

New Zealand's Child Discipline Law Crimes (Substituted Section 59) Amendment Act 2007

Information for people who work alongside and support families.

This booklet discusses:

- What the new law means.
- The law and the needs of parents and the public.
- Why the law is a good law.
- How you can help inform parents.

It also provides the text of some relevant provisions of the new law.

In 2007 after much public and political debate, almost all New Zealand politicians voted to pass the *Crimes (Substituted Section 59) Amendment Act 2007*. The Act is commonly referred to as "The Anti-Smacking" Act. This term minimises the issue of physical punishment of children and contributes to opposition to the law. We prefer to call it the 'child discipline law'.

This booklet provides information aimed at helping people who provide services to families to explain and support the law.

What the law means

The purpose of the new law is essentially *to make better provision for children to live in a safe and secure environment free from violence*. The new law seeks to achieve this by abolishing the use of parental force for the purposes of correction.

Supporters of the law, both within Parliament and the public sphere came to understand that the previous law:

- Provided a legal defence for parents charged with hitting children hard enough to end up in court.
- Conveyed the implicit message that use of physical discipline was ok.

The law not only discriminated against children by making them the only group against whom it was legal to use force, it also set a standard in law that was inconsistent with what is now known about effective ways to manage and guide children's behaviour, and the dangers of hitting children.

The provisions of the law now mean that:

- The statutory defence contained in the old Section 59 of the Crimes Act 1961 no longer exists and adults who hit children hard enough (only serious assaults end up in court) to be prosecuted cannot excuse their behaviour as “correction”.
- Adults caring for children can still use force (in other words hold or restrain) to keep children safe. For example, adults can stop a child rushing out on a street, prevent children harming themselves or others, and they can restrain a child to provide care such as changing nappies or carrying a protesting child out of a supermarket .
- Use of force for correction is explicitly forbidden.
- The Police have discretion not to prosecute in situations where force used to correct a child is inconsequential and it is not in the public’s interest that a prosecution go ahead.
- The law will be reviewed after it has been in place two years to assess its impact on children and families.

Some of these provisions came about during the bill’s passage through the parliamentary process. They were designed to reassure the public that the intent of the law was that minor infringements would not necessarily be prosecuted. At the same time the essential message that assaults against children are not ok was maintained.

The law and needs of parents and the public

Research recently released by the Office of the Children’s Commissioner informs us that while there is reasonable support for the law and increasing opposition to the use of physical discipline there are still people who:

- Are uninformed or confused about the provisions of the law.
- Perceive the law as an unwarranted intrusion into parental choice.
- Are convinced that smacking is an essential and effective part of child discipline.
- Are reliant on physical and other negative forms of punishment and do not know about the principles of positive discipline.

Some groups opposed to the law and supportive of the use of physical discipline have succeeded in forcing a referendum which will take place as a postal referendum in July and early August 2009.

The question to be voted on is:

“Should a smack as part of good parental correction be a criminal offence in New Zealand?”

The question is confusing.

A parent administering a single smack (as long as it is not heavy handed or administered in a way that puts the child's physical safety at risk and as long as there has been no other history of serious violence in the home) is most unlikely to be prosecuted. And, of course, "good parental correction" does not include the use of physical discipline.

Nevertheless a referendum will take place and while politicians do not have to abide by its outcome those forcing the referendum will do all they can to undermine the law and raise fears about its intent and implementation.

A 'yes vote' will support the law

People who work with children and families are in an excellent position to build confidence in the law and understanding of it. They can also support parents to comply with the law and provide their children with effective, positive, and peaceful parenting.

Why the law is a good law

The law is good because:

- A positive, safe and secure childhood is the foundation for the development of well behaved children and adults and part of ensuring positive outcomes for children as they grow up.
- The law makes it clear that physical discipline is not a necessary or acceptable part of parenting because it undermines a child's feelings of safety and security.
- Physical discipline is not an effective way to guide children – it teaches them about violence, leads to fear and distrust of adults and often does not help children understand what behaviour is expected of them.
- Previously, section 59 sent a message to parents that smacking and hitting children was ok and this message was not in line with modern knowledge about managing children's behaviour which is about "positive parenting".
- Although most parents do not abuse their children, some do. Violence, including violence to children, is a big problem in New Zealand. In time, amendment of section 59 of the Crimes Act 1961 will help change attitudes about the use of violence as a solution to any problem including unwanted behaviour.
- The new law helps ensure that children's right to a fair deal in the courts are respected. The old section 59 statutory defence sometimes served children badly, when it was successfully used by an adult to explain his or her assault on a child.

- The new law places New Zealand among a growing number of countries across the world (25 currently) that have a legal ban on the use of physical punishment with children
- Its provisions are such that while not endorsing the use of physical force for correction in any way it takes into account the fact that children and families will not be well served if prosecutions take place for minor infringements of the law.

How you can help

You can help by:

- Being well informed about the law and confident to talk about it.
- Reassuring parents who are anxious or resentful of the law.
- Making opportunities to share information about the law with individuals and groups.
- Providing information about positive ways that parents can manage and guide their children's behaviour and encouraging parents and caregivers to use these.
- Sharing the fact that research shows very clearly that moderate and harsh physical discipline places children at risk of poor outcomes like aggression, emotional problems and child abuse.
- Telling people that a yes vote in the referendum will help secure the law and lead to better outcomes for children.

For tips or ideas about how to talk about the law, contact Deborah Morris-Travers at Deborah.travers@barnardos.org.nz

Copies of a pamphlet explaining the new law to parents and members of the public are available from Barnardos New Zealand and EPOCH.

The booklet can be ordered or downloaded from:

www.barnardos.org.nz

www.epoch.org.nz

www.plunket.org.nz

Further information about positive parenting and positive discipline is available from:

- **Parent Help** – a parenting counselling service run by Barnardos 0800 472 7368.
- **Barnardos NZ** www.barnardos.org.nz/SupportServices/21alternatives.pdf

- **Parents Centre** www.parentscentre.org.nz/parenting_family/discipline.asp
- **SKIP (pamphlets)** www.familyservices.govt.nz/information-for-families.
- **Royal New Zealand Plunket Society** www.plunket.org.nz

The following booklets can be downloaded or ordered from www.occ.org.nz

- Choose to Hug – This booklet contains useful information and ideas.
- Children Are Unbeatable – more information about why it is not a good idea to smack or hit children.

The following books can be downloaded from Save the Children NZ

- **Unreasonable Force: New Zealand's journey towards banning physical punishment of children.** http://www.savethechildren.org.nz/new_zealand/nz_programme/main.html
- **Insights – Research into Children's perspective on Physical Punishment** http://www.savethechildren.org.nz/new_zealand/nz_programme/main.html

Some relevant provisions of the Crimes (Substituted Section 59) Amendment Act 2007.

Note – This Act now forms the basis of an amended section 59 Crimes Act 1961.

4 Purpose

The purpose of this Act is to amend the principal Act to make better provision for children to live in a safe and secure environment free from violence by abolishing the use of parental force for the purpose of correction.

5 New section 59 substituted

Section 59 is repealed and the following section substituted:

59 Parental control

- (1) Every parent of a child and every person in the place of a parent of the child is justified in using force if the force used is reasonable in the circumstances and is for the purpose of---
- preventing or minimising harm to the child or another person; or
 - preventing the child from engaging or continuing to engage in conduct that amounts to a criminal offence; or
 - preventing the child from engaging or continuing to engage in offensive or disruptive behaviour; or

- (d) performing the normal daily tasks that are incidental to good care and parenting.
- (2) Nothing in subsection (1) or in any rule of common law justifies the use of force for the purpose of correction.
- (3) Subsection (2) prevails over subsection (1).
- (4) To avoid doubt, it is affirmed that the Police have the discretion not to prosecute complaints against a parent of a child or person in the place of a parent of a child in relation to an offence involving the use of force against a child, where the offence is considered to be so inconsequential that there is no public interest in proceeding with a prosecution."
- (7) Chief executive to monitor effects of this Act
- (1) The chief executive must, in accordance with this section, monitor, and advise the Minister on, the effects of this Act, including the extent to which this Act is achieving its purpose as set out in section 4 of this Act, and of any additional impacts.
- (2) As soon as practicable after the expiry of the period of 2 years after the date of the commencement of this Act, the chief executive must---
- (a) review the available data and any trends indicated by that data about the matters referred to in subsection (1); and
- (b) report the chief executive's findings to the Minister.
- (3) As soon as practicable after receiving the report under subsection (2), the Minister must present a copy of that report to the House of Representatives.

