In most jurisdictions, including in Queensland, the law enables parents to raise a defence of ‘reasonable discipline’ or other equivalents if charged with assaulting their children. In Queensland, s 280 of the Criminal Code is the relevant legislative provision, allowing parents to use such force as is ‘reasonable under the circumstances’ to correct or discipline their child. Recently, considerable media attention has been given to parents’ ‘right’ to smack a child, particularly in light of New Zealand legislation, passed in 2007, to prohibit parents from physically punishing their children.

This Research Brief considers, with caveats regarding methodological and other shortcomings, the studies and research regarding the apparent associations between the use of physical punishment on children, including smacking, and short-term and long-term impacts and behaviours. It then examines the arguments in support of banning parents’ use of physical punishment, including smacking, and the arguments that defend the right of parents to use smacking as a disciplinary tool. Laws governing the issue in other Australian jurisdictions and overseas, particularly in New Zealand and in Sweden, are discussed before turning to recent moves by the Hon Dean Wells MP to argue for a change to the laws about smacking in Queensland.
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EXECUTIVE SUMMARY

In most jurisdictions, including in Queensland, the law enables parents to raise a defence of ‘reasonable discipline’ or other equivalents if charged with assaulting their children. In Queensland, s 280 of the Criminal Code is the relevant legislative provision, allowing parents to use such force as is ‘reasonable under the circumstances’ to correct or discipline their child. Recently, considerable media attention has been given to parents’ ‘right’ to smack a child, particularly in light of New Zealand legislation, passed in 2007, to prohibit parents from physically punishing their children.

Section 2 of this Research Brief considers the common law origins of laws regarding the reasonable punishment of children. What is ‘moderate and reasonable’ is left to the courts to determine according to the circumstances of the case. Views about this have changed over time as attitudes of society have altered.

In Queensland, s 280 of the Criminal Code provides that it is lawful for a parent to use, by way of correction, discipline, management or control towards their child, such force as is reasonable under the circumstances. This defence and some case law regarding its use are considered in section 3.

In relation to international approaches towards the care and treatment of children, section 4 of the Research Brief considers, among other matters, the United Nations Convention on the Rights of the Child, Article 19 of which requires State parties to adopt the necessary measures to protect children from all forms of physical or mental violence, injury or abuse. The UN Committee on the Rights of the Child has interpreted ‘physical punishment’ to include smacking or hitting.

The Brief (in section 5) then turns to the research and studies about the effects and impacts of physical punishment on children. At the outset, it notes the significant study design and methodological limitations in much of the research to date and the issue that some studies do not differentiate between light smacks and severe physical punishment or abuse. Firstly, studies regarding the effects of the Swedish smacking ban (Sweden being the first country to ban physical punishment – in 1979) are examined, followed by an overview of an Australian survey about the physical punishment of children and some Australian research about children’s views on the matter.

Section 6 then examines the arguments for and against the physical punishment of children, in particular, smacking. Research by and viewpoints of a number of experts in the fields of child psychology and related professions, legal academics and relevant law reform and other bodies are outlined for both sides of the debate. As for whether physical punishment has harmful effects on children, the expert, academic and community debate is considerable. Those opposing physical punishment point to the possibility of it producing individual and social negative effects (e.g. aggressive behaviour, mental problems, anti-social behaviour, and criminal involvement). Those supporting the use of physical punishment contend that moderate smacking can produce effective disciplinary outcomes for children and argue that many of the negative findings are based on studies with design
problems. They also argue that anti-smacking advocates often point to the worst cases of physical punishment or abuse to push for a blanket ban on smacking.

The laws governing parental smacking in other states and territories are considered in section 7, noting that in the Australian Capital Territory, South Australia and Victoria, the common law underpins the right of parents to use reasonable force to discipline their children. As is the case in Queensland, legislation provides the relevant defence of ‘reasonable force’ or equivalents thereof in Western Australia, Tasmania, the Northern Territory and New South Wales. In NSW, s 61AA of the Crimes Act 1900 (NSW) essentially clarifies the defence and imposes limits on what is ‘reasonable force’, prohibiting parents from striking a child’s head or neck or applying force that causes harm lasting for more than a short time. In 2003, the Tasmanian Law Reform Institute recommended that parents’ right, under s 50 of the Criminal Code Act 1924 (Tas), to use reasonable force to correct a child should be repealed. On the other hand, a private member’s Bill before the South Australian Parliament seeks to enshrine the right of a parent to smack a child.

Section 8 of the Brief then looks at legislative changes that have occurred in other countries. Particular attention is given to the Swedish prohibition on physical punishment, as this was the first country to impose such bans – in 1979. The recent repeal of laws in New Zealand that enabled parents to use reasonable force to correct a child is examined in some detail. It is also noted that Canada is about to follow suit but, on the other hand, the United Kingdom and the United States of America appear to have no current plans to ban smacking in the home.

The efforts of former Attorney-General and Minister for Justice and the Arts, the Hon Dean Wells MP, to amend s 280 of the Queensland Criminal Code are discussed in section 9 and mention is made of the recent announcement of a Government review of assault charges laid against parents to determine if the current law is working properly.

Finally, in section 10, some consideration is given to the use of alternative discipline strategies.
1 BACKGROUND

It has been said that smacking or hitting a child is a very personal issue given that many parents have smacked their offspring and most people were smacked when they were children. Nobody likes to think badly of one’s parents or of their own parenting style.\(^1\)

In most jurisdictions, including in Queensland, the law enables parents to raise a defence of ‘reasonable discipline’ or other equivalents if charged with assaulting their children. In Queensland, s 280 of the Criminal Code is the relevant legislative provision, allowing parents to use such force as is ‘reasonable under the circumstances’ to correct or discipline their child.

Recently, considerable media attention has been given to parents’ ‘right’ to smack a child, particularly in light of New Zealand legislation, passed in 2007, to prohibit parents from physically punishing their children. A number of organisations at national and international levels, including United Nations and human rights bodies, seek to end the physical punishment of children in all countries, including in the home. Both sides of the debate regarding whether parents should be allowed to smack their children tend to hold strong beliefs and can point to various studies and research tending to support their respective arguments.

Around 23 countries (the majority being European) have prohibited, or are in the process of prohibiting, corporal punishment completely, including in the home. Most Australian jurisdictions have banned physical punishment in places outside the home, including in government schools, correctional services institutions, and in alternative child care and foster parent settings.\(^2\)

In Queensland, a strong advocate for banning the physical punishment of children, but still allowing parents to engage in the occasional light smack, is former State Attorney-General and Minister for Justice and the Arts, the Hon Dean Wells MP. In a recent article, Mr Wells MP observed that the Minister for Police had made available to him indicative statistics for 2005-2006 which showed that there were 699 separate charges of assault laid against parents in respect of assaults against

\(^1\) Global Initiative to End All Corporal Punishment of Children Website, Introduction, [http://www.endcorporalpunishment.org/pages/frame.html](http://www.endcorporalpunishment.org/pages/frame.html) (Global Initiative Website). The Global Initiative, launched in April 2001, aims to eliminate corporal punishment of children across the world in all contexts. It has the support of the United Nations and a number of human rights organisations.

\(^2\) Global Initiative Website.
their own children. He noted that 388 of the charges involved serious assaults of some kind and 14 were grievous assault charges.³

Among the concerns of those who wish to ban smacking, is that even a smack is a point on the continuum of the physical abuse of a child.⁴ With the Australian Institute of Health and Welfare finding that the number of substantiations of incidents of child abuse and neglect across the nation rose by 45% between 2002-2003 and 2006-2007,⁵ no parent wishes to be seen as abusing his or her child. Those who consider smacking to be a legitimate form of discipline point to the fact that some of the research about its impact on children has tended to lump the light occasional smack together with actions that amount to physical abuse of a child – violence which would horrify most parents.⁶ There are others who nevertheless do point out that, while the laws retain ambiguities in terms of phrases such as ‘reasonable force’, there will be some parents who will think that slaps that leave marks and truly hurt their children are ‘reasonable’.⁷

A facet of any debate about physical punishment of children is the growing unease in the community about whether today’s children are lacking in discipline and are becoming increasingly scathing of parental authority.⁸ It may be that there are parents who provide no guidance or discipline of any sort to children, as illustrated by recent incidents of young teenagers roaming the streets and engaging in

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⁷ See, for example, J Tucci, J Mitchell, C Goddard, Crossing the Line: Making the case for changing Australian laws about physical punishment of children, Report by the Australian Childhood Foundation (ACF) and the National Research Centre for the Prevention of Abuse (NRCPA) at Monash University, September 2006,

violence. The challenge for parents is that they do not wish to be seen as bringing up unruly children but neither do they wish to be seen as abusing them by administering a smack.

2 ORIGINS OF LAWS REGARDING ‘REASONABLE PUNISHMENT’ OF CHILDREN

In terms of the legality of smacking a child, the common law has long allowed a defence of ‘reasonable punishment’ to a charge of assault. It appears that this defence had its origins in judicial remarks by Chief Justice Cockburn in England who stated that by ‘the law of England, a parent ... may for the purpose of correcting what is evil in the child, inflict moderate and reasonable corporal punishment, always, however, with this condition, that it is moderate and reasonable.’ What is ‘moderate and reasonable’ is for the courts to determine according to the circumstances of the case. Views about this have changed over time as attitudes of society have altered.

Former Chief Justice of the Family Court of Australia, the Hon Alastair Nicholson, recently said that the ‘reasonable chastisement’ defence has its roots in common law and has remained unchanged in almost all legislation. It dates back to a time when ‘women and children were regarded as chattels of their husbands/fathers. There was no research available as to the ill effects of violence upon children. ... Physical punishment was commonplace’. However, there has been enormous social change in so many areas since this law was first introduced, particularly regarding the care of children.

A leading case on the common law position in Australia is the 1955 Victorian case of R v Terry. Sholl J pointed out that there are strict limits to the right of a parent to inflict reasonable and moderate corporal punishment on his or her child for the

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11 UK Department for Children, Schools and Families, p 6.


purpose of correcting the child in wrong behaviour. Such limits are: (i) the punishment must be moderate and reasonable; (ii) it must have a proper relation to the age, physique and mentality of the child; (iii) it must be carried out with a reasonable means or instrument. Whether the chastisement is reasonable will depend on matters such as the health and age of the child and the circumstances of the infliction of the punishment.

3 THE LAW ABOUT SMACKING CHILDREN IN QUEENSLAND
– SECTION 280 OF THE CRIMINAL CODE

Under s 245 of the Queensland Criminal Code (the Code):

A person who strikes, touches, … the person of another, … without the other person's consent, or … attempts or threatens to apply force of any kind to the person of another … under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect the person's purpose, is said to assault that other person.

There are, however, a number of defences to a charge of assault. One defence relates to the use of reasonable force towards a child. Section 280 of the Code provides:

It is lawful for a parent or a person in the place of a parent, or for a schoolmaster or master, to use, by way of correction, discipline, management or control towards a child or pupil under the person’s care such force as is reasonable under the circumstances.

In this Research Brief, only the use of force by a parent towards a child will be considered.

Once a parent has raised the defence to a charge of assault that the force administered to the child was by way of correction, discipline, management or control and that it was reasonable under the circumstances, the prosecution has to prove that the force was unreasonable under the circumstances. There is no indication in s 280 of what is considered to be ‘reasonable under the circumstances’ but some guidance can be obtained from the common law. The case of R v Terry, considered earlier, does set out some guiding factors such as

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16 The Criminal Law Amendment Act 1997 (Qld) amended s 280 to include force used by way of discipline or management in addition to correction. It also removed the ability to use the defence in relation to use of reasonable force towards an apprentice: s 43.
whether the force was carried out with reasonable means, the age and development of the child, and circumstances such as the time between the misdeed and the chastisement. A caveat on consideration of the cases is that many of them are from earlier times and, possibly, from a different generation’s viewpoint about discipline of children. More recent cases seem to indicate less tolerance of heavier forms of force against a child.17

In *R v H*,18 the respondent mother was convicted of assault occasioning bodily harm on her 9 year old son while she was armed with a tree branch. The boy received bruises to his body. The boy had been described during the court proceedings as difficult to manage and as having exhibited some violence previously towards his mother. He had assaulted her on two occasions. The events preceding the attack with the branch were that the boy and two other children had vandalised cars, causing distress in a small community in which the family lived. The boy’s father (estranged from the mother) wrote a victim impact statement that was rejected by the trial judge after reading it. The mother was placed on a good behaviour bond. The Attorney-General appealed that the penalty was inadequate. The Court of Appeal dismissed the Attorney-General’s appeal with de Jersey CJ stating that the court would not interfere with the good behaviour bond penalty and impose an order and a counselling requirement instead. His Honour said of his findings:

None of this is intended to send any signal to the community that this sort of unrestrained lack of discipline on the part of a parent is acceptable. But in circumstances where there is no evidentiary basis for a conclusion that the [mother] needs ongoing counselling, or that there is any risk of recurrence of this sort of misbehaviour on her part, ... the good behaviour bond ... cannot be condemned as so far out of the range as to warrant disturbance on this appeal.19

In terms of the message that the community should draw from the case, de Jersey CJ said that ‘this sort of ill-disciplined response by a parent to a child is intolerable.’20


19 [2001] QCA 174, p 6, per de Jersey CJ.

20 [2001] QCA 174, pp 6-7, per de Jersey CJ.
The question of whether s 280 of the Code should be amended or repealed has been debated in Queensland, as it has in many other jurisdictions, in recent times. The latest push for change will be examined later in this Research Brief.

4 UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

In 1990, Australia ratified the United Nations *Convention on the Rights of the Child* (UN Convention). The UN Convention is based on the concept, among others, that a child should be able to grow up in a family environment in an atmosphere of happiness, love and understanding for the full and harmonious development of his or her personality.\(^{21}\)

Article 3 recognises that all actions concerning children, including by public or private social welfare institutions, courts, administrative authorities or legislative bodies, must be taken with the best interests of the child as the primary consideration.

In particular, Article 19 requires State parties to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of a parent or others having the care of the child. Finally, Article 37 requires parties to ensure that children are not subjected to cruel, inhuman or degrading treatment or punishment.

A number of human rights treaty bodies, including the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, have criticised the corporal punishment of children. In 1999, a resolution of the UN Commission on Human Rights called on States to ‘*take all appropriate national, bilateral and multilateral measures to prevent all forms of violence against children...*’.\(^{22}\)

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\(^{22}\) Quoted on the Global Initiative to End All Corporal Punishment of Children website (Global Initiative Website) at [http://www.endcorporalpunishment.org/pages/frame.html](http://www.endcorporalpunishment.org/pages/frame.html) (click on the ‘Introduction’ link on the left hand side).
4.1 KEY JUDGMENT

An important case, *A v UK 1998*, decided by the European Court of Human Rights (ECHR) in 1998, focused considerable attention on the issue. The matter arose before the English courts in 1994 and concerned a 9 year old boy being hit with a garden cane by his stepfather with some force and on more than one occasion. The stepfather was charged with assault occasioning actual bodily harm and the argument of ‘reasonable chastisement’ was raised by the defence. The stepfather was acquitted by a jury majority verdict.

The stepson (A) applied to the ECHR on the basis that a violation of Article 3 of the *European Convention on Human Rights* had occurred. Article 3 provides that: ‘No one shall be subject to torture or to inhuman or degrading treatment or punishment.’

The ECHR found that, at the relevant time, UK domestic law did not provide adequate protection to A against punishment or treatment contrary to Article 3. The UK Government accepted that the law did not provide adequate protection for children and said that it would be amended. The UK Parliament subsequently enacted the *Human Rights Act 1998* (requiring courts to take into account ECHR judgments regarding rights under the *Convention on Human Rights*) and also passed the *Children Act 2004*. Section 58 of the *Children Act 2004* limited the instances in which the ‘reasonable punishment’ defence could be used (as discussed in Section 8.4 when considering the UK position). As will be seen later, the defence can only be raised where the injury is transient and trifling.

4.2 UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD

The UN Committee on the Rights of the Child (the UN Committee), which aims to help parties to understand the provisions of the UN Convention concerning protecting children against violence, has issued General Comments on corporal punishment, including *General Comment No 8* to highlight the obligation of State

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24 UK, Department for Children, Schools and Families, p 7. The Government is obliged by the Convention to abide by the judgment and to execute it.

25 UK, Department for Children, Schools and Families, p 7.

26 UK, Department for Children, Schools and Families, p 19.
Parties to move quickly to prohibit and eliminate all such punishment of children.\textsuperscript{27} This follows a general discussion on ‘violence against children’, held in 2001, in which the UN Committee called upon member States to take legislative measures to “prohibit all forms of violence, however light, within the family and in schools, including as a form of discipline...”\textsuperscript{28}

The UN Committee defines ‘corporal’ or ‘physical’ punishment as:

\textit{any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (“smacking”, “slapping”, “spanking”) children with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears [etcetera].}\textsuperscript{29}

It points out, however, that in rejecting any justification of violence and humiliation of children, the UN Committee does not reject the positive concept of discipline. Some of the points from the \textit{General Comments} include:

- the UN Committee took encouragement from the fact that a growing number of parties to the UN Convention are taking appropriate legislative and other measures to assert children’s right to respect for their human dignity and physical integrity and to equal protection under the law (para 5);
- the recognition that parenting and caring demand frequent physical actions and interventions to protect children, particularly young children, but this is quite distinct from the deliberate and punitive use of force to cause some degree of pain, discomfort or humiliation (para 14);
- that Article 37 of the UN Convention requires parties to eliminate corporal and other cruel or degrading forms of punishment through legislation and other appropriate measures (para 18);
- that there has been condemnation, in a series of judgments of the European Court of Human Rights, of the corporal punishment of children, first in the penal system, then in schools, and most recently in the home (para 23);
- that while many State parties have child protection laws making ill-treatment, abuse or cruelty an offence, an examination of reports filed by State parties show that such laws do not generally guarantee children protection from all corporal punishment and other cruel or degrading punishment in the family or other settings (para 30);

\textsuperscript{27} United Nations, Committee on the Rights of the Child, \textit{General Comment No 8 (2006), 42\textsuperscript{nd} Session, 15 May-2 June 2006}, paras 2 and 3.

\textsuperscript{28} UN Committee, para 8, citing Report on the 28\textsuperscript{th} session of the general discussion on violence against children within the family and in schools, Sept/Oct 2001, paras 701-745.

\textsuperscript{29} UN Committee, para 11.
• that many States have explicit legal provisions in criminal and/or civil codes that give parents and other carers a defence or justification for using some degree of violence in ‘disciplining’ children. The UN Committee emphasised that the UN Convention requires the removal of laws that allow some degree of violence against children in their homes etc. (para 31);

• that express prohibition of corporal punishment is needed to make it absolutely clear that it is unlawful to hit or ‘smack’ or ‘spank’ a child and that the law of assault applies equally to children as it would to hitting an adult (para 34);

• that the aim should be to stop parents from using violent or other punishments through supportive and educational, rather than punitive, interventions (para 40);

• that, given that minor assaults between adults would rarely come before the courts, the same will be true of minor assaults on children. Prosecutions and interventions should occur only if it is in the child’s best interests and to protect the child from harm. The child’s views should be considered according to his or her age/maturity (para 41);

• that, in addition to legislation, it is necessary to instigate comprehensive awareness-raising of children’s rights to protection and the laws about such rights to overcome the widespread traditional acceptance of corporal punishment as a means of discipline. Further, positive parenting and education needs to be consistently promoted to parents and others. The media can play a valuable role in education and awareness-raising (paras 45-48).

4.3 GLOBAL INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN

The Global Initiative to End All Corporal Punishment of Children (the Global Initiative) was launched in April 2001 by the then UN High Commissioner for Human Rights, Mrs Mary Robinson, with the primary aim of hastening the end of corporal punishment of children across the world. Its work includes lobbying governments to ban all forms of corporal punishment of children and developing public education programs, health promotion and early childhood programs to promote positive discipline.\(^\text{30}\) The aims of the Global Initiative are supported by bodies such as UNICEF, UNESCO, and many other organisations, human rights commissioners of various countries and states thereof, and individuals (many of whom are members of bodies such as the UN Committee, children’s ombudsmen etc.).\(^\text{31}\)

\(^{30}\) Global Initiative Website, Introduction.

\(^{31}\) Global Initiative Website, Supporters.
The **Global Initiative Website** regularly provides updates on the progress towards universal prohibition of corporal punishment of children. The website (as updated in April 2008) comments that 7 States\(^\text{32}\) achieved full prohibition (i.e. banning in all settings, including the home) of corporal punishment during 2007 (Spain, Chile, Venezuela, Uruguay, Portugal, New Zealand and the Netherlands), bringing the total number to 23.\(^\text{33}\) In terms of the home setting, it notes that 157 States have yet to commit to a ban but, in many places, progress is being made in enacting bans in other settings, such as schools and in alternative child care settings.\(^\text{34}\) It was noted that New Zealand became the first English-speaking state to enact full prohibition in all settings in 2007 and the Council of Europe is the first intergovernmental body to launch a campaign for universal bans across its 47 member states.\(^\text{35}\)

### 5 RECENT STUDIES AND SURVEYS

Much of the research on physical punishment of children has limitations and methodological shortcomings and these must be kept in mind when considering the results.\(^\text{36}\)

Before considering weaknesses and limitations in the design and methods of past studies, it is worth noting an important issue that troubles many researchers, particularly those who argue for the legitimacy of smacking. Prominent US developmental psychologist, Dr Elizabeth Gershoff (at p 540), and others point out that the arguments regarding links between physical punishment and child outcomes and behaviours are clouded by confusion about what ‘physical punishment’ or ‘corporal punishment’ actually means. Some experts and analysts view all physical punishment, including smacking, as abusive behaviour. Many

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\(^\text{32}\) The Global Initiative Website (‘Countdown to universal prohibition’) notes that, for the purposes here, the total number of states is 197, comprising all those that have ratified the UN Convention on the Rights of the Child except for Vatican City (which has no child population), plus Palestine, Somalia, Taiwan, USA and Western Sahara.

\(^\text{33}\) The remainder with full prohibition are: Greece, Hungary, Romania, Ukraine, Iceland, Germany, Israel, Bulgaria, Croatia, Latvia, Denmark, Cyprus, Austria, Norway, Finland and Sweden. In 1996, the Supreme Court of Rome declared all corporal punishment in Italy to be unlawful but this has not been confirmed in legislation: see Global Initiative website, ‘States with full abolition’.

\(^\text{34}\) The Global Initiative Website, ‘Countdown to universal prohibition’.

\(^\text{35}\) The Global Initiative Website, ‘Countdown to universal prohibition’.

researchers, noted Gershoff (at p 553), see physical punishment and child abuse as points along a continuum so that physical punishment administered harshly or frequently can cross the line into abuse. There is also disagreement about where to draw the line between what might be acceptable physical punishment (such as smacking) and dangerous physical abuse (punching or kicking). Even more confusing is when researchers use terms such as ‘child maltreatment’.

For the purpose of her meta-analytical analyses (discussed later), Gershoff adopts the definition of corporal punishment preferred by a leading researcher in the field, Dr Murray Straus, that it is the ‘use of physical force with the intention of causing a child to experience pain but not injury for the purposes of correction or control of the child’s behaviour’. This will be the working definition of ‘corporal punishment’ used in this Research Brief from hereon (and referred to as ‘physical punishment’); in particular, it refers to smacking.

Various issues about methodological weaknesses in studies about physical punishment of children include the lack of comparison groups and inability to conduct randomised trials to ensure that the outcome is not biased by other factors (randomised trials allow known and unknown factors to be evenly allocated between groups). This means that generalisations are considerably restricted. Another limitation is a lack of longitudinal research (i.e. studies carried out over time). Research on physical punishment also tends to rely on retrospective investigations that allow self-reporting – i.e. of what parents say they do.

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38 A meta-analysis is a ‘statistical methodology in which data from previous tests are considered and analysed together. For example, a series of small experiments may all show only slight signs of the same effect but the aggregation of the experiments provides overwhelming evidence. A difficulty with this approach is that the experimental conditions and experimental protocols may vary so that the aggregate outcome may not be a fair reflection of the true situation’: G Upton & I Cook, A Dictionary of Statistics, Oxford University Press, 2002, p 230.


40 EO Paolucci & C Violato, p 204, note various research establishing agreement that in studying the effects of physical punishment, the randomisation of parents’ punishing responses to children’s behaviour is unethical.

41 EO Paolucci & C Violato, p 205. See also G Upton & I Cook, p 209.

42 EO Paolucci & C Violato, p 205.
Gershoff (at p 540) also has concerns about the need to rely on parents’ reports of punishment rather than on observations. She believes that while some methods, such as daily phone calls or detailed daily discipline diaries, have high validity, the majority of information on physical punishment comes from parents’ or adolescent and adult children’s recollections of frequency of punishment.

Another problem Gershoff sees (p 552) is that many studies and surveys do not take into account the frequency with which physical punishment is used, how forcefully it is administered and how emotional the parents are when it is used. Although there is little doubt that the effects of physical punishment depend on its frequency and severity, some studies ask only if parents have ever used physical punishment and few ask about its severity.

It has been argued that proper evaluations of the effectiveness of physical punishment must include an assessment of the child’s entire social context. Indeed, outcomes noted by researchers may be the consequences of other parental factors rather than physical punishment alone – factors which include lack of social support, substance abuse, mental health problems, teen parenting, marital discord and multiple stressors.  

Many studies also face the issue of needing to control for differences in sex and social structure variables. For instance, some research has found that parents of a lower socioeconomic status use physical punishment more often and their children have higher rates of anti-social behaviour. Thus, such variables may confound the relationship between physical punishment and behavioural outcomes and effects.

The most significant shortcoming of research on physical punishment, Gershoff believes, is that many studies fail to recognise that physical punishment rarely occurs in isolation; rather, it typically accompanies other disciplinary techniques, such as reasoning, time-out, and threats.

Given the identified study limitations and methodological issues, Gershoff’s presentation of the results of 11 meta-analyses of the association between physical punishment and...

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45 ET Gershoff, p 553, citing JE Grusec & L Kuczynski, ‘Direction of effect in socialisation: A comparison of the parents’ versus child’s behaviour as determinants of disciplinary techniques’, Developmental Psychology, vol 16, 1980, pp 1-9. Gershoff notes that RE Larzelere’s studies (with colleagues), some of which are considered later, are an exception. These have found that reasoning ‘backed up’ by punishment, such as physical punishment, can be highly effective at preventing future misbehaviour. Larzelere’s research is considered later in this Brief.
punishment and 11 child behaviours and experiences does not, therefore, seek to present causal conclusions – i.e. that physical punishment causes certain short-term or long-term behaviours or outcomes for children. Rather, it attempts only to allow an understanding of whether there is an association between physical punishment and certain child behaviours.

5.1 **THE EFFECTS OF THE SWEDISH SMACKING BANS**

In 1979 Sweden became the first country in the world to ban all corporal punishment of children, including in the home. The ban was intended to be educational rather than punitive and sought to change public attitudes towards corporal punishment.\(^{46}\)

Given the length of time in which the prohibition on smacking has been in place in Sweden, studies regarding its impact on children’s short-term and long-term behaviour and on public attitudes have been eagerly awaited. Yet, there have been relatively few studies and those which have been conducted, as seen below, appear to be open to different interpretations.

The most well-known research of the effects of Sweden’s anti-smacking laws appears to be a study undertaken by Canadian Professor and child psychologist, Dr Joan Durrant, who has written extensively about physical punishment of children. The report, ‘*A Generation Without Smacking*’, while somewhat dated (2000), gives an indication of the effects of banning all forms of corporal punishment (referred to in this Brief as physical punishment) after 20 years of operation.

The main findings of Dr Durrant’s research, based on data collected through interviews with a wide range of individuals and primary data sources (including Statistics Sweden and the National Crime Prevention Council), were that:\(^{47}\)

- public support in Sweden for physical punishment fell from 53% in 1965 to around 26% in 1981 (just after the ban was introduced) and to 11% in 1994, particularly among younger parents (6% of Swedes under the age of 35 supporting its use);\(^{48}\)

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\(^{47}\) The following is taken from JE Durrant, p 6, unless indicated otherwise.

\(^{48}\) See also, JE Durrant, p 9.
a number of cross-sectional studies\textsuperscript{49} indicate that the use of physical punishment has declined substantially over the past 40 years. A 1994 survey of 13 to 15 year olds (who would have been aged around 5 or younger when the ban took effect) found that one third had received physical punishment from parents before reaching their teens. Of these, most physical punishment was only in mild form (e.g. arm-grabbing, mild slap) and only 3% reported harsh slaps from parents and 1% said they had been hit with implements;\textsuperscript{50}

reports of assaults on children have increased in Sweden (as they have worldwide with the growing global awareness of the problem of child abuse). However, the proportion of suspects in their twenties (i.e. raised during the anti-smacking bans) prosecuted has decreased since 1984 and the vast majority of reports are for minor offences, suggesting that most cases are being identified before children are seriously hurt;

the prosecution rate has shown a declining trend, indicating that there has not been an increase in the number of parents being drawn into the criminal justice system for minor infractions;

there has been a decrease in the number of children being removed from parents and placed in State care since 1982 (a 26% decline);

overall rates of youth crime have remained steady since 1983 and there has been a 21% decrease in the proportion of 15 to 17 year olds convicted of theft between 1975 and 1996. There has also been a decline in young people’s drug and alcohol intake;\textsuperscript{51}

while the proportion of suspects aged 15 to 19 in alleged assaults against children aged 0 to 6 declined between 1984 and 1994, the proportion of suspects aged under 15 and suspects aged 15 to 19 in alleged assaults against 7 to 14 year olds showed an increasing trend during this period.\textsuperscript{52} Durrant considers that the upward tendency in peer against peer violence may be attributable to more recent trends towards reporting of bullying at school and stricter enforcement by police and other authorities.\textsuperscript{53}

\textsuperscript{49} A cross-sectional study involves samples that include representatives of all sections of the population. See G Upton & I Cook, p 91.

\textsuperscript{50} JE Durrant, p 10.

\textsuperscript{51} It should be noted that Sweden has long tended to have a lower rate of alcohol consumption than many other countries due to factors such as government regulatory policies and public health programs. It also has very restrictive drug enforcement measures and well developed treatment programs: JE Durrant, pp 26-27.

\textsuperscript{52} JE Durrant, p 23, referring to Statistics Sweden data from 1995.

\textsuperscript{53} JE Durrant, pp 24-25.
Durrant concludes that it would be too simplistic to make a direct link between the ban on smacking and any of the above social trends, but the evidence does suggest that the ban has not had negative impacts and, in terms of the goal of changing public attitudes and facilitating early identification and supportive intervention, it has been successful.  The study found that while a multitude of social forces interact in shaping the well-being of children, ‘a range of evidence indicates that the ban has not had negative effects. Parents have not been criminalised for minor infractions; the social authorities have not become more coercive; and youth have not become unruly’.

In response to Durrant’s study, US professor of psychology, Dr Robert Larzelere, has argued that the only age group considered in the study that was raised entirely after the ban was introduced (the under 15s) had the largest percentage increase in assaults against 7-14 year old children (an increase of more than 500% between 1984 and 1994). Among this age group born after the ban, Larzelere noted that the frequency of assaults against other children was 718 as opposed to 116 in 1984 (where the perpetrators were born before the ban).

The second largest percentage increase in assaults against 7-14 year olds, according to Larzelere, occurred for 15-19 year old perpetrators. This group were aged 0 to 4 when the ban took effect. While Larzelere noted that he had referred to the same source used by Durrant in coming to this conclusion, he did not combine data on assaults against children under 7 (which are quite low) with data on assaults against 7 to 14 year olds as this would dampen the effect of the increase.

In terms of peer to peer violence, a Swedish Government report in 2000 noted that it could ‘see no tendency to a decrease in bullying at school or in leisure time during the last 20 years’.

54 JE Durrant, p 6.
55 JE Durrant, p 27.
56 RE Larzelere, ‘Sweden’s smacking ban: more harm than good’, Families First & The Christian Institute, 2004, pp 9-10. Dr Larzelere has researched in the area of child correction for around 30 years.
57 RE Larzelere, ‘Sweden’s smacking ban: more harm than good’, p 10, referring to U Wittrock, ‘Violent crimes against children in criminal statistics 1981-1991’ and ‘Violent crimes against children 1984-1994’. Larzelere noted that this outcome appeared in Durrant’s journal article but not in the paper published by Save the Children, the latter of which is the paper used in this Research Brief.
Larzelere also questioned Durrant’s claim that the Swedish smacking ban had changed public attitudes regarding physical punishment (with Durrant producing figures showing 11% of people supporting it in 1994, compared with 26% in 1981, just after the ban took effect). He considers that the survey questions were very different in the years 1965-1981 (including in 1981) and in 1994. 1965-1981 surveys used the statement ‘a child has to be given corporal punishment from time to time’. In 1965, 53% agreed with the statement but this fell to 26% in 1978, the year before the ban. It stayed at 26% in 1981 which was apparently the last year in which the statement was used in a survey. Thus, he believes, the change in attitude actually occurred before the ban in 1979 and has altered little since. 59 The 11% of people supportive of physical punishment in 1994-95, cited by Durrant, was to the question of being ‘positively inclined to milder forms of physical punishment’. To the question that Larzelere considers is closer to that used in the surveys from 1965-1981, that ‘[m]ild or moderate physical punishment is sometimes necessary as a child rearing method but should be carefully considered …’, 34% of respondents in 1994 agreed with the statement. 60

In his conclusion, Larzelere said that there was ‘no objective evidence that the overall situation has improved for children in countries that have adopted smacking bans’. 61

Countering Larzelere’s comments regarding the increase in peer to peer assaults, Dr Durrant is reported by the New Zealand media as saying that the increase in reported assaults by under 15 year old children on other children was ‘due to an anti-bullying campaign’. 62

At the end of the day, a UNICEF research centre has observed that:

In practice, it is all but impossible to find a clear-cut causal connection between Sweden’s ban on physical punishment and any of the social changes that have occurred in Swedish society since 1979. First, it is always difficult to identify clear social trends when attitudes, definitions, laws and ... legal practices have also changed over time. Second, it is even more difficult to relate such trends to any one specific change in law or practice; there are simply too many variables involved in shaping children’s later life attitudes and behaviours.

59 RE Larzelere, ‘Sweden’s smacking ban: more harm than good’, pp 6-7.

60 RE Larzelere, ‘Sweden’s smacking ban: more harm than good’, pp 6-7.

61 RE Larzelere, ‘Sweden’s smacking ban: more harm than good’, p 15.

Nonetheless, it seems that the worst fears of those who oppose the banning of physical punishment have not been realised. There has been no obvious degeneration of discipline among Sweden’s new generation.\textsuperscript{63}

### 5.2 Australian Childhood Foundation & National Research Centre for the Prevention of Abuse Australian Survey

The Australian Childhood Foundation (ACF) and the National Research Centre for the Prevention of Abuse (NRCPA) published the report, *Crossing the Line: Making the case for changing Australian laws about physical punishment of children* in September 2006. One of the authors, Joe Tucci, is the chief executive of the Australian Childhood Foundation. The report presents findings of a telephone survey of 720 Australian adults in late 2005 seeking their views about the physical punishment of children and makes comparisons with a 2002 study. The critical findings were:\textsuperscript{64}

- a majority of people continue to support the need for physical punishment, with 69% agreeing that it is sometimes necessary to ‘smack’ naughty children (but this was a drop from the 75% who agreed in 2002). There has been a slight increase in uncertainty about whether it is necessary (8% vs 4%). The results suggest, according to the authors, that the community is becoming more open to evaluating their position about physical punishment (p 24);

- there is an increasing gap between those who support the physical punishment of children and those who do not but there has been an increase in support for the use of implements (e.g. sticks, belts, slippers) to inflict punishment, with 10% believing it is sometimes necessary to use such things. However, 82% disagree with the use of implements to punish children (p 21);

- while the numbers have declined since 2002, 45% of the adults surveyed believed it is reasonable for a parent to impose physical punishment that leaves a mark on a child. However, only 1% considered it was acceptable to leave a mark lasting for a few days (p 22);

- while it is often argued by many that they were smacked as children and there is nothing wrong with it, the researchers argue that this study and their earlier research suggest that this premise is being challenged by more parents (p 24). Research conducted by the authors in 2004 indicated that parents were

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\textsuperscript{63} UNICEF, *Innocenti Report Card 5*, pp 24-25.

\textsuperscript{64} J Tucci, *et al*, *Crossing the Line: Making the case for changing Australian laws about physical punishment of children*,

interested in reviewing ways to discipline their children and 58% said that finding a right approach was a serious issue for them:65

- there appears to be agreement among adults that there is a range of more important and positive ways to discipline children, with smacking last on the list of the relative importance of different strategies. Reasoning with children, rewarding good behaviour, ‘time-outs’, and grounding were regarded as more important discipline methods (p 26);

- the legitimacy of physical punishment appears to decrease with the age of the child and the younger the child, the less support for smacking to modify behaviour. Smacking a child under 2 years of age was supported only by 12% of respondents, although 52% believed that parents should be able to smack a naughty child who is over 2 years old (39% disagreeing) (p 27);

- although 41% of respondents thought physical punishment was an effective way of shaping a child’s behaviour, only 11% believed that it was an effective strategy in influencing the behaviour of teenagers. For younger children, there was an almost equal division of opinion between those considering that smacking is effective in shaping children’s behaviour (41%) and those who did not (45%) (p 28);

- there is a small group of adults who agree with shaking children and hitting them about the head (5%) (p 29).

5.3 CHILDREN’S VIEWS AND PERSPECTIVES

A research paper, ‘Parents’ Use of Physical Discipline: The Thoughts, Feelings and Words of Australian Children’, by Saunders and Goddard who interviewed Australian children about their feelings about parents’ use of physical discipline, noted that children’s views are rarely sought on issues, even those which affect them.66 The study interviewed 21 professionals who work with children, 27 parents, 7 grandparents and 31 children aged 8-16 years. Eight questions were posed and a selection of the various responses from children is set out in the context of each issue:

(1) Why are children physically punished? (pp 2-3):

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• To say ... through the hit ... ‘don’t do it again’ (girl, 10 years);
• ... to put the child back into line ... the act they did was that bad that they needed to be
fixed or they needed discipline ... and a quick fix was just to hit (boy, 16 years);
• Dad said ‘you’re not the parent ... you shouldn’t be doing any of that [hitting your
sister]’ ... I got smacked then and ... sent to my room (boy, 12 years);
• ... it’s the only way the child will learn (girl, 9 years);
• ... if you don’t get ... smacked ... you tend to keep on doing it because ... you think it’s
okay ... (boy, 14 years).

(2) Why do parents either make a decision to hit their child, or hit without
forethought? (pp 3-4):
• Mum ... and ... Dad ... just get really angry (boy, 10);
• ... they think it’s the best way.  Like they might have been smacked ... when they were
younger ... they think that telling off ... won’t get the message through and they have
to physically hurt them (boy, 12);
• Sometimes they go overboard ... I don’t think a lot of parents mean to smack or want
to smack ... it just happens... (girl, 12).

The researchers see the above responses as indicating that children seem to regard
hitting as the norm.  It may occur because parents were physically punished as
children, because parents believe it is effective, or because they do not know other
ways of disciplining their children.  The children also realise that parents hit in
anger or frustration and as a way of relieving tension.  One 10 year old boy also
asked ‘who’s really stopping them?’ (pp 3-4).

Other observations made by Saunders and Goddard about the children’s responses
to the questions were that:
• the children seemed to be aware that hitting children is becoming less
acceptable, at least in public view.  They suggested that hitting more often
happens in private where they are powerless to stop it (‘...if it’s in your house, if
you’re a kid ... it’s ok because they’re your kids ... if you are a kid ... you barely have
any say’).  If hitting occurs in public, children may feel embarrassed (‘... the
child will probably get embarrassed ... and ... might want to cry ... they probably
won’t want everybody watching’) (p 4);
• in response to a question about what a child sees, hears, and feels when being
hit, the children described yelling, screaming and angry voices and red, angry
faces.  Small children feel pain and hurt (‘... a [smack] hurts and you feel the pain
inside’ (girl, 8 years)) (p 5);
• in terms of how adults who hit are perceived by children, it was found that the
children see them as immature and not worthy of the child’s respect (‘I don’t
think your children will ... respect you as much’) (p 5);
• in relation to how children behave and feel after being hit, some said they then
felt unimportant and ‘squashed’ as well as hurt and in pain.  Others reported
feeling sad or scared. One 10 year old girl said that she felt let down because she had trusted her parents (pp 6-7); and

- regarding what children thought about parents being able to hit children, it was found that many children thought that adults who hit may be unenlightened and hypocritical. They recognised that adults might also be remorseful. On the whole, many children seemed to think it was wrong to hit and one boy said (echoed by similar comments from other children) that ‘the child will grow up [believing that] hurting people is the right thing’. Another 12 year old boy commented that it was ‘giving the message that it’s ok to smack ... It’s just a big cycle’ (pp 7-8).

5.4 ETHNICITY

There have been a number of studies into the relationship between ethnicity, discipline and children’s outcomes with several authors suggesting that the effects of harsh disciplinary tactics, especially physical punishment, may vary across social and cultural contexts.67

Some studies tend to support the view that where physical punishment is a predominant and normative mode of discipline and is used in a controlled manner in the context of a nurturing relationship, it is considered to be culturally acceptable with positive effects.68 However, some researchers also point out that the results of studies regarding ethnicity can be confounded by factors such as poverty, low social status and disadvantage. Thus, the findings in relation to ethnicity are somewhat inconclusive although some studies suggest that children who experience physical punishment, even if it was normative within their culture, are more anxious and aggressive.69

6 ARGUMENTS FOR AND AGAINST SMACKING CHILDREN

A number of arguments have been raised both for and against parents being allowed to smack a child as a form of administering discipline. Paolucci and

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67 AB Smith, p 122, citing other studies.

68 AB Smith, p 122, referring to a range of studies, especially K Deater-Deckard & KA Dodge, ‘Externalising behaviour problems and discipline revisited: Nonlinear effects and variation by culture, context and gender’, Psychological Inquiry, 8(3), 1997, pp 161-175.

Violato point out that most people would agree that discipline is an important foundation for the development of a child’s self-direction and competence. At the end of the day, there appears to be consensus that discipline and child rearing should ideally be carried out by:

those who have warm, nurturing relationships with [children]. Discipline should be directed toward a child’s welfare and should be developmentally appropriate; it should not be an expression of a caretaker’s anger. Some caregivers use spanking as a method of discipline, and it is from this point that philosophies diverge greatly and the controversy regarding possible benefits or adverse consequences of corporal punishment persists.  

The various standpoints can be prejudiced by factors like childhood experiences, religion, family traditions, regional attitudes, and education levels. Paolucci and Violato, in discussing the results of their meta-analysis (considered later), said (at p 214) that another complicating factor has been the strong position taken by groups promoting their own personal and political agendas for or against physical punishment. A diverse range of groups and organisations raise varying opinions about physical punishment based on the principles upon which those groups and organisations are founded.

As for whether physical punishment has harmful effects on children, the academic and community debate is considerable. Those opposing physical punishment point to the possibility of it producing individual and social negative effects (e.g. aggressive behaviour, anti-social behaviour, criminal involvement). Those supporting physical punishment claim such findings are based on uncertain evidence and are refined by common experience.

As noted earlier, there is often confusion about what amounts to ‘physical punishment’ and disagreement about where to draw the line between what might be acceptable physical punishment (e.g. smacking) and dangerous physical abuse (e.g. punching) that no parent would condone. Some researchers and commentators may not clearly indicate the severity of the physical punishment being looked at.

Because of the limitations of the research conducted on the issue and other methodological defects and design flaws identified by Gershoff and others, it has

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70 EO Paolucci & C Violato, p 216, referring to other research.

71 EO Paolucci & C Violato, p 216, citing IA Hyman, ‘Using research to change public policy: reflections on 20 years of effort to eliminate corporal punishment in schools’, Paediatrics, 1996.

72 As observed by the Tasmanian Law Reform Institute, Physical Punishment of Children, Final Report No 4, October 2003, p 32.

73 As indicted by ET Gershoff, pp 340, 553, and AB Smith, p 115.
been argued outcomes should not be discussed in terms of causal pathways. This point was considered earlier in this Research Brief.

Some groups, parents and others on both sides of the debate claim a religious justification for permitting, or not permitting, smacking. On the one hand there is a belief that a parent has a moral duty to use physical punishment as a last resort and in a loving manner in order to raise children well. Possibly one of the most quoted Proverbs in this regard is ‘He that spareth the rod hateth his son; but he that loveth him chasteneth him betimes’. Similar ideas about child raising are found throughout the Old Testament. However, the Gospels in the New Testament do not mention physically punishing children, nor did Jesus speak of it.

Philip Greven, a Christian historian in the US, has commented that the Bible has long been a basis upon which the earthly suffering of children has been justified so that they will be saved from an eternity in hell. On the other hand, many Christians are strongly against physical punishment of children and observe the need to balance the ancient scriptures against the way in which Jesus responded to children and his teachings about forgiveness and compassion. There is also considerable support from mainstream churches for changing physical punishment laws, as was witnessed in the lead up to the repeal of the ‘smacking’ laws in New Zealand. An example of this around that time is found in the joint statement by the Anglican Bishops of Aotearoa, New Zealand, favouring repeal. They stated that, as Christians, ‘our primary role model is Jesus Christ. … The way of Jesus was one of non-violence’.

74 EO Paolucci & C Violato, p 207.
75 As canvassed in some of the responses to the Tasmanian Law Reform Institute’s inquiry. See Physical Punishment of Children, p 28.
76 Holy Bible (King James version), Proverbs of Solomon, Chapter 13:24.
77 Holy Bible (King James version). See also, B Wood, I Hassall & G Hook, Unreasonable Force: New Zealand’s journey towards banning the physical punishment of children, Save the Children New Zealand, Wellington NZ, February 2008, p 93.
79 B Wood, et al., pp 96-97, quoting in full the joint statement by the Anglican Bishops of Aotearoa, New Zealand.
81 Joint statement by the Anglican Bishops of Aotearoa, New Zealand.
6.1.1 Arguments Against Smacking

Advocates for banning the use of physical punishment by parents point to some of the abovementioned studies and others not considered here as providing evidence of the negative effects on children of such actions. In particular, they argue that the studies show that children who are hit by their parents may become aggressive and be more likely to hit other children and, later in life, other family members; they may suffer from mental health problems, such as low self-esteem and depression; they may become anti-social and engage in delinquent behaviour; and they may not perform well at school.\(^{82}\)

6.1.2 Murray Straus

Professor of Sociology and leading researcher into the physical punishment of children, Dr Murray Straus, has concluded that children being physically punished are ‘being subjected to a socialisation experience which increases the risk of them developing major social and psychological problems, such as physical violence and depression.’\(^{83}\) Straus found that depression was also linked to an increased probability of subsequently physically assaulting one’s partner.\(^{84}\)

While acknowledging methodological and other issues involved in studies on physical punishment, Straus has argued that the weak point of each individual study tends to be resolved by the next one and each almost always converges on the finding that physical punishment is related to violence and other anti-social behaviour.\(^{85}\)

A number of Straus’ studies, alone or with colleagues, have found a number of negative effects, such as aggressive and anti-social behaviour in children, to be associated with physical punishment. In a 1996 study, Straus noted suggestions of a connection between physical punishment and violence such as later abuse of

\(^{82}\) Tasmanian Law Reform Institute, p 35, referring to a range of studies, including E Gershoff (considered earlier); MA Straus ‘Discipline and deviance: Physical Punishment of children and violence and other crime in adulthood’, Social Problems vol 38, 1991, p 133; and to a 1995 Discussion Paper by the Commonwealth Department of Human Services and Health which cites a range of studies.


\(^{85}\) EO Paolucci & C Violato, p 207, citing MA Straus, ‘Spanking and the making of a violent society’. 
one’s children and one’s spouse. In a later study, Straus et al conducted a controlled study which concluded that when parents use physical punishment to correct anti-social behaviour in their children, subsequent anti-social behaviours actually increased 2 years later. Thus, it was concluded, attempting to use physical punishment to reduce anti-social behaviour had the long-term effect tending towards the opposite. Further, the researchers argued, this relationship applies even if the parents provide cognitive stimulation and emotional support and regardless of factors such as sex, socioeconomic status and ethnicity of the child. Straus et al also suggested that the more frequent the physical punishment and the longer it lasts in the child’s life, the greater the probability of behavioural problems.

A recent study considered the effects of physical punishment on cognitive development on 806 children (of mothers in the National Longitudinal Study of Youth) aged 2 to 4 in the first year of the study and for 704 children who were aged 5 to 9 in the first year. Physical punishment was measured by whether the mother was observed hitting the child during the interview and by a question about frequency of smacking over the past week. Cognitive ability was measured in the first year and two years later by age appropriate tests. The study controlled for the mother’s age, education, mother’s supportiveness and cognitive stimulation, the child’s age and gender and a range of other factors. The 2 to 4 year olds in the high physical punishment group experienced a slower rate of cognitive development than did the children in the middle physical punishment group. Those in the low physical punishment group had slightly faster than average cognitive development. However, for the 10% of 2 to 4 year olds not hit in either of the baseline weeks, the best results were found in cognitive development and similar but less strong relationships were found for the 5 to 9 year old children.

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87 EO Paolucci & C Violato, p 203, citing MA Straus, DB Sugarman & J Giles-Sims.


6.1.3 Gershoff’s Meta-analyses

Given the research and methodological limitations she and others refer to, Dr Elizabeth Gershoff’s meta-analyses ‘Corporal punishment by parents and associated child behaviours and experiences: A Meta-analytic and theoretical review’, mentioned earlier, does not seek to offer causal conclusions. Instead, Gershoff presents the results of 11 meta-analyses of the association between physical punishment (in the context of its milder forms, such as smacking) and 11 child behaviours and experiences. The meta-analysis involved 88 studies over 62 years up to 2001, with most emphasis on recent studies. These were a mix of desirable and undesirable behaviours and experiences, as set out below. After an examination of the studies, Gershoff came to the conclusion that physical punishment ‘is associated significantly with a range of child behaviours and experiences’ and the discussion under following headings provides a brief outline of Gershoff’s observations in relation to these.

**Immediate Compliance**

To stop misbehaviour immediately is a desirable outcome of physical punishment and research has confirmed that it is effective in gaining short-term compliance but less effective in gaining long-term compliance. However, of the 5 studies considered in the meta-analyses, 3 studies found physical punishment associated with higher levels of compliance but 2 did not. Gershoff also noted issues that qualified the results, mainly in terms of inconsistency in the findings, and recommended that further research be undertaken (pp 549-550).

**Moral Internalisation**

‘Moral internalisation’ is defined by some researchers (at p 541) as taking society’s values and attitudes as one’s own so that acceptable behaviour is motivated not by anticipating consequences (e.g. getting punished) but by intrinsic factors. In other words, seeing what is acceptable behaviour is motivated by moral choice rather

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91 Gershoff states (p 550) that these studies are primarily correlational studies i.e. looking at the degree of association between two numerically valued random variables: G Upton & I Cook, p 84. Correlation is not the same as causation.

92 ET Gershoff, pp 541-542, 549-550, and Table 4 on p 547. Gershoff cites a number of studies on smacking and physical punishment in relation to each of the behaviours and experiences, each meeting the criteria required by Gershoff for carrying out her meta-analytical review. These are listed on p 545 and full references are provided on pp 567-579.
than by fear of punishment. Internalisation is thought to underlie the development of children’s social and emotional competence. There is some research indicating that internalisation of morals in children is enhanced by discipline that does not involve physical punishment and that physical punishment does not promote moral internalisation because it does not teach children the reasons for behaving correctly. It may, in fact, teach children the desirability of not getting caught.

In Gershoff’s meta-analyses, 13 out of 15 studies found a connection between physical punishment and a decrease in moral internalisation of parental rules and values which (at p 550) Gershoff regards as being consistent with previous research showing that power assertion impedes children’s moral internalisation.

**Aggression**

The connection between physical punishment and aggression is one of the most studied and debated in child-rearing literature. Several reviews have concluded that physical punishment has been hypothesised to predict increases in aggression and violent behaviour, and may legitimise other types of violence in a person’s life, including in their romantic life (p 541).

In the meta-analyses, all 27 studies found a link between physical punishment and child aggression. Again, however, Gershoff (at p 550) considered that more detailed studies were necessary to resolve questions such as why boys tend to show a stronger association between physical punishment and aggression than do girls (in other words, are boys smacked more because they are aggressive or are they more aggressive because they are smacked more?), and why the association is lower among high school children than those aged 10 to 12.

**Criminal and Anti-Social Behaviour**

Decades of research has implicated physical punishment in the origins of criminal and anti-social behaviour by children and adults. Gershoff notes (p 542) that some theories posit such links on the inability of physical punishment to facilitate children’s internalisation of values and morals while other theories suggest that physical punishment erodes the parent-child relationship and the desire to internalise parents’ and society’s values, which then results in lower self-control.

In Gershoff’s meta-analyses, 12 out of the 13 studies considered found a connection between child delinquent and anti-social behaviour and 4 out of 5 studies found a link with criminal and anti-social behaviour measured in adulthood. However, Gershoff noted (at p 551) the need for caution when drawing conclusions from the child behaviours measured in adulthood because of the limitations on the methodology used (e.g. retrospective methods; inability to control for intervening factors).
**Disruption of the Quality of the Parent-Child Relationship**

Gershoff noted that the potential for the parent-child relationship to be disrupted by physical punishment has been thought to be the main shortcoming of its use. Such punishment may, according to research, evoke fear, anxiety and anger in children which can cause them to fear and avoid the parent. This may then erode bonds of trust. All 13 studies Gershoff considered revealed an association between physical punishment and deterioration in the parent-child relationship (pp 542, 547).

**Mental Health Problems**

Although, as of 2001, little research had been done to identify the processes by which physical punishment would lead to mental health issues, Gershoff noted (p 542) that a significant connection has been found between physical punishment and adolescents’ depressive symptomatology and distress, even after controlling for other factors such as gender, age and socioeconomic status. In the meta-analyses, all 12 studies examined found an association between physical punishment and mental health problems in children and 8 studies (keeping in mind the need for caution in interpreting studies involving child behaviours measured in adulthood) found such an association when measured in adulthood.

**Adult Abuse of Own Children or Spouse**

Gershoff stated that (p 542) ‘if physical punishment is associated with a general aggressive tendency in adulthood, this aggression may also manifest in relationships with members of the family’. There are studies showing a strong tendency for parents who were physically punished as children to continue the practice with their own children. Further, Gershoff notes, there are studies to indicate that experience of average (e.g. smacking) and extreme (e.g. beating up or kicking) forms of punishment are associated with increases in a person’s likelihood of acting violently with an adult romantic partner. Here, all 5 studies considered (p 547) showed an association between physical punishment and domestic abuse in adulthood (noting the caution required in interpreting studies involving behaviours measured in adulthood) (p 551).

**Becoming a Victim of Physical Abuse**

Gershoff noted that some child abuse researchers see physical punishment and abuse as on a continuum, such that if physical punishment is given too severely or too often, the outcome can be abuse. She notes that this idea of a continuum is somewhat borne out by physically abusive parents themselves: parents who had abused their children revealed that two thirds of their abusive incidents started as attempts to change children’s behaviour (p 542). Also, a 1999 study showed that
between 16% and 21% of reported incidents by parents were rated by independent coders as severe (e.g. use of sticks, belts or spoons).

In Gershoff’s meta-analyses, each of the 10 studies revealed a strong association between being physically punished and becoming a victim of physical abuse. Gershoff comments (p 550) that the potential for physical punishment to escalate into physical abuse must be seriously considered.

**Discussion Regarding Meta-analyses of Outcomes and Experiences**

Gershoff made the following observations regarding her meta-analyses:

- 10 out of the 11 meta-analyses indicate an association between parental physical punishment and mainly undesirable behaviours (as just discussed). Physical punishment was associated with just one desirable behaviour – increased immediate compliance (p 544);
- the behaviours and experiences with the largest effect sizes were also the starkest in contrast: immediate compliance (a highly desirable outcome) and physical abuse (highly undesirable). This, according to Gershoff, underlines the controversy over the use of physical punishment because there is general agreement that it is effective in getting children to immediately stop the bad behaviour but, at the same time, child abuse researchers caution that physical punishment, by its nature, can escalate into physical abuse (pp 549-550);
- ‘statistical meta-analyses cannot overcome the psychological tenet that findings of correlation do not prove causation’ (the studies looked at being primarily correlational). Thus, physical punishment cannot be definitively identified as the cause of these child behaviours and experiences, apart from immediate compliance. There may well be alternative explanations for behaviours and the causal direction might be actually reversed (for instance, aggressive children may provoke more physical punishment). Further, Gershoff adds, there might be an additional variable that predicts both use of physical punishment and child behaviours, such as parents’ inconsistent style of discipline. Indeed, future studies of physical punishment, using more robust designs, are needed in this area (p 550);
- a variety of parent, child and situational factors not examined in the meta-analyses have the potential to moderate any links between physical punishment and child behaviours. Thus, not all children who experience physical punishment become aggressive or delinquent (p 551);
- parents tend to view physical punishment as most appropriate for children of preschool age and least appropriate for infants and for children aged 5 years and over, particularly for teenagers (p 557).

Gershoff also presents a model (what she terms a ‘process-context’ model) to explain how parental physical punishment might cause particular child outcomes. The model used seeks to identify processes in the child that might transform the
experience of physical punishment into manifest behaviours and to suggest the types of children and parents for whom and the circumstances under which the various associations might be expected. However, space does not permit consideration of this aspect of Gershoff’s study.

6.1.4 UNICEF Innocenti Research Centre Report Cards

A 2007 UNICEF *Innocenti Research Centre Report Card* 7 presents the findings of an assessment of the well-being of children and young people in 21 nations of the industrialised world. It attempts to measure and compare child well-being under six headings (material well-being, health and safety, education, relationships, behaviours and risks, and subjective well-being). In terms of the health and safety component, the Research Centre authors note that the overview would have benefited from some indicator of the level of maltreatment, abuse and neglect of children but various collection and reporting methodology difficulties made this impossible at present. 94 However, it notes that around 3,500 children under the age of 15 die each year in OECD countries from maltreatment, physical abuse and neglect. 95 While the Research Centre authors seemed to be focused on the more serious types of ‘maltreatment’, in an earlier 2003 *Innocenti Report Card 5*, some attention is given to hitting of children by parents. 96

The *Innocenti Report Card 5* notes a number of findings indicating a link between physical punishment of children and outcomes such as aggressive behaviour, tendency to bully other children and mental problems in later life (pp 28-29). However, in terms of assessing the risk of problems in later life for children who have experienced physical punishment, the authors note that there are difficulties in establishing unambiguous cause and effect linkages between any one aspect of child rearing and any given outcome in later life. There are just so many ‘influences and variables involved in shaping the attitudes and behaviour of children’ to make it

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hard to ‘isolate the long term effects of any one factor’ (p 29). In addition, the authors point out that even the ‘factor’ itself is difficult to define. In other words, should the research look for the likely long term effects of only severe and regular physical punishment or should it include even light and infrequent physical punishment? (p 29).

While the authors appear to oppose physical punishment of children, particularly from a human rights perspective, they comment that the approach taken by some researchers that all hitting is abuse ‘has sometimes left research findings looking ridiculous. Links between regular and severe abuse as a child and, say, depression or aggression in later life does not prove that all physical punishment is likely to produce the same result’. 97

6.1.5 Professor Anne B Smith

Professor Anne B Smith, New Zealand researcher and former director of the Children’s Issues Centre at the University of Otago, recently produced a report, The State of Research on the Effects of Physical Punishment. It updates part of a previous Children’s Issues Centre report about the effects of physical punishment on outcomes for children. The Report refers to the Gershoff meta-analyses and to additional studies. 98

Smith noted Gershoff’s findings regarding the association between the use of physical punishment and child aggression as well as delinquent and anti-social behaviour. She then referred to a 2004 study examining the relationship between physical punishment and anti-social behaviour in children. The study found that whether or not parents smacked their children in the past week was related to anti-social behaviour 2 years later. Even low and common levels of smacking were found to be associated with increases in anti-social behaviour. Smith considered that the study challenged the assumption that only frequent and severe punishment is associated with harmful effects. 99


99 AB Smith, p 118, referring to A Grogan-Kaylor, ‘The effect of corporal punishment on anti-social behaviour in children’, Social Work Research, 23(3), 2004, pp 153-164. The study used a ‘fixed effects analysis’ that provides more rigorous statistical controls than used in earlier research as it controls for both observed and unobserved covariates (i.e. a variable that has an effect but is of no direct interest: G Upton & I Cook, p 86).
Gershoff did not consider studies about links between physical punishment and cognitive development of children. However, Smith noted that a research team from the Children’s Issues Centre recently reviewed the research on this matter. The team found 7 studies linking aspects of children’s cognitive development to family discipline and each of them revealed an association between harsh discipline and poorer academic achievement and/or cognitive development across a range of ages and ethnic groups.  

Among other studied effects on children, Smith noted Gershoff’s findings regarding an association between physical punishment and mental health problems and reported another study involving a survey of Anglo-Australian and Asian-Australian high school students. It was found that, regardless of ethnicity, depression was significantly related to perceptions about parents’ punitiveness and withdrawal of love.

Smith considered that Gershoff’s review supported the view that physical punishment tends to lessen the chances that children will internalise parental rules and values. A 2001 longitudinal study of children under 4 years old and their mothers also found several significant negative correlations between maternal use of power and children’s committed compliance with their mother’s requests.

After reviewing the studies, Smith said:

*The use of physical punishment has been associated with many negative social outcomes, including aggression, disruptive behaviour in school, lack of acceptance by peers, crime and delinquency. Children’s cognitive and intellectual development are also adversely affected .... Physical punishment is linked to insecure attachment and poorer relationships between children and parents, and to a variety of mental health problems.*

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103 AB Smith, p 124.
6.1.6 Tasmanian Law Reform Institute

In its 2003 Report, *Physical Punishment of Children*, the Tasmania Law Reform Institute presents a number of points in support of banning physical punishment of children. These arguments presented below are among the many raised during the debate about reforming the law on smacking in Tasmania (pp 23ff):

- allowing the physical punishment of children means that children do not enjoy the same right to physical integrity that adults enjoy (p 23);
- criminal laws allowing the physical punishment of children breach Australia’s obligations under international human rights treaties and conventions (pp 24-25);
- physical punishment is inconsistent with modern attitudes to children that regard children’s best interests as the paramount concern (p 26);
- laws and policies do not permit teachers, child carers, juvenile justice workers, or foster parents to use physical punishment on children (p 26);
- the fact that research indicates that smacking is still accepted in many households does not mean that it should not be questioned. People accept it because they have grown up with it and may give little thought to whether it is morally right or not. Parliament frequently legislates against activities which were once condoned by a majority of the community, such as driving without a seatbelt (pp 26-27);
- while physical injury to the child is not usually intended, it arguably a risk of physical punishment because children are more vulnerable to injury than adults and some adults underestimate their own strength. Further, there is potential for mild punishment to escalate and ‘go too far’ (p 32);
- it has been suggested by learning theory, that to be effective, the punishment has to occur after every transgression, be immediate, be intense and not be signalled by a discriminative stimulus. Some research suggests that those conditions are a tall order for parents and most are likely to fail on all counts. Further, it has been contended that the pain and other emotion felt by the child who is physically punished may be so overwhelming to the child that any explanations or reasons given by the parents with the punishment may go

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105 Not all the arguments are set out here and some that have been raised earlier – less likelihood of moral internalisation; deterioration of the quality of parent-child relationship; increased aggressive and anti-social behaviour, becoming a victim of abuse; decreased cognitive ability (see pp 32-36) – are not detailed again in this context.

106 Tasmanian Law Reform Institute, p 30, citing other research.
unheard and many children may not remember why they were punished in the first place;\(^\text{107}\)

- while some respondents to the Issues Paper (forming part of the Review) argued that parents need to use physical punishment when a child is acting dangerously, such as about to put their hand on the stove, other respondents argued that the child in such a situation could be easily grabbed and then other ways used to communicate that they should not ‘do that again’. It was said that even very young children can understand stern, simple explanations (‘no, the stove is hot, it will hurt your hand’) and that parents who do not use physical punishment have found from experience that they can avert the danger (p 31);

- many parents and professionals, such as the Paediatrics and Child Health Division of the Royal Australasian College of Physicians, have stated that discipline – which most would agree children do need – can be effectively administered without physical punishment. There is a range of disciplinary techniques far more effective and beneficial, such as rewarding good behaviour and ignoring undesirable behaviour, and setting appropriate limits;\(^\text{108}\)

- while some respondents to the Issues Paper argued that a law banning physical punishment would be an unjustified intrusion upon parental rights and the Police Department also noted the need for caution regarding measures which might undermine the parental prerogative and the family’s ability to manage its own affairs, the law does already intrude into ‘private’ family life by stating that any physical punishment must be ‘reasonable’. While parents may wish to discipline their children in the way they feel is best, they do not, and should not, have an absolute legal right to do so (p 38).

The Institute concluded that ‘there is sufficient evidence to find there are probably a number of negative effects produced by the use of physical punishment’ although that evidence ‘is not yet totally conclusive – such is the nature of much social and scientific evidence’. However, the Institute argued, when dealing with children’s welfare, a cautious approach is needed and the evidence should not be ignored (p 36).

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\(^{107}\) Tasmanian Law Reform Institute, p 30, citing other research.

6.1.7 Australian Childhood Foundation & National Research Centre for the Prevention of Abuse – Crossing the Line

In its September 2006 Report by the ACF and the NRCPA, Crossing the Line,\(^{109}\) the authors urged legislative reform of the defence of ‘reasonable correction’ or ‘lawful correction’ by parents in Australia. It also recommended that governments implement a major community education campaign against the use of physical punishment and promote positive parenting approaches to discipline. The authors presented various issues identified in the literature about the physical punishment of children to support their opposition to it and their concern that it is not possible to determine the point at which physical punishment crosses the line and becomes child abuse. In brief, the Report made the following points:\(^{110}\)

- Gershoff’s meta-analytic review found that while physical punishment was related to short-term compliance, there were also a number of negative outcomes;\(^{111}\)

- after extensive studies of the issue, Associate Professor Joan Durrant concluded, in 2006, that whilst some children who are physically punished ‘may be resilient to the experience, many are not. In fact, [it] is far more likely to be a risk factor than a benign factor in children’s lives’;\(^{112}\)

- the results of the 2006 survey conducted as part of this study (discussed above), suggest that support for physical punishment has fallen between 2002 and 2006 with more people registering uncertainty on the issue although the majority of respondents (69%) still support it. However, the community is open to considering whether it is a necessary way of shaping children’s behaviour. In addition, it is seen as a measure of last resort for many and there is very little support for using physical punishment on children under 2 years old or with teenagers. The effectiveness of physical punishment as a teaching tool is also being questioned (p 30);

- it was, nevertheless, said by the authors to be alarming that 45% of respondents to the 2006 survey thought it was acceptable for children to be left with red marks and that the apparent threshold for what is considered to be unreasonable was causing a mark which lasts for more than a few days. Thus, the authors

\(^{109}\) The Report follows a 2002 Report tracking community attitudes about the physical punishment of children and seeks to determine if there have been changes in beliefs since that time.

\(^{110}\) J Tucci, \textit{et al.}, pp 11-17. Not all analyses of studies and research can be included here due to restrictions of space.


contend, the question is where the community will draw the line between physical punishment and abuse? The authors said that the survey outcomes challenge the argument that children are hit in a controlled and reasoned way because it is not uncommon for a parent to lose control so that the punishment becomes an abuse of the child. The researchers argue that the use of an implement such as a stick or belt increases the risk of punishment escalating to abuse when a parent is out of control because it is difficult for the parent to judge the amount of force being exerted in hitting the child (p 31);

• while it is true that children need discipline and that most parents do not hurt their children, it is also true, the authors argue, that children are injured, sometimes seriously, in the name of discipline. They contend that children need to learn what is and is not acceptable from feedback that helps them to understand and follow rules (pp 9, 31);

• ‘It is absurd’, the authors argue, ‘to try to draw an arbitrary line between physical punishment and physical abuse’. There cannot really be any safe levels of hitting (p 31);

• changing the laws to repeal ‘reasonable chastisement’ and like defences will both help set and reflect community standards and will also strengthen community commitment to the importance and value of children. However, legislative reforms would have to be accompanied by community education campaigns to support parents in understanding the changes and to encourage an adjustment in their beliefs and behaviour (p 32);

• in Sweden, where the ban on smacking was accompanied by a widespread education campaign, parental attitudes and behaviours have changed towards using alternative disciplinary strategies and all of this ‘has been accomplished without Swedish society being driven into anarchy by a generation of young people who have been raised without being physically punished’ (p 33).

6.1.8 Hon Alastair Nicholson – Choose to Hug Not Hit

In April 2007, the Hon Alastair Nicholson, former Chief Justice of the Family Court of Australia and Patron of Children’s Rights International gave a speech, titled ‘Choose to Hug Not Hit’, to mark international ‘No Smacking Day’. A brief summary of His Honour’s comments in support of a ban on smacking is set out as follows:

• while most of us are rightly concerned about child abuse:

    it troubles me that we are unable to characterise the hitting of children as falling squarely into this category. I suspect that the use of the word “smacking” has something to do with it. To most, it raises connotations of a gentle correction to a

113  Hon A Nicholson, ‘Choose to Hug Not Hit’.
toddler in order to protect or deter him or her from harm, administered by a gentle but loving parent (p 16);

* • that the defence of reasonable chastisement:
  
  operates to protect parents from ... conviction for much more serious assaults on children and, in effect, operates as a charter for child abuse. ... because particular parents use it as a licence for [action that many would regard as brutal assault] either out of cruelty or a misguided belief that they are properly disciplining the child (p 17);

  • some reported court cases over the past few years involve situations where parents have hit children with implements such as belts, sticks and wood. Thus, the defence has been successfully relied upon by some parents and might also ‘operate as a serious inhibitor on any prosecutions’ (p 18);

  • the removal of the defence to a charge of assault would simply place children in the same position as the rest of the community in relation to assault laws (p 16);

  • changes to the law would not result in loving parents being subject to prosecution for gentle correction. The legal phrase *de minimis* means that the law does not concern itself with trivialities so any attempt to prosecute for trivial assaults would fail (p 16);

  • in preserving the defence of ‘reasonable chastisement’ Australia is ‘in clear breach of the Convention [on the Rights of the Child]’ (p 21);

  • because it was understandable that parents might fear that any legislative change would leave them open to prosecution for relatively mild acts of punishment, it is important that any changes to the law be made in a way that takes such concerns into account. Law reforms could also be accompanied by significant public education campaigns regarding the negative effects of smacking and the better ways available for disciplining children (p 17);

  • although there are many strong religious opponents of change and their views are entitled to consideration, the need to protect children must prevail (p 26);

  • the prevalence of bullying may be attributable to the fact that children experience parents using force to discipline them and they then use force towards their peers at school. It is also highly probable that there is a connection between violence towards one’s partner and having been physically punished as a child. While both problems have a number of causes, it should not prevent us from acting to reduce one contributing factor (pp 27-29);

Reference was made (p 28) to a 2001 US study of 578 children assessed in kindergarten through to the 8th grade using statistical modelling to determine the basic developmental trajectories of behaviours for 3 physical maltreatment groups (children maltreated before 5 years; children maltreated over 5 years; and children not maltreated). Findings indicated the later harmed children increased their problem behaviours more rapidly than the other groups. His Honour believed that the physical punishment and bullying relationship needed further research.
that if ‘political leaders were to take a leadership role on the issue, coupled with a public education program, [public] attitudes would change’ as they did in Sweden and as they have in relation to other public health and safety issues such as wearing seatbelts and not drink driving (p 26).

6.1.9 Hon Dean Wells MP

The main proponent of the most recent campaign to prohibit physical punishment of children in Queensland is former Attorney-General and Minister for Justice and the Arts, the Hon Dean Wells MP. In a recent article, Mr Wells stated:

If your partner puts a brick through the windscreen of your car and to teach them a lesson you calmly take an implement and give them a good hiding, leaving bruises ... you will be charged with assault occasioning bodily harm and sentenced to a maximum of seven years imprisonment ... . Alternatively, you may have a domestic violence order taken out against you.

If, on the other hand, your child does exactly the same thing and you respond in exactly the same way, you will not be charged because s 280 provides you with complete protection.\(^{115}\)

Mr Wells MP wants s 280 of the Criminal Code to be amended so that it does not operate as a defence to any type of assault other than common assault and says that the effect would be to allow parents to smack their children, but not to injure them, nor to inflict upon them an assault occasioning bodily harm or grievous bodily harm. He concludes:

I am not suggesting that we make merely smacking a child a crime. I would not encourage it, but it is not something with which the law should concern itself. ... The law should, however, concern itself with protecting children from injuries.... \(^{116}\)

6.2 ARGUMENTS FOR SMACKING

As noted earlier, a 2006 telephone poll carried out by the Australian Childhood Foundation revealed that almost 7 in 10 Australians support smacking.\(^{117}\) Thus, it would appear that the debate is set to continue for some time.

It has been suggested that one of the difficulties with the smacking debate is that a number of opponents of smacking point to terrible cases of physical punishment,

\(^{115}\) Hon D Wells MP, ‘‘Reasonable” Assaults?’ p 25.

\(^{116}\) Hon D Wells MP, p 26.

\(^{117}\) J Tucci, et al., p 22ff.
much of which amounts to child abuse, as indicative of why smacking should be banned. Psychology professor, Dr Robert Larzelere, who has researched child correction for nearly 30 years, has commented that much of the research has included the use of harsh or abusive punishments and that while ‘all professionals oppose abusive physical punishment, non-abusive physical punishment is more controversial’. It has also been argued that even Gershoff’s meta-analyses did not exclude overly severe forms of physical punishment in a number of instances, thus making her analyses less relevant to the debate about whether normative smacking is harmful.

Other researchers point to the constraints and limitations, noted earlier, of the methodology and design of many studies about the physical punishment of children. It has been argued that the design quality and the reliability and validity of the research results have often been inadequate, unclear and equivocal.

Larzelere points out how these limitations can influence conclusions. For instance, Larzelere’s 1996 analysis of 35 empirical studies investigating child outcomes associated with physical punishment found that the stronger studies – clinical treatment studies and sequential studies – revealed mainly beneficial outcomes but most of the retrospective studies found predominately detrimental or neutral outcomes. Larzelere found a particularly pervasive weakness was that most of the studies did not control for the original frequency or severity of any child problem behaviour.

Some researchers suggest that it is wrong to discuss the studies in this area in terms of cause and effect because of the identified shortcomings of many of them. Yet, it has been argued that Gershoff – while stating that she did not propose to do so –

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118 RE Larzelere & BR Kuhn, Executive Summary, p 2.


121 See, for example, EO Paolucci & C Violato, pp 214ff.

122 RE Larzelere, ‘Parental Use of Non-abusive or Customary Physical Punishment’.

123 EO Paolucci & C Violato, p 207.
does seem to suggest a causal link between physical punishment and physical abuse in her meta-analyses.\textsuperscript{124}

6.2.1 Dr Robert Larzelere

\textit{A Review of the Outcomes of Parental Use of Non-abusive or Customary Physical Punishment}

In Larzelere’s 1996 review of 35 empirical studies examining the effects on non-abusive smacking on children, 26% found predominantly beneficial outcomes associated with such smacking, 34% detected predominantly detrimental outcomes, and 40% found neutral outcomes.\textsuperscript{125} Larzelere commented on the lack of quality studies, as noted earlier, due to methodological weaknesses.

Larzelere found that the studies with stronger internal validity tended to find beneficial outcomes. All (100%) of the clinical treatment studies and sequential studies showed predominantly beneficial outcomes associated with smacking; 30% of the prospective longitudinal studies found predominantly detrimental outcomes and the remaining 70% found neutral outcomes. Of the retrospective studies (less robust methodologically), 53% found predominantly detrimental outcomes and 41% found predominantly neutral outcomes.

Larzelere’s review also found that the age of the child had an impact on the findings and it appeared that smacking of teenagers had predominantly detrimental outcomes. Also, studies which excluded abuse from the measures were most likely to find predominantly beneficial outcomes (55%).\textsuperscript{126} Further, studies showing beneficial outcomes tended to control for pre-existing differences in child outcome variables, for parenting characteristics and for family differences.

\textsuperscript{124} D Baumrind, \textit{et al.}, p 584.

\textsuperscript{125} RE Larzelere, ‘Parental Use of Non-abusive or Customary Physical Punishment’. A finding was counted as a beneficial outcome if the non-abusive physical punishment significantly predicted a desirable outcome in the child. A finding of a detrimental outcome was made if the physical punishment significantly predicted a detrimental outcome. A finding of a predominantly beneficial or predominantly detrimental outcome was made if: its only relevant statistical analysis was significantly in the specified direction; one of its two or three relevant analyses was significantly in the specified direction; or at least two of its relevant analyses were significantly in the specified direction. Otherwise the outcome was regarded as neutral.

\textsuperscript{126} The studies which did not exclude abusive or physically violent parents found mainly detrimental outcomes (46%).
Larzelere found that beneficial or neutral outcomes of physical punishment were characterised by:

- used infrequently (less than weekly);
- used in non-abusive severity by parents who were not violent;
- used privately;
- used without a potentially damaging implement;
- used on children younger than teenagers – particularly children aged 2 to 6;
- used with reasoning;
- used preferably with an intermediate level of distress; and
- used mainly as a back up for less aversive disciplinary tactics.\(^{127}\)

Parents who got better outcomes associated with smacking were:

> positively involved with their child, had child-oriented motivations for using spanking rather than parent-oriented motivations, did not increase their children’s fear of parental discipline, followed through with their warnings, and cooperated with each other in discipline responsibilities. They did not use verbal put-downs and they changed their main discipline method to grounding when their children got older.\(^ {128}\)

Of all the studies Larzelere considered, it was found that, when compared with the outcomes of alternative disciplinary responses (such as physical restraint, reasoning alone, punishment without reasoning, ignoring etc.), the only alternative that had more beneficial outcomes than did physical punishment was grounding (for older children).\(^ {129}\)

Larzelere observed that how discipline tactics are used may be more important than which ones are considered off limits. Further, the effects of physical punishment may well depend on ‘when and how parents implement it, its role in [the parents’] approach to ... discipline, and the overall parentchild relationship’. Thus, ‘[o]ther aspects of parental discipline may be more important indicators of dysfunctional parenting than whether parents [smack] or not’.\(^ {130}\)

In an updated review by Larzelere in 2000, again, all the studies that used clinical samples and all of the sequential-analyses studies found beneficial outcomes of

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\(^{127}\) RE Larzelere, ‘Parental Use of Non-abusive or Customary Physical Punishment’.

\(^{128}\) RE Larzelere, ‘Parental Use of Non-abusive or Customary Physical Punishment’.

\(^{129}\) RE Larzelere, ‘Parental Use of Non-abusive or Customary Physical Punishment’.

\(^{130}\) RE Larzelere, ‘Parental Use of Non-abusive or Customary Physical Punishment’.
non-abusive smacking, particularly when used to back up milder disciplinary methods in 2 to 6 year olds.  

**Combining love and limits in authoritative parenting: A conditional sequence model of disciplinary responses**

In another study, ‘Combining love and limits in authoritative parenting: A conditional sequence model of disciplinary responses’, Larzelere considered a ‘conditional sequence model’ of optimal disciplinary responses and showed its consistency with a wide range of research. The conditional sequence model combines love and limits and suggests that optimal responses begin with less severe tactics (e.g. reasoning) proceeding to firmer tactics when the initial method fails to achieve compliance or an acceptable compromise. The firmer tactics can be non-physical punishment initially (e.g. time-out), backed up with non-abusive physical punishment (e.g. smacking or what Larzelere refers to as the ‘2-swat spank’).

It was found that a combination of reasoning and punishment was more effective in delaying recurrences of misbehaviour than either one of these methods alone, particularly with pre-school aged children. Larzelere opined that one possible reason for this was that the punishment communicates to the child that he or she should have made a better behaviour choice and the reasoning part clarifies what the choice should have been and why. Successful use of the conditional sequence model was found to result in well behaved children whose parents use reasoning effectively and rarely resort to punishment. Larzelere commented that the conditional sequence model predicts that anti-smacking advice may make gentler

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131 RE Larzelere, ‘Child Outcomes of Non-abusive and Customary Physical Punishment by Parents: An Updated Literature Review’, *Clinical Child and Family Psychology Review*, 3(4), December 2000, pp 199-221. Abstract/free preview (1 page) only available on publisher’s website: [http://www.springerlink.com/content/j441281r73j24441/](http://www.springerlink.com/content/j441281r73j24441/). While 5 of 8 longitudinal studies controlling for initial child misbehaviour found predominantly detrimental outcomes of smacking, these outcomes were primarily due to overly frequent use of physical punishment. Also, apparently detrimental outcomes have been found for every alternative disciplinary tactic when investigated with similar analyses.


133 RE Larzelere, ‘Combining love and limits in authoritative parenting’ also refers to conditional sequencing used by other researchers.

134 RE Larzelere, Combining love and limits in authoritative parenting’.
disciplinary tactics less effective unless an equally effective back up was found to replace smacking.\textsuperscript{135}

However, studies considered by Larzelere indicated that punishment was more effective as an upper limit control than as a maintenance or lower limit control. Thus, parents should be looking for opportunities to use gentler disciplinary tactics when possible. There was evidence to suggest that frequent smacking becomes counterproductive with relatively well behaved children.\textsuperscript{136}

\textit{Sweden’s Smacking Ban: More Harm Than Good}

In his 2004 article ‘\textit{Sweden’s Smacking Ban: More Harm Than Good}’, Larzelere said that there was no objective evidence that the overall situation has improved for children in countries with smacking bans.\textsuperscript{137}

As he argued in previous research, Larzelere maintained that how parents use any disciplinary tactic (including smacking) is more important for its effect on children than whether they use it or not. He went on to say:\textsuperscript{138}

\begin{quote}
[C]urrent evidence suggests that, with 2- to 6-year-olds, nonabusive smacking can be a beneficial response to defiant responses to milder disciplinary tactics, such as reasoning, time-out and removing privileges. When used in this way, an occasional smacking supports child development of age-appropriate cooperation with non-physical consequences, rationales, and discussion. Most parents choose to smack reluctantly when it seems best for their children .... Policy makers need more clear-cut, unbiased evidence that smacking is invariably detrimental before they impose the view of anti-smacking advocates in the face of disciplinary practices by parents in most cultures.
\end{quote}

\textbf{6.2.2 Larzelere and Kuhn’s Meta-Analysis}


\begin{footnotesize}
\textsuperscript{135} RE Larzelere, ‘Combining love and limits in authoritative parenting’, Figures 4 & 5.

\textsuperscript{136} RE Larzelere, ‘Combining love and limits in authoritative parenting’. Reference is also made to MA Straus, \textit{et al.}, ‘Spanking by parents and subsequent anti-social behaviour of children’ regarding the counterproductiveness of frequent smacking with relatively well behaved children.

\textsuperscript{137} RE Larzelere, ‘Sweden’s smacking bans: more harm than good’, p 15.

\textsuperscript{138} RE Larzelere, ‘Sweden’s smacking bans: more harm than good’, pp 15-16.
\end{footnotesize}
Analysis, reviewed 26 qualifying studies of physical punishment comparing child outcomes of its use directly with outcomes of alternative disciplinary measures used by parents. The authors concluded that the outcomes of physical punishment only compared unfavourably with alternative disciplinary tactics when physical punishment was the primary disciplinary method or was too severe (such as striking the child’s head).

Similarly to Lazelere’s earlier studies, it was found that conditional smacking (the 2-swat smack) was one of the most effective tactics when 2 to 6 year olds defy milder tactics. It was concluded that conditional smacking teaches a child to cooperate with the milder disciplinary tactic, making smacking less necessary in future.

Larzelere and Kuhn commented that the better that parents can keep a positive parent-child relationship, promote appropriate behaviour, and respond to misbehaviour with mild, effective disciplinary tactics, the less their need to use smacking. It was also observed that it should never be used for infants under 12 months and rarely, if at all, before 18 months of age. Parents must not use smacking too severely. It should also be remembered that every child is different and parents must be skilful in finding the range of disciplinary options that helps their child to develop.

6.2.3 Paolucci and Violato’s Meta-Analysis

The authors, from the Faculty of Medicine at the University of Calgary in Canada, conducted A Meta-Analysis of The Published Research on the Affective, Cognitive, and Behavioural Effects of Corporal Punishment, considered 70 studies, mainly between 1990 and 2000, involving almost 48,000 people from the United States. Paolucci and Violato analysed studies on the effects of physical punishment on affective outcomes (e.g. low self-esteem, depression, anxiety); cognitive outcomes (e.g. academic performance or impairment, attitudes toward violence), and behavioural outcomes (e.g. aggression, child and spousal abuse, anti-social

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139 RE Larzelere & BR Kuhn. As noted earlier, only the Executive Summary is available: http://faculty.biola.edu/paulp/mappvalsum.pdf.

140 RE Larzelere & BR Kuhn, Executive Summary, p 1.

141 RE Larzelere & BR Kuhn, Executive Summary, p 1.

142 RE Larzelere & BR Kuhn. Executive Summary, p 2.
behaviours). Each dependent variable was coded and certain weightings and statistical analysis were applied regarding the outcomes.\textsuperscript{143}

In considering the various studies, Paolucci and Violato acknowledged the various design and methodological limitations and other shortcomings, as were discussed earlier.\textsuperscript{144}

The Paolucci and Violato meta-analysis ‘transformed the results of all the relevant studies to a common statistical metric to provide an accurate estimate of the strength of the effects of spanking’.\textsuperscript{145} Given the large number of participants and relatively narrow confidence levels, the authors said that considerable confidence can be placed on the meta-analysis findings.\textsuperscript{146}

In discussing the results of their meta-analysis, Paolucci and Violato made the following points (pp 214-216):

- people who have experienced physical punishment are at a small, and perhaps negligible, increased risk for developing emotional and behavioural problems, such as cognitive pathologies or distorted thinking patterns;
- the findings suggest minimal negative effects of smacking on functioning and development, despite the great prevalence of smacking;
- smacking does not appear to pose a serious emotional, cognitive or behavioural health problem for a significant number of people exposed to it;
- the lack of data in most of the studies to code for moderator variables (e.g. the age at which punishment occurred, its frequency, main disciplining technique and so forth) did not allow for meaningful analysis of the effect of those variables. It was intuitively and theoretically surmised that such variables ought to be important in moderating the outcomes being considered in this analysis;
- while more appropriate analyses could not be done to look at the relationships between effect sizes and important moderator variables, such as frequency and intensity of physical punishment and the quality of the parent-child relationship, many researchers have found different consequences at different development levels.

\textsuperscript{143} EO Paolucci & C Violato, pp 208-210. The results were presented as: descriptive statistics of the characteristics of the studies, effect size analysis, and the analysis of moderator variables on the effect size.

\textsuperscript{144} EO Paolucci & C Violato, p 214.

\textsuperscript{145} EO Paolucci & C Violato, p 214.

\textsuperscript{146} EO Paolucci & C Violato, p 215.
However, while Paolucci and Violato found that there were minimal negative
effects on human functioning and development and it was recognised that not all
physical punishment escalates to abuse, these effects should not be ignored.\footnote{147}
Paolucci and Violato observed too, that while the negative effects on children
should not be ignored, so too they should not be exaggerated. Calling for more
studies and research about other variables that may impact upon outcomes, they
argued that it is important that the effect of physical punishment on children is
known before decisions to restrict or permit it are imposed. Present ‘preliminary
and exploratory analysis suggests, in general, a small negative relationship between
physical punishment and affective, cognitive and behavioural functioning’.\footnote{148}

6.2.4 Family Education Trust – United Kingdom

An October 2004 publication, ‘\textit{A Reasonable Approach to Discipline}’ by the
Family Education Trust in the United Kingdom\footnote{149} considered the likely effects of
any changes to the law on parental smacking.

The Trust argued that to remove or limit the defence of ‘reasonable chastisement’
would not provide children with any more protection than they have under existing
legislation because unreasonable punishment is already against the law. If the
defence were to be removed, it was argued, smacking might provide sufficient
justification for social service intervention. The existing threshold requires that the
child be suffering ‘significant harm’.\footnote{150} Government guidance on the matter issued
to officers notes the need for an exceptional case to exist before intruding into
family life because investigations into suspicions of abuse can have traumatic
effects on families. Thus, any laws which would effectively lower the threshold for
intervention could result in unnecessary trauma for parents where the children are
at no risk.\footnote{151} The Trust observed that, in addition to the resultant trauma to
families, there would be a considerable increase on the workload of social workers,

\footnote{147}{EO Paolucci & C Violato, p 216, citing other research.}
\footnote{148}{EO Paolucci & C Violato, pp 216-217, noting that physical punishment affects each person
differently.}
\footnote{149}{The Family Education Trust is a registered UK charity, established in 1971 to conduct research
into the causes and consequences of family breakdown and to publicise the research findings:
\footnote{150}{Family Education Trust, ‘A Reasonable Approach to Discipline’, pp 1-2.}
\footnote{151}{Family Education Trust, ‘A Reasonable Approach to Discipline’, pp 1-2.}
thereby reducing resources for investigations into children suffering serious abuse.\textsuperscript{152}

It was also noted that both the Director of Public Prosecutions and the Attorney-General had spoken about possible changes to the defence and had indicated that the use of even moderate and reasonable physical punishment could result in prosecution.\textsuperscript{153}

The Trust considered the law regarding physical punishment in other European countries and said that there were differences and ambiguities in the legislation in the various states. It also thought that information was sparse regarding how the laws were enforced.\textsuperscript{154}

It also noted continuing public support for smacking, as revealed in July 2004 research conducted by the British Market Research Bureau. The Bureau undertook a survey of a representative sample of over 1,000 adults and found that 85\% agreed that ‘parents should be sometimes allowed to smack’ while 12\% agreed that smacking should be illegal in all circumstances.\textsuperscript{155}

6.2.5 Other Views Regarding Occasional Smacking as a Disciplinary Tool

The need for parents to have available to them the necessary tools to maintain authority over defiant children has been echoed by other child psychologists. For instance, US paediatrician, Dr Den Trumbull, notes the complexities of parent and child relationships where the outcome of a parent’s effort is influenced by many factors unique to the child, the parent, the environment and the context. He argues that a ‘\textit{ban on all disciplinary physical punishment does not respect this complexity and oversimplifies the debate on spanking}’.\textsuperscript{156}

Trumbull clarifies some findings regarding the scientific evidence about the effects of physical punishment made by the American Academy of Paediatrics consensus conference, in which he participated. In relation to ‘non-injurious spanking’ (to be differentiated from other corporal punishment), the committee ‘\textit{could not reach any

\textsuperscript{152} Family Education Trust, ‘A Reasonable Approach to Discipline’, p 4.

\textsuperscript{153} Family Education Trust, ‘A Reasonable Approach to Discipline’, p 2, noting recent statements by the Director of Public Prosecutions and the Attorney-General in various forums.


\textsuperscript{155} Referred to in the Family Education Trust, ‘A Reasonable Approach to Discipline’, p 3.

\textsuperscript{156} Dr D A Trumbull, ‘Parents need techniques for behaviour control’, Letter to the Editor, \textit{British Medical Journal}, vol 320, 3 June 2000, p 1539.
strong conclusions favouring or opposing a parent’s use of disciplinary spanking for children aged 2-11 years’. The committee thought that in a ‘relatively “healthy” family life in a supportive environment, spanking in and of itself is not detrimental to a child or predictive of later problems … there is a lack of research related to the use of corporal punishment’.

Trumbull said that while advocates for a ban might describe alternative disciplinary measures well, they tend to leave parents shorthanded on techniques for behavioural control:

\[ \text{Time out and disapproval are effective tools but are not sufficient to control all problem behaviour with all children. Disciplinary spanking, when properly applied, can augment non physical measures and optimise the process of behavioural control. To remove spanking from the repertoire of parents could … lead to increased violence among older, unruly children.}^{157} \]

In a similar vein, a British child and family psychologist, Dr Richard Fry, who, himself, does not condone physical punishment of children, has argued against legislative intervention that would deny the ability for parents to ‘be in charge of their children. … There is a benign aim in the use of punishment … even though all the evidence shows that there are better ways to achieve the aim’. Fry goes on to argue:

\[ \text{[P]arents need to be more powerful than children in the hierarchical structure that we call family. At the very least parental power represents the best we have yet to come up with for successful child rearing, in the early years at least. Public education … may be the more effective route to change…}^{158} \]

Even ACF chief executive, Joe Tucci, is said to doubt that the occasional smack would damage children but believes that you do not have to hit children ‘to teach them a lesson’.^{159}

Australian Family Association (AFA) spokesperson, Angela Conway, considers that to ‘make discipline work, parents need to be the boss’. She considered that a ban on smacking would just create anger and defensiveness among parents when what was needed was ‘parental education and policies that give tired and overstretched parents the time and resources to understand what constructive discipline looks like’.^{160} The AFA is also anxious that parents should never be allowed to ‘use discipline in a

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157 Dr DA Trumbull, ‘Parents need techniques for behaviour control’. Dr Trumbull notes that the committee referred to a review of literature presented by Dr Robert Larzelere.


160 Fay Burstin, quoting AFA spokesperson, Angela Conway.
way where it becomes an assault on children. ... But to introduce laws which mean the Government has a role to play in deciding who is and who isn’t a good parent, we think that is going too far’.

From Sweden – where there has been a ban on parental smacking since 1979 – comes the view of a mother, Linda Skugge, in a Swedish newspaper column. She states that the country was ‘in the process of bringing up a generation of monsters’. Earlier she noted that when children come over to play at her home, they cannot take ‘no’ for an answer and that a child had ‘even hit me when I tried to remove him bodily [from my study]’. Ms Skugge goes on to say that at the schools, the teachers do not impose their will on the children ‘for fear that the children will telephone [a children’s rights organisation]’.

Some responses to the Tasmanian Law Reform Institute’s Physical Punishment of Children Issues Paper suggested that, while other forms of discipline may be satisfactory when dealing with compliant children or in ideal situations, physical punishment works with less compliant children in less than ideal situations. Alternative punishments, such as loss of privileges, are often too remote for a child to care about.

7 LAWS IN OTHER AUSTRALIAN JURISDICTIONS

How Australian parents punish their children is a matter for state rather than federal legislation. In early 2007, however, the then Senator, Andrew Bartlett, of the Australian Democrats, called for a public inquiry into the physical punishment of children, including smacking. While the then Federal Government provided the ACF with $2.5 million towards the Every Child is Important Program, it stopped short of responding to Senator Bartlett’s call. Through the program, the ACF provides parenting education and resources to strengthen the parent-child relationship and to help parents raise happy and confident children. The program


162 Linda Skugge, ‘We are bringing up a generation of monsters’, taken and translated from Expressen, 16 August 2003.

163 Linda Skugge, ‘We are bringing up a generation of monsters’.

164 Tasmanian Law Reform Institute, p 30, referring to some respondents’ comments.


has given rise to a number of initiatives including television advertisements, a parent information booklet, a national phone number, and parenting seminars.

In some jurisdictions, the common law, as discussed earlier, underpins right of parents to use reasonable force to punish their children. This is the case in the Australian Capital Territory, South Australia and Victoria. Legislation regarding physical punishment of children exists in Queensland, New South Wales, Tasmania, Western Australia, and the Northern Territory.

### 7.1 New South Wales

Under s 61AA(1) of the Crimes Act 1900 (NSW), in criminal proceedings brought against a person regarding the application of physical force to a child, it is a defence if the force was applied for the purpose of the punishment of the child, but only if:

(a) the physical force was applied by the parent of the child or by a person acting for a parent of the child, and

(a) the application of that physical force was reasonable having regard to the age, health, maturity or other characteristics of the child, the nature of the alleged misbehaviour or other circumstances.

However, s 61AA(2) then provides that the application of the physical force, unless it could reasonably be considered to be trivial or negligible in all the circumstances, is not reasonable if the force is applied:

(a) to any part of the head or neck of the child; or

(b) to any other part of the body ... in such a way as to be likely to cause harm to the child that lasts for more than a short period.

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167 Section 257 of the Criminal Code (WA) provides:

It is lawful for a parent or person in the place of a parent, or for a schoolmaster, to use, by way of correction, towards a child or pupil under his care, such force as is reasonable under the circumstances.

168 Section 27(p) of the Criminal Code (NT) provides:

In the circumstances following, the application of force is justified provided it is not unnecessary force and it is not intended and is not such as is likely to cause death or serious harm: ...

(p) in the case of a parent or guardian of a child, or a person in the place of such parent or guardian, to discipline, manage or control such child.

169 These categories of persons are listed in s 61AA(6).
The foregoing does not limit the circumstances in which the application of the force is not reasonable: s 61AA(3). If the use of force does not fall into any of the two categories in s 61AA(2), it is for the court to decide whether the force is reasonable, having regard to all the relevant circumstances.\textsuperscript{170} Prior to s 61AA taking effect, the issue of lawful correction by parents was a matter for the common law. This provision essentially codifies and clarifies the defence of lawful correction and imposes a limit on the use of excessive force. \textit{Section 61AA(2)} specifies the types of force that are never reasonable.

\textbf{Section 61AA(5)} clarifies that the common law is not altered concerning the management, control or restraint of a child by means of physical contact or force for purposes other than punishment. This provision is intended to protect teachers, child care workers and others who need to manage, control or restrain a child by means of contact or force, such as breaking up a fight in a playground or controlling a child to strap him or her into a child car seat.\textsuperscript{171}

Section 61AA was inserted into the \textit{Crimes Act} by the \textit{Crimes Amendment (Child Protection – Physical Mistreatment Act) 2001} (NSW) which began as a private member’s bill, introduced by the Hon Allan Corbett MLC into the Legislative Council in May 2000. The Bill underwent considerable scrutiny, including being referred to the Legislative Council Standing Committee on Law and Justice which recommended, in a report tabled on 24 October 2000, that the Bill be passed but with minor amendments.\textsuperscript{172} After referring to the Committee’s recommendations, Mr Corbett said that support for the Bill had grown during the investigations of the Committee and it was backed by organisations such as the Paediatrics and Child Health Division of the Royal Australasian College of Physicians, the NSW Federation of School Community Organisations and the Association of Child Care Centres of NSW. He also said that it had the support of the NSW Commissioner for Children and Young People as well as from the Tasmanian and Queensland Children’s Commissioners.\textsuperscript{173}

\textsuperscript{170} Hon R Debus MP, Second Reading Speech, Attorney-General, Minister for the Environment, Minister for Emergency Services, Minister Assisting the Premier on the Arts, Crimes Amendment (Child Protection – Physical Mistreatment Bill) 2001 (NSW), 21 June 2001, \textit{NSW Legislative Assembly Hansard}, pp 15025-15026, p 15026.


\textsuperscript{172} Hon AG Corbett MLC, Second Reading Speech, p 11832.

\textsuperscript{173} Hon AG Corbett MLC, Second Reading Speech, p 11832.
In addition to the existing examples of what would not constitute ‘reasonable force’, s 61AA(2) initially excluded using a stick, belt or other object to administer physical force, unless trivial or negligible in the circumstances. However, during the passage of the Bill through Parliament, the Government moved an amendment to remove the reference to sticks and belts because it considered that the use of an implement is never reasonable.\textsuperscript{174}

Introducing the amended Bill into the Legislative Assembly, the NSW Attorney-General, the Hon Bob Debus MP, said that the Bill ‘\emph{is not about new offences, it is about ensuring that sensible parents have a valid defence…. But child abusers will not.}’\textsuperscript{175}

In his Reply, Mr Debus said that ‘[n]obody condones child abuse. At the same time, the Government is of the view that children should not be immune from ordinary parental discipline when the situation requires it. \emph{The Bill has the broad support of the medical community}’.\textsuperscript{176}

The legislation was the subject of a significant public education campaign leading up to its coming into force in NSW. The former Chief Justice of the Family Court of Australia considers that the NSW position is preferable to that in other states and territories but that it was a ‘\emph{weak compromise that does not face up to the real issues and sends the wrong message}’ because it maintains the legality of hitting children.\textsuperscript{177}

Pursuant to s 61AA(8), the NSW Attorney-General has undertaken a review of the provision. A number of submissions were received. The review is now complete and awaiting finalisation.

### 7.2 Tasmania

Section 50 of the \textit{Criminal Code Act 1924 (Tas)} provides:

\begin{quote}
It is lawful for a parent or a person in the place of a parent to use, by way of correction, any force towards a child in his or her care that is reasonable in the circumstances.
\end{quote}

The s 50 defence was used in the 1992 case of \textit{Bresnehan v R}\textsuperscript{178} in which a father was charged with ill treatment and assault of his four children. His wife, who was

\textsuperscript{174} Hon R Debus MP, Second Reading Speech, p 15025.

\textsuperscript{175} Hon R Debus MP, Second Reading Speech, p 15026.

\textsuperscript{176} Hon R Debus MP, Reply, Crimes Amendment (Child Protection – Physical Mistreatment) Bill 2000 (NSW), \textit{NSW Legislative Assembly Hansard}, 28 November 2001, p 19112.

\textsuperscript{177} Hon A Nicholson, ‘Choose to Hug Not Hit’, p 24.

\textsuperscript{178} (1992) 1 Tas R 234.
The children’s stepmother, was also charged. The incidents pertaining to the charges included striking his daughter with a whip and forcing her to eat cigar butts after smoking them (she had been caught smoking), holding a child’s face over a mug of gunpowder while igniting it, and striking the other children with a whip. There were also alleged instances involving a cattle prod, an ‘Agfest’ stick, and kicking of one of the children. There were also allegations that the father had tied a child in a shed with a dog chain (apparently for bed wetting). At trial, the judge said that there had been sustained violence in excess of lawful correction over an extended period.

The trial judge sentenced the father to 12 months in gaol on being found guilty of ill-treatment of one of the children but both the father and his wife were acquitted on the counts of assault (the jury being unable to reach a verdict). There appeared to be inconsistencies and other difficulties with the evidence, particularly regarding the testimony of the children. His sentence was reduced on appeal to 10 weeks imprisonment. The Tasmanian Supreme Court accepted the trial judge’s finding that the man had believed that his methods of discipline were for the ultimate good of the children (they had apparently misbehaved in various ways) and that he was a first offender.179

In October 2003, the Tasmanian Law Reform Institute released the Report, Physical Punishment of Children in response to a proposal by the Tasmanian Commissioner for Children that physical punishment be a topic for the Institute’s consideration. The following three alternative recommendations were made by the majority of the Institute’s Board:

- that the defence of reasonable correction be abolished in s 50 of the Code; or
- if the Parliament does not implement the first recommendation, a staged approach is recommended. The first stage involves a clarification of s 50 and the second (2 years later) would see the repeal of s 50; or
- if the first or second recommendations are not accepted, s 50 should be clarified and, in 2 years, the appropriateness of the availability of the defence should be reviewed.

Alongside banning physical punishment, it was recommended that there be a time delay of 12 months on the ban coming into force and an education campaign to inform the community of the changes and to provide information and resources about alternative discipline measures.180

The Institute acknowledged the fear that parents will become ‘criminals’ if they give their children the lightest of smacks and that some may be deterred from

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179 See also Tasmanian Law Reform Institute, pp 12-13.

180 Tasmanian Law Reform Institute, pp 3-4.
seeking help because they might be seen as bad parents. However, the Institute said that just like trivial assaults between adults are not prosecuted, it would be expected that this approach would be taken in relation to trivial smacks. The Police Department told the Institute during its Inquiry that the police would continue to exercise discretion and it would seem unlikely that there would be an increase in the reporting of minor infractions. The Department said that “power relationships and loyalty considerations within the home [would] tend to stifle complaints”.181 The Institute also pointed out that a time delay before any ban came into effect would allow parents to adjust to using alternative discipline measures and that it would be important for education campaigns to make it clear that parents would not be judged for seeking help. It should, it recommended, also be made clear that there would be no change in the law relating to child abuse so that ‘a smack would not be evidence of abuse or justify attention from’ child safety officers.182

The majority of the Board did not see clarification of the law as the preferred option because it was considered that, among other reasons, clarification did not respect the human rights of children and there did not appear to be community consensus on the types or levels of physical punishment that are acceptable.183

The Government has not, to date, implemented the recommendations of the Institute Board. In September 2007, the Tasmanian Commissioner for Children, Mr Paul Mason, gave a speech in which he called for action to prohibit physical punishment of children in the home.184 The former Family Court Chief Justice has also commented that s 50 gives parents a positive lawful right to use reasonable force towards a child by way of correction. In His Honour’s view, s 50 is a ‘disgraceful piece of legislation which should be removed...’.185

7.3 SOUTH AUSTRALIA

South Australia does not currently have any statutory defence for parents regarding use of ‘reasonable force’ or ‘reasonable discipline’ and it is the common law that operates in cases where parents are charged with assault against their children. However, a Private Member’s Bill is presently before the SA Legislative Council

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181 Tasmania Law Reform Institute, p 40, citing Tasmanian Department of Police response.
182 Tasmania Law Reform Institute, p 41.
183 Tasmanian Law Reform Institute, p 4.
to provide a defence to assault under s 20 of the *Criminal Law Consolidation Act 1935* (SA).

The *Criminal Law Consolidation (Reasonable Chastisement of Children) Amendment Bill 2007 (SA)*, introduced by Family First MP, the Hon DGE Hood, into the Legislative Council in May 2007, states that ‘*conduct that lies within limits of what would be generally accepted in the community as reasonable chastisement or correction of a child by a parent ... or a person in loco parentis ... cannot amount to an assault ...*’.

In his Second Reading Speech, the Hon Mr Hood MLC said that the proposal would enshrine the right of a parent to discipline their child by way of a smack. ‘*We are not talking about violence against a child or abuse of a child.... That is clearly wrong and ... people who engage in that sort of activity should have the book thrown at them*’. He said that the Government does not have the right to tell parents how to discipline their child provided parents do not go too far.\(^{186}\) The Bill is yet to be debated in the Parliament.

### 8 SMACKING LAWS IN OTHER COUNTRIES

Much of the information about laws in the countries discussed in the headings below is taken from the *Global Initiative Website*.\(^{187}\) A number of other governments throughout the world have committed to prohibiting legislation.

As noted earlier, the Global Initiative has found that, as of December 2007, 23 states have passed legislation to protect children from all corporal punishment.

#### 8.1 SWEDEN

As early as 1959, the Penal Code was amended to withdraw parents’ exemption from prosecution if they injured a child when chastising him or her and, in 1969, was amended again to withdraw the right of parents to use violence towards children. In 1979, Sweden became the first country in the world to ban all corporal punishment of children, including in the home. The relevant provision of the Parenthood and Guardianship Code (forming part of Sweden’s civil law) reads:

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\(^{187}\) The Global Initiative (discussed earlier) regularly provides website updates of measures taken around the world to ban corporal punishment in all settings, including in the home.
Children are entitled to care, security and a good upbringing. Children are to be treated with respect of their person and individuality and may not be subjected to corporal punishment or any other humiliating treatment.\textsuperscript{188}

The ban was intended to be educational rather than punitive. The new law formed part of a large parental education program which was undertaken by the Ministry of Justice, a component of which involved a letter-box drop of a pamphlet telling households that the law now forbade all forms of physical punishment of children, including smacking. Non-violent parenting is also part of the syllabus in Swedish education.\textsuperscript{189} Parents were also encouraged to seek help with difficulties in managing their children and to learn about alternatives to physical discipline.\textsuperscript{190}

Some evaluations and studies of the Swedish experience and the effects of the anti-smacking ban have been undertaken and were discussed earlier in this Brief. As then noted, it appears that it cannot be definitively stated that the prohibition has led to the emergence of a new and less aggressive generation nor can it be said that it has produced an ill-disciplined generation of bad mannered youths.\textsuperscript{191}

\section*{8.2 New Zealand}

On 16 May 2007, New Zealand became the first English-speaking country to eliminate all forms of corporal punishment of children by passing legislation to effectively ban the corporal punishment of children by parents.

Prior to the amendments, s 59 of the \textit{Crimes Act 1961} recognised that parents had the right to use ‘reasonable force’ in disciplining children. It appears that impetus for the repeal of s 59 came from burgeoning public concern over the significant levels of violence occurring within families and a wave of academic research identifying the negative effects of physical punishment of children.\textsuperscript{192} Around the same time, a report prepared by a UNICEF research body found that New Zealand had a rate of child maltreatment deaths that was four to six times higher than the

\textsuperscript{188} See BarnOmbudsmannen (Children ‘s Ombudsman) – ‘The Swedish Corporal Punishment Ban’, \url{http://www.bo.se/adfinity.aspx?pageid=90}.


\textsuperscript{190} JE Durrant, ‘A Generation Without Smacking’.


\textsuperscript{192} See also, B Wood, \textit{et al.}, Chapter 1: Setting the Scene.
average for those countries found to have an exceptionally low incidence of child maltreatment deaths (i.e. Spain, Greece, Italy, Ireland and Norway).\textsuperscript{193}

There was also considerable media attention and consequent public unease regarding court cases involving serious injuries inflicted on children by their parents. In many of these cases, the parents had raised the s 59 defence of ‘reasonable force’ against assault charges and, in a number of instances, were successful in being acquitted. Examples of these media reports include an article about a father who hit his 12 year old daughter with a hosepipe after she interrupted him, leaving a 15 cm long welt along her back; and another about a couple who hit a 9 year old boy with a bamboo stick.\textsuperscript{194}

However, there are also other cases in which s 59 has failed as a defence to instances of physical abuse to a child. In \textit{R v McFarlane}\textsuperscript{195} a couple were convicted of wilfully mistreating the daughter of the husband and step-daughter of the wife. On the relevant occasions, the girl was between the ages of 8 and 10. The assaults were conducted in many ways using open hands, fists, a plastic spoon, and a leather belt. On one occasion, after being beaten several times with a wooden spoon, then with a leather belt, the girl suffered extensive bruising. The couple were imprisoned for 9 months. In another case, s 59 did not protect a woman who inflicted injury on her de facto partner’s child, causing him to suffer a fractured skull and injuries to the testicles. Although convicted, the woman did not go to prison.\textsuperscript{196}

The new s 59 of the \textit{Crimes Act}, taking effect in June 2007, removed the right of parents to use ‘reasonable force’ to discipline children so that the laws on assault will apply to parents using physical punishment on a child.\textsuperscript{197}

The new s 59(1) provides that:

\textsuperscript{193} \textit{Innocenti Report Card 5}, p 2. The Report said that there were classification inconsistencies and lack of common definitions and research methodologies making international comparisons difficult and that the extent of child maltreatment is likely to be underrepresented by the data.


\textsuperscript{197} In addition, a provision in s 139A of the \textit{Education Act 1989} (NZ) recognising the right to use force by way of correction was repealed.
(3) Every parent of a child and every person in the place of a parent ... is justified in using force if the force used is reasonable in the circumstances and is for the purpose of:

- preventing or minimising harm to the child or another person; or
- preventing the child from engaging or continuing to engage in conduct that amounts to a criminal offence; or
- preventing the child from engaging or continuing to engage in offensive or disruptive behaviour; or
- performing the normal daily tasks that are incidental to good care and parenting.

But, subsection (2) then provides that ‘[n]othing in subsection (1) ... justifies the use of force for the purpose of correction’.

Section 59(4) expressly affirms 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 inconsequential that there is no public interest in proceeding with a prosecution.’

The new s 59 of the Crimes Act began as a Private Member’s Bill in 2005 introduced by Greens MP, Sue Bradford, but was later backed by the Labour Government. The Bill passed by 113 votes to 7 on a conscience vote. In her speech to the Parliament, Ms Bradford MP advocated for a public information campaign about the new measures and to publicise the alternatives to using physical discipline. She also suggested that the government provide funding to community groups that support children and their families; research and monitoring of attitudinal change towards corporal punishment; and for closer work between government and non-government organisations.

Prime Minister Helen Clark has been quoted as saying that ‘New Zealand has on its conscience that our rate of child death and injury from violence, including in the home, is appalling’. She was hopeful that the new law would correct that.

Police guidelines accompanied the commencement of the ban indicating how it was to be enforced. These provide the police with a list of graduated responses, ranging from warnings over mild misdemeanours through to prosecution for serious assaults. However, the usual step for repeated mild misdemeanours is likely to be a requirement to attend parenting courses. Some of the opposition to the new law

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stems from the view by some that the law does not make it clear what ‘inconsequential’ incidents (in s 59(4)) means.\textsuperscript{201}

There was a degree of public opposition to changes to the law, particularly by those concerned that good parents might be prosecuted.\textsuperscript{202} It was also observed that the public were given mixed messages – on the one hand, there was to be a legal ban on physical punishment – but, on the other hand, nobody will be in trouble if they just do it mildly.\textsuperscript{203} Politicians who supported a ban on smacking also struggled to find ways of reassuring the public that they did not want to see parents who occasionally smack being prosecuted for minor assaults.\textsuperscript{204}

The \textit{2006-07 New Zealand Health Survey} commissioned by the NZ Ministry of Health administered a questionnaire to the primary caregiver of children about particular forms of discipline used in the previous four weeks when his or her child misbehaved.\textsuperscript{205} The data collected includes interviews from before and after the repeal of s 59 of the \textit{Crimes Act} 1961. In 79\% of cases, the caregiver completing the questionnaire was the biological mother and in 14\% of interviews, it was the biological father. The Survey data shows that:\textsuperscript{206}

- physical punishment, such as smacking, was one of the least common forms of discipline used with children aged 0 to 14 years. Around 10\% of this age group had experienced physical punishment by the primary caregiver in the past four weeks;
- the most common types of discipline used were explaining or discussing why not to misbehave (around 68\%); telling the child off (around 60\%); or sending the child to a bedroom or other place (around 48\%);

\textsuperscript{201} ‘NZ passes disputed smacking bill’.

\textsuperscript{202} See B Wood, \textit{et al.}, p 29.

\textsuperscript{203} B Wood, \textit{et al.}, p 29.

\textsuperscript{204} B Wood, \textit{et al.}, pp 29-30.

\textsuperscript{205} New Zealand Ministry of Health, \textit{A Portrait of Health – Key results of the 2006-07 New Zealand Health Survey}, National Research Bureau (NRB), pp 48-52, \url{http://www.moh.govt.nz/moh.nsf/pagesmh/7601/SFile/physical-punishment-ch2.pdf}. More than 12,000 New Zealanders from all ethnic groups took part in the survey, including about 3000 Maori adults and 1100 Maori children. The NRB notes (p 49) that the method it used could undercount the use of physical punishment during the last four weeks because of factors including: only the caregiver’s actions are counted, not those of other adults; the caregiver may have forgotten or feel guilty about the actions; fear of criminal prosecution; or the caregiver may not regard some acts as physical punishment.

\textsuperscript{206} NZ Ministry of Health, pp 50-52.
• around 4% of parents considered physical punishment to be an effective form of discipline and less than one in three parents (around 30%) who had used it in the past four weeks considered it to be effective;
• children aged 2-4 years were the most likely to experience physical punishment with around 19% having done so in the previous four weeks;
• Pacific and Maori boys were the most likely to have been physically punished during the previous four weeks.

Ms Sue Bradford MP commented that the survey showed that even people who use physical punishment, on the whole, do not consider it to be effective. She also considered the size of the study to be such as to make it more robust than others used by lobby groups against the ban on smacking. An example of one lobby group study was one commissioned by Family First, released in May 2008, which reportedly found that 48% of respondents with children under 12 years had smacked their child after the law change and the national director of the lobby group is reported to have found it surprising that many parents were prepared to admit flouting the law.

In November 2007, the media reported that a New Zealand father had been convicted of assault under the new laws and sentenced to 9 months supervision, including attending anger management. He had smacked his 8 year old son on the bottom. It is reported that the court was told that the boy received a bruised shoulder when his father apparently grabbed him roughly before smacking his bottom three times with an open hand. It appears that the boy had misbehaved at school. Opponents of the law are reported to have commented that the conviction showed that the law was ‘parents’ worst nightmare’.

On the other hand, in April 2008, it was reported that a New Zealand man had had charges against him dropped after he was accused of hitting his 5 year old daughter with an open hand on the back of her head and swinging a pair of jeans at his 6 year old daughter which hit her on the side of the head. He denied the claims and the police were unable to offer any evidence to the court. The father’s version of events was he had pushed one of the girls to get her to hurry for school and threw the jeans at the other to get her attention. The father’s lawyer is reported as saying that he did not condemn the police for trying to protect children, but when

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208 Martha McKenxie-Minifie.


210 ‘Father’s smacking case is dismissed’, nzherald.co.nz, 11 April 2008.
the law was being discussed in Parliament, the public were assured that minor matters would not end up in court.\(^{211}\)

In recent months there have been moves by opponents of the anti-smacking law to seek a referendum about whether to overturn the law. After an unsuccessful attempt, Family First has succeeded in having the Government hold a referendum in 2009 by way of a postal ballot.\(^{212}\)

### 8.3 Canada

Section 43 of the *Criminal Code* provides:

> Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.

In October 2007, the *Criminal Code (Protection of Children) Bill 2007* was introduced into the Canadian Parliament to repeal and replace s 43 of the *Criminal Code* and has passed both Houses. It is currently awaiting Royal Assent.\(^{213}\) The new provision states:

43(1). Every schoolteacher, parent or person standing in the place of a parent is justified in using reasonable force other than corporal punishment toward a child who is under their care if the force is used only for the purpose of

(a) preventing or minimizing harm to the child or another person;

(b) preventing the child from engaging or continuing to engage in conduct that is of a criminal nature; or

(c) preventing the child from engaging or continuing to engage in excessively offensive or disruptive behaviour.

(2) In subsection (1), "reasonable force" means an application of force that is transitory and minimal in the circumstances.

The new section does not take effect until one year after it receives assent in order to allow the public to be educated about the changes.\(^{214}\)

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\(^{211}\) ‘Father’s smacking case is dismissed’, referring to comments by Mr Tony Boucher.

\(^{212}\) Claire Trevett, ‘Smack referendum next year, says Clark’, nzherald.co.nz, 26 June 2008.

\(^{213}\) As of 25 August 2008.

8.4 UNITED KINGDOM

In England and Wales s 58 of the Children Act 2004 enables parents to justify their actions as ‘reasonable punishment’ provided it does not amount to the following offences:

(a) wounding and causing grievous bodily harm;
(b) assault occasioning actual bodily harm;
(c) cruelty to a child; or
(d) battery of a child causing actual bodily harm.

The legal effect of s 58 is to remove the defence of reasonable punishment to a charge of assault occasioning actual bodily harm, wounding or grievous bodily harm under the Offences Against the Person Act 1861, or to a charge of cruelty to a child under the Children and Young People’s Act 1933. Thus the defence only applies where the charge is for common assault rather than for a serious assault, the victim is a child, and the defendant is a parent or acting in loco parentis to the child.215

Soon after the law was passed, the Government amended the Crown Prosecution Service’s Charging Standard to clarify the position regarding common assault. It now states that the vulnerability of the victim, such as being a child assaulted by an adult, should be seen as an aggravating factor when deciding the appropriate charge. An injury to a child which amounts to more than a temporary reddening of the skin and where it is more than transient and trifling would not allow a defence of reasonable punishment.216

When the Act was passed, the responsible Minister committed to a review of the operation of s 58 within two years, including a parental survey, children and young persons’ survey and additional evidence.217 The Department for Children, Schools and Families Review of Section 58 of the Children Act 2004 was presented to Parliament in October 2007. The findings from the evidence were that:218


216 UK, Department for Children, Schools and Families, p 6.

217 The Departmental consultation document sought evidence from practitioners, organisations, parents and others about the practical effects of the change to the law. 1,405 responses were received. The Review noted (p 9) that the views received may not necessarily represent the population as a whole.

218 UK, Department for Children, Schools and Families, Executive Summary, pp 3, 11-12 also citing some ‘key messages’ from the Ipsos MORI Survey: A study into the Views of Parents on the Physical Punishment of Children, 2007 (Ipsos MORI Survey).
smacking is becoming less commonly used as a form of discipline as parents begin to recognise that there are other ways of disciplining children;

parents’ attitudes on smacking have shifted over time and younger parents tend to hold more negative views about smacking (7% of parents aged 15-24 use or have used smacking compared with 44% of those aged 65 and over);

52% of the 1,822 parents taking part in a departmental commissioned survey regarding parental opinion on smacking (including 618 whose children had left home) think it is sometimes necessary to smack a naughty child and many said that they have smacked at least one of their children;

59% of parents agree that the law should allow parents to smack their children, and 67% disagree that smacking should be banned outright;

even among parents who believe it is always wrong to smack a child and say they will not smack, 34% disagree that there should be a complete ban. Thus, it seems that even though many parents disagree with smacking as a form of discipline, many of them do not think the law should prevent parents from smacking;

there appears to be a lack of awareness across different audiences about the scope and application of the law.

The Review noted that the UK Government’s view that s 58 of the Children Act 2004 means that the defence of reasonable punishment is no longer available for any act capable of breaching a child’s rights under Article 3 of the Convention on Human Rights (against torture or inhuman or degrading treatment or punishment). Further, the Government considered that s 58 is consistent with the UK’s obligations under the UN Convention on the Rights of the Child. The Review noted that the Government believes that the Convention respects party states’ rights to retain a degree of discretion about what sort of measures to adopt to protect children from violence.

The Government concluded, from the Review findings, that the law should not be changed. The law appeared to be giving adequate protection to children. The police have discretion to deal with cases as they consider appropriate, taking into account factors such as evidential issues, the public interest, and the best interests of the child. It was noted that s 58 has improved the legal protection for children by restricting its use but ‘it was not clear that it had had any significant practical

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219 UK, Department for Children, Schools and Families, p 7.


221 UK, Department for Children, Schools and Families, p 18.
consequences for those working with children and families day to day, but there had been no reported significant problems with its operation’. 222

Although the Government does not condone smacking and believes that there are more effective methods of managing children’s behaviour, it did not consider that the state:

*should intervene in family life unnecessarily – unless there are clear reasons to intervene, parents should be able to bring up their children as they see fit. … The law does not permit anyone deliberately or recklessly to cause injury to a child which is more than transient and trifling. It is important that parents understand the law ... and not live in unreasonable fear of being subject to criminal investigation.* 223

It was also said that the Government would do more to help with positive parenting.

The June 2008 UK Children’s Commissioners’ Report to the UN Committee on the Rights of the Child expressed disappointment that the abovementioned Review of Section 58 of the Children Act 2004 had not resulted in s 58 being repealed. 224 The Report noted that children in England and Wales have less protection under common assault laws than do adults. The Commissioners noted that the Welsh Government supported banning all physical punishment of children but could not change the law because the legislative power for change lies with the UK Parliament. 224

In Scotland, the law allows people with parental responsibility to physically punish a child and sets out a list of factors that a court should consider when deciding if a punishment is reasonable. Those matters include the duration and frequency of the punishment, the age of the child and its effect. The law also sets out the types of punishment that are unjustifiable (e.g. blows to the head, shaking, and the use of implements). 226

In April 2007, a survey by the National Society for the Prevention of Cruelty to Children of 1,000 adults found that 77% believed that smacking children was...

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222 UK, Department for Children, Schools and Families, pp 3, 18-19.

223 UK, Department for Children, Schools and Families, p 19.

224 *UK Children’s Commissioners’ Report to the UN Committee on the Rights of the Child*, p 14, citing UN Committee on the Rights of the Child, General Comment No 8, 2006.

225 *UK Children’s Commissioners’ Report to the UN Committee on the Rights of the Child*, p 14.

226 *UK Children’s Commissioners’ Report to the UN Committee on the Rights of the Child*, p 14, citing s 51 of the Criminal Justice (Scotland) Act 2003 and noting that the Scottish Parliament, in 2006, rejected a call to ban all forms of physical punishment.
becoming less acceptable. A child being smacked in public had been witnessed by 41% of respondents within the past six months. When asked how they felt about seeing a child being smacked, 65% said that they felt concerned for the child and 51% felt upset. Another 51% of respondents reported that they would like to stop the child being smacked while 47% wanted to help the parent.

### 8.5 United States of America

Smacking is legal in the home in all US states. In June 2008, a newspaper reported that a Minnesota Supreme Court had ruled that a father who spanked his 12 year old son 36 times with a paddle did not commit physical abuse. The ruling indicated that that the court was unwilling to establish a ‘bright line’ rule that the infliction of any pain amounts to physical abuse or injury because, to do so, would effectively prohibit all corporal punishment by parents and the law allows ‘reasonable discipline’. The Global Initiative Newsletter also notes that the Indiana Supreme Court recently overturned a conviction of battery of a parent who hit her son, aged 11 years, with an extension cord. The bruising was said to be temporary and no ‘permanent’ mark was left.

In terms of prevalence research, the Global Initiative website notes a telephone survey of 600 adults across the US carried out by the organisation, SurveyUSA of Verona New Jersey in 2005, finding that 72% of respondents supported the use of smacking as a form of discipline. The highest proportion in support came from Alabama (87%).

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227 As reported by the Global Initiative website, Global Progress, ‘United Kingdom: Prevalence Research’, Report updated February 2008. The survey was part of the NSPCC’s campaign to stop children being smacked in shops and reported on 10 April 2007.


230 Global Initiative Newsletter, p 7, citing an article from the *Post-Tribune*, 13 June 2008.

9 PROPOSALS FOR CHANGE IN QUEENSLAND

As noted earlier, proposals for reforming or removing the defence provided in s 280 of the Criminal Code to a charge of assault for the use by a parent of ‘reasonable force’ to correct their child have been around for some time. In 2005, a group of Queensland psychologists lobbied the State Government to repeal s 280.\(^{232}\)

Foremost among those advocating change in Queensland is former state Attorney-General and Minister for Justice and the Arts, the Hon Dean Wells MP.

In March 2007, Mr Wells MP invited members of Parliament to observe the moves in New Zealand to remove the reasonable discipline defence and to consider if such reform is needed in Queensland.\(^{233}\) He told Parliament that, under s 280, ‘a whole range of assaults, from minor slapping to painful and even injurious blows, are unlawful if perpetrated against an adult but are lawful if perpetrated against a child’.\(^{234}\) Mr Wells said that he did not believe that the most vulnerable members of society, ‘whom society should be most concerned to protect’, should have the least protection of the law. Mr Wells MP noted that once a parent raises the defence of use of reasonable force, the prosecution has to prove the force was unreasonable, meaning that the bar to be jumped over by the prosecution is very high.\(^{235}\) In addition, if the case was brought to court, Mr Wells MP said that one juror with a guilty conscience or who has beaten ‘the living daylights out of their kid’, might prevent the jury agreeing on a conviction.\(^{236}\)

Mr Wells MP sought to reassure those who might ‘have reservations about removing the … defence…’ because it may criminalise the vast bulk of the population and open the floodgates to prosecuting a large proportion of people who occasionally smack their children:

> That is not how the legal system would work if we were to abolish the … defence. [Removal of the defence] just puts those children in the same situation as adults who receive minor or trivial assaults. … [T]here would not be the prosecution of every

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\(^{232}\) Rosanne Barrett & Rosemary Odgers, ‘Smack ban is rejected – It would make me a hypocrite, says Beattie’, *Courier Mail*, 15 February 2007, p 11.


\(^{234}\) Hon DM Wells MP, p 761.

\(^{235}\) Hon DM Wells MP, p 761.

\(^{236}\) Hon DM Wells MP, pp 761-762.
parent who occasionally smacks their child ... for the same reason as we now do not prosecute every push and shove ... between adults.\footnote{Hon DM Wells MP, p 762.}

Mr Wells MP also noted the various factors that are taken into account before bringing a prosecution and the triviality of an offence is one such matter – for example, an isolated case of smacking whether the recipient was an adult or a child.\footnote{Hon DM Wells MP, p 763.}

Thus, the proposal by Mr Wells MP would remove the ‘reasonable force’ defence for assaults on children, other than a common assault. Parents would be allowed to administer a non-injurious smack but not anything that amounts to bodily harm or grievous bodily harm.\footnote{D Wells, ‘Reasonable Assaults?’ p 26.} It is reported that the former Attorney-General has support within his party, among them, Mrs Jo-Ann Miller MP, who is reported as saying that the change was not to ‘outlaw “short smacks” but punishments like beltings’.\footnote{Margaret Wenham, ‘Child smack law rethink’, \textit{Courier Mail}, 1 May 2008.}

On the other hand, Brisbane criminal defence lawyer Michael Bosscher considers that s 280, as it currently stands, is appropriate. He argues that it only protects parents who ‘use moderate and reasonable force ... where warranted and where appropriate. .... Never, would bruising a child, injuring a child, (or) inflicting grievous bodily harm be considered “reasonable force”’.\footnote{Marissa Calligeros, ‘Laws would punish good parents’, \textit{brisbanetimes.com.au}, 9 July 2008, referring to comments by Mr Michael Bosscher.} Further, Toowoomba criminal defence lawyer, Tim Meehan, states that while he does not condone violence against children, he does not agree that removing the ‘reasonable force’ protection in the Criminal Code is the best way to deal with the issue of abusive parents.\footnote{T Meehan, ‘Child abuse or discipline, not for politicians to decide’, \textit{Lawyers Weekly}, No 380, March 2008, pp 16-17, p 16.} Meehan considers that ‘reasonable force’ is a question to be decided by the jury in any given case of parental assault and that the jury reflects the changing attitudes of society. Thus, the law does not need to be altered ‘to reflect any shift in moral norms’.\footnote{T Meehan, p 16.}
In March 2008, Mr Wells MP tabled a paper by Parliamentary Intern, James Millett, *Protecting Children: A review of ‘reasonable chastisement’ and section 280 of Queensland’s Criminal Code*, calling it a ‘wake up call to legislators’. Mr Wells MP also thanked the Minister for Police for making previously unpublished statistics available regarding the extent of child physical abuse in Queensland for the purposes of the research. In brief, Millet’s paper argues the following:

- although the s 280 defence has generally been denied by the courts in recent cases where a parent has threatened a child with a knife or thrown the child into a doorframe, and where parents punch a child for wetting the bed, these cases demonstrate a fundamental misunderstanding of what is reasonable when disciplining a child;

- statistics provided to the Hon Dean Wells MP by the Minister for Police for 2005-2006 indicate that there were 699 police investigations into cases relating to the assault of children by parents and 14 of these were for grievous assault (p 10);

- section 280 is ambiguous and has been the subject of inconsistent judicial interpretation. It also offers no guidance to parents and what is ‘reasonable’ is interpreted differently by different people and is influenced by each person’s background and experience and emotions. There are also concerns that it may deny the human rights of children as outlined by the United Nations (p 11);

- law reforms in other jurisdictions have often been preceded by a surge of violent cases of child abuse carried out in the name of ‘reasonable chastisement’. There are no similar documented cases in Queensland. It may be that there is need for more empirical research, or it may be that there is no significant problem with s 280 as it currently stands. However, another possibility is very few cases on the issue may reach a reported level of judicial consideration because the uncertainty about ‘reasonableness’ could be an impediment to prosecuting cases of this type (pp 11-12);

- while, so far, only one Australian jurisdiction has made any changes to the law on physical punishment of children (that being NSW legislation clarifying what is considered reasonable, as considered earlier), a number of countries have removed the defence completely (pp 15-20);

- complete removal of the s 280 defence is the best possible change to send a clear and unambiguous message about the Government’s position on assault on any member of the community and to help to accelerate the acceptance of

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245 J Millett, p 10, referring to two unreported cases (*R v Baldwin*, Brisbane District Court, Howell J, 2 March 2006; and *R v Watson and Gibson*, Cairns District Court, White J, 19 September 2005).
alternative methods of discipline. However, abolition may face a negative public response. A less preferred option (as it suggests ongoing support of physical punishment of children by the State), but a possibly more practical one, is to clarify the provision so that it would apply only to occasional simple assaults, not to more serious attacks on children (pp 13, 21).

It is reported that at the Labor Party’s State Conference in June 2008, a new policy was adopted stating that Labor would ‘review section 280 of the Criminal Code to ensure that it does not continue to provide a statutory excuse for serious, grievous or bodily harm by parents on children’.\(^\text{246}\) This follows a reported announcement by the Premier, the Hon Anna Bligh MP, on 1 May 2008, that she was seeking a review of assault charges laid against parents to determine if current laws hindered the successful prosecution of abusive parents.\(^\text{247}\)

The debate over smacking resurfaced in early August 2008 when it was reported that a mother of four narrowly escaped a prison sentence for hitting her children aged 7 and 9 with a leather belt for failing to properly clean their bedrooms. The woman was placed on probation for two years after pleading guilty to two counts of assault occasioning bodily harm. It was reported that the magistrate had considered jailing the mother as the beatings had an ‘element of cruelty’ that had turned his stomach but she seemed to be so remorseful about her actions.\(^\text{248}\) Mr Dean Wells MP was reported as saying that the case strengthened calls for an urgent overhaul of s 280 and that it was nonsense to suggest that changing the provision to allow light smacking but not allow injury to a child would lead to widespread criminalisation of parents. He said that he had just returned from New Zealand where he had found all to be ‘business as usual’ with prosecutors relieved that ‘child assault cases were no longer turned into a trial of the child’.\(^\text{249}\)

10 ALTERNATIVE DISCIPLINE STRATEGIES

The need for parental support and government funded training and education campaigns about alternatives to physical punishment have been supported by many experts and researchers in the child development field, as seen throughout the earlier discussion. Legislative reforms to ban smacking in both New Zealand and


\(^{249}\) Tony Keim & Margaret Wenham, referring to comments by the Hon Dean Wells MP.
Sweden were accompanied by government backed, well publicised education campaigns and assistance for caregivers.

Some Canadian researchers (including Dr Joan Durrant whose research about the impact of the Swedish smacking bans was discussed earlier) have observed that physical punishment most often results from intent to teach, not to harm and that there needs to be education and resources to encourage positive approaches.\textsuperscript{250} Research considered earlier, including from the Tasmanian Law Reform Institute and the ‘Crossing the Line’ Report by the ACF and NRCPA, has advocated the need for widespread education and assistance being provided to parents to help them adjust to alternative disciplinary measures.

Durrant, \textit{et al} suggest that professionals working in all areas of children’s health should endeavour to raise awareness of the impact of physical punishment on children’s development (e.g. provide information about risks of physical punishment in neonatal units of hospitals). The researchers considered that retaining protection in the criminal laws for parents appears to give legal permission for using physical punishment and undermines public education programs aimed at reducing it.\textsuperscript{251} Durrant, \textit{et al} argue that education/information programs should be aimed at the entire community, not just at parents deemed to be at risk as it has been found that while poverty, unemployment, poor anger management and stress are risk factors, there are violent parents across all social classes.\textsuperscript{252}

Leading Australian child psychologist, Dr John Irvine, has a tip sheet setting out alternative methods of punishing children that do not require smacking. These include, but are not limited to.\textsuperscript{253}

- \textit{extinction} – by not responding to attention seeking behaviours, such as tantrums;
- \textit{satiation} – by having the child repeat the offensive action (such as the spitting, swearing, screaming, nose picking) over and over again until they are tired of it;

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\textsuperscript{252} JE Durrant, \textit{et al}., ‘Physical Punishment and Children’s Health’, p 3, citing other studies.

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• *overcorrection* – by having the child over-fix the problem to make a point when the child steals, lies or engages in other disruptive behaviour;

• *time-out* – by having the child take time out in a private spot or the child’s room to cool off and think;

• *response cost* – whereby the child loses privileges and/or has to repay in cost or kind for misbehaviour such as stealing, vandalism, defiance etc.; and

• *skills training* – by simulating real life situations to rehearse appropriate behaviour (e.g. saying sorry).

Those who have watched the television programs *Supernanny* or *Nanny 911* will have seen the use of the time out or ‘naughty step’ method. This involves the misbehaving child being told to sit on a certain spot for the same number of minutes as his or her age. A clear explanation for the punishment is given before and after the child has sat on the spot and the child is asked for an apology.  

However, there are undoubtedly parents who doubt the effectiveness of alternative disciplinary methods in all situations: ‘try contending with a four year old who is in the middle of a 100 decibel tantrum in a supermarket aisle. There comes a point where reason and logic just don’t cut through. A mild whack on the backside does tend to get attention when all else has failed’.  

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