

Setting boundaries around the physical disciplining of children in New Zealand

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ABSTRACT

Aims

To assess public opinion and review current social policy towards disciplining children by hitting with objects or around the head.

Methods

As the first stage of an intended regional child violence education programme, a house-to-house survey of 883 dwellings was conducted in an area of Whangarei determined to be a priority area by local authorities. A wide range of questions were asked, with this study focusing solely on the responses around physically disciplining children by hitting with objects or around the head.

Results

A total of 445/883 (50%) potential respondents participated. Of these, 391/445 (88%) were against hitting a child in anger with an object, and 416/445 (93%) were against hitting a child in anger around the head.

Summary

In this study a significant number of respondents believe that hitting children in anger with objects, or around the head, is unacceptable. New Zealand social policy needs to reflect this view in the context of current New Zealand and international legislation.

(NZFP 2003; 30: 108–115)

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Introduction

This study presents some of the findings from the first stage of an intended regional educational programme, looking at educating the public against hitting children with objects or around the head. There are only two published New Zealand studies that have examined these behaviours, both incorporating these items as part of wider child discipline projects. Maxwell in 1993¹ assessed New Zealand public views of hitting children with objects, noting 2% reporting hitting with a 'strap, stick or other object'. Carswell in 2001² assessed New Zealand public attitudes towards both hitting children with objects or around the head to determine that 15% believed that objects such as a wooden spoon or belt were acceptable and 98.7% were against smacking children in the head or neck area. Both of these studies were telephone interviews. Carswell identified the major limitations of tele-

phone interview methodology in that they under-represent groups who have lower rates of telephone ownership and achieve a lower response from Maori and Pacific peoples who tend to prefer face-to-face interviewing.² This study is the first to use face-to-face interviews to focus specifically on attitudes towards hitting children with objects or around the head. Presentation of the results of this study is followed by a discussion of current New Zealand and international legislative trends on this subject.

Methods

In May 2001, ethical approval was obtained from the Auckland Ethics Committee to deliver the Think Twice Safety Programme. The Think Twice programme is a two pass (each dwelling is visited twice, one month apart), door-to-door educational programme. Within each pass, if a dwelling is unoccupied, then that dwelling is not revisited during that

Table 1. Demographics

Gender		Ethnicity		
Male	Female	Maori	European	Other
172/445 (39%)	273/445 (61%)	206/445 (46%)	224/445 (50%)	15/445 (4%)

Table 2. Could there be times when it is OK to hit a child in anger with an object or around the head?

	Definitely No	Probably No	Neutral	Probably Yes	Definitely Yes
Object OK	391/445 (88%)	36/445 (8%)	11/445 (2%)	7/445 (2%)	0/445 (0%)
Head OK	416/445 (93%)	24/445 (6%)	5/445 (1%)	0/445 (0%)	0/445 (0%)

pass. In the target area reported in this study, the 1st pass of the programme was preceded by a pamphlet drop introducing the project workers headed *Think Twice Non Violence Programme*. All project workers were respected bilingual Maori people from the local community, commissioned by the project director. At the doorstep one week after the pamphlet drop, project workers delivered a two-minute two-point message, and delivered resource material against hitting children with objects or around the head. For willing participants data collection then occurred. The 2nd pass one month later enquired if the two-point message was remembered, if the message was considered useful, and re-asked the 1st pass questions.

This study reports on the 1st pass responses to hitting children with objects or around the head. Further analysis of other parts of the programme will occur at a later date. In the context of this analysis, it is important to note that collecting data after an educational presentation may influence responses towards what respondents might identify as the project worker's interest, namely, what the project worker wants to hear, and/or perceived socially acceptable responses. The chosen methodology resulted from ethical requirements around full disclosure. The effects of any such influence are reduced by framing the questions indirectly, e.g. *'Could there be times when it is OK*

to hit a child in anger with an object?', rather than *'Could you hit a child in anger with an object?'*

Respondents comprised one self-selected consenting adult 18 years and over per dwelling. Dwellings with no respondents during each pass were not revisited for that pass. Appendix A details the questions asked. The 1st pass collected demographic information on gender and ethnicity. Consultation with local Kuia and Kaumatua advised against assessment of demographic measures such as age and number of children. Information was also gathered on any past personal history of being hit as a child in anger with an object or around the head. Questions were then asked about whether there could be times when it is 'OK' to hit a child in anger with an object, or around the head. Assessment of the emphasis of the response was assessed via a 1–5 scale ranging 1 = Definitely No, to 5 = Definitely Yes (see Appendix A).

Consultation with Child Youth and Family, New Zealand Police, and

Northland Health prioritised areas of Whangarei at risk of child violence. Respondents were not aware of area prioritisation, but rather that this was the first part of a programme intended to extend through all of Whangarei and possibly further.

As a consequence of wanting to place the programme into areas of highest need first, a representative

sample of the population was not sought. The programme commenced in the highest priority area. The consequence of a non-random sample is that the results cannot be taken to

represent the views of the whole population. However, it can be reasoned that if these behaviours were unacceptable in a high-risk area where child violence may be common, then they are likely to be even more unacceptable in other areas of the population.

Results

A total of 883 dwellings were visited with 445 respondents (response

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Table 3. Grouped responses

	Definitely No	Other
Object OK	391/445 (88%)	54/445 (12%)
Head OK	416/445 (93%)	29/445 (7%)

rate 50%). Of the non-respondents 332/883 (38%) were not home, 39/883 (4%) declined, and incorrect data entry accounted for 67/883 (8%). Table 1 shows the demographic spread for gender and ethnicity. Table 2 shows the responses towards hitting children with objects or around the head.

Significantly fewer responses occurred in the categories other than 'Definitely No'. As a consequence of this, statistical analysis is not meaningful when analysing each individual response. However a robust analysis can be undertaken if the four low response categories are grouped together into one category called 'Other'. This new grouped category represents respondents who did not say 'Definitely No'. Table 3 shows the resulting grouped response table.

In undertaking this analysis, it should be noted that determining confidence intervals for these figures is difficult under a one pass, no dwelling revisited design, where the number of non-responders are expectedly significant. However, a conservative hypothetical approach distributing non-responders evenly between the two categories 'Definitely No' and 'Other', would give corrected figures of 610/883 (OR 69%, 95%CI 66%–72%) against hitting with an object, and 635/883 (OR 72%, 95%CI 69%–75%) against hitting around the head. These conservative figures support the direction of the statistical inference from the original data.

Discussion

This study shows that in this particular study area, a statistically significant number of respondents believe that it is unacceptable to hit children with objects or around the head. Caution needs to be added to the interpretation of these findings with respect to the already noted influences of pre-questioning education, and non random sampling. It is difficult to assess how much of an

influence pre-questioning education had. Certainly some influence is expected, but the number of responses against the education message (12% object-related and 7% head-related) suggest this is not a unanimous influence by default. Framing the questions towards an impersonal 'Could there be times...' rather than a more personal 'Could you...' is also less likely to implicate a respondent directly, and give greater flexibility to reply against the delivered educational message.

When raising questions about hitting children with objects or around the head, an argument can be made around those actions that would reasonably be considered casual, in play, or even in jest. Maxwell¹ framed her study questions in a context of when 'children misbehave', and Carswell² used 'if the child is naughty'.

It was with this in mind that the questions in this study were phrased 'in anger'. This then places a direct burden of responsibility on the motive, rather than the more difficult task of trying to define if the behaviour was suitable or not.

The choice of a known high priority area, rather than a random sample, also means that the results cannot be stated as a representation of what all of the population believes. That aside, the high degree of statistical significance, and the direction of the results, could lead one to reasonably surmise that if it was unacceptable to hit children around the head or with objects, in an area where the behaviour is more common and maybe more permissive, then it is very likely to be even less acceptable in the general population.

This study supports the findings previously noted by the only two reported studies examining these behaviours,^{1,2} and confirming a lack of

public acceptability of hitting children with objects or around the head. This needs to be set against the results of all previously published studies on child discipline generally, that have consistently shown that New Zealanders are in favour of some forms of physically disciplining children.¹⁻⁶ This article does not intend to focus on a discussion around the pros and cons of corporal punishment generally. It is taken as fact that this is what the evidence shows. So what is the current legislative position against which claims could be made, to ban

hitting children with objects or around the head?

In April 2001, Cabinet requested officials from the Ministries of Justice, Social Policy, and Youth Affairs to report by October 31st 2001 on the implications of repealing or

amending Section 59 of the Crimes Act 1961. Section 59 outlines the rights of parents and others to physically discipline children as follows: 'Every parent or person in place of a parent of a child is justified in using force by way of correction towards a child if that force is reasonable in the circumstances'.⁷ The study by Carswell² on the 'public attitudes towards the physical discipline of children' noted that 80% of those surveyed believed that smacking a child in one form or another was acceptable. This view is supported by nearly all previous New Zealand surveys, which over the past 20 years have consistently demonstrated majority public acceptance of smacking as a form of child discipline.¹⁻⁶

Discussions have continued around the suitability of Section 59 for current New Zealand society. No definitive legislative positions have been taken, although at the time of

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writing, two private members' bills have been placed in the parliamentary ballot box that read '*no parent, or person in the place of a parent, may use such force that would result in the child exhibiting internal or external bruising, swelling, cuts, burns or more serious injuries*',⁸ and the general policy statement accompanying the other bill seeks to remove the existing parental legal defence as an assault on children.⁹

The key phrase summary to Section 59 is often simply termed 'reasonable force', and it is around this that I will discuss the case for having legislation and social policy that more clearly defines the parameters of 'reasonable force' in a way that reflects changing contemporary social practices, public opinion, and international developments.

This discussion argues the case that if some forms of physical disciplining of children are acceptable to the wider community, as it seems to be, then hitting with an object or hitting around the head should be specifically detailed in legislation as unacceptable behaviours.

Why we should legislate against striking with objects or striking the head

1. The law is unclear

The current Section 59 legal defence of 'reasonable force' is far too nebulous to provide a clear and safe environment for children in New Zealand. Brobst⁹ identifies features of New Zealand case law that are considered in a defence of 'reasonable force'. These include the child's '*misbehaviour, age, sex, maturity, physique, health, personality, and the injuries and indignities caused to the child*'. Factors relevant to the parent include the '*amount of*

force, method of force, motive in applying the force used, and the effectiveness of previously used methods of discipline'. While some of these features can be objectively assessed, e.g. age, important areas such as motive and even the critical nature of the injuries, e.g. psychological injuries, are still exceedingly difficult to define. What one person considers 'reasonable' at any one time or place simply creates too much uncertainty. Any number of child and youth agencies can give examples where 'reasonable force' has been successfully used to defend what in their view (and what they would hold to be the public's view) is unacceptable forms of child discipline. The proposal here then is that clarity should be brought to the implications and associations around 'reasonable force', by legislating against two of the most serious activities, hitting with an object or hitting around the head.

2. Banning objects and striking the head would protect children now

The traumatic deaths of James Whakaruru, Mereana Edmonds, and Tangaroa Matiu in 1999/2000, amidst a range of other social issues, reinforces the lack of legal protection for children against being struck with hammers, electric jug cords, vacuum cleaner hoses and pieces of wood. In all of these cases, the children had bruising and other injuries consistent with being struck with objects.^{10,11,12} All of the

children also had significant head injuries. James Whakaruru had '*extensive subdural haemorrhage*',¹⁰ Mereana Edmonds died of '*wide*

spread hypoxic ischaemic change in the brain',¹¹ and Tangaroa Matiu died from '*blood loss exacerbated by acute scalp haemorrhage*'.¹² Head injuries are recognised by Children Youth and

Their Families Service as being the most common cause of death from physical child abuse in New Zealand.¹³ The risks associated with hitting children with objects and around the head are not

startlingly new. Rather, society has failed to act on the obvious and repeated associations with such discipline, cloaked under a mantle of 'reasonable force'.

3. Parental guidance

Clarifying the law has its functional application in providing parents with guidelines towards what is and is not acceptable. This serves the purpose of removing parental fear and confusion over parenting decisions as it relates to some aspects of the law. This does not limit the rights of parents to autonomously raise their children in a manner that they deem fit, any more than most other autonomous actions in New Zealand society are limited in some way by ethical considerations determined by the wider community.

4. Reporting child abuse

A clear definition of some of the boundaries of child discipline is likely to enhance those mechanisms that report and monitor the safety of children. This would desirably facilitate early detection and appropriate management.

5. Expert support for prohibiting the use of objects and striking the head and neck areas

The position of professional bodies in New Zealand specifically on these two behaviours is mostly unknown and needs to be actively sought. How-

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Areas such as motive and even the critical nature of the injuries, for example psychological injuries, are exceedingly difficult to define

ever, some indication of how these professional views might look can be gathered from our closest neighbour Australia, with whom we already share a number of professional bodies and legislative similarities. In its first presentation, the New South Wales Crimes Amendment (Child Protection – Excessive Punishment) Bill 2000 prohibited striking a child with an object and striking around the head and neck. The Bill received support from expert bodies such as the Australian Medical Association, Royal Australasian College of Physicians' Division of Paediatrics, Community Services Commission, Association of Children's Welfare Agencies, Law Society of New South Wales, and the Human Rights and Equal Opportunity Commission.¹⁴ Support for specifically prohibiting these two actions has also been detailed in policy statements by the American Academy of Pediatrics, and the Canadian Paediatric Society.¹⁴

6. Public opinion supports banning striking with objects or around the head

In this study, a total of 88% of respondents did not consider it acceptable to hit a child with an object, and 93% disagreed with hitting around the head. Few New Zealand studies have analysed public views or activities in these two areas. In 1993, Maxwell¹ telephone surveyed 1 000 people 15 years and older regarding physical punishment in the home. One of the questions asked of parents was whether they had actually 'ever hit a child with a strap or stick or something similar'. A total of 89% did not report ever using such objects. This figure is remarkably close to what Carswell² found in the Ministry of Justice telephone survey report 2001. In this report, 85% of people did not believe that a person parenting a child should be allowed to use a light object such as a wooden spoon or belt, and there was almost unanimous agreement

(98%) that the use of a heavy object such as a piece of wood or electric cord should not be allowed by law. Public opinion would quite clearly seem to be against accepting these two activities as appropriate forms of child discipline.

7. Banning objects and striking the head is a natural progression towards reducing the overall level of physical punishment of children

Few in modern society would challenge the desirability to progress towards a societal goal of decreasing violence. This argument is totally in keeping with that goal. By defining these two unacceptable disciplinary behaviours, a 'middle ground' position is reached away from terms of 'reasonable force' and towards decreasing violence. It is a step in the right direction. Some might say that it doesn't go far enough, and why take a small step when you could maybe leap straight to the stated goal. Maybe a small step might even reach a position of contentment or saturation that actually diminishes the chances of ever attaining the ultimate goal. It is this author's view that there is likely to be a greater acceptance, and chance of success with small, carefully measured progressions towards reducing overall violence in society.

Why we should NOT legislate against striking with objects and striking the head

1. Legitimises all other forms of discipline as acceptable

Concern has been expressed that detailing some forms of unacceptable child discipline might by default legitimise the non stated, equally unacceptable behaviours. This concern can be addressed in several ways. The

first is that this argument is not seeking to solely replace legislation, but rather add some clear parameters as guidance to some universally agreed basic minimum. These parameters could be either directly stated, or given as specific examples allowing some flexibility for the intention of the law. It is my view that if clarity is one of the goals, examples such as 'a light wooden spoon' are less specific than 'any object', and the parameters should simply be stated. The second point is to question whether the community would actually interpret such

legislation as validating other extremes of child discipline. To say to someone 'Don't hit people' is not saying 'But do hit animals'; to say 'Don't punch' is not to say 'But do kick'. I concede that some may rationalise this view, but I

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would suggest that it is only a small proportion of the public, with the majority correctly interpreting the nature of any such legislation.

2. Intrusion on parents' rights

No rights are unconditional. The right to free speech is limited by the laws of slander, the right to lead your life how you want is limited by the rights of others to co-exist also. Parents' rights similarly are conditional. We already provide some parameters around parental rights, for example as they relate to the responsibility to provide children with the 'necessities of life'. By detailing these two forms of discipline, we are simply further defining the shape that existing parental rights might take. Some might put forward a Biblical view along the lines of 'spare the rod – spoil the child'. Again this can be defended under a 'rights' concept such that even the right to a specific religious view may need to be conditional on certain things.

3. Goes from one murky legislative area to another

Several points can be made challenging the stated goal of clarifying the law. The first asks: why just select striking with an object and striking around the head? Deliberately dropping a child from a height, for example, could cause an equal amount of harm, as could an almost infinite range of other potential harms to children. To attempt to detail all of these harms would be an example where an attempt towards

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completeness would in fact create a situation little improved, or even worse than the starting point. Rather, the suggestion is made to focus on the few 'big ticket' items – those activities that historically have been shown to be frequent and high risk. Such a process may still detail a list of potential harms that is quite large, however, I would contend that striking with an object and around the head leads such a list on the basis of high risk, frequency, and public support.

The second challenge that could be levelled is more directed to the difficulty in clarifying the specifics of legislation as it relates to defining objects and the head area. For example, what constitutes an object? Is a hand an object? Are 'light' objects, e.g. pillows, also included in this terminology? New South Wales parliamentary commentary and briefing after the second reading¹⁵ sought to clarify this as follows: '*...the force is applied by the use of a stick, belt, or other object*'. Acceptability of striking with an 'open hand' was also tabled in the first reading, although reviews of this rightly asked questions as to whether there is a difference between a slap from the palm of the hand, a thrusting of the fingers, or a chop from the side of the hand. Scottish legislation has settled

on the wording '*use of an implement*'.¹⁶ Similarly, where does the head start? Does this include the neck also? It is my view that overall these arguments share the same potential risk as mentioned previously, namely negation by attempted completeness.

The Scottish legislation stating '*a blow to the head*' and '*the use of an implement*' seems to succinctly state the case around which an umbrella of well thought out legislation could provide an appropriate context. Such a context would be im-

portant to allay concerns that even trivial contact with objects and the head could be inappropriately caught up by legislation. These concerns are valid and would require significant attention to factors such as motive, e.g. actions undertaken in anger.

4. Focuses on the mechanism not the harm

Maybe the nature of any harm caused is more important than how it happened. I would agree that the nature of any harms caused would be useful information in defining acceptable physical discipline, but do not believe that it suitably removes the need to still detail completely unacceptable behaviours. Striking around the head that did not leave any degree of noticeable harm is still unacceptable. Striking a child with a bottle, that left no physical harm is still unacceptable. Such a focus may also direct undue attention to visibly physical harms at the expense of injuries to mental health. These can often take many years to manifest, and in children can be very difficult to diagnose. The New South Wales legislation, however, has taken harm into account by

prohibiting '*harm to the child that lasts more than a short period*'.¹⁵ In Scotland, the equivalent legislation reads '*any effect (whether physical or mental) which it has been shown to have had on the child*'.¹⁶ Other consultation documents have described more pathological criteria such as '*visible marks*' that last for more than 15 minutes. It is my view that mechanisms are able to be more readily defined than harms, and are more sensitive to the 'potential for harm' than a pathological diagnosis. Unfortunately the trade off here is that it may be too sensitive a mechanism to differentiate events such as striking in jest and play, but less harm is done by erring on the side of caution.

International developments restricting parental corporal punishment

Brobst⁹ quotes a *New Zealand Listener* article from May 2001¹⁷ reviewing the New Zealand government position on smacking, and the lead it takes on this issue from other countries. The article makes the statement '*The government, according to Goff, has decided that smacking should stay. Under pressure from the UN, the government reviewed what the rest of the world was doing. It found, broadly, that European countries have banned*

smacking, and the so-called old Commonwealth countries have not. New Zealand is going with the old Commonwealth. Goff says that, instead, New Zealand could follow the British lead and define what is

Mechanisms are able to be more readily defined than harms, and are more sensitive to the 'potential for harm' than a pathological diagnosis

unreasonable force against children; perhaps the use of instruments, blows to the head'. Over the intervening 18 months since the *Listener* article was published, much has changed on this topic for these 'Old Commonwealth' countries. These changes will now be briefly reviewed.

England and Wales

In England and Wales, civil law provides parents with a defence of 'reasonable chastisement'. In January 2000, the government sought public consultation with a document *Protecting children, supporting parents*.¹⁸ This document presented four options including banning 'some forms of punishment that could never be deemed reasonable, like a belt or slipper', and maintaining the status quo. After due analysis, the government announced in November 2001 that 'We do not believe that any further change to the law at this time would command widespread public support or that it would be capable of consistent enforcement. However, we will keep the reasonable chastisement defence under review in the future'.¹⁹

Republic of Ireland

In September 2001, the Republic of Ireland released the consultation document *Physical punishment in the home – thinking about the issues, looking at the evidence*.²⁰ This document presented a range of options for consultation, including striking with objects and striking the head. Responses to this document closed in January 2002, with analysis still being undertaken.²¹

Scotland

On 26 March 2002, the Criminal Justice (Scotland) Bill was introduced as an Executive Bill into the Scottish parliament.¹⁶ Section 43 of that Bill details legislation under the title 'Physical Punishment of Children'. Under this proposed legislation, a 'blow to the head' and 'the use of an implement' are specifically detailed as required to be taken into account for a defence of 'justifiable assault'. This Bill has since passed through the Stage 1 parliamentary debate on 18 September 2002, and Stage 2 Committee dis-

cussion and amendments on 13 November 2002. It will shortly be reported back to parliament.

Canada

In Canada, a defence exists for parents under Section 43 of the Criminal Code to use 'reasonable force' in disciplining children.²² On 15 January 2002, the Court of Appeal for Ontario upheld a lower court judgment against the Canadian Foundation for Children, Youth and the Law who were seeking to demonstrate that 'reasonable force' violates the Canadian Charter of Rights and Freedoms. As part of this judgment, the judge reiterated findings from the lower court judge who determined significant areas of agreement amongst experts in that 'Corporal punishment using objects such as belts, rulers etc. is potentially harmful both physically and emotionally and should not be tolerated'. The judge also recorded that 'Corporal punishment should never involve a slap or blow to the head'.²³ On 17 October 2002, the Canadian Foundation for Children Youth and the Law were given leave to appeal the Court of Appeal findings to the Supreme Court of Canada.²⁴

New South Wales, Australia

In May 2000, the Crimes Amendment (Child Protection-Excessive Punishment) Bill 2000 was introduced into the NSW parliament.¹⁴

Initial readings of this bill contained references to prohibiting the use of a '...stick, belt or any object other than an open hand...', as well as unreasonable force if the force is ap-

plied to any part of the '...head or neck of the child...'. The clause relating to implements was eventually removed under the weight of arguments around the effect of the punishment being more important than the mechanism, and significant

public concern around the likely banning of the wooden spoon.²⁵ The clause relating to striking around the head was retained and the bill was passed into law with a 12-month delay in commencement to allow for public education. This act will now come into effect on 6 December 2002.

Summary

The evidence from recent child deaths and beatings as a consequence of physical discipline suggests that current New Zealand legislation and social policy does not afford adequate protection to children. Public opinion however is not in favour of completely banning corporal punishment. Government thinking needs to reflect a middle ground position that takes into account our international obligations and responsibilities, yet balances this with the absolute desires and wishes of the New Zealand public. This would seem to be endorsed by policy makers such as Minister of Justice Phil Goff stating 'what I am trying to do is to make progress towards eliminating child abuse and violence against children but working within the consensus of New Zealand public opinion'²⁶ and Minister for Social Services Steve Maharey commenting 'before we change the law, we really need...to lay the scene for changes in the way that other countries have done. Law very seldom works if it runs ahead of the way people think'.²⁷ This study affirms opinion against striking children with objects or around the head. Recent international legislative developments further supporting banning these behaviours are presented. The task now is to appropriately encapsulate public opinion, with moral and legislative imperatives.

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Current New Zealand legislation and social policy does not afford adequate protection to children

Appendix A

1st Pass Questions

1. Ethnicity – Which ethnic group or groups do you belong to or identify with?
2. Gender?
3. When you were a child, did an adult ever hit you in anger with an object? (Yes/No)
4. When you were a child, did an adult ever hit you around the head in anger? (Yes/No)
5. Could there be times when it is OK to hit a child in anger with an object? (Scale 1–5)
6. Could there be times when it is OK to hit a child in anger around the head? (Scale 1–5)

1	2	3	4	5
Definitely No	Probably No	Neutral	Probably Yes	Definitely Yes

NOTE: This study only analyses questions 1,2,5 and 6. Questions 3 and 4 are for further analysis at a later date.

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