

# Executive Summary

The Crimes Amendment (Child Protection – Excessive Punishment) Bill 2000 was introduced into the Legislative Council by the Hon Alan Corbett MLC on 5 May 2000. Prior to a vote being taken on the second reading, the Legislative Council referred the Bill to the Standing Committee on Law and Justice on 2 June 2000. The Committee was required to inquire into the Bill and report within 5 months.

The Committee placed advertisements in newspapers for submissions, and the Chair wrote to more than 60 individuals or organisations inviting them to make submissions. These included persons suggested by either Mr Corbett or Rev the Hon Fred Nile MLC (an opponent of the Bill). The Committee received 40 submissions and held four days of public hearings at which 20 witnesses gave evidence in relation to the Bill.

The Bill is a codification of the common law defence of “lawful correction” or “reasonable chastisement”. Currently it is a defence to a charge of assault that the person was administering corporal punishment while acting in a parental role, provided the punishment was reasonable in all the circumstances. The Bill seeks to codify this common law defence by inserting it in the Crimes Act. The Bill modifies the defence so that it cannot be pleaded when a parent uses sticks, belts or other objects (other than in trivial cases); when a parent strikes a child above the shoulders (other than in trivial cases); or when a parent causes harm which lasts for more than a short period. The Bill also restricts the use of the defence to only family members, some of whom (such as step parents) require express authorisation to impose physical punishment.

Those supporting the Bill came from medical, child protection and legal backgrounds. Their views are summarised in Chapter Four. Supporters argue that the Bill will have an educative effect by making it clear that forceful blows to the head of a child, or any forceful blows with objects, are unacceptable as a means of parental discipline. They argue that the Bill reflects current community standards. The Bill’s supporters believe it is pragmatic, providing sufficient safeguards to protect ordinary parents from trivial prosecutions. Supporters argue that overseas experience demonstrates the significant improvements in child protection that can be made by legislation backed by community education campaigns. The Bill is also said to advance implementation of Australia’s human rights undertakings.

Those opposing the Bill came primarily from religious organisations or groups representing parents. The arguments against the Bill are outlined in Chapter Five. The main concerns are that the Bill is an inappropriate interference in the family unit and in particular in the rights of parents to discipline their children. They fear the Bill is a stepping stone to the banning of all physical punishment, including smacking. At worst the Bill is seen as potentially criminalizing ordinary parents, and at best as creating uncertainty or undermining the confidence of parents. Opponents of the Bill share the concerns of supporters to prevent abusive discipline but believe child protection laws rather than the criminal law should be the means by which abuse is deterred.

Legal experts were asked by the Committee to examine technical issues regarding the Bill. These views are discussed in Chapter Six. The issues raised are mainly concerned with the narrowing the class of persons to whom the defence of lawful correction is available. Concern was

expressed as to how the current wording of “person acting for a parent” would affect child care workers, teachers, babysitters and siblings aged under 18. Lesser concerns raised include the definition of “harm for more than a short period”, the usefulness of the words “trivial or negligible in all the circumstances”; and whether the common law defence was correctly restated. The Committee itself raised the issue of age of the child to which physical discipline could be applied.

The Committee’s view and recommendations are contained in Chapter Seven. The Committee is persuaded by the arguments from those best placed to understand the way in which abuse and injuries occur. Apart from a very small minority of sociopathic parents who will abuse children under any conditions, there is no clear cut-off where excessive punishment ends and abuse begins. Many of the very serious injuries seen by hospitals come as a result of physical discipline gone wrong rather than premeditated abuse.

The Bill provides parents with a guide to what is acceptable, normal discipline. Smacking with an open hand is acceptable; striking a child above the neck, or with objects such as sticks or belts is unacceptable. The Bill is an advance on the common law, which at present gives no guidance to parents on acceptable/non-acceptable physical discipline. The Committee does not accept the arguments that the child protection laws currently existing are sufficient to make this Bill unnecessary; child protection laws do not set clear standards for *all* parents on physical discipline.

The Committee believes the Bill does define current community standards, so far as this is possible in a diverse state such as NSW. Only one witness attempted to support a blow to the face as acceptable or appropriate; no-one defended the use of a belt and the only support for use of objects in discipline came from those who argued for the “wooden spoon”. For very many parents the Bill will make no difference at all, because it reflects their current standards. For a minority of parents this legislative standard may force them to consider modification of their methods of physical discipline.

The purpose of the Bill is to set a standard, not be the source of prosecutions. Cases of serious abuse will continue to be pursued through child protection legislation. A certain level of trust is required in the common sense of police and child protection authorities in the exercise of their discretion. The Committee is encouraged that the Bill is supported by both the Law Society and the Bar Association, bodies not noted for excessive trust in the use of prosecutorial discretion.

The Committee does not see this Bill as a stepping stone to the banning of all physical punishment. The Committee expresses no view whatsoever on smacking because this Bill does not require examination of this issue.

The Committee recommends the Bill be supported with three minor modifications: removing a drafting error in s 61AA (2) (c); permitting siblings aged under 18 to be able to use the defence of lawful correction; and ensuring that the rights of teachers and child care workers to use physical restraint, in the interests of management or control as distinct from discipline, are not affected by the Bill.

A community education campaign should precede the operation of the Bill. Without the Bill a community education campaign to reduce excessive punishment may be moderately helpful, but may be ignored by many as only an expression of opinion. The Bill provides a message: these are the standards which have been determined by Parliament as acceptable within this State, going beyond this is excessive punishment and is a criminal assault. The Committee believes the Parliament has the opportunity to send a message to the community that excessive physical punishment is no longer acceptable in New South Wales in the year 2000.