and a parent cannot resort to assaulting a child under the guise of discipline. The Judge considered that, on the evidence, the risk existed that the respondent would resort to hitting the applicant again if he felt justified, and accordingly granted the application.

T V T 9/7/90 Auckland Family Court FP 004/919/90

This Family Court case concerned an application for a Protection Order. The respondent Father hit his child 12-year-old son with a gun belt and kicked him on the bottom, causing bruising. The respondent claimed it was reasonable chastisement.

The Family Court accepted that section 59 permits a degree of violence but found kicking a child and causing bruising was unacceptable.

S v B (1996) 15 FRNZ 286 *

This Family Court Case also concerned an application for a protection order.

In this matter, the respondent father slapped the applicant, his 14-year-old daughter with his open hand on the girl's legs and face during an access visit. Prior to this the respondent had pushed her across the room and forced her into a squatting position, as a reaction to what he considered to be defiant behaviour.

The daughter was refused a protection order on the basis that, in the circumstances, this was reasonable force by way of correction under section 59. In justifying this finding, the Court found (at page 287):

"The criteria for making a protection order were not made out. In the circumstances B's actions, although inappropriate, could not be considered as "abuse" or "a pattern of behaviour" constituting domestic violence. R accepted that her own behaviour was unacceptable. She was acting irrationally and B's response was spontaneous. She did not require medical attention".

F v T (2002) 27/03/02 Wanganui Family Court FP083/46/01

This Family Court case regarded an application for a Custody Order. The Court heard that the mother hit her children with a riding crop and wacky stick and slapped the older children, claiming it was reasonable discipline.

The Judge described the mother's parenting style as extreme and harsh and accordingly awarded custody to the father.

C v C 5/11/02 Porirua Family Court FP091/159/02

In this matter the mother smacked her 7-year-old child in the bath and slapped the child's face, claiming that she administered this in a calm controlled manner. The Judge observed that this was unreasonable discipline.

T v T 19/11/01 Wanganui Family Court FP 083/306/00

This case regarded an application for a Custody Order. The father made his two boys, aged 10 and 4, lie on their beds face down while he hit them on their buttocks or hands with a length of hose.

In addition, it was heard that he boasted about giving his children a beating and slapped his baby daughter in front of a teacher. It was also heard that the mother had hit the children on their hands with a hairbrush. The Court awarded custody to the mother.

Appendix two

Historical Survey: The fall and fall of corporal punishment

In the law codes of the Roman Empire citizenship conferred on the citizen certain absolute rights: the power of a father (*pater familias* or patriarch) over his children (*patria potestas*), of the husband over his wife (manus), of an owner over his property - including slaves (*dominium,*) and of a freedman over another by contract (*mancipium*.) The paterfamilias owned as agent and trustee all the property of the extended family and held most absolute power over persons within his extended household. He held the power of life, death, enslavement (*servitus*) and bondage (*mancipium*.).

By the eighteenth century English law still recognised a limited version of these powers: "Parents have the right to use reasonable force against their children for the purpose of correction and punishment, as do Masters against their servants and husbands against their wives." (**Source**: Blackstone. *Commentaries on the Laws of England, 1765-69*)

Note how the key elements - "reasonable force", "correction" - still exist in section 59 of the Crimes Act 1961.

It is interesting to note also how the legal status of corporal punishment has eroded as shown in the table below. In the nineteenth century its legal use was widespread: judicial, educational, work related, and in the family (wives, children and servants). Furthermore even a casual reading of the literature and newspapers of the time show that its use was accepted and normal.

1867 *Offences Against the Person Act* made provision for the whipping of boys under 16 a punishment on conviction for certain offences.

1893 *Criminal Code Act* gave statutory recognition to the long established English common law principle that parents and schoolteachers could use reasonable chastisement to correct the behaviour of children under their authority. The Criminal Code Act also confirmed the right of employers to hit their servants and apprentices and increased the number of crimes for which flogging and whipping could be given as a judicial punishment. Under 16s could be whipped with a rod for 30 criminal offences. Over I6s could be flogged with a cat of nine tails.

1908 *Crimes Act* confirmed the right of parents and teachers to use corporal punishment.

1935 *Cadogan Report* (UK) urged the repeal of laws allowing the birching of young people, the Committee finding that it was not a suitable or effective method of punishment.

1935 Last judicial flogging in New Zealand.

1941 *Crimes Amendment Act* abolished judicial whipping of boys.

1948 Corporal punishment as a judicial penalty abolished in the United Kingdom but continued as a punishment in prisons and approved schools.

1959 *United Nations Declaration on the Rights of the Child* stated that children should enjoy special protection including legal safeguards and protection from all forms of cruelty.

1960 *Barry Report* (UK) unanimously opposed the reintroduction of corporal punishment as a judicial punishment finding no evidence that it was an effective deterrent.

1961 *Crimes Act* includes statutory confirmation (s59) of the common law principle that parents, care providers and schoolteachers can use force to correct the behaviour of children.

1964 Society for the Discouragement of Physical Punishment in Schools established by Prof. Basil James.

1968 *Crime in New Zealand*, a Justice Department Report, concluded that corporal punishment was objectionable because it was ineffective as a deterrent and degrading and unsuitable as a means of punishing juveniles.

1976 *International Covenant on Civil and Political Rights* (later ratified by New Zealand) stated that no person shall be subjected to cruel, inhuman or degrading treatment or punishment.

1978 European Court of Human Rights in *Tyrer v UK* held that judicial birching of a 15 year old boy in the Isle of Man was 'degrading punishment' and breached *The European Convention on Human Rights.*

1978 *Parliamentary Select Committee on Violent Offending* decided that legislation should not be used to change parental attitudes to smacking despite a submission by the Justice Department that the "alleged special potency of corporal punishment was a myth."

1979 Sweden is the first country in the world to prohibit all corporal punishment of children. Sweden has since been followed by Finland, Denmark, Norway, Austria, Cyprus, Latvia and Croatia.

1979 *Penal Policy Review Committee* of the Department of Justice advise that the reintroduction of corporal punishment as a judicial penalty would damage New Zealand's international reputation.

1979 International Year of the Child - at a major conference on *The Rights of the Child and the Law*, James and Jane Ritchie argued strongly for the repeal of s59 of the Crimes Act to a mixed response (including a teacher's representative supporting the continuation of corporal punishment in schools.)

1980 *New Zealand Committee for Children* established to carry on the initiatives from IYC year. The Committee consistently opposed the use of corporal punishment.

1981 *Spare the Rod* In the first comprehensive critique of corporal punishment of children in all its forms, the Ritchies made a strong case for legal reform.

1982 *Human Rights Commission Report* on children in Auckland residential homes heard from staff and residents of physical ill treatment and punishment and questioned whether this amounted to cruel, inhuman, degrading treatment or punishment in terms of the Covenant on Civil and Political Rights.

1984 Labour government indicates its intention to abolish corporal punishment in schools and child care centres.

1985 *Child Care Centre Regulations* removed the right to use corporal punishment in any Child Care Centre.

1986 *Children and Young People (Residential Care) Regulations* banned the use of corporal punishment in all residential institutions run by the Department of Social Welfare (now Child, Youth and Family Services).

1987 *Ministerial Inquiry into Violence* calls for the abolition of corporal punishment.

1989 *Children, Young Persons and their Families Act,* New Zealand's most comprehensive child protection law, allows the state to intervene to protect children from abuse and neglect. It has been held to be subject to s5.9 which permits parents and carers to hit children.

1989 *Ministerial Inquiry into Pornography* favours the abolition of corporal punishment.

1989 New Zealand's first Commissioner for Children appointed. Dr lan Hassall and successive Commissioners for Children have continued to press for the repeal of s59.

1989 *New Zealand University Law Review* publishes an article by Law Professor John Caldwell reviewing the law of corporal punishment and concludes that our descendants will probably be appalled by the legal power we give to adults to beat their children.

1990 *Education Amendment Act,* a private member's Bill to abolish all corporal punishment in state and private schools, was passed on a conscience vote of MPs.

1991 Department of Social Welfare Policy on Punishment for departmental foster parents and family home caregivers stressed that corporal punishment was unacceptable.

1993 *United Nations Convention on the Rights of the Child* ratified by New Zealand. The government thus undertook to take all legislative and administrative measures to protect children from all forms of physical violence, abuse or maltreatment and to further protect them from cruel, inhuman or degrading punishment.

1996 *Domestic Violence Act* provided for protection orders in cases of family or household violence whether physical, sexual or psychological. Parliament

agreed that the definition of 'violence' should be subject to the right of parents in s59 to hit their children by way of correction.

1997 *United Nations Committee on the Rights of the Child* in its report on New Zealand recommended that New Zealand review s59 Crimes Act and to effectively ban all forms of physical violence towards children.

1997 *EPOCH International* branch opened in New Zealand dedicated to the ending of all physical punishment of children.

1997 European Court of Human Rights in *A v UK* held that the caning of a child by his stepfather amounted to an inhuman or degrading punishment and ordered the UK government to pay NZ$30,000 compensation.

1998 Children, Young persons & Their families Service runs a national publicity campaign to educate parents that there are better ways of modifying children's behaviour than the use of corporal punishment.

1999 EPOCH International founder, Peter Newell, tours New Zealand with support from Ministry of Youth Affairs.

2003 The UN Committee on the Rights of the Child publishes its report on New Zealand's compliance with the United Nations Convention on the Rights of the Child and among other things strongly condemns the country's failure to repeal section 59 despite previously requesting it do so.

?? Section 59 of the Crimes Act 1961 is repealed

(Based on *Youth Law*, Jan/Feb/March 2000)

Appendix three

Common arguments used by those who support retention of Section 59 of the Crimes act

Proponents of Section 59 argue that –

1) Repealing section 59 will result in law-abiding good parents being prosecuted for administering a light smack to their child

This is a mischievous canard. Smacking a child is *already* a prosecutable common assault. But section 59 provides a defence and as a consequence the Police exercise discretion and do not prosecute unless a gross and seious assault of a child has occurred. The only person who needs section 59 is the child abuser who has used such gross levels of force that the Police have decided to prosecute. The Police discretion will continue. It should also be noted that the Police already exercise that discretion when determining whether to prosecute minor or technical common assaults of adults.

If the legislature believes that the Police and the Courts need further guidance in exercising that judgment then they could do so by requiring revised written prosecution procedures.

2) Light physical punishment, such as a smack, is a necessary and effective option for parents in disciplining children

This assertion is not supported by research. Physical punishment can achieve short term compliance, but persistent long term use of physical punishment by parents is consistently shown in the research literature to be associated with negative outcomes for children.[23]

More importantly there is now ample evidence showing that physical punishment is unnecessary. Positive parenting techniques achieve a better quality of child guidance

[23] Smith, Anne B *et al. op cit.*: 14-15

precisely because they provide a better modelling of desirable social behaviour for the child. Positive parenting techniques do not model the use of violence by the more powerful. They do promote the use of reason and internalisation of moral standards.

It is sometimes argued that children have diminished judgment and responsibility and that therefore the sharp salutary infliction of low level pain is needed to prevent an accident or other emergency. Elderly people with some form of dementia or adults with significant intellectual disability also have diminished judgment and responsibility, but there is no law providing a defence for their caregiver who decides to use 'reasonable' force in the correction of their behaviour.

Consider the child about to pull a pot of boiling water off the stove. The mother administers several hard smacks to the child's bottom. Then consider this: the same child's senile grandmother repeats the act and the mother leads the old person gently into the living room and sits her down in front of the television with a cup of tea. Was the striking of the child really necessary as child guidance or was it in fact an expression of the parent's alarm and frustration. Why is it acceptable to strike the child but unacceptable when the same dangerous action was carried out by an adult?

3) Light physical punishment is harmless

A light smack is, in all probability, physically harmless. Though even this statement has to be qualified by reference to, say, the haemophiliac child.

It cannot, however, be confidently asserted that it is psychologically harmless. A few researchers would argue that it is. The leading proponent of this view, Robert Larzalere, himself argues *"that smacking is only appropriate under very limited conditions: for 2 to 6 year old children; not severe; the punisher is under control; accompanied by reasoning, carried out privately; and motivated by concern for the child. Even he acknowledges that other disciplinary practices can be as effective as physical punishment"*.[24]

But Professor Anne Smith reported to the 10th Australasian Conference on Child Abuse and Neglect in Wellington, Febrary 2006 that *"…a 2004 study of 2000*

[24] *ibid.*

children in the United States showed that even minor physical correction – such as a smack on the hand – was associated with a rise in bad behaviour over the following week...”[25]

4) Corporal punishment is enjoined by the Bible

The Bible is often quoted as supporting the use of corporal punishment. But when you look at all the quotes from the Bible you find none come from Jesus or the great Old Testament prophets.

All but one come from the *Book of Proverbs* – a collection of wise sayings from about 2500 years ago. Maybe they represent the widely held view of parenting in the Near East at that time, but that doesn't make them good parenting today.

Prov 13:24: "*He that spareth his rod hateth his son: but he that loveth him chasteneth him betimes (diligently).*"

Prov 19:18: "*Chasten thy son while there is hope, and let not thy soul spare for his crying.*"

Prov 22:15: "*Foolishness is bound in the heart of a child; but the rod of correction shall drive it far from him.*"

Prov 23:13: "*Withhold not correction from the child: for if thou beatest him with the rod, he shall not die.*"

Prov 23:14: "*Thou shalt beat him with the rod, and shalt deliver his soul from hell (Shoel).*"

Prov 29:15: "*The rod and reproof give wisdom: but a child left to himself bringeth his mother to shame.*"

[25] Hill, Ruth (2006) *Child expert wants smacking banned.* www.stuff.co.nz

An additional verse from the New Testament is occasionally cited as justification for physical punishment of children by parents. But it is not clear whether the discipline, referred to at the end of the verse, refers to corporal punishment or to some other form of correction (e.g. removal of privileges):

Hebrews 12:6-7: "*...the Lord disciplines those he loves, and he punishes everyone he accepts as a son. Endure hardship as discipline; God is treating you as sons. For what son is not disciplined by his father?*"

Some of the proponents for retention of Section 59 go so far as to argue that the Bible *requires* them to use physical punishment. Thus for example Family Integrity states in their publication *The Christian Foundations of the Institution of Corporal Correction* that

> *"Children are **not** little bundles of innocence: they are little bundles of depravity (see Psalm 51:5) … Selfishness, violence, lying, cheating, stealing and other such manifestation of rebellion, are just the child unpacking some of this sinful foolishness from the vast store in his heart…*
> *"Mere words, you see, do not dislodge the foolishness and sin from the heart, whereas a smack will …"*
> *"Smacking does so much good for the child and for you. It deals with all the issues*
> *"Smacking may be a 10-15 minute process. Go to a private place, collect the smacking rod, then fully discuss the crime. Ask the child to identify which of the four Ds was broken and explain why he needs a smack rather than a tongue lashing or isolation. Always give an opportunity to plead extenuating circumstances; be prepared to call in witnesses for cross examination; and if appropriate, do not smack. The child must comply with your direction to hold still while you administer the smacking to the clothed bottom, not the back or the legs. Do not be tempted to restrain a struggling child. Their agreement that a smack is necessary and the need to master self-discipline together make it important that the child voluntarily submits to the discipline of smacking…*

> *"I freely admit that I do not understand the connection between a physical smack on the bottom and a rebellious spiritual condition of the heart … But the Scripture declares it is so, therefore I am obliged to believe and practice it."*[26]

This is only one interpretation of the Biblical texts and would be disputed by many other Christians.

Even such an apparently literalist interpretation however must be seen as selective. Scripture also declares that *"the stubborn and rebellious son who will not obey the voice of his father, or the voice of his mother, and that, when they have chastened him, will not hearken unto them"* is to be taken to the town elders and then stoned to death. (*Deuteronomy* 21.18-21), but we do not hear that Family Integrity feels *"obliged to believe and practice it."*

The essential point of such discussion, however, is to highlight the need for the legislature to eschew any faith-based approach to Section 59 in favour of a secular approach based upon rational discussion of evidence-based child guidance best practice.

[26] Family Integrity (2005) *The Christian Foundations of the Institution of Corporal Correction.* Plamerston North, Family Integrity:3-7