

TALKING POINT – PHYSICAL PUNISHMENT

January 2021

Like previous Tasmanian Commissioners for Children, and the Tasmania Law Reform Institute, I am one of many who have advocated for changing or abolishing section 50 of Tasmania's *Criminal Code Act 1924*.

Section 50 has not substantially changed since first passed in 1924, other than by the removal of specific reference to school masters. The current section states:

It is lawful for a parent or a person in the place of a parent to use, by way of correction, any force towards a child in his or her care that is reasonable in the circumstances

What this section means in practice is that a parent or a person in the place of a parent who is accused of assaulting a child or young person aged less than 18 may defend that assault by arguing that what they did was “by way of correction” and that the force used was reasonable in the circumstances.

However, there is no definition in the Criminal Code about what is “reasonable” – and what does “by way of correction” mean, and who is a person “in the place of a parent”?

It is, therefore, unclear as to what extent or degree, a person can go to in exercising their legal right to physically punish a child. It is also somewhat unclear as to who that person can be. A teenaged babysitter? A neighbour? A parent's friend or partner?

In my view, the law as it stands is unacceptable. When this law was first passed by the Tasmanian Parliament in 1924, the physical punishment of children through a caning at school, or the belt at home, or indeed a regular beating, was unfortunately common practice.

We have certainly moved on as a society since that time. Unfortunately, this particular law has not.

Whenever this issue re-erupts in Tasmania – regularly over the past 20 years because successive governments have chosen to do nothing about it - the community debate quickly becomes one about smacking children.

In my view, the debate and reasons why this defence should be reviewed are much broader than because of an argument about smacking.

This is about how our laws reflect societal expectations, and prevent the infringement of human rights.

Like all Australian states and territories, Tasmania has obligations under the United Nations *Convention on the Rights of the Child*.



Our obligations include those outlined in Article 19 of the Convention, which says that the Government must take steps to protect children from all forms of violence, abuse and neglect while in the care of their parents, legal guardians or other people who are looking after them.

Section 50 of our Criminal Code, does not, in my view uphold our obligations under the UN Convention. Instead, it effectively gives permission to physically punish a child, with no explanation as to what degree of physical force is appropriate.

More contemporary Tasmanian laws such as the *Education Act 2016* and the *Youth Justice Act 1997* better reflect our human rights obligations and indeed community expectations in that they rule out corporal punishment of children.

This means that it is not permitted to use physical punishment against a child in our schools. In our youth justice detention centre, physical force cannot be used as a punishment.

Our child protection legislation - the *Children, Young Persons and Their Families Act 1997* – imposes a duty on members of the community to take steps to prevent children being abused or neglected, including by notifying relevant authorities.

Yet, because of the defence in section 50, the physical punishment of a child in a home is legal if it's reasonable.

It is difficult to reconcile the defence in section 50 with other laws designed to protect children from violence.

Clearly, we should not be making it unlawful to use force against a child in all circumstances. There are some instances where a level of force may be necessary to keep a child safe - for example preventing a child from running across a road by grabbing them and pulling them back to safety or preventing them from touching a hot stove.

In 2021, we know more about effective behavioural management than ever before, and evidence clearly suggests there are better ways of setting boundaries and guiding our children's behaviour than through physical punishment.

Naturally, as community expectations and attitudes shift, so should our laws.

This year, 2021, will hopefully bring with it Tasmania's first ever whole-of-government strategy to improve the wellbeing of our children and young people.

What better way to demonstrate our commitment to improving children's wellbeing than by reviewing section 50 of the Criminal Code – an outdated and archaic law.

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