



Global Initiative to
**End All Corporal Punishment
of Children**

NEW ZEALAND – COUNTRY REPORT

Child population: 1,063,000 (UNICEF, 2009)

Summary of necessary legal reform to achieve full prohibition

Settings where explicit prohibition is necessary

Corporal punishment is prohibited in all settings.

DETAILED COUNTRY REPORT

Legality of corporal punishment

Home

Corporal punishment is unlawful in the home. The Crimes (Substituted Section 59) Amendment Act (2007) repeals the legal defence for the use of reasonable force “by way of correction” in section 59 of the Crimes Act (1961). It substitutes a new provision on parental authority which allows the use of reasonable force for purposes of protection from danger or prevention of damage to people or property (section 1) but states clearly that “nothing in subsection (1) or in any rule of common law justifies the use of force for the purpose of correction” (section 2). The law also explicitly recognises standard police practice of exercising discretion as to whether or not to prosecute in very minor cases where there is no public interest in proceeding. Implementation of the law is monitored closely and supported by the promotion of positive parenting.

Schools

Corporal punishment is prohibited in state and private schools under in 139A of the Education Act (1989, amended 2007): “(1) No person who — (a) is employed by a board ... at or in respect of a school or institution administered by the board; or (b) is employed by the managers of a school registered under section 35A at or in respect of the school; or (c) is employed at an early childhood service ... ; or (d) owns, manages, or controls an early childhood service, — shall use force, by way of correction or punishment, towards any student or child enrolled at or attending the school, institution, or service. (2) No person who is supervising or controlling—(a) on behalf of a board ... any student enrolled at or attending a school or institution administered by the board; or (b) on behalf of the managers of a school registered under section 35A any student enrolled at or attending the school; or (c) on behalf of the service provider of an early childhood service ... any child enrolled at or attending the service, — shall use force, by way of correction or punishment, towards the student or child.”

Penal system

Corporal punishment is unlawful as a **sentence for crime**. Under the New Zealand Bill of Rights Act, persons should not be subjected to “degrading or disproportionately severe treatment or punishment” (article 9).

Corporal punishment is unlawful as a **disciplinary measure** in penal institutions. The New Zealand Bill of Rights Act states that a person deprived of liberty should be treated with humanity and respect for the inherent dignity of the person (article 23). Other protection is given by the Children, Young Persons and their Families Act, the Children, Young Persons and their Families (Residential Care) Regulations (1996), the Crimes Act, the Penal Institutions Act (1954) and the Penal Institutions Regulations (1999).

Alternative care

Corporal punishment is unlawful in alternative care settings. It is prohibited in pre-school settings and early childhood centres under article 139A of the Education Act (see above), in state day care institutions by regulations under the Children and Young Persons Act, and in residential institutions by Regulation 22 of the Children and Young Persons (Residential Care) (1986) and Children, Young

Persons and their Families (Residential Care) Regulations (1996). The Crimes (Substituted Section 59) Amendment Act also applies (see above).

Prevalence research

A survey of 100 families with children aged under five found that 46% of parents and carers were in favour of the legislation which gave children equal protection from assault to adults; 27% were opposed to the legislation and 27% were undecided. Of those who were in favour of the legislation, 58% had an accurate understanding of it. Of those who were undecided or opposed to reform, a large majority had an inaccurate understanding of the legislation (81% of those who were undecided and 70% of those who were opposed to reform). The law came into action in June 2007. Around a third of the interviews were carried out before the law change, and two thirds following it. (Lawrence, J. & Smith, A. (2008), "Aotearoa/New Zealand Families: Their Perspectives on Child Discipline and Recent Legislative Change", *Childrenz Issues*, 12(2), 17-24. See also Lawrence, J. & Smith, A. (2009), *Discipline in context: families' disciplinary practices for children aged under five*, Wellington: Families Commission.)

In a 2009 Families Commission survey, only 9% of parents and carers in the 100 families surveyed thought smacking effective. Parents and carers were three times more likely to use positive techniques than punishments. (Lawrence, J. & Smith, A. (2009), *Discipline in context: families' disciplinary practices for children aged under five*, Wellington: Families Commission)

A poll of more than 3,000 respondents by *The New Zealand Herald* found that almost 70% supported the return of caning and strapping in schools. (Reported in *Radio New Zealand News*, 1 August 2007)

In the wake of prohibition of all corporal punishment in 2007, the Children's Commissioner commissioned a benchmark survey in order to gauge changes in attitudes towards corporal punishment and the law. Of a nationally representative sample of 750 adults, 43% supported the law, compared with 28% who opposed it. The research found a high awareness of the law change (91%) and high levels of support (84-89%) for the principle of equal protection from assault for children and adults. Support for the use of corporal punishment is declining over time: 58% agreed there are some circumstances in which smacking a child is acceptable, compared with 87% in 1993 and around 90% in 1981. (UMR Research (2008), *Omnibus Survey Report: One year on: Public attitudes and New Zealand's child discipline law*, Office of the Children's Commissioner)

A 2007 Families Commission survey found that 41% of parents and carers in the sample of 100 families with children under 5 had smacked their children; 9% said they thought smacking was effective. Around half the sample filled in detailed diary sheets about "disciplinary encounters" with their children over three days. Of these parents, 2.6% smacked the child's bottom at some point during the three days, 2% smacked the child's hand and 2% smacked the child on another part of their body. Parents and carers were two to three times more likely to use positive techniques (such as giving rewards and praise) than punishments (such as smacking, verbal reprimands and withdrawal of privileges). (Lawrence, J. & Smith, A. (2009), *Discipline in context: families' disciplinary practices for children aged under five*, Wellington: Families Commission)

The 2006/2007 Health Survey found that one in ten children aged up to 14 had been physically punished by their primary caretaker in the previous four weeks. Only 5% of all primary caregivers believed that physical punishment was an effective form of punishment; less than a third of those who had used physical punishment in the previous four weeks felt it was effective. The survey was carried out between October 2006 and November 2007, before and after prohibition, on a sample size of 17,000 (12,488 adults and 4,922 children). (Ministry of Health (2008), *A Portrait of Health: Key results of the 2006/07 New Zealand Health Survey*, Wellington: Ministry of Health)

As part of the Government's *Strategies with Kids: Information for Parents* public education programme, designed to promote alternatives to corporal punishment, the Ministry of Social

Development commissioned telephone interviews with 612 parents and 539 caregivers of children up to 5 years of age nationwide in 2004 (before prohibition). Overall, 51% of parents and 21% of caregivers reported using physical discipline, with this being more likely the lower the level of education and higher the number of children (for parents) and with decreasing household income and increasing age (for caregivers). The most common form was smacking on the bottom (45% parents, 32% caregivers); 25% of parents using physical punishment were not interested in receiving information on parenting. (Gravitas Research and Strategy Ltd, for the Ministry of Social Development (2004), *Strategies with Kids – Information for Parents (SKIP) Strategy Development Research: Parent and Care-giver Survey Report*, draft report)

For research published more than ten years ago, see the research pages at www.endcorporalpunishment.org.

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(11 April 2011, CRC/C/NZL/CO/3-4, Concluding observations on third/fourth report, paras. 28 and 29)

“The Committee welcomes the new section 59 (1) of the Crimes Act (1961), which abolishes the legal use of parental force for the purposes of correction.

“The Committee recommends that the State party heighten public awareness about section 59 (1) of the Crimes Act and continue to promote positive and non-violent forms of discipline in childrearing.”

Committee on the Rights of the Child

(27 October 2003, CRC/C/15/Add.216, Concluding observations on second report, paras. 4, 29 and 30)

“While acknowledging the attention that the State party has given to the implementation of the recommendations contained in the Committee’s previous concluding observations (CRC/C/15/Add.71) adopted following the consideration of the State party’s initial report (CRC/C/28/Add.3), the Committee is particularly concerned about ... the prohibition of corporal punishment and the establishment of mechanisms to ensure the recovery of victims of ill-treatment and abuse (para.29).

“The Committee is deeply concerned that despite a review of legislation, the State party has still not amended section 59 of the Crimes Act 1961, which allows parents to use reasonable force to discipline their children. While welcoming the Government’s public education campaign to promote positive, non-violent forms of discipline within the home, the Committee emphasizes that the Convention requires the protection of children from all forms of violence, which includes corporal punishment in the family and which should be accompanied by awareness-raising campaigns on the law and on children’s right to protection.

“The Committee recommends that the State party:

- a) amend legislation to prohibit corporal punishment in the home;
- b) strengthen public education campaigns and activities aimed at promoting positive, non-violent forms of discipline and respect for children’s right to human dignity and physical integrity, while raising awareness about the negative consequences of corporal punishment.”

Committee on the Rights of the Child

(24 January 1997, CRC/C/15/Add.71, Concluding observations on initial report, paras. 16 and 29)

“The Committee expresses its concern at the authorization provided by section 59 of the Crimes Act to use physical force against children as punishment within the family, provided that the force is reasonable in the circumstances. Moreover, the Committee notes the insufficient measures taken to address the issue of ill-treatment and abuse, including sexual abuse, within the family, as well as issues of physical and psychological recovery and social reintegration of children victims of such ill-treatment or abuse.

“The Committee recommends that the State party review legislation with regard to corporal punishment of children within the family in order to effectively ban all forms of physical or mental violence, injury or abuse. It further recommends that appropriate mechanisms be established to ensure the physical and psychological recovery and social reintegration of children victims of such ill-treatment and abuse, in the light of article 39 of the Convention.”

Committee Against Torture

(14 May 2009, CAT/C/NZL/CO/5 Unedited Version, Concluding observations on fifth report, para. 3)

“The Committee notes with appreciation: ...

f) the enactment of the Crimes Amendment Act 2007 which repeals the legal defence for the use of reasonable force ‘by way of correction’ in section 59 of the Crimes Act 1961 and prohibits corporal punishment....”

Committee Against Torture

(11 June 2004, CAT/C/CR/32/4, Concluding observations on third report, para. 6)

“The Committee recommends that the State party:

e) implement the recommendations made by the Committee on the Rights of the Child (CRC/C/15/Add.216, paras. 30 and 50) ...”

Universal Periodic Review

New Zealand was examined in the first cycle of the Universal Periodic Review in 2009. No recommendations were made concerning corporal punishment of children. (Full prohibition was achieved in 2007.) Examination in the second cycle is scheduled for 2014.

Report prepared by the Global Initiative to End All Corporal Punishment of Children
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