



*Clerk of the Committee  
Justice and Electoral Committee  
Parliament House  
Wellington*

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**A SUBMISSION ON THE CRIMES (ABOLITION OF FORCE AS A JUSTIFICATION FOR CHILD DISCIPLINE) AMENDMENT BILL**

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The Institute of Public Policy\* supports the Bill.

Dr Hassall would like the opportunity to make an oral submission.

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## **1.0. How prevalent and how severe are assaults<sup>1</sup> upon children in New Zealand?**

1.1. Physical assaults upon children are endemic in New Zealand. They range in severity from a single smack delivered in anger to repeated and prolonged violence resulting in death. The best indication of the prevalence of assaults on children comes from the Christchurch and Dunedin longitudinal studies.

1.2. The Christchurch cohort, born in 1977 were questioned at 18 years of age. 10.8% reported that their parents had 'never used physical punishment', 77.7% that they had seldom used it, 7.6% that it had been used regularly, 2.0% that it had been used too often and too severely and 1.9% that they had been treated in a harsh and abusive way. (Fergusson & Lynskey, 1997)

1.3. The Dunedin cohort, born in 1972 – 73 were questioned at 26 years of age. 20% reported receiving no physical punishment, 29% had been smacked as the most severe form of punishment, 45% had been hit with an object, and 6% reported extreme physical punishment involving injury or lasting bruises. (Millichamp, Martin & Langley, 2006)

1.4. Another measure which includes assaults upon children is the rate of substantiated cases of child abuse and neglect recorded by the Department of Child, Youth and Family Services. In 2003 it was 7.4 per thousand children under 17 years of age, a total of 7,361 children. (MSD, 2005a)

1.5. There were at least 10 deaths per year of children under the age of 15 from intentional injury in the years 1996-2000. (MSD, 2005b). This is a minimum. The real figure is likely to be greater. (Kotch, Chalmers et al., 1993, UNICEF, 2003)

## **2.0. Does New Zealand have more assaults on children than other countries and are they increasing?**

2.1. There are difficulties in comparing statistics between countries and over time because of differences in definition, ascertainment rates and coding. Nevertheless the recorded differences among OECD countries if large are likely to have some validity.

2.2. A 2000 survey in Sweden found that fewer than 10% of children reported having been 'hit in the last year'. (Janson, 2002) In a recent United Kingdom survey a random sample of 18-24 year olds was asked about the treatment they received up to the age of 16 years. (May-Chahal & Cawson, 2005) 7% had been seriously physically abused.

2.3. Mortality is one of the more reliable statistics for the purposes of comparison although the proportion of deaths coded as 'uncertain whether or not deliberately inflicted' varies considerably between countries. A table of twenty seven OECD countries in which these deaths of uncertain cause are combined with those coded as definite homicide due to maltreatment (abuse and/or neglect) for children under 15 years of age in the mid to late nineteen-nineties finds New Zealand with the sixth highest annual death rate behind Portugal, Mexico, U.S.A., France and Hungary. (UNICEF, 2003)

2.4. While most of the OECD countries had a reduction in their child maltreatment death rate between the 1970s and 1990s New Zealand experienced an increase. (UNICEF, 2003)

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<sup>1</sup> 'Assault' is used in this submission, as it is in the law, to mean an application or threat of application of force with the intent of causing pain or fear. The term is used in this technical, neutral sense in preference to 'correction', 'physical discipline', 'physical punishment', 'maltreatment', 'abuse', 'smacking' or 'hitting' all of which are less easily defined and tend to convey either approval or disapproval of the action.

### **3.0 Is there public support for reducing assaults on children in New Zealand and can they be reduced?**

3.1. In the case of assault leading to death or serious injury few would argue against reducing the numbers. The lower rates in countries comparable to New Zealand suggest that this can be achieved. It is evident from 2.4 above that whatever has been done in New Zealand in the last twenty years has not been effective in reducing the cases of assault leading to death or serious injury.

3.2. In the case of lesser assaults, the level of public support for reducing them is unknown. A somewhat different question has been asked of New Zealanders in a series of surveys in recent decades. A consistent proportion of around 80% of parents have said the law should allow them to physically discipline their children. (Carswell, 2001, Maxwell, 1993, Ritchie, 1981) Whether they wish to use this licence or keep it in reserve is not clear.

3.5. The lesser prevalence of assaults on children within families in some countries when compared to New Zealand suggests that a reduction can be achieved. This view is supported by the fact that assaults on women within families which have a close association with assaults on children vary considerably in prevalence between countries and societies (Counts, Brown et al, 1999, Cox, Kotch & Everson, 2003, Garcia-Moreno, Heise et al, 2005) with New Zealand being in the middle to high range. (Fanslow & Robinson, 2004)

### **4.0. Why should assaults on children be reduced?**

4.1. There are many arguments against assaulting children

- Foremost among the arguments is simply that it is wrong to strike another person
- It is painful and dangerous to the child
- It breaks a taboo whose existence is the surest way of reducing interpersonal violence of all kinds.
- It teaches not only that interpersonal violence is legitimate but that it is a legitimate expression of love in a context of one person overpowering another
- It is an infringement of children's right to live free from the threat of pain, humiliation and injury
- It is a denial of children's equal citizenship and humanity in fact and in law.
- It is not the best way to teach children how to behave
- It trains children to be either servile or rebellious

A brief expansion on each of these headings follows.

4.2.0 It is wrong to strike another person, particularly one who is vulnerable and in our charge. This is both an inherent human social value and a rational rule of desirable human social behaviour. It can be supported by personal reflection, observation of people's behaviour and motivation and by analogy with other situations in which one person strikes another. Unless our sensitivity becomes deadened by habitually striking, being struck or observing others being struck we recoil at such behaviour and after we have struck out in anger we feel remorse.

4.2.1. Research which systematically asks children or adults about their childhood experience makes it clear that assaults on children are usually carried out in anger although they may be justified as 'correction' or 'discipline'. (Dobbs, 2005, Millichamp, Martin & Langley, 2006) Reducing the number and severity of assaults on children is a question, then, of improving parental self discipline rather than relaxation of discipline in relation to their children.

4.3.0. It is painful and dangerous to the child. It is sometimes overlooked that the effect of an assault on a child is to inflict pain or engender fear. This is no more tolerable in childhood than it is at any age. An additional danger to the child is the possibility of escalation resulting in serious injury. It is true that most children experiencing domestic assaults are not seriously injured but it is also true that for most children who are seriously injured the assault became increasingly severe over time.

4.3.1. There is evidence for an association between assaults on children and poor outcomes. The Christchurch longitudinal study found:

“There were consistent dose/ response relationships between the extent of reported physical punishment/ maltreatment during childhood and a wide range of outcomes including mental health status at age 18, substance abuse and dependence, juvenile offending,, and being a victim of violence.”

(Fergusson & Lynskey, 1997)

4.3.2. Severe punishment is associated with later emotional fragility. Members of the Dunedin longitudinal study cohort at age 26 experienced visible emotional distress during the interview about their childhood experiences. (Millichamp, Martin & Langley, 2006) This occurred in 22% of those who had received extreme physical punishment, 2% of those who had been hit with an object and 1% of those who had had no physical punishment

4.3.3. Using a range of measures, Gershoff, in her meta-analysis of 88 studies from the world literature found parental corporal punishment to be associated with:

“higher levels of immediate compliance and aggression and lower levels of moral internalisation and mental health”

(Gershoff, 2002)

4.4. It breaks a taboo whose existence is the surest way of reducing interpersonal violence of all kinds. Once the barrier to assault is broken it is easier for it to be breached again and/ for the level of assault to escalate.

4.5. It teaches not only that interpersonal violence is legitimate but that it is a legitimate expression of love in a context of one person overpowering another. Social learning theory suggests that people assaulted as children by those in authority over them and whom they are bound to love will learn to associate authority and love with assault.

4.6. It is an infringement of children’s right to live free from the threat of pain, humiliation and injury. The U.N. Convention on the Rights of the Child, adopted by New Zealand and all but one of the other nations of the world asserts in its Article 19 the right to protection from:

“...all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation....”

(Hodgkin & Newell, 1998)

4.7. It is a denial of children’s equal citizenship and humanity in fact and in law. Children (and adults), as citizens, are entitled to the protection of the law wherever they may be. They are also entitled as human beings to fair and compassionate treatment from the people with whom they live. They should not be

regarded as the chattels of their parents any more than women should be regarded as the chattels of their intimate partners.

4.8. It is not the best way to teach children to behave well. Assault as a means of teaching or reinforcing behaviour has, on average, an effect in gaining immediate compliance but it is at the expense (again on average) of longer term resentment and mental health problems. (Gershoff, 2002) The age of the child is important in determining the response.

4.9. It trains children to be either servile or rebellious. A manual on dog training makes this point well.

“...never, never hit him for something that he has done wrong in your eyes. If you hit him and he is a timid dog by nature, he will become afraid of you.... ..if he is a bold dog by nature he will turn aggressive and bite you.”

(Tucker, 1998)

## **5.0. Will enactment of the Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill contribute to a reduction of assaults on children?**

5.1. The effect of the new Act will be to

- Raise the status of children in the law and ultimately in the public understanding.
- Remove official normalisation of assaults on children.
- Remove a defence that has been used successfully by people who have caused injury to children to escape the retribution of the law in criminal proceedings by adults

5.2. Raise the status of children in the law and ultimately in the public understanding. Children will be placed on a similar footing to other people. Under the present law children, as the only human beings (or animals) for whom assault is permitted, have a lesser status. Their lesser status makes them vulnerable.

5.3. Remove official normalisation of assaults on children. The wording of s59 of the Crimes Act 1961 proposes that assaults on children will ‘correct’ their behaviour and are ‘justified’. Neither of these propositions is sustainable but the effect is to enshrine assaults in the law as a normal and expected part of child-rearing. Programmes such as SKIP which help adults to learn to live comfortably with children are undermined by perpetuation of a harsher, punitive and often destructive relationship.

5.4. Remove a defence that has been used successfully by people who have caused injury to children to escape the retribution of the law in criminal proceedings by adults. There have been a small number of cases in which children have been assaulted with instruments causing severe pain and leaving bruises but their assailant has successfully defended a prosecution for criminal assault using s59 of the Crimes Act 1961

5.5. The effects set out in 5.2 and 5.3 above can be expected in time to contribute to a reduction in both major and minor assaults on children. Although it is difficult to establish cause and effect in a case such as this, the enactment of legislation of similar effect has been associated with a reduced prevalence of assaults on children in Sweden and an enhanced status of children in Germany. (Janson, 2002, Federal Ministry of Justice, 2003)

5.6. An argument has been put forward that a distinction should be drawn in the law between minor and major assaults on children and the law modified to permit minor assaults and prohibit major ones. Such a change may well raise the bar for a few cases of serious assault at present being successfully defended

(5.4 above) but seems unlikely to have an effect on the much larger and more important problems of status and normalisation (5.2, 5.3 above).

## **6.0. What adverse effects could enactment of the Bill have?**

6.1. Concerns have been raised that parents who have not risked harm to their children but have administered a smack out of exasperation will be prosecuted either by zealous officials or by officials under pressure from zealous members of the public.

## **7.0. How can these be overcome?**

7.1 It could be made clear during its passage through Parliament and perhaps in the Act itself, as has been done in other jurisdictions, that this is not the intention. Police at present exercise considerable discretion in the decision to prosecute assaults on adults.

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