

International No Smacking Day - Choose to Hug Not Hit: 2006
Patmalar Ambikapathy: Chair of EPOCH(Tasmania) End Physical Punishment of Children

"International No Smacking Day – Choose to Hug Not Hit" is held each year on the 30th April to highlight and disseminate information about peaceful child rearing and conflict resolution in homes. We start from the policy statement that has been made by the Tasmanian Department of Health and Human Services in 2003, that child rearing need not involve the hitting of children. Most people accept the obvious premise that parents care about the wellbeing of their children and that most do their best to bring them up in the best way they know how. Parents know that children need to learn what is right and wrong in the home and in the world, and it is also the intent of parents that their children grow up with rules that inculcate self discipline. They would like to see their children grow up to lead positive lives to achieve their full potential, and in the process not cause harm or injury to themselves or others. So it makes sense not to harm and injure children whilst they are at home, or otherwise, we will be the first teachers of such behaviour to our children, by our example to them. The reality for society is that the loving, unpaid job of parenting is the one of the most important and onerous jobs or duties that anyone can be involved in, and yet the significance of good parenting has been largely undervalued by many of us. There has been a historical lack of up to date information, support and services that seek to prevent the abuse and neglect of children and "International No Smacking Day – Choose to Hug Not Hit" is designed to address this gap and provide support to parents who need advice, and an affirmation of those parents who are already committed to the peaceful rearing of children that does not involve hitting them

Research has now shown that assisting good parenting that prevents child abuse and neglect, is important not just for children but for society too. I hope today to demonstrate to you how valuable the job of parenting is for society, and how we all need to support it, so that there is less stress in homes that can cause violent interaction between adults and children. I suggest that the benefits of peaceful resolution of conflict in homes will be felt by parents, children and society. The Mission Australia Youth Report of 2005 with respect to Tasmania, has produced results of a survey carried out, that indicate that a significant number of young people are concerned about physical abuse, and they cite stress and suicide as a major issue for them. On the other hand, it is of comfort to know that in Tasmania since the Law Reform Institute Discussion Paper in 2002 (that I commissioned when I was Tasmania's first Children's Commissioner), and their Final Report in 2003, there have already been many important shifts in thinking on the issue of physical punishment of children. This shift started all the way from the then Minister of Health and Human Services to his Department. Both have reviewed their past position on the acceptance of physical punishment of children, and are now unequivocal about stating that such child rearing practices are not necessary. Indeed the Division of Children and Families in the same Department, have commenced buying services for parenting programs from the community, that teach parents how to parent an discipline, without hitting their children (the "Triple P Program"). This initiative started with Centacare Tasmania employing the first "Triple P" teacher in Tasmania, Sheila Banks (our first Convenor of EPOCH Tasmania), to run a program in Hobart. This training program is being rolled out in many other regions of Tasmania now. The psychologist who devised this parenting program has had seen it rolled out in countries as diverse in culture as Hong Kong and England, so you can see why it has generated the interest it has had in Tasmania. We can be very proud that in Tasmania, this initiative is being driven initially by principled and progressive community organizations like Centacare, and now by government and visionary individuals who deserve our great support.

This is an excellent start to necessary law reform, as New Zealand, our neighbour, have committed themselves to law reform and have already started to roll out programs as a spearhead to such change in the law. This is the other objective of EPOCH Tasmania, encouraging people to think positively about law reform that will give children equal protection of the law that adults have, from violence in the homes. We can take comfort from the fact that, law reform in countries that have achieved this change in the law, like some Scandinavian countries, have reaped results that must compel us to rethink our own common perceptions about child rearing that causes the emotional abuse of children. It is good to know that Denmark where a young prince is being reared by a Tasmanian mother, changed the law that allowed smacking, decades ago. Surely what is good enough for that little man is good enough for all our children! In Sweden for instance, since 1970, there has been a fall in juvenile crime (especially in narcotics related crime and theft), child deaths, youth suicide, children taken into care. We would agree that these outcomes that reflect increased public safety and public health are of benefit to the entire community. (J Durant (2000) *A generation Without Smacking*. Impact of Sweden's ban on Physical Punishment: Save the Children Fund Publication: www.savethechildren.com)

I suggest that a change in the law will bring about a greater understanding of and a respect for children's vulnerability and cause a change in society's values about the true nature of aggression against children. This understanding and insight will change attitudes to methods of childhood discipline and reduce violence against children at home. I also suggest that when we travel on this path of law reform to ban the physical punishment of children, we will create a climate where there will be a clear message from society that parenting needs to be in an environment that is safe and free from any violence between members of a family. In the second part of this paper, I hope to take you on a journey from my heart and mind to yours, to convince you that such violence against children (which we all agree is unacceptable), needs preventative measures that necessitate law reform. This is but one of the steps we need to take to achieve less violence in homes against children, but it is an important and symbolic step to take as it will generate a powerful chain reaction in not only our behaviour towards children, but in our children's attitudes about the acceptability of such violence in the home and in the community.

The newly elected government and the new Minister for Education David Bartlett has stated that he takes a very serious view about bullying in schools, not just between children but also between adults. This change can only benefit children and I will show you how in this second part. This is a very welcome initiative as how can children learn that bullying is not acceptable when they are in an environment where adults indulge in such unacceptable conduct. The Minister is to be congratulated for his principled stand and this is the example of political leadership to right entrenched wrongs that I would like to see permeate all agencies in Tasmania. The other policy position that must be noted as it augurs well for very little children is that the government was elected on a platform to give every child in Tasmania a good start, the best I hope that they can have. Making the home a safer place for children, by promoting alternatives to hitting them is a very logical extension of this policy and is in fact in harmony with it. This is a welcome shift in policy and one that has the potential to boost our child safety record in this state. I wish Lara Giddings the new minister for Health and Human Services all those who implement this policy the very best, and trust that the initiatives they have started will continue. We have such a small population and so few children on which to plan for our future in this state, so it makes sense from every angle, ethical, economic and social to make their development safety and wellbeing an important agenda for this new government.

Disclaimer: These are my views and do not bind EPOCH Tasmania

Part 11: Children's right to be protected from violence

I have deliberately separated these two sections out, as promoting alternative methods of discipline that do not involve violence against children, is not the same as law reform. It is action that we choose to take now, before law reform, to support parents and reassure parents and the community that help is available. These initiatives are there to actually assist parents now to help them change any negative parenting practices they may have. For those who are not convinced we seek to encourage and persuade them to take an alternative view of how we can discipline children. All of us have a role here in the work we do now, to disseminate this important information.

Changing the law so that we outlaw this practice by repealing an archaic defence that is embodied in our criminal code is another step that we can take. This has to necessarily come after these activities, as in a democracy we prefer to govern with consensus, but must also be prepared with strong leadership to lead the community along better practice pathways in parenting that will give children greater protection in the law than they now have.

United Nations Convention on the Rights of the Child

It would be appropriate to start with the *United Nations Convention on the Rights of the Child* (the Convention) as Tasmania is now contemplating human rights legislation. However, even before this legislation comes into being this Convention was accepted as the basis for earlier law reform for children, young people and their families in legislation known as the Children Young Persons & their Families Act 1997 and the Youth Justice Act 1997. The Convention, referred to by the Joint Parliamentary Committee in Tasmania, has confirmed that all children are the holders of intrinsic and inalienable human rights in equality with other members of the human family. The Convention states that they have a right to be safe and nurtured within their families, protected from all forms of harm and also have a right not be subjected to any form of discrimination or abuse in the home or anywhere else. As far as physical punishment is concerned, articles 19 and 37 of the Convention specifically set out the rights of children to be protected from such violence.

The Convention is also an expression of international law that we have agreed should be applicable to our country and the Joint Parliamentary Committee in their report of 1996 affirmed such rights. The above legislation accepting the principles of the Convention, was passed in 1997. As such we are honour bound to pass legislation to outlaw the smacking of children that is allowed as a defence to parents in our Criminal Code and in the Common Law. Australia signed this Convention in 1990 and Tasmania affirmed it in legislation in 1997, and over 15 years later federally and 10 years later in this state, may I respectfully suggest law reform is long overdue. Allow me to quote Article 19 of the Convention that states:

"1. States Parties shall 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 parent(s), legal guardian(s) or any other person who has the care of the child.

"2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for

identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial intervention."

In addition Article 37 (a) states that:

"No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment."

The United Nations Committee on the Convention on the Rights of the Child in Geneva notes that the rights to safety that children have, are being compromised by a delay in repealing all laws that allow parents a defence to the hitting of children. I would like to most respectfully suggest that preserving such a law, is not an example of good international citizenship as this law excuses parents from the crime of assault when they hit and harm their children. We inherited this English common law doctrine which is reflected in our Criminal Code and only law reform can change this law that undermines the safety of children.

We have had enough time to think about what the right thing to do is, and the Division of Children and Families have embarked on a parental learning program. The Department of Health and Human Services' change in policy about the acceptability of such violence in child rearing, has also been achieved in response to the Law Reform Report. These necessary policy steps before such law reform have already been taken, so we should venture down this path with much more confidence now than ever before in the history of this state. The new Labor government that won the recent elections had a clear majority for its policies, and one was to give children the best possible start. Can anyone argue that a childhood free from being hit is not a good start for every child in this state? As the government has this mandate, I suggest that as a first step, it simply repeals section 50 of the Criminal Code that allows parents this defence. Those who oppose a full law reform, cannot object to this as the Common Law defence of lawful chastisement will still exist. A simple repeal (as the repeal to the same defence that teachers once had), will be cost free and have no impact on the budget, and can be done easily as the government has the majority in Parliament.

The present law on "domestic discipline" in Tasmania

In Tasmania our Criminal Code uses the words "domestic discipline" and "correction" in section 50 and there is an inherent acceptance that if force is used against children it can be 'reasonable' if it is used for 'correction'. The law gives no guidance on what type of 'force' is 'reasonable', so there is a wide range of physically punitive measure taken against children that have variously been sought to be justified by parents who have harmed their children. Indeed many decisions made in our courts of law have allowed extraordinarily harsh forms of discipline against children. This concept of reasonable force also begs the question why any force against a child can be considered reasonable. Surely it is much more reasonable for the law to protect children from the excesses of parental power over them and not permit the use of force against children at all? Given their tender age, vulnerability to being damaged, and lack of adult maturity about moral wrongdoing, should our role and the role of the law be instead, to protect them from any form of violence? What can we do about this law that fails to properly protect children in homes? We can look at repealing it, and when I was Children's Commissioner in Tasmania, I commissioned the Law Reform Institute of Tasmania to look at just that. They brought out an excellent discussion paper in November 2002, that I commend to you that argues the pros and cons of the issue. You can obtain on line at: www.law.utas.edu.au/reform/Publications/Physical%20Punishment/Physicalpunishment.pdf

The need for criminal law reform to remove excuses for violence against children

Those who seek to preserve the status quo in the law, seek to rely on an anachronistic and obsolete law that is no longer sanctioned for other adult members in the family home. Family violence legislation in 2004 sent a strong message to the community that physical assault between adults will be severely dealt with. This has had strong opposition, but the government passed this legislation that is now common place in America where most states have a pro arrest policy. Victoria was also looking at such law reform and now has it, as from July 2005, so were ahead of them. However, in Tasmania, the courts have allowed parents a defence to the common law assault of children, in circumstances that amount to various degrees of unacceptable harm and very serious injury to children. With this law, parents do not know how far they can go, and many have differing opinions on what is reasonable. What may be considered as acceptable hitting, is entirely subjective in the mind of adults and particular families, and any consideration of what type of 'smacking' is lawful or unlawful is also difficult 'in the heat of the moment'. As such, this test is inherently dangerous as parents may unwittingly harm their children using what they believe is reasonable force, commit a crime and yet, the law as it now stands, can excuse them of this crime.

Judging from decisions in the courts of Tasmania, even courts and the police have difficulties with the test of what is reasonable. This wide and systematic uncertainty in the law and a tolerance and acceptance of assaults on children, is nothing less than a denial of children's equal right to protection of the law that adults enjoy. These are matters of concern but of equally great concern is the notion that the harming of a child by an adult can be excused, by rationalising the force used as 'reasonable' if it was for the purpose of 'correction'.

The assumption of reasonableness of violence against children in the law

I respectfully suggest that, in the 21st century, in any discussion on the physical punishment of children it would be necessary to question the underlying assumption that we appear to have in the law, that the use of such punishment against children can be "reasonable". I suggest that it is possible that the law evolved on the basis of beliefs that are no longer supported by research and the evolution of more humane values that we now espouse.

In the eighteenth century, capital punishment of children was considered reasonable, and in the nineteenth, the flogging and incarceration of child offenders with adults was considered reasonable. This we know to our shame happened in Port Arthur when we were a penal colony of a foreign state. We do not consider these punishments at all reasonable now, and even the Supreme Court of the United States of America has in March 2005 stated that the capital punishment of those who committed crimes as juveniles is no longer acceptable. This ruling overturned years of misguided belief that such punishment was reasonable.

In addition, legislation could have been based on several societal assumptions about such harsh adult conduct, for instance that:-

- force amounting to physical punishment did a child no harm;
- Such force was of benefit to a child;
- physical punishment was necessary for the child's "own good".

However, with the evidence we now have, we know *better*, in that even if force does not cause physical harm it can cause emotional injury that we may not be able to detect or

which may not be apparent until much later in a child's life. I suggest that in the 21st century we can no longer accept that such harm caused by physical punishment is "reasonable". Medical, psychological and criminological research (that I will refer to later), published by Margaret McCain and Fraser Mustard, in Canada, David Olds in America and David Farrington in Cambridge England, provide conclusive evidence that such negative and abusive forms of child rearing impact adversely on a child's future life, and have adverse consequences for society too.

Only *parents* in Tasmania, are exempt from complying with established research and evidence based best practice guidelines. They are the only adults that the law seeks to protect when they harm children, and I respectfully suggest that we have to question this societal as well as this legal assumption.

Recent legal changes to the assumption of reasonableness

Advances in our thinking as a society can be demonstrated by the removal of this defence for teachers in Tasmania. The removal of this defence overturned decades of belief and acceptance that the common law defence of 'reasonable chastisement' of children by teachers, was appropriate. It was only in 1999 that we withdrew this defence for teachers, presumably because we as a society believed that such an abusive and coercive method of teaching was unreasonable.

Paradoxically, the law still preserves this defence for parents who are a child's first teachers in the home. In my view the discharge of this function of parents as teachers, requires the utmost good faith from us. The use of reasonable force that harms a child either physically or emotionally, is hardly an action taken in good faith.

We now also know that children are harmed when they witness violence between their parents, so we no longer find it acceptable to subject them to such interaction. Our expectation now is that it is no longer reasonable for parents to expose children to such abusive interpersonal conduct. I have quoted a list of research papers in a Report I presented to the former Minister of Health and Human Services in Tasmania in 2002 on the harm caused to children by witnessing violence between carers, and that list is now available on the Children's Commissioner's website at : www.childcomm.tas.gov.au under "Papers and Reports" and this Report is titled " Services for Children Accompanying Parents who are Victims of Violence" (June 2002).

In Tasmania in December 2004, proactive legislation was passed to deal with violence between partners, and under this new law, there are greater penalties if children witness such violence. However, this law is not applicable to violence against children, so we are only going part of the way in protecting children with this new law. The view of my Children's Council when I was Children's Commissioner, was that violence against children needed to be considered as "domestic violence" as well, and I agree with this. I am sure children beaten anywhere in the world and their peers would support this view, but adults who have the power to pass laws for children appear not to accept the simple logic of this obvious truth.

The test of reasonableness in the use of violence against children

Can it be argued that the legal requirement that the force used on children be 'reasonable', was made to protect parents and not children? I think not, as there is an alternative to this view in that it can be argued that the word "reasonable" was used, because legislators did not wish to see force that was 'unreasonable', and which could harm children, be used to excuse adult behaviour. Yet, the way the courts, the police

and social workers etc conduct this test at present in Tasmania, seems to indicate that it is generally parents that are protected and not children. The test of "reasonableness" is of concern as:-

1. The test is always *after* the injury or harm has been inflicted on the child;
2. The perception of reasonableness is that of the parents, social workers, police and the courts, all of whom are adults;
3. No regard is had of what the injured child's perception of reasonableness is.
4. It ignores the requirement of Article 3 of the Convention that states we need to act in the best interests of the child.
5. Article 12 of the Convention is ignored although it states we must:
... assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child
Let us look at some of the views of children in Tasmania on this important issue.

Children's view of the reasonableness of violence against them by adults

Given the way the law is implemented in Tasmania, a repeal of this defence is essential as a prerequisite to the protection of children more effectively in the law. We need to ensure that no one is able to shield behind the abuse of children in the name of "reasonable" "force" for the purpose of "domestic discipline" or "correction" under our Criminal Code.

As children's views on physical punishment were and are not sought in the criminal justice process in Tasmania, I sought them in a competition for children on banning physical punishment, when I was Tasmania's first Children's Commissioner, and I set out some of what they communicated to me in that competition:-

14 year old girl

Beating "because of one's anger and frustration should be banned as it is teaching a child that physical discipline in an aggressive way is acceptable"

10 year old girl

Beating "might teach the child that hitting is a way to get people to do things"

These are just two of the views I received and in the main, although children were forgiving of parents who hit them, they preferred not to be hit. This mirrors the situation of many spouses who suffer assault at home, and yet we do not use this as a reason for not having laws that outlaw such violence between adults.

Parents rights

In any campaign for law reform in this area, there is a temptation for some to avoid addressing the evidence and research findings, and instead limit the discussion to a debate between children's rights and parent's rights. There is an alternative view expressed in the Tasmanian Law Reform Institute discussion paper at page 37, where there was a reference to a publication by the Office of Law Reform in Northern Ireland dated September 2001, called "Physical punishment in the home-thinking about the issues , looking at the evidence" that stated at page 9 that:-

"Parents' rights exist to be exercised for their children's benefit while the children are learning and growing to maturity"

This view of parents rights from Northern Ireland, where Judeo Christian values are entrenched, emphasises the responsibility that parents have to children, to instruct them in a manner that benefits them instead of harming them.

In addition a major impediment to law reform is a widely held misapprehension, that the law gives parents a 'right' to hit children, and as such any law reform in this area is an interference with this perceived parental 'right' to hit children. However, the common law that both our countries have inherited, does not grant parents a 'right' to hit children, and they have never had this 'right' . Such a 'right' is in contradiction of the common law of assault that forbids the hitting or even the threatening of anyone that causes them fear that they will be hit.

It has always been illegal to hit anyone, and all that parents have had, is simply a mere defence to the crime of assault. The defence that parents now have, that some see as a 'right', has been drafted in a way that allows parents to go beyond small smacks to big smacks and then where does that stop? Sometimes children are gravely hurt or even lose their lives with smacks. This requires us to extend the boundaries of this debate beyond the narrow perspective of parents rights, as there is an alternative argument based on the concept of the *best interest of the child* that is more persuasive. Let us take a look at that alternative concept in the civil law.

Best interests of the child

Law reforms in the 20th century in family and child welfare law now require us to focus on what is in the best interest of the child, rather than on what rights parents have. It also requires us to interpret what is meant as 'parental rights' in a more restricted way than we did before. *Gillicks Case* in the English House of Lords, as far back as twenty years ago, is authority for the proposition that whilst a number of decisions relating to children are normally left to the parents, this is not an absolute right exercisable at their unfettered discretion. This right must be exercised in the *interests* of the child, and this echoes the Northern Ireland view, that it must be exercised for the *benefit* of the child. I suggest that inadvertently or deliberately causing physical and emotional injury to a child for the purpose of "correction" or 'discipline" is not in that child's interest or benefit.

These views expressed in England and Northern Ireland are also consistent with our rejection of the old "Roman law" notion, that children are 'chattels' over whom their father had the power of life or death. We all agree that this is a repugnant proposition now.

Rights over a child vs Best Interests of the child

I suggest that our discussion on law reform, should not be based on an assumption that promoting the right of children to be safe from violence means taking away 'rights' parents have. It should not be seen as a debate between parents rights versus the rights of children but be seen in the context of what is in the best interests of the child, based on established findings and research evidence. Given the changes we have seen in legislation in the twentieth century, it would be simplistic to maintain an adversarial position, or to ignore the new knowledge we have gained in child development.

In addition, we cannot suggest without any evidence, that the sole purpose of section 50 of the criminal code in Tasmania is to preserve and confirm the 'right' of parents to use physical force to correct children. Before we make this assumption, we need to assess the possible reasons why Parliament gave parents this defence that excuses them when they assault children. It may be that given the norms and values of the early twentieth

century, parents and legislators believed in good faith that, children needed to be disciplined and corrected using 'reasonable' physical 'force' even if it causes pain or injury. It is conceivable that this is the rationale behind why such a defence was created, and not because it gave parents rights over their children's bodies. There is no reason why we cannot revisit this rationale now in a thoughtful and measured manner, and not in an instinctive reaction based on fears that such a change can negatively impact on us as adults.

It is only "smacking" and this is not child abuse

How often have we heard this rationalization about the hitting of children, and the statement that it is "only a smack" ? Some may consider that a smack is not child abuse, but abuse always starts with a smack. In any event, any hitting or smacking of a child is an assault at law now, and more importantly it is an abuse of power by bigger more powerful people against those who are smaller, weaker and the most vulnerable in the community. How can we sanction the hitting of children and yet have an outcry (as there was recently), when there was elder abuse exposed in some nursing homes? Both these members of our community are vulnerable and assaults against either are unacceptable. No one would say small smacks of elder citizens are acceptable or not a form of emotional abuse at the very least.

Why is this double standard, sometimes espoused by those who are older and may have been reared on smacks? Why are we older people surprised and horrified when smacks are dispensed against elders by those who now care for them in our old age? Are we frightened it may happen to us? Well it most unfortunately can if we have reared those dispensers of abuse against elders, with smacks in their childhood. They may have learned the lessons that may have been taught at home, about how to control or contain behaviour by intimidation and smacks. I respectfully suggest that the ramifications of seeking to ethically condemn smacks against the elderly and condone smacks for children are questionable, and we really need to re think our attitudes and values on all forms of abuse.

Partial law reform to redefine the defence

An alternative for law reform to ban physical punishment of children, is to define how children can and cannot be assaulted. There are some who may wish to take this lesser route of what is euphemistically called "clarifying" the law, but which in fact gives parents the option of hitting children in a manner that will be made acceptable in the law. Both England and New South Wales have sought to define what type of force exercised against children is legitimate, and this is in my respectful view, such a violation of children's right to be safe from abuse. Telling parents how they can and cannot hit children beggars belief, as it seeks to legitimise some forms of assault on children. Yet, this is seen as a rational response to the need to protect children from excessive physical punishment!

We also need to ask, if we take this option, why we are protecting adults before we protect children? Are our needs as mature adult's greater than theirs, and are we as helpless and as vulnerable as they are? No, if we go down this road, we are well and truly putting adults perspectives, perceptions and needs before that of children. I am in no doubt about that, and many in England too oppose their recent so called clarification of the law as to how parents can hit children. At the very least physical punishment is an ugly form of bullying inflicted by adults on children.

However, it is argued that this is a good option so that parents will know in what way they

are allowed to hit children and I cannot agree with this, as not only is it unethical but it is also discriminatory. It will simply allow us to reframe what physical harm we can do to children and ignore the emotional harm we may be causing them. In October 2004, the Ombudsman in Tasmania had in her report on past abuse of children in care that :

“One of the strongest impressions to emerge from the Review was that physical and emotional abuse can cause damage and scar lives as much as sexual abuse. It was apparent from the interviews that sustained emotional abuse almost invariably accompanied physical and sexual abuse and may well have had the most long lasting effects”.

With this knowledge that is expressed at an official level, we can no longer maintain that any form of physical abuse of children is acceptable in any law reform proposed. Let me summarise other aspects of my opposition to this option:-

- It sends an ambiguous message to parents that only severe, persistent harm is unacceptable and that anything less is not criminal or actionable;

- It will also pose difficulties for welfare authorities and police who investigate physical abuse as they will have to decide what is criminal and what is not.

- Lesser crimes against children will be minimised to a welfare and child protection issue outside the protection of the criminal law.

- If decisions are made by welfare authorities, that an action is not criminal, this allows them to prejudge whether to refer a criminal assault to police or not.

- It therefore denies police their jurisdiction and discretion on whether to take legal action or not;

- It pays no regard to scientific evidence of emotional harm and injury to children;

- It also pays no regard to the fact of permanent damage to the brain development of young children who are subjected to abusive physical punishment.

- We will leave it to social workers, police, lawyers and judges to come up with the answers as to what is abusive or not.

We need to have the courage to make this decision about what is abusive ourselves, and not leave it to the law. We need the courage to say that all physical punishment should be banned, on the basis that any assault on a child is unacceptable. It is my view that only a complete abolition of physical punishment will protect children from violence effectively. Educating and informing parents on what is or is not permitted under the law, and what parts of the body the force can be applied to etc. would hardly remove the present risk of injury and harm to children, and continue the present uncertainty about what type of hitting is lawful or unlawful. The perpetuation of ambiguity in the law is the problem with recent law reform in England and has been criticised on this basis.

In 2002 the Chief Justice of the Family Court of Australia the Honourable Alistair Nicholson stated in Tasmania, when he came to make the awards in the competition I ran for children's views about banning physical discipline that:

"You can't fortunately any more beat a woman, you can't beat animals yet for some reason you can beat children. To me it seems very strange that it should be the only remaining defence available against a charge of assault... It is not smacking we're directing this toward, what we're primarily directing the attention at is that this defence is used as an excuse for abusing children and to me that's not acceptable by a society. Everyone talks about the small smackers but the problem is that the defence is relied on by people who are delivering a lot more than tiny smacks- it is used to get out of quite serious charges...I think it's better if you remove the defence altogether and then it's always up to the prosecuting authorities as to whether the matter is serious or not. I'm concerned that under the system that's operating now, prosecuting authorities are more reluctant to bring a proceeding against a parent when they're met with this defence..."
(The Examiner Newspaper September 2002 at Page 12)

Changing attitudes to children

A prohibition of all types of physical punishment, is essential if we are to change attitudes about what is the abuse of children not only for parents but for all agencies that provide services to children. An unequivocal statement of the law that does not allow for any variations in the interpretation of the law would also have the benefit of avoiding the confusion and ambiguity that is apparent in all systems in Tasmania. This lack of clarity too could also be very demoralising for police, social workers, teachers, doctors and all those who are expected and are mandated to report abuse, and take action to protect children. Any qualifications in the law that excuse conduct that causes harm to a child, offers children little protection in reality, and it has been expressly stated in England, that such reform is worse than no law reform.

I would also suggest that other information about reasons for the need for law reform need to be brought to the attention of the public. This must go hand in hand with the appropriate training of service providers, based on the following research evidence that has emerged. I will look at some of this information now that suggests the need for law reform but from a different perspective, based on child development research, public safety and public health concerns.

Early childhood brain development and children's behaviour

We are now aware that latest research from leading paediatricians, child psychologists and other health and medical professionals in the field of child development, all acknowledge that the process of 'wiring' of an individual's brain begins before birth and infancy. The human brain begins to be formed in very early prenatal life, at some weeks after conception and particular nerve synapses are formed for each experience, and this leaves an indelible mark on the developing brain of the child. (McCain M and JF Mustard (1999) : *Reversing the Real Brain Drain: Early Years Study , Final Report*, Ontario Children's Secretariat, Toronto). The current research in developmental neurobiology shows that the stimulation of the billions of undifferentiated neurons that the brain receives during early childhood, has a major effect on their differentiation and function, which in turn has a significant effect on the competence and coping skills of that individual in later life (Cynader M and Mustard F, *Early Stimulation Aids Brain Development, Increases Competence, Decreases Cost to Society: www.childsearch.net*.) Research shows that quality early childhood care results in quality early childhood development and learning. Such care has been shown to promote physical, language and motor skills as well as social, emotional and cognitive development (Mc Cain M & Mustard F (2002) *The Early Year Study Three Years later*. Canadian Institute for Advanced Research : wwwFOUNDERS.net)

Researchers have recognised that neglecting or abusing a child during this period of early childhood, can produce functions and wiring patterns in the core of the brain that can lead to heightened anxiety in response to stimuli, and to stress leading to abnormal and adverse behavioural responses in childhood and in later adult life (See Cynader and Mustard above). In addition, how the brains of children are wired, influences their behaviour, as well as their functioning, as members of society (Farrington DP (1991) "Childhood aggression and adult violence : Early precursors and later life outcomes" in DJ Pepier and KH Rubin (eds) *The development and treatment of childhood aggression*). Early childhood medical and psychological research has important implications for adult interactions with children during the early years.

These research findings provide a sound medical basis for parents to find non violent alternatives to the discipline of their children during this important stage in their development. This requires nurturing parenting rather than the use of physical force upon the child, which is the kind of force that is more often than not, typically experienced by the child when parents are stressed or angry. The World Health Organisation Report of October 2002, also pointed out the financial and social costs to the community of perpetuating violent modes of conduct.

(see:www.who.int/violence_injury_prevention/violence/worldreport/). These increases in costs are expressed in increased expenses for services to abused children who develop physical and mental health issues, as well as expenses for those who become involved in the welfare, family law and criminal justice systems, as juveniles and adults.

Here is the view of one child in Tasmania:

[15 year old girl](#)

"Hitting and hurting children spoils their development and it means they grow into unhappy, sad and angry adults with low self esteem"

Public safety concerns

Research in criminology and medicine has now also established that the physical punishment of children is a risk factor for later offending, anti social or addictive behaviour, and even mental health problems. We cannot ignore these risk factors that create public safety concerns and instead seek comfort in the fact we cannot assert any definitive links between crimes against children to later similar offending by them, with any research that "proves" that one follows the other. There is enough evidence that corporal punishment is a risk factor for later criminal behaviour and behaviours that risk health too. The anecdotal evidence that I gathered in Tasmania confirms this, as I found that most if not all of the population in juvenile justice facilities I visited, had violence inflicted on them as a way of life, and many had trauma issues as well.

Marianne James at the Australian Institute of Criminology, has explored and addressed trends and issues with regard to child abuse and neglect together with practical intervention and prevention strategies in two articles titled "*Child Abuse and Neglect*" (Part I no. 145 and Part II No. 173). In addition, in the 1999 publication by the Australian Federal Attorney General titled "*Pathways to Prevention: Developmental and early intervention approaches to crime in Australia* (1999) National Crime Prevention), there is further evidence of physical abuse being a risk factor in juvenile offending. Both these publications refer to an extensive list of papers, articles and research on this topic, that can be referenced.

Some of the links between abuse in childhood and later anti social, delinquent or criminal behaviour have been understood and accepted for years. Just as we know that

not all those who smoke develop lung cancer, we do know that smoking is a risk factor and does actually cause lung cancer. No one would suggest that we ignore the possible effects of smoking and ill health. Similarly, can anyone suggest it would not be best practice to take into account existing links between child abuse and later offending that we know about, to raise public awareness of them?

The Tasmanian Law Reform Institute paper sets out further criminological evidence of a link between physical punishment of children and later criminal activity by such victims of violence, that make the use of physical force a public safety issue.

Once again here are the views of two children in Tasmania on this topic:

13 year old boy

"Beating leads to anger and you cannot control your temper, it's hard"

14 year old girl

Beating " can harm a child both physically and psychologically by producing fear, which in turn could produce repressed anger in later years. Things like teenage group violence and victimised husbands, wives and children could occur"

Public health concerns

There is also evidence with respect to physical punishment being a public health issue that we cannot ignore. Research has indicated that the emotional injury to the child can be even more severe than the physical ones. It appears that in children who have suffered abuse, there is a significant correlation between Post Traumatic Stress Disorder (PTSD) and Attention Deficit Hyperactivity Disorder (ADHD) and other Anxiety Disorders, as well as suicide ideation (Famularo R, Fenton TY, Kinscherff R & Augustyn M (1996) "*Psychiatric Comorbidity in Childhood post traumatic stress disorder*", Child Abuse and Neglect , October 20(10) 953-961). It is also suggested that abused children with PTSD have activity profiles similar to those of children with ADHD, while abused children without PTSD have activity profiles that have a greater similarity to those of depressed children Glod CA Teicher MH (1996) "*Relationship between early abuse, post traumatic stress disorder, and activity levels in prepuberal children*" Journal of the American Academy of Child and Adolescent Psychiatry October: 35)

In Tasmania, I received anecdotal evidence that a disturbing number of children who entered shelters and refuges with their mothers, especially boys, are on ADHD medication. The police in Tasmania informed me when I was Children's Commissioner, that of the few offenders below the age of criminal responsibility (ie aged under 10), many are on medication for mental disorders like ADHD. Research has shown that family conflict and dysfunctional parenting have a lasting impact on the child and do relate to a wide variety of adverse developmental and behavioural outcomes in adolescence including drug abuse, poor school achievement and truancy. (Sanders MR (1995) *Healthy families, healthy nation: strategies for promoting family mental health in Australia*).

Dr Lesley Laing (Laing L (2000) in the Australian Domestic & Family Violence Clearinghouse Issues paper No. 2 titled: "*Children, Young People and Domestic Violence*"), presented evidence from many sources that indicated that although children experienced family violence differently, they did exhibit a host of behavioural and emotional problems when compared with other children who did not experience family violence. All the indications are that if we intervene at an early stage, to take steps to reduce family violence, including the physical punishment of children, and

establishing support services for parents to parent without violence, we will be able to have some impact on the future health of children and perhaps even prevent or reduce later offending behaviour by children and young people. In August 2004 the Australian Institute of Criminology Trends and Issues publication titled "*The 'Teen Triple P' Positive Parenting Program: A Preliminary Evaluation*", indicated that initial results showed that there were positive outcomes for most participating parents with a significant reduction in a variety of risk factors for even teenagers, after such an intervention program. In Tasmania, police informed me that approximately 50% of youth offending was related to drugs.

As far back as 1992 research has shown that dysfunctional parenting practices place children at risk of developing conduct problems (Hawkins JD, Catalano RF & Miller JY 1992, in their article "*Risk and Protective factors for alcohol and other drug problems in adolescence and early adulthood: implications for substance abuse prevention*", Psychological Bulletin 112(1) : 64-105). This research also indicated that serious conduct problems have been shown to be strongly associated with substance use and abuse (Hawkins et al 1992).

The 2002 World Health Organisation report that I referred to earlier, states that violence in the community must be viewed a public health issue, and as such we need serious responses to family dysfunction that includes the physical abuse of children at home. Here is what some children expressed to me in the competition I ran on this issue:

12 year old girl

"Beating does not only leave physical marks but mental marks"

14 year old girl

Beating "teaches children that violence is an acceptable way, and the only way of dealing with problems. Children who are abused at home often have emotional problems".

12 year old said

"because the child is suffering from many things like depression and could be feeling not wanted which could lead the child to do stupid things like drugs"
Consult with children and you will hear their voices that we need to hear.

Implementing a legal ban on the hitting of children

All the evidence that I have presented to you suggests that the physical punishment of children is risk factor both for children and for us as a society, with respect to public health and safety. I suggest that if we take all this evidence and knowledge seriously, it demands proactive preventative action by legislators. Legislative change need not be implemented in a manner that will cause dissent and concern, if we do it in stages. I respectfully suggest some options for staged legislative change:-

Amending legislation can be passed and there can be a time delay in proclaiming the Act, with immediate training in preparation for the new law.

The Act can be passed and proclaimed with the defence available to parents phased out over a period of years

There can be charges laid, suspended and then dismissed, for diversions provided from a hearing for a period of time, in properly defined situations where

parents will benefit from programs of support and training, rather than punishment.

There can be legislation passed that clearly indicate that prosecution discretion will be maintained so that more minor assaults against children may result in pre sentence diversion or suspension to programs of support and parent education.

Prosecution discretion that exists now can be maintained as to whether charges are laid at all.

All these above options would arguably not have adverse impact on the interests of parents or children, but enable children to have access to proper legal protection soon. Parents too can be reassured, that prosecution for trivial infringements of the law is not the experience of police prosecutions anywhere else in the world, where there has been a ban on the physical punishment of children.

Of course this is all premised on our government making a commitment to the protection of children, and in this regard I am greatly encouraged by the policy position of the Labor party the party in power in Parliament now on early childhood, that I have referred to earlier. I have noted personal commitments to the support of this law reform from some members of cabinet and I hope very much that they will have the support of their other cabinet colleagues for a complete ban on the physical punishment of children now. However, there will be resistance to this proposed law reform, and I will now examine some possible arguments that have to be addressed if we are to persuade people of the value and need for such reform.

Disproportionate impact on some communities

Some say that hitting must not be outlawed because only the most disadvantaged people hit their children. We had this view of domestic violence in the past, but we now know that this crime occurs at all levels of society. Targeting disadvantage is crucial but to state that only disadvantaged people hit their children is not the whole story. Many disadvantaged people under stress with perhaps lack of employment, health issues, unstable housing, marital difficulties, and a host of other problems, choose not to take it out on their children. Indeed some who hit children, do not have any of these difficulties, but they have the belief that there is nothing wrong in hitting children. It is thus incorrect to think that only those who are disadvantaged have such an attitude to child rearing. In any event, we prosecute those who are disadvantaged when they commit other crimes like theft or when they assault their wives, or other people's children, so this argument cannot be sustained. May I also respectfully suggest that it is insulting to disadvantaged people to saddle them with this attitude.

In my talks and travels, I have sometimes found that those who were hurt as they were hit as children, and who may also come from disadvantaged backgrounds, are the most eager not to repeat this same punishment on their children. One ex prisoner told me that if they had such a campaign of alternatives to violence when he was a child, he may not have been hit. He said that had his upbringing been different, he would have learned that hitting was not the only way to deal with difficulties, and he would not have hurt others as he had. He would have learned of behaviours that were not dependent on violence and he may have turned out differently. He has recently informed me of his view that much of society is predicated on force, and many states still have a police "force" and we have "armed forces". This nomenclature does not acknowledge the valuable peace keeping role Australia has established. In addition how much "force" is

used against those in the armed forces by their own colleagues as a matter of culture in "bastardization" ? Think about it like this prisoner has, and you too will come up with examples of how acceptable and prevalent the use of force is and how it is considered legitimate in our society.

He was enthusiastic about supporting non violent parenting campaigns and began email contact with other ex-prisoners he knew, explaining about such parenting. He said this would mean they would learn ways of not hurting others especially those they loved. He is going to write about it again this year and this is just one example of an instance where people in difficulties need encouragement, support and assistance, to change their behaviour. In my work as a barrister in Melbourne now, I have met ex prisoners who are clear that they are committed to a non violent upbringing for their own children. This new insight about non violent parenting empowers those who have experienced abuse to reject it and to instead choose less abusive behaviours for themselves. Stopping this intergenerational transfer of violence by breaking the cycle of violence against children is the prime purpose of law reform, after the objective of protecting children better.

Parents with difficulties who have no experience or knowledge of alternative ways to discipline children except by the use of violence, need to be assisted in a sympathetic manner, of their obligations to parent in a way that is different to the way they were parented. We have a duty to bring this to their attention as if we do not, how are they to be assisted to learn to parent without violence? We cannot just tell them what to do, they need our assistance and support to change their parenting behaviours and they can do this, just as we all did, and changed our behaviours when new laws were passed curbing some of our other excesses, that I will discuss shortly.

Cultural norms or distortion of culture

There is another argument I need to address about not interfering with cultures that are practiced in different communities. When we signed this Convention it was I believe an acknowledgement that there are some universal rights that we all have by virtue of being human, that are above culture. Some may not agree with this, but we knew when we signed the Convention, that some of our laws and customs were in breach of the Convention, and yet we signed this as we accepted that we needed to review them. For me, our acceptance of the Convention signals that it is now our belief that children have human rights that need to be protected and promoted, despite other constraints that may have held us back in the past. One of these constraints was the view that if there was an existing cultural practice, we simply had to accept it, and that there was nothing we could do to challenge it. I cannot agree with this, as we have laws based on human rights in one territory this country now and you can assess laws to see if they breach human rights, so why quarantine culture from complying with the law and human rights?

This view that we cannot question culture makes culture akin to dogma, but we all know that even cultures change and develop, as no culture is static. For instance, wives no longer have to commit suicide by burning themselves on their husbands funeral fires in India. This cultural practice is no longer acceptable in India as it was based on an ideology that we no longer accept. Similarly, customs that are not based on modern evidenced based research need to be challenged and questioned. This is not the case with all cultural concepts or practices of course, as there are many cultural practices, that is parallel with the concept of children's human rights. Such positive cultural concepts and ancient wisdom can be confirmed and promoted as they mirror changing community standards and new knowledge.

In addition, the concept of equality and respect for each individual, requires us to seek the view of those who benefit from any cultural practice as well as those who are disadvantaged by it. The group that is dominant should not be able to decide what is culture and what is not, especially when harmful practices are sought to be preserved against those who have less power than those who decide what culture is. Some cultures may in fact turn out to be distortions of culture, and then we can usefully apply the law and human rights to challenge them. I do recall that there was some discussion on whether the apparent widespread sexual abuse of children in Pitcairn Island was culture or not.

However, we know that such activity is illegal, and in this kind of context any such practices are also a breach of Article 19 and article 37 of the Convention. The notion of culture can be, and were challenged and dismissed in the Pitcairn Island cases. On the other hand, there is a much admired cultural practice that the Maori have that has been adopted in Tasmania in our child welfare legislation. In our *Children Young Persons and their Families Act 1997*, we have adopted the Maori concept of a family getting together and resolving issues by listening to everyone. We call it "Family Group Conferences" in Tasmania, and there, children's voices are heard too. I am sure that if we listen to children using this modern day conflict resolution strategy, that has its roots in traditional Maori wisdom, it will yield fruitful thoughts about the need to physically punish children in any of our families.

Loyalty to past practices

I am aware that many people have concerns on law reform that bans physical punishment as they themselves were hit by their parents when they were children. I have noted elements of this concern with some sympathy, as they appear to be based on a loyalty to current and past child-rearing practices. These concerns may well be uppermost in the minds of many, as if we have been hit as children, we will be making a negative judgment on our parents when we say hitting children is wrong. This is a very uncomfortable feeling when we love our parents, but may I suggest that instead of making any negative judgements, we can instead choose to feel a compassionate understanding for them. We can take the view that they did the best they could for us, sincerely believing that what they did was the right thing to do. At that time they did not know what we know now, and as such it would not be appropriate to judge them at all.

Public interest issues

There is another concern that I need to address, which is the argument that the law has no business telling parents what to do. The truth is that the law has been doing just that for centuries, as the law states that you cannot sexually assault anyone anywhere, and this includes the children in your own home. It is also no longer a defence to hit your wife and for those who still want to be able to do as they wish inside and outside the home, this impulse too has been curbed by the law in many different ways. Individual rights have been restricted by the passing of laws in the greater public interest by Parliament despite the misgivings of some in the community.

In these situations the law is ahead of public opinion and new legislation leads us to higher levels of cultural conduct and expectations, in keeping with public interest. I also note that there would always be some who would insist on their personal rights and the liberty to do as they like, without a corresponding sympathetic concern for the rights or interests of others. In the past it was their perception that it was their right in a democracy to be able to continue to drink and drive, to choose not wear seat belts, to speed on the roads, to smoke where and when they wished. Their rights came at a cost

to the health and safety of other citizens, and the public purse, and was incidentally, also a breach of the good neighbour principle, that I will refer to later. These examples of the changes in law that restrict our individual freedoms, are all curbs on our right to do as we wish. In the public interest we recognise that one person's right can take away another's and or compromise society's interests as well.

Changing the law to repeal the defence parents have of hitting children is similar to these other laws that have been passed, overturning years of earlier types of past unacceptable behaviour. This progress in cultural conduct has occurred as we have a greater knowledge of public interest issues and the need for such laws that restrict the way we behave, if it has an adverse impact on others and ourselves. This reliance on individual rights is a time worn rearward action that I have great difficulty in accepting and fortunately such views are being swept away by law reform in many common law countries. What is noteworthy is that some third world countries have banned the hitting of children and this includes South Africa a mainly Christian country and Bangladesh a mainly Muslim country. They have overturned and rejected past laws, cultures and customs that have existed for centuries that governed personal conduct, in preference for new laws that instead promoted the safety of children at home. They are to be warmly congratulated, as they have clearly reviewed their value systems and considered that there was a need to change them. I will now address some of these underlying values that they may have re-examined, so we can look at them too.

Moral values of parents and society

What are the moral values that we are unknowingly and subconsciously passing on to our children when we hit them? Are we telling them that it is OK to hit those we love? Do we want them to learn that it is acceptable to hit those we are supposed to protect? Is it alright for them to realise that those who are bigger and stronger can force those who are smaller and weaker to do as they wish? How will this training work when they take on these ideas and exercise them as juveniles or adults with others in the community? By our behaviour, are we planting the seeds of unacceptable social behaviour that can lead children to criminal activity? We can mean well when we discipline children with physical force, but why is this the only way many exercise discipline?

I venture to suggest that sometimes, using physical force is the only way some parents know of parenting, as that is exactly how they have been parented. When people say that being hit or smacked never hurt them, and they hit their own children, of course they cannot say it has not had an impact on them, as they are following their parents' example and inflicting hurt on their children. I suggest that they have could well have become desensitised to the hurt they are causing their own children, as they have accepted and rationalised the hurt that they themselves felt.

If we were to pause for just one second before inflicting physical punishment on children and consider whether there is a moral need to hit them, would we hit them? In any event, when we strike out at them, is it a calm and considered approach based on an awareness that they are not doing the wrong thing morally? No, I suggest that it is often an immediate action, a conditioned reflex action that is a response to the stress, fear, irritation or anger we are feeling. We know we always have a choice about how to behave in these situations and this suggests that it is possible to focus on ourselves and our actions and behaviours, and not only on our children's behaviours. It is not so much what *they* are doing, but in fact all about what we are feeling, as negative emotions try and take over the usual non violent interaction we have with our children. I suggest that out first task in parenting would be to address the various stress situations that cause us to

lash out in angry or violent responses towards our children.

The sad truth also, is that many have been brought up, strongly believing that it is a moral duty and right to hit children. The dubious morality of believing you are right in inflicting fear on a child and that your faith allows you to hit children seems to escape our attention when we focus only on the misdemeanours of children. We need to send a clear signal to those who are entrenched in such views, that it is possible to keep your faith and parent without violence, by thinking of your own behaviour too. This can be done in many ways like education, example, information, support services and ultimately clarity in the law that leaves no one confused about what is right and wrong in the 21st century about our behaviour and actions toward children.

For those who are genuinely concerned to strictly and literally follow the laws and rules in the Bible, may I respectfully suggest that we acknowledge that the law diverges from the Bible in many ways now. We need to follow the law of our countries, and remember that Jesus said, render unto Caesar that which is Caesar's and to God that which is God's. He asked us to obey the laws and not break them, and we note that we do not for instance stone adulterers anymore. Some aspects of personal law in the Bible have been changed over the years in the law of the land, and these have occurred despite strongly held beliefs. In this regard, can we not remember, for instance, that the adulterous woman was forgiven by Jesus when he told her to go on her way and sin no more? Following this example, can we be more loving and understanding of children's mistakes and misdeeds and put their needs to learn first? Children lack the maturity to fully comprehend the impact and ramifications of their actions, but do parents have this an excuse?

Moral content of children's behaviour

Let us now look at the moral content of children's misbehaviour. When children do what is not right, especially when they are very young, does it mean they are morally wrong? It may simply be that in their innocence they are not aware that what they are doing is wrong or are making a mistake. This is certainly true of very little children, and yet these are the very children we hit for being "naughty" and we sometimes harm them physically and emotionally when we do this if we lose control. Common sense tells us that everything is new to a child, and what is happening when a child does not behave as we expect an adult to, is often because that child is learning about the environment. They explore what can and cannot be done, what is safe and what is not and what is right and what is wrong. Are these actions so morally wrong that they have to be punished by striking them?

When they make mistakes, do we need to show them what is correct instead? If we just hit them, they will simply avoid being hit and they will not be aware of the reason why they should not repeat a particular action. They need to be shown this, as they cannot know automatically what is right and wrong. Children need to learn about rules and boundaries based on what is safe and what their parents values are. Is this passing on of information by punishing them physically, the only way they can be taught? We know in our hearts that this is not so.

Do you remember how long it took you to learn your alphabet and multiplication tables? It takes teaching, patient repetition and support for success, for these basic subjects to be mastered by children, so why would it be different for behaviour? Children need a reason for good behaviour too, to practice it to get it right and they have a right to expect our support for this, not our wrath. This support allows them to learn and develop

confidence that what they are doing is right. In time, our teaching will be expressed in their own self discipline and a mastery over their own actions by choice, based on love and respect and not fear and guilt.

Ethical considerations

What kind of ethical values do we espouse, both in the law and in daily life, when the law states that it is wrong to hit anyone, but that hitting children in the name of discipline gives you a defence for assault? How can it be ethically acceptable for such kind of discrimination to exist in the law? Why is it acceptable for the most defenceless in our society to be assaulted, sometimes very seriously, in the private confines of a home? Why is it ethically acceptable to be hit by those that society relies on for the support and protection of children? Laws are very powerful symbols of a society's values and gives us an indication of what is important to us. In Tasmania you are not allowed to beat, torment or harass animals, but it is legal for children to be beaten if the force used is "reasonable" and the purpose is "correction". Do we want this symbolic lack of respect for children to remain in the law and remind us that perhaps animals are valued more than children? We cannot and should not beat an animal to train them and this is the case in Tasmania, and yet we can do all this to a child. I respectfully suggest that it is time we looked seriously at these anachronisms in the law and do something to end it, as such a law is no longer defensible or tenable in a civil society.

One view of how the present law that fails to protect children developed.

We do not have to have an understanding of the law to know in our hearts that the rearing of children where there is love without physical punishment is the best way for them and us. We know too that we feel better and are happier when we are more loving towards each other and them. However at the same time, we are all in a moral dilemma, as we also know that the law now allows us to get away with hitting children and inflicting various forms of violence against them in the name of discipline or correction.

Despite all of us knowing that hitting anyone is wrong, it is confusing when parenting by the use of physical force against children is permitted by the law. How did this force become acceptable? I will take you down one road that I believe made this law possible, so that we can understand that it is also possible to take an alternative route in the law, to the one the present law has taken. The other alternate route that I will show you, leads us to the position where the discipline of children without hitting them is not only possible but acceptable and considered the preferred option. I propose to do this by examining some cultural and religious norms that have evolved over many centuries, to see if some of the roots of acceptance of violence or non violence against children arises there.

You be the judge, so let me first go back a little in history to a time when one ancient system did not accept that any violence against children was acceptable in the job of child rearing. Let me start with the sacred, as ancient and traditional Aboriginal Australia believed that children were sacred. This was a simple truth for them, as without proper instruction to children, to respect and obey rules, the support of Elders in the isolated and harsh Australian terrain would not have been possible. The very survival of their communities was dependent on children, so naturally their culture valued them.

Children are sacred

In Australia an Aboriginal Elder, Tex Skuthorpe, has done paintings and given us talks on traditional Aboriginal culture about child rearing, and the fundamental principle here is

that it is the role of adults to teach, and the role of children to learn. This transference of culture, customs, laws and knowledge was accomplished in traditional Aboriginal communities, without hitting, harming or punishing their children. Even the concept of discipline was irrelevant in this system of conduct between generations, where the eldest and the youngest were respected in different ways. It was the role of Elders and other adult family members to perform the duties and obligations they had to the new generation. It was the role of children to simply learn and they were allowed to make mistakes without punishment, to learn their community's values. He informs us that the deliberate harming of children, was severely punished in traditional Aboriginal culture.

By way of contrast, this is not the philosophy of non Aboriginal Tasmania. We still have in existence, legislation that accepts the archaic common law defence that states that parents can use physical punishment to discipline children, even if it harms them. We move from the cultural and spiritual concept of an adult's duty to teach, with the understanding that children need to learn in an environment of safety in the home, to concepts based on punishment, and discipline. This latter concept opens up possibilities where the wellbeing of children can be compromised by physical punishment or harsh discipline. Showing children what is done by example and instruction as traditional Aboriginal culture did, is very much in the mode of adults modelling positive behaviour, a modern day alternative to the physical punishment of children. It is the most natural way to teach children right from wrong, and as such we should not be surprised that this obvious truth was known in traditional Aboriginal cultures.

Our newer cultures have departed from this alternative non violent interaction within families to interactions that allow violence in the name of discipline or punishment. How did this happen? I am going to give you one possible answer to this question, simply to allow us to start thinking of how it may be possible to parent without violence. I do not mean to offend anyone by my analysis, but simply to provide you with food for thought about how we can create an environment that is much more conducive to non violent interaction between adults and children in homes than we have now.

Old Testament

Contrast this ancient Aboriginal philosophy with some of our old Testament biblical statements about child rearing. We all know the phrase from the Bible that says spare the rod and spoil the child. Does this mean hitting them? Is there another meaning that is possible here? An advisor of mine whilst I was Children's Commissioner in Tasmania, who was preparing for church ministry, said that her interpretation of the Bible allows us to consider these statements from a non violent perspective. She said that the rod in the Bible referred to the shepherd's rod. This shepherd's rod had a crook in it which was used to hook onto the sheep to prevent them from straying, to contain them. I then realized for myself, that the rod was not the staff that the shepherd also had, that I believe was used to beat off wolves and other predators.

My own reflections also lead me to this conclusion, as my favourite Psalm, Psalm 23 states that the Lord is my shepherd and that His rod and staff will always guide me and be my comfort. The rod is to steer me to paths of righteousness with the rod to protect me from harm. Neither of these were there to harm me, and this concept of a benign and loving God, who like a good shepherd was devoted and faithful in looking after his flock is commonplace in the Bible. I humbly and respectfully offer you this alternative way of viewing some Biblical statements as matters for your consideration, to show how it is possible to parent without any violence, but with guidance, care and love.

New Testament

We are all also familiar with the concept of original sin, and another Biblical injunction of beating the devil out of the child. Contrast this with what Jesus is stated to have said in the New Testament, when he was speaking at a gathering. It appeared that there were children present who may have been causing a disturbance to their elders who were trying to listen to what Jesus said. It appeared too that the children were being removed from the gathering but Jesus stopped this removal and said suffer the little children to come unto me. He did not punish them when they were brought to him, but instead he placed one child on his lap, put his hand on the child's head and blessed that child. He also said that one of these, the children, would find it easier than the adults in the crowd to get to heaven. I suggest that Jesus would have known that there were Pharisees and even lawyers in the crowd, very righteous and very learned people, and yet was he suggesting children had an edge on even such adults when it comes to spirituality?

The actions of Jesus when those listening to him perhaps believed they had a right to listen to him without children being present, suggests to me an equal respect for children that I respectfully suggest that Christians deny, if they seek to assert their right to hit children. Remember what was also said in this same context by Jesus, that if anyone harmed a child, it would be better for them to have a millstone around their neck? Once again, I am very humbly and respectfully asking you whether you can find it in your heart to consider, if the Bible, your faith and belief allows you to parent without violence against children, given the compassion and understanding shown by Jesus for noisy children?

Disciples

The Bible tells us that Jesus had disciples. I believe the word "disciple" in this context means "to follow", as that is what Jesus said to them, "follow me". Does the word discipline come from the word disciple? I believe so and this means again that you can allow yourself to consider whether you can parent by letting your children follow the example you set in your words and deeds. A Brazilian catholic guideline for childrearing I came across states that when you hit children to teach, you also teach them to hit. I also came across an Islamic parenting guideline, that states that children's attitudes are formed by parental attitudes, so they state that if you wish them to have better values, you have to model such better values yourself.

Both these concepts are supported by research evidence and modern child development theory, which means we need to ask exactly what we are teaching our children when we hit them? We know that when some of us swear in front of children, they too learn to swear. It is the experiences that they have had with their parents which make them learn about how to behave. What example of adult behaviour are we setting when we model negative behaviours? There were many rules we were asked to live by in the Old Testament, but Jesus gave us one new rule for us to follow. Love your God and love your neighbour as yourself. Can we not regard children as our neighbours in the home and can we not be benign, strong and loving shepherds to them? Would it not be possible to teach them by our example that they can follow, instead of using our physical and mental power over them as tyrants in the home?

An opportunity to help the next generation now.

With law reform to ban the physical punishment of children, we have an opportunity to safeguard the wellbeing of the future generation now. Their wellbeing is dependant on our goodwill and we need an abundance of that now if we serious about protecting them better. It is a trite political concept that children are our future, when we have so little respect for them now, given the present state of the law. Today is their present that

could well determine their future, and their future is in our hands today and is being compromised by our inaction. We have an opportunity now with law reform to keep faith with the next generation on whom we will depend, in our old age. Will they remember that we let them down in the present when they were politically powerless? Or will they be proud of us as we rose up to the challenge of protecting them more effectively and be happy with us that we cared enough to put their need for protection first before ours?

Fortunately there are people all over the world, that do not wait for law reform but seek to inform, support and advise parents and the community now, about peaceful non violent forms of parenting. In addition, the Secretary General of the United Nations has commissioned a survey on violence against children around the world, as there is a concern that this is a serious issue that needs to be addressed. Consultations for this report are occurring and have occurred in this area and in the Pacific region, and I hope that as a result of this survey and report we will see violence against children also become a public health issue.

The United Nations Secretary General's survey on violence against children around the world, will note that we have ignored the recommendations of the Geneva Committee on the Convention on the Rights of the Child, and are still leaving our children in risk situations that does, and has compromised their physical and emotional safety.

The World Health Organisation (WHO) now promotes " World No Tobacco Day" or "World No Smoking Day" on 30th May each year. I hope we will have UNICEF or WHO promoting "No Smacking Day" that I initiated in Tasmania from 2003, on 30th April each year. I hope to see Australia initiating "Quit Smacking" programs, just as we have "Quit Smoking" ones. It would be logical to have such programs and other preventative measures to prevent violence against children. These programs are needed now and in particular for those who run foul of any new law that I hope our Parliaments will pass to ban the physical punishment of children.

Leadership Obligations and Public Policy issues

In the light of our obligations under the Convention, the latest evidence in child development, health and criminology, some of which I have touched on, I respectfully suggest that law reform is essential. This must lead public opinion that is not up to date, and demonstrate the merits of law reform to society. All our elected representatives are in a position of responsibility to all citizens and I trust that they recognise that children are citizens and members of the public too. For too long we have not considered children in this light as they do not have the power to vote. This does not detract from the fact that they have civil and legal rights in our criminal law. This criminal law does not fully protect them now and this does not benefit them, but only benefits adults to the detriment of children. Leaders in the community have a duty to encourage improvement in community standards and conduct, and to dispel the false perceptions and fears that exist that could hold us back from embarking on best practice in child rearing. Children of today are the voters of tomorrow, and who knows, one day the youth vote may be crucial in an election.

It is not just community leaders that need to play a role here. We all have a duty to make it our business act on all this information, as children need our support to achieve greater protection from violence in the home than they now have. In the meanwhile it is also vital that both parent and child support services and public education campaigns are maintained and increased so that there is wide spread awareness and understanding of the hoped for changes in the law in this area.

All the evidence I have sought to persuade you with, allows us to choose to parent differently from our parents even if we have been physically punished ourselves, and may even be punishing our children in this way now. I hope I have been able to demonstrate to you, that a more compassionate view of child rearing in the 21st century, is not only possible but I believe compatible with modern Judeo Christian thinking. We know that adverse and harsh styles of parenting can change with appropriate supports and services to both parents and children. We can stop hitting children just like many other people have stopped being addicted to drinking and smoking when the need arises. We have seen this demonstrated in Scandinavian countries and in the article I referred to earlier. Joan Durant in her 2000 publication for "Save the Children Fund", documents the positive and beneficial impact on children and society, after one generation of having laws that ban the hitting of children.

The commitment to making the family home a safer place for children is a worldwide movement now, and the banning the physical punishment of children is an idea whose time has come.

Conclusion

In my submission for the United Nations Secretary General's Survey on violence against children in May 2004, I stated that we need law reform based on the legal and human rights of children to be protected from violence and abuse. Unless there are strong unequivocal calls for the repeal of all defences to violence against children, we can be said to condone such violence by our inaction. This is an ethical and moral dilemma caused by our omission to protect children more effectively than we are doing now and it includes a failure to act when we have the opportunity to do so.

In addition, I suggested that whilst a repeal of all laws that allow violence against children is vital, it is equally important for the law not to remain only as an important symbol of our respect for children. Countries need a comprehensive plan of services that tackle the root causes of problems that Australia agreed to do when we signed the *Declaration for the Survival Protection and Development of Children* in 1990. This calls for a focus on children in difficulties and seeks assistance for their parents too, who often reflect the same unresolved difficulties that their children have. Unless we tackle the root causes of violence against children in the community in the manner that the above Declaration proposed, new laws to protect children and their human rights more effectively will not be properly enforced, and alternatives to the physical discipline of children will not be properly implemented in the community,

This is also an issue of governments giving priority to the funding of increased services and supports for children and parents. Tasmania endorsed a plan for services and support to children under age 12 called "*Our Kids*" in 2002, and last year announced an "*Early Childhood Foundation*". Our government strategies need to be comprehensively funded as a priority, to enable a human rights approach to the issue of prevention of abuse of children to be properly established, and not only a reactive one that deals with abuse once it has occurred. Policies and foundations are a good start and we need to think through these so that we have effective alternatives to the hitting of children as discipline in the home.

I will end by reminding you of one ancient wisdom we all know about, that the hand that rocks the cradle rules the world. The logical extension of this is that the child we rock and cradle today will be the adult who will rule our world when we are older and more vulnerable. I hope we will have brought them up with the kind of love and care that they

will show to us when we need it, and that their care and concern for us will make our world, a better and safer place for all of us to live in, now and when we are older.

Patmalar Ambikapathy
Barrister and Human Rights Consultant for Children
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Hobart
Tasmania
Australia

Contact details: patmalar@hotmail.com

P.O.Box 136W
Ballarat West
Vic.3350