

# CORPORAL PUNISHMENT OF CHILDREN

## REFORMING THE LAW: THE WHYS AND THE WHEREFORES?

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# A highly emotive and polarised debate

....

- **Everyone has an opinion**
  - Subject of such punishment - as a child
  - Deliverer of such punishment - as a parent
  - Role of anecdote
- **Struggle over state intervention into privacy of family life**
- **Various definitional issues**
- **Historical and cultural background, research**



# Discipline, Punishment and Abuse

- Discipline - guidance of children's moral, emotional and physical development – LT goal of self-regulation and optimal development
- Punishment – use of negative feedback or adverse treatment to prevent/stop misbehaviour
- Physical punishment – use of physical force to cause pain but not injury to correct behaviour



# Main Questions

- How much is it used in Australia?
- Is it effective?
- Is it safe - non-harmful?
- Is it acceptable? To parents? To children?
- Is it morally defensible?
- Is legal reform / change needed?
- How can that best be achieved?
- What can we learn from NZ experience?



# The state of the law in Australia

- **Common law defence to charge of assault**
  - State-based criminal law – codified in NSW
  - “Reasonable chastisement” or “lawful correction”
    - Reasonable force, solely for purpose of correcting child’s behaviour
  - **Now only children who may lawfully be hit**
    - Previously applied to servants, apprentices, pupils, military and naval staff, and wives



# The state of the law in Australia

- Model Criminal Code Ch 5 1998 – ‘at the present, it goes too far to criminalise a corrective smacking by a parent or guardian, so long as the force used is reasonable.’
- MCCOC did recommend that a legislative standard of “reasonableness” be established and that the use of objects in such a way as to cause or risk causing injury be prohibited.
- **State-based child protection laws in relation to abuse and neglect**



# NSW Law Reform 2002

- **Amendment to the Crimes Act s61AA to limit and codify the defence** so that it does not apply where a parent applies any physical force unless trivial or negligible:

⊖ To any part of the head or neck of the child

⊖ To any other part of the body in such a way as to be likely to cause harm that lasts for more than a short period

Also bans the use of a stick, strap or other object.



# UN Convention on the Rights of the Child

## Article 3

– in all actions involving children – best interests of the child as the primary consideration

## Article 19

... All appropriate legislative measures to protect children from all forms of physical or mental violence



## UN Committee – 2005 Concluding Observations

The Committee notes with concern that corporal punishment in the home is lawful throughout Australia under the defence of “reasonable chastisement” and other similar provisions in states’ legislation.

Furthermore, the Committee is concerned that, while corporal punishment has been prohibited in government schools and some private ones in most states and territories, it is still lawful in many private education institutions and in both government and private schools in South Australia and the Northern Territory.



# UN Committee – 2005 Concluding Observations

## The Committee recommends the State party to:

- take appropriate measures to **prohibit** corporal punishment at home, in public and private schools, detention centers and all alternative care settings in all States and Territories;
- strengthen awareness-raising and education campaigns with the involvement of children in order to promote positive, non-violent forms of discipline and respect for children's rights, while raising awareness about the negative consequences of corporal punishment.



# International comparisons

- **24 countries have banned use of CP**
  - 1979 Sweden
  - 1983 Finland and 1987 Norway and Austria 1989
  - 1994 Cyprus ; 1997 Denmark; Latvia 1998; Croatia 1999
  - 2000 Germany, Israel, Bulgaria
  - 2003 Iceland; 2004 Ukraine, Romania ; 2005 Hungary
  - 2007 Greece, Spain, Chile, Venezuela, Uruguay, Portugal, Netherlands and **New Zealand**
  - 2008 Costa Rica
  - Committed – 17 countries including Ireland and Pakistan



# Is it effective?

Research findings indicate that:

- That CP is effective in producing ST compliance esp while parent/punisher is present – teaches external control of behaviour
- That it is much less effective in promoting LT internalisation of values – what most parents want to achieve
- Inconsistent hypocritical message if children are hit for hitting or hurting others
- NZ parent's view: “We tried slapping him .. And it had quite a negative effect cos he thought that how you react when you got angry was to smack someone on the hand.



# Is it effective?

Research findings indicate that:

- Other methods including time-out and reasoning are more effective
- And parents tend to agree:
  - Tucci, Mitchell & Goddard (2006) survey of 720 adults
  - Important ways to teach children right from wrong
    - 100% Making children feel loved
    - 100% Parents setting a good example
    - 99% Reasoning with children
    - 92% Time-out
    - 52% Smacking children



# Is it acceptable? To parents?

- Recent surveys?
- Tucci, Mitchell & Goddard (2006) - 720 adults
  - 69% It is sometimes **necessary** to smack a naughty child
  - 58% Similar for NZ survey in 2007, 87% in 1993
  - 61% Parents should have **right** to ... Over 5 yrs old
  - 52% Parents should have right to ... Over 2 yrs old
  - 12% Parents should have right to ... Under 2 yrs old
  - 41% Smacking children is **effective** way to change behaviour
  - 11% Smacking teens is effective way to change behaviour



# Is it acceptable? To parents?

- Reported ambivalence – use but regret it
  - I feel bad afterwards – I'd rather not use these methods but I do
  - I do use smacking . I always said that I wouldn't, but one of the children responds to it reasonably well, and it's very much a last resort and I would never use an object. (NZ parent, Lawrence & Smith, 2008, p. 20)
- Various justifications
  - Educational - for good of children
    - “Short sharp tap does wonders when all else fails”
  - Cathartic – for good of parent -- relief , frustration
  - Result of child challenging parental power/authority
  - Reproducing own parents' treatment of them



# Is it acceptable? To children?

- **Children's voices often not heard in this debate** – discounted but legitimate, essential – “perceived dignity”
- Many children report feeling angry, hurt when hit
- Prefer withdrawal of privileges, time-out, talking to
- Children do not necessarily understand what they did ..
- Some children react with defiance – challenging parental power/authority
- 50% of children in several studies say they will not hit their own children



# Is it acceptable? To children?

- **Adults looking back**

- As justified, parents' fair treatment – normative?
- As unfair, humiliating
- 63 year-old respondent in Tucci et al (2006) survey:
- When my mother hit me with a cane carpet beater, I had welts that lasted for days, but that pain was minute compared to the pain I felt emotionally. The wounds have long gone, but at the age of 63 years I can still feel the emotional pain. When my two children were little I used to give them a slight smack on the bottom and I regret to this day doing it. Thankfully I stopped doing it .. There is no love where there is pain.. One thing I am thankful for is that maybe I have broken the cycle, my children have never smacked their children (p. 21)



# Is it safe - non-harmful?

- **Gershoff's 2002 meta-analysis**
  - 11 aspects of children's behaviour and outcomes
- **Critique by Baumrind, Larzelere & Cowan 2002**
  - Causality?
    - Ordering
    - Mechanism?
    - Other factors accounted for
    - Shared method variance
  - Need for longitudinal prospective studies
  - Methodological quality - robustness



# Is it safe - non-harmful?

- **Gershoff's 2002 meta-analysis**
  - 31 studies of aggression and 18 studies of delinquent and antisocial behaviour
  - 47 of 49 studies showed a consistent link between physical punishment and antisocial behaviour
  - Causality? Need for longitudinal prospective studies
    - Does aggressive behaviour precede the punishment?
    - Modelling explanation



## Is it safe - non-harmful?

- Grogan-Kaylor 2004 – 1998 wave of NLSY longitudinal study
- Measured parents and children's behaviours
- Spanking in the previous week predicted child's anti-social behaviour at high and low frequency of physical punishment
- Increased risk of hitting own children and partners but still most people exposed to CP do not become violent



## Is it safe - non-harmful?

- Gershoff's 2002 meta-analysis re mental health outcomes
  - 20 studies showing that mental health (anxiety, depression and low self-esteem) were associated with physical punishment
  - Rationale that children may suppress anger following punishment resulting in the development of depression
  - Australian study of high school students -Heaven & Goldstein (2001)



# Quality of the parent-child relationship

- Gershoff's (2002) meta-analysis
  - 13 studies linked more physical punishment to poorer relationships between children and their parents
  - Importance of the context – how, when and why parents punish
  - Evidence that in children can threaten their trust in their parents to be a safe and secure base
  - Some evidence that children escape from and avoid punitive parents



# NZ Law Reform : 2007

- Private Members Bill – Greens
- Bipartisan support esp Prime Minister Clark (113/121 members)
- Advocacy and research – Commissioner and CIC
- Religious groups resistance
- Forthcoming referendum – loaded question:
  - Should a smack as part of good parental correction be a criminal offence in NZ?



# NZ Law Reform : 2007

- S59 removes defence, sets out 4 situations in which parents can apply reasonable force for purposes **other than correcting their children**:
  - Preventing the child from
    - engaging in conduct that amounts to a criminal offence
    - engaging in offensive or disruptive behaviour
  - Preventing or minimising harm to child or another person
  - Performing the normal tasks that are incidental to good care and parenting eg move children away from situations that are harmful



## NZ Law Reform: 2007 Police discretion

- Last minute addition to law under ss 4 simply confirming police discretion
- “To avoid doubt, it is affirmed that the Police have the discretion not to prosecute complaints against a parent of a child or person in the place of a parent in relation to an offence involving the use of force against a child, where the offence is considered to be so incoincidental that there is no public interest in proceeding with a prosecution.”



# NZ Law Reform : Early findings

- No prosecution for ‘smacking’
- Research base by Office of Commissioner
  - Some misunderstanding of the law
- Some increasing acceptance of change in the law
  - 43% in favour
  - 28% against
  - 26% unsure
- Role of media - some confusing messages but generally supportive
- Importance of education program: SKIP

