

LEGAL STUDIES

Children, parents and discipline



'Whose Rights? Children, Parents and Discipline', outlines the current law on the physical discipline of children. The article examines how these laws conflict with the *UN Convention on the Rights of the Child (CRC)* (1989) and the need for a change in the law.

What does the law say?

Carefully read the section 'Physical discipline and the criminal law'. Working in pairs, answer the following questions:

1. In Australia, is it lawful for a parent to use physical force to discipline a child?
2. What is assault? What 'lawful excuses' provide a defence to assault?
3. The defence of 'reasonable chastisement' is defined in the Victorian case of *R v Terry*. According to this decision, what are the three criteria for determining if physical discipline of a child is reasonable chastisement?
4. If you could speak to the judge in the case of *R v Terry*, what questions would you want to ask about the meaning of reasonable chastisement?
5. How does the law about the use of physical discipline of a child conflict with the *UN Convention on the Rights of the Child (CRC)* (1989)?

The debate

Working in groups of three or four, read the sections 'The importance of this debate in Australia now' and 'International developments in prohibiting physical punishment'.

1. Outline the five arguments against the use of physical discipline suggested in the article.
2. Describe the approach in Sweden to the physical discipline of children. Has this been successful? Justify your view.
3. New Zealand passed the *Crimes (Substituted Section 59) Amendment Act 2007* to prohibit the use of corporal punishment on children
 - a. Outline the law in New Zealand on the physical punishment of children.
 - b. The New Zealand *Crimes (Substituted Section 59) Amendment Act 2007* states that there are four situations when a parent is justified in using force. Do you agree?

4. Do you think the New Zealand law has been successful? What evidence is there in the article to support your view?
5. The article concludes: 'This is an issue that will not go away until children's rights are fully respected.'

Draw up a chart like the one below.

Rights of children	Rights of parents

- a. List what you consider to be the rights of children in the first column.
- b. List what you consider to be the rights of parents in the second column.

Forming a conclusion

Working individually, prepare a written response to the following:

'Governments must ... address the issue of physical discipline as children are bearers of rights, including rights to physical and emotional integrity, and protection from harm.'

Do you think that the law about the physical discipline of children should change? Explain.

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