

Corporal punishment of children in New Zealand

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Child population 1,097,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Law reform has been achieved. Corporal punishment is unlawful in all settings, including the home.

Prohibition 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 (s1) 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” (s2). 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. The Government reported on implementation to the Committee on the Rights of the Child in 2015.¹ It stated that reviews by the Police between 2007 and 2012 found no significant issues with enforcement of the law, and that Police continue to work with CYF (Child, Youth and Family) and other key stakeholders to promote positive parenting and parenting programmes. There are also government programmes and services promoting positive, non-violent child discipline: the WCTO (“Well Child/Tamariki Ora”) service identifies and refers parents to parenting programmes, the SKIP (“Strategies with Kids – Information for Parents”) initiative works with local communities and national networks to reduce physical punishment among parents of 0-5 year olds, and PB4L initiatives (“Incredible Years” programmes for parents and teachers) are aimed at learners, parents, whanau and educators to help improve children’s behaviour and wellbeing and increase educational attainment.

¹ [2015], CRC/C/NZL/5 Advance Unedited Version, Fifth state party report, paras. 86-89

Alternative care settings

Corporal punishment is unlawful in alternative care settings. It is prohibited in residential institutions by Regulation 22 of the Children and Young Persons (Residential Care) 1986 Regulations and the Children, Young Persons and their Families (Residential Care) Regulations 1996. The Crimes (Substituted Section 59) Amendment Act 2007 also applies (see under “Home”).

Day 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 1989 (see under “Schools”) and in state day care institutions by regulations under the Children and Young Persons Act. The Crimes (Substituted Section 59) Amendment Act 2007 also applies (see under “Home”).

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 institutions

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 (art. 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 Corrections Act 2004 and the Corrections Regulations 2005.

Sentence for crime

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” (art. 9).

Universal Periodic Review of New Zealand’s human rights record

New Zealand was examined in the first cycle of the Universal Periodic Review in 2009 (session 5). No recommendations were made concerning corporal punishment of children.

The second cycle review of New Zealand took place in 2014 (session 18). No recommendations were made specifically on corporal punishment of children.

Third cycle review took place in 2019 (session 32). No recommendations were made specifically on corporal punishment of children.

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

(4 June 2009, CAT/C/NZL/CO/5, 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) ...”

Committee on Economic, Social and Cultural Rights

(31 May 2012, E/C.12/NZL/CO/3, Concluding observation on third report, para. 5)

“The Committee welcomes the range of measures taken by the State party to promote the realization of economic, social and cultural rights, noting the following in particular: ...

d) in the area of family protection, ... the adoption of the Crimes (Substituted Section 59) Amendment Act 2007 prohibiting corporal punishment by parents.”

Prevalence/attitudinal research in the last ten years

An examination of long term attitude change in New Zealand, based on findings from public opinion surveys over the last three decades, found a substantial decline in approval of physical punishment from 89% in 1981, 58% in 2008, to 40% in 2013. The steepest declines were found to have occurred during the 1990s following the banning of physical punishment in schools and the start of public education campaigns, and then during the period after the 2007 law change.

(D’Souza, A. J., *et al* (2016), “Attitudes to physical punishment of children are changing”, *Archives of Diseases in Childhood*, published online on 10 May 2016 as 10.1136/archdischild-2015-310119)

A 2013 survey of 750 adults in New Zealand, which used questions and a methodology comparable to earlier studies, found that a large majority of respondents (93%) were aware of the law reform which prohibited all corporal punishment and that acceptance of physical punishment of children was declining steadily. In 2013, 40% of respondents thought it sometimes alright for parents to physically punish children, compared to 58% in 2008, more than 80% in 1993 and more than 90% in 1981. The

proportion of parents with children under 18 who thought it was alright to use physical punishment fell from 62% in 2008 to 35% in 2013.

(Wood, B. (2013), *Physical punishment of children in New Zealand – six years after law reform*, EPOCH New Zealand)

A 2012 poll of 500 parents of children aged under 12 found that 44% had not smacked their children since the 2007 law change which prohibited all corporal punishment of children; 29% said they had smacked “rarely”, 21% “occasionally” and 1% “frequently”.

(Reported in *New Zealand Herald*, 2 April 2012, www.nzherald.co.nz)

A 2007 Families Commission survey found that while 41% of parents and carers in the sample of 100 families with children under 5 had smacked their children, only 9% 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, www.familiescommission.govt.nz/sites/default/files/downloads/discipline-in-context.pdf; see also Lawrence, J. & Smith, A. (2008), “Aotearoa/New Zealand Families: Their Perspectives on Child Discipline and Recent Legislative Change”, *Childrenz Issues*, 12 (2), 17-24)

A survey of 100 families with children 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 in favour of the law, 58% had an accurate understanding of it. Of those undecided or opposed to reform, a large majority had an inaccurate understanding of the law (81% of those who were undecided and 70% of those who were opposed to reform). The law came into effect 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 the wake of prohibition of all corporal punishment in 2007, the Children’s Commissioner commissioned a benchmark survey to gauge changes in attitudes towards corporal punishment and the law. Of a nationally representative sample of 750 adults, 43% supported the law, 28% 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. The research confirmed that attitudes towards and knowledge of the law were changing even over the one-year period since its introduction. The report includes detailed recommendations for continued and improved implementation of the law based on the issues raised.

(UMR Research (2008), *Omnibus Survey Report: One year on: Public attitudes and New Zealand’s child discipline law*, Office of the Children’s Commissioner, www.occ.org.nz/_data/assets/pdf_file/0008/5669/OCC_UMR-Research_141108.pdf)

One in ten children aged up to 14 had received physical punishment from their primary caretaker in the four weeks leading up to the 2006/7 New Zealand Health Survey. However, only 5% of all primary caregivers believed 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 New Zealand prohibited all corporal punishment, on a sample size of 17,000.

(Ministry of Health (2008), *A Portrait of Health – Key results of the 2006/07 New Zealand Health Survey*, [www.moh.govt.nz/moh.nsf/pagesmh/7601/\\$File/physical-punishment-ch2.pdf](http://www.moh.govt.nz/moh.nsf/pagesmh/7601/$File/physical-punishment-ch2.pdf))

In a poll of more than 3,000 respondents by *The New Zealand Herald*, almost 70% supported the return of caning and strapping in schools.

(Reported in *Radio New Zealand News*, 1 August 2007)