



The New Zealand Psychological Society

Te Rōpū Mātai Hinengaro o Aotearoa

2 September, 2008

Sue Bradford
Member of Parliament
Parliament Buildings
Wellington

Dear Sue

Child Discipline Act (2007)

You may be aware that the New Zealand Psychological Society supported the legislative initiative, in relation to the repeal of Section 59 of the Crimes Act. I attach the Society's submission to the Justice and Electoral Select Committee.

There will clearly be further publicity associated with the recent petition to hold a referendum, and with the forthcoming referendum and we would like to make a suggestion in relation to this. The Society is of the view that a great deal of the opposition to the Child Discipline legislation has occurred because of the way the media and others have described it in public forums. Calling the Bill the "Anti Smacking Bill" and the subsequent Act as the "Child Discipline Act" has prompted a variety of complaints and parental 'fears', rightly or otherwise.

We suggest that a reframing of the legislation as the "Child Protection Legislation" would give this legislation an entirely different image in the eyes of the public. It is far harder to argue against the protection of children, than against the infringement of supposed parental 'rights'. It is a much stronger position in public discussions of the Act in being for child protection than against those opposing the legislation.

We believe that reframing this initiative in the positive light of child protection might positively influence public perception.

Thank you for your consideration of this approach.

Best wishes,

Yours sincerely

Jack Austin
Educational Psychologist
President
New Zealand Psychological Society

SUBMISSION of the New Zealand Psychological Society

To The Justice and Electoral Select Committee

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

Introduction

1. This submission is made on behalf of The New Zealand Psychological Society. It has been approved by the executive of the Society (Keriata Paterson, Jack Austin, Associate Professor Neville Blampied, Joanne Cunningham, Jhanitra Gavala, Dr Raymond Nairn, Dr Neville Robertson) and by the executive of the Institute Of Educational and Developmental Psychology (Robyn Rees, Rebecca Abrahams-Boon, Jean Annan, Stephen MacCartney and Peter Coleman) which is a professional subgroup within the Society. With over 1000 members, The New Zealand Psychological Society is the largest professional organisation for Psychologists in New Zealand.
2. We wish to appear before the committee to speak to our submission. Our contact person is

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Our Position

3. We support the intent of this Bill which is to remove the statutory right of parents under Section 59 (1) of the Crimes Act 1961 to use "force by way of correction towards any child or pupil under his care, if the force used is reasonable in the circumstances". We note that under the current legislation the "reasonableness of the force used is a question of fact" (s.59 (2)) as determined by the presiding judge or jury in a defended hearing. In recent years, some parents have avoided conviction for severely abusing their child by invoking this provision as a defence. We will argue that the use of force on children is ethically never justifiable, is ineffective, is counterproductive in the longer term and importantly, has negative consequences for and on the punishing parent.

The Human Rights of Children

4. We believe that the legislation as it stands is an abrogation of the civil rights of children and contrary to Article 19 (1) of the United Nations Convention on the Rights of the Child, to which New Zealand is a signatory.

5. Western jurisdictions have seen protection from corporal punishment progressively extended to slaves, soldiers and sailors, prisoners and wives. It is anomalous that the one remaining class of people for whom corporal punishment is still sanctioned under New Zealand law are those who, because of their immaturity, are (a) the most likely to suffer physical and psychological harm from such punishment and (b) should be considered the least culpable for their misbehaviour. If a distinction is to be made, then surely children require greater rather than lesser protection.

Behaviour Management

6. The heart of the argument is not what we (or parents) would like children to do or not do, rather the means that we use to bring 'good behaviour' about. Very often the aims of good parenting and commendable child-behaviour are confused with the means of achieving this. We don't think that the ways that we would like children to behave are significantly different from the strictest of parents. The major difference is that we believe that the proactive teaching of appropriate ways of behaving is the most effective way of achieving this and that inflicting physical (or other) punishment after the event is not. Many parents might not agree with this sentiment and may suggest that there is a need to more quickly detect misbehaviour and to more frequently and more severely punish it. Such a position is encapsulated by the common refrain that children 'need more discipline'.
7. It may be useful to therefore reflect on the use of the word discipline in Section 59 of the Crimes Act 1961. The word 'discipline' is often taken to mean and used interchangeably with the words 'chastisement' and 'punishment'. However, the word itself comes from the word 'disciple' which in turn is derived from the Latin word 'discipulo' that means, "I follow". Advocating for discipline then in our view could more reasonably be taken as arguing for a more active demonstration or modelling, teaching, prompting and rewarding desirable behaviour. The non-aversive intervention procedures that we advocate have a focus on teaching children new skills or alternative ways of behaving rather than merely trying to suppress their unwanted behaviours. We will argue that the maintenance of discipline should be regarded as a pro-social and educative process rather than a reactive and aversive or punishing process. We therefore reject as misdirected, the criticism that our recommendations are 'soft' on discipline because this criticism does not distinguish between the goals and the effective means of achieving this.
8. The metaphors that are commonly used in talking about physical (and other) punishments are of interest and alert us to the need to change the public attitudes and beliefs that they reflect. We have undoubtedly moved beyond a crude medieval theology (as implied by the phrase 'beat the devil out of him') as a justification for physical punishment. However, the phrase a 'good hiding' is still taken to mean a 'severe hiding' when applied to hitting and hurting children. We are unlikely to use the descriptor 'good', and rather more likely to use a descriptor such as 'brutal,' when referring to other forms of severe assault. In three further examples, children are still said to 'need' (as in treatment), 'deserve' (as in retribution) or in an unblushing perversion of the English language, 'have asked for' physical punishment. Why is hitting and hurting a natural 'good' if and only if the recipient is a child?
9. Although we are aware that parents routinely hit and hurt their children far less now than in previous years, public opinion might still not support the repeal of Section 59. This is an issue in which we believe Parliament needs to take the lead in changing, rather than simply reflecting popular views about discipline.

10. There are well-accepted principles of child behaviour management. These include:
- (a) Managing children's behaviour requires the teaching of new pro-social and alternative behaviours to those behaviours that are not wanted.
 - (b) It also involves teaching children to discriminate when a particular behaviour is appropriate (or not) for the particular setting.
 - (c) The principles of effective teaching and instruction apply equally to the teaching of pro-social behaviours. This involves formal training in the skill or behaviour, role-play and coaching, guided practice and the reinforcement of independent use of that skill.
 - (d) Whilst punishing a child for inappropriate behaviour may temporarily suppress that behaviour, it does not bring about lasting change and importantly does not result in the acquisition of new or alternative behaviours. It is more likely to result in the child avoiding detection, avoiding the punishing parent and learning to respond to inter-personal problems with violence.
 - (e) When talking about behaviour change, it is important to understand the statistical concept of 'probability'. When implementing behaviour change strategies, we can never be absolutely certain what the next behaviour exhibited might be. Rather, we can only state that it will either be more or less likely to occur. We should generally expect children's behaviour to change slowly over a period of time, not immediately. The notion of giving children a 'last chance' before being punished is therefore, pointless.
 - (f) Above all, we should be cautious of using behaviour management strategies that may appear to 'work' in the short term (e.g. physical punishment), but which might prove to be counter-productive in the longer term.
11. Proactive behaviour management strategies are most often applied when the problem behaviour is not occurring and have the primary goal of teaching alternative behaviours to replace the problem behaviour. This may be seen as counter-intuitive to parents who may be more used to making an aversive response to problem behaviours when they occur. This is reflected in the often-heard phrase, "we can't let them get away with it!" However, what is done at times other than when the problem is occurring (e.g. through teaching, modelling, practicing and praising appropriate behaviour) has the greatest bearing on whether or not the inappropriate behaviour will re-occur. Consequentially, there is no good or empirical need to visit a punishing consequence on a child for what is termed misbehaviour; such misbehaviour is really a consequence of mis-learning and the parent may just as well punish him or herself for faulty instruction.
12. It is not our intention to promote alternatives to corporal punishment (i.e. alternatives that do not leave marks or bruises) because these too are likely to prove ineffective and counterproductive. We think that parents should be encouraged to teach for what they want from their children, not to hit or punish for what they do not want.
13. The intuitive appeal of an aversive or punishing response to parents is we suggest that they are seen to be doing 'something' at the time of the misbehaviour. In this example, intuition is simply misleading; the best time to teach children alternative behaviours is when there are the fewest immediate problems and no one is upset.

The non-aversive strategies that we recommend do not have this intuitive appeal. In essence they indirectly rather than directly reduce the rate of the problem behaviour but they are demonstrably much more effective.

The Long Term Effects of Corporal Punishment

14. As noted in paragraph 10, at best corporal punishment will only temporally suppress the unwanted behaviour and does not result in the acquisition of new or alternative appropriate behaviours.
15. There is strong evidence about the negative outcomes on children of corporal punishment and the statistical concept of 'probability' is again useful. There is an increased risk for children who have experienced coercive parenting (in which there is a low rate of positive engagement and an escalation in threats and corporal punishment) of developing mental health problems and antisocial behaviour later in their life. Put another way, the childhood experience of corporal punishment is a clear risk factor in the development of mental illnesses and antisocial behaviours.
16. Many of those who are incarcerated in our prisons for offences of violence have been subject to severe physical discipline and abuse as children. The high rate of recidivism following their release suggests that imprisonment also has not led to a change in their behaviour.

Corporal Punishment and Parents

17. Our last and possibly most powerful argument questions the effect on the parent of being a punishing agent. Because physical punishment might at least in the short term be seen to work (by suppressing the inappropriate behaviour), they are likely to resort to it more often. We also cannot avoid noting that the administration of corporal punishment might also be vicariously reinforcing (e.g. the power to hurt and humiliate) to some parents. This could similarly explain why some parents (and in previous years, teachers) continue with the practice despite it not resulting in a positive behaviour change. We do not suggest that outcomes such as this await most well-intended but punitive parents, but the causal link undoubtedly remains.
18. The likelihood that corporal punishment will escalate is evident in child abuse. Most child abuse, including assaults which result in child deaths, arises in the context of parents administering physical punishment. At best, Section 59 sends mixed messages to parents about appropriate behaviour management techniques.
19. At the same time, we are not convinced that repealing Section 59 will make criminals of otherwise good parents who may occasionally lapse and smack a child. Police always exercise discretion and do not prosecute very minor assaults which can be resolved informally. Neither have those jurisdictions which have outlawed corporal punishment seen frivolous prosecutions of parents.
20. Some parents argue that there is a distinction between a "loving" smack and one administered in anger. It should be obvious that this is entirely a parent-centred distinction which is meaningless to children, whose welfare should be our prime concern.

Conclusion

21. We would like to conclude by quoting from Mahatma Gandhi (writing about apartheid in South Africa); *"How can men feel themselves honoured by the*

humiliation of their fellow beings". Some might argue that smacking or hitting a child when done with love and in a calm and considered manner is a parental responsibility. We suggest that a parent who hits in spontaneous anger – whilst a regrettable example of human frailty – is more worthy than a parent who smacks or hits in with the intention of inflicting pain and humiliation. We ask:

- (a) How does the hitting and hurting of children make for a better parent and person?
- (b) How does the hitting and hurting of children strengthen the family or protect New Zealand society?
- (c) Why do we continue to legislatively support children being hit and hurt when we know that this is ineffective in changing their behaviour and is more likely to result in negative outcomes for them and their parents.
- (d) Isn't there enough pain and misery for the children of this world without allowing the protection of 'reasonable force' (i.e. hitting and hurting) within our legislation?
- (e) How can we reconcile the fact of hitting and hurting being legislatively defined as 'Domestic Violence' in one context (Domestic Violence Act 1995) and as 'Domestic Discipline' (Crimes Act, 1961) when visited upon children in another?
- (f) Why do we allow children to continue to have fewer rights of protection in law from hitting and hurting, than is currently allowed for domestic pets and farm animals.
- (g) We believe that the weak and defenceless (i.e. children) deserve the protection of legislation rather than be subject to pain and humiliation with legislative approval.

Recommendations

- 22. We respectfully request that the defence of 'reasonable force' when hitting and hurting children be removed from New Zealand legislation through the repeal of Section 59 of The Crimes Act 1961.
- 23. It might be necessary for Members of Parliament to step beyond any currently perceived consensus of the voting public in support of the 'right' to hit and hurt their children. Like banning smoking in enclosed public spaces, in a few years, we will wonder what all the fuss was about. Certainly those countries which have outlawed corporal punishment now have a strong public consensus about the inappropriateness of hitting children.
- 24. Today's children are the parents the future. They and their children will have good reason to thank you for your wisdom and courage in supporting the repeal of Section 59.