

MEDIA RELEASE



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ATTENTION: Chiefs of Staff, News Editors ...

TASMANIA LAW REFORM INSTITUTE

Today the Tasmania Law Reform Institute released its Final Report No. 4:

Physical Punishment of Children

The report follows the release of an issues paper on this topic in October 2002. Fifty-six individuals, groups or couples responded to the issues paper.

The report examines the current law relating to the physical punishment of children, in particular focussing on section 50 of the Criminal Code which allows parents, or a person in the place of a parent, to use force to punish a child as long as that force is "reasonable in the circumstances". It is concluded that the current law is unclear. Lack of clarity means:

- the law offers no clear guide to parents on what level of physical punishment of their children is acceptable; and
- prosecutions are difficult even in cases of apparently serious child abuse.

This suggests that some children may not be being as protected from excessive physical punishment as effectively as possible and we therefore recommend reform of the law.

There are two options for reform. The first is to prohibit the use of physical punishment. The second option is to clarify the law relating to physical punishment by further defining what type and/or degree of punishment is reasonable or unreasonable.

The arguments for and against these two options are given detailed consideration. The issue of whether physical punishment should be permitted at all is discussed in relation to the following six questions.

1. *Is physical punishment morally acceptable?*
2. *Is physical punishment effective?*
3. *Is physical punishment necessary?*
4. *Is physical punishment harmful?*
5. *Would banning physical punishment be an unjustified intrusion into the privacy of the family and parental rights?*
6. *Would banning physical punishment be effective?*

The Institute is of the view (by majority) that clarifying the law is not the preferred option for reform for the following reasons:

- Clarifying the law does not adequately protect the human rights of children;
- Clarifying the law is less likely to be effective;
- Education is less likely to be effective without a prohibition;
- Public support for prohibition can be achieved through education and the use of a time delay;
- There does not appear to be community consensus on the types or levels of physical punishment that are acceptable.

The paper also examines law reform developments in other jurisdictions, particularly New South Wales, Scotland and Sweden.

The report makes three alternative recommendations. Each of these recommendations is made by a majority of the Institute's Board. They are:

Recommendation 1: that the defence of reasonable correction be abolished.

Recommendation 2: if the Parliament does not implement the first recommendation, in the alternative, a staged approach is recommended. The first stage involving the clarification of s 50, the second stage, 2 years later – the abolition of the defence (repeal of s 50).

Recommendation 3: if the Parliament does not implement the first or second recommendations, it is recommended that s 50 be clarified, and that in 2 years the appropriateness of the availability of the defence be reviewed.

The topic of this law reform project was proposed by the Children's Commissioner in September 2001.

The final report can be downloaded from the Institute's web page at:

<http://www.law.utas.edu.au/reform/>

or a copy of the report can be sent to any group or person, contact:

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