



## Media Kit - May 2009

---

### ***The Crimes (Substituted Section 59) Amendment Act 2007: How the law is working and why it should be retained***

This media kit has been prepared to inform news media of the facts supporting the retention of the child discipline law in the face of the postal ballot referendum scheduled for July/August 2009.

Aotearoa New Zealand can be a place where children grow up secure, confident and understand limits and boundaries that help them to behave well - without physical punishment.

In 2007, by an overwhelming majority of 113 to 8 votes, Parliament granted children protection from assault by their parents. The law is working well but is under threat from an upcoming referendum, to be held by postal ballot in July and August 2009.

The referendum will ask voters: *"Should a smack as part of good parental correction be a criminal offence in New Zealand?"*

This question is problematic because:

1. Smacking children is not good parental correction.
2. A single smack is unlikely to lead to criminalisation of a parent under the 2007 law.
3. It creates fear and misunderstanding, preying on the concern that parents will be prosecuted for lightly smacking their children.

New Zealand's child discipline law is a good one. Parents are not being prosecuted for smacking. The law supports positive parenting and increases children's protection from assault. Referendum 2009 is unnecessary and expensive but now inevitable.

A yes vote supports the law.

A website providing additional information about the referendum and about the associated issues is available at: [www.yesvote.org.nz](http://www.yesvote.org.nz)

#### **Enclosed:**

#### **1. Why is NZ spending \$10m on a referendum on smacking?**

*Opponents of the law change started gathering signatures for a petition calling for a referendum long before the final shape of the child discipline law was confirmed and the Crimes (Substituted Section 59) Amendment Act was passed in 2007. Despite Police statistics showing the law is working well, the nation now faces a costly and unnecessary referendum on a divisive and confusing question.*

Page 4

## **2. Why the law change was necessary- history of the child discipline law**

*The law had allowed some parents to get away with serious acts of violence against children and had set a standard for acceptability of physical punishment. There was a particular importance for New Zealand, with its very high rates of family violence and violent child deaths in families, in changing the law to remove any defence for assault on a child. It left New Zealand in breach of the United Nations Convention on the Rights of the Child. It created an anomaly where children were devoid of protection from assault despite adults and animals enjoying such protection.*

Page 5

## **3. An overview of the law (including the review scheduled for 2009/ 2010)**

*The law makes 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. In late 2009 or early 2010 a review of the law will have been completed. The review will look at how the law is impacting on families.*

Page 7

## **4. How the law is working- are parents being unnecessarily criminalised?**

*Successive Police reports show that Police are exercising the discretion granted to them in the law to avoid the prosecution of parents if this is not in the public interest. The law is not leading to mass criminalisation of good parents. The cases pursued by Police usually involve serious levels of violence of families where there are prior convictions for family violence. It is **appropriate** that some action is taken where assaults are heavy handed, although not necessarily prosecution. Any suggestion that children who are subjected to heavy handed assaults should not be protected is to suggest that their safety is not a paramount consideration.*

Page 9

## **5. Public awareness and attitudes to the law**

*Research shows there is a significant level of support for the child discipline law, and support for the use of physical discipline appears to be declining over time. Awareness of the law is high but understanding of the law is not and family support organisations report strong uptake of positive parenting literature and courses in the last two years.*

Page 10

## **6. What else needs to be done- child abuse and the law**

*Important steps to reduce child abuse include public education (about the law, about positive parenting and about child development), addressing the attitudes that support abuse, and addressing the social issues that put children at risk.*

Page 12

## **7. Positive Discipline**

*Positive discipline, positive parenting, is the more effective way to guide children to behave well. It avoids the risk of child abuse associated with physical punishments and supports the best outcomes for children. It works well for both children and parents. Demand for positive parenting courses and information is at an all time high.*

Page 14

## **8. Frequently Asked Questions.**

Page 15

**9. Some of the New Zealand organisations that support the law, and contact details for media spokespeople**

*Organisations delivering social services to children and their families support the law and many are available for interviews.*

*Pages 19*

We trust this material will assist you in your reporting of these issues in the months ahead.

Please feel free to contact us if you have any questions. For more information visit:

[www.yesvote.org.nz](http://www.yesvote.org.nz)

Yours sincerely

Hon Deborah Morris-Travers  
Spokesperson for “The YES Vote Coalition”

[Children1st@xtra.co.nz](mailto:Children1st@xtra.co.nz)

0274 544 299

## **1. Why is New Zealand spending \$10m on a referendum on smacking?**

“Should a smack as part of good parental correction be a criminal offence in New Zealand?” This is the question on a postal ballot that will be sent to all registered electors at the end of July to be returned on 21 August 2009. The Citizens Initiated Referendum has come about because ten percent of registered voters signed a petition calling for the referendum. The aim of the supporters of the petition that led to the referendum is for the “No” votes to be in the majority so that politicians can be pressured to revisit the 2007 child discipline law.

The petition question is both misleading and confusing:

- A single smack is very unlikely to lead to criminalisation of a parent under the 2007 law. Good parents are not being criminalised.
- Smacking children is not part of good parental correction.
- The word “good” before “parental correction” makes a value judgment which predetermines the answer. People answering the question may be drawn to answer “no” on the basis that what is “good” cannot be “bad” (i.e criminal).

It should be noted that many of the signatures for the petition that led to the referendum were collected well before the final form of the law was drafted in Parliament and well before those who signed the petition had time to observe how the law was being implemented.

The final form of the new legislation contained a provision (affirmation of Police discretion in cases of inconsequential assault) to reassure parents that Police did not have to prosecute where assaults were very minor. The Police discretion provision makes the petition question redundant.

There has been no government-led campaign to inform the public about the provisions of the 2007 law. Responses to the referendum may be influenced by the lack of information that most people have about the child discipline bill and how it is working.

The referendum will cost the New Zealand public about \$10m. The referendum will not reduce violence in our homes, it will simply create confusion and fear among parents and subject children to once again hearing the nation’s adults debate using force against them.

Non-governmental organisations (NGOs) are determined to ensure the public receive accurate information about the law and will use the referendum as an opportunity for public education about positive parenting. The outcome of the referendum will be non-binding on the government.

**A ‘yes’ vote is a vote for positive parenting.**

**A ‘yes’ vote is a vote to retain a law that is working well.**

**A ‘yes’ vote is a vote to protect children from assault.**

**A ‘yes’ vote is supported by Barnardos, Plunket, Save the Children, Unicef, Te Kahui Mana Ririki and many other respected child-focussed organisations.**

## ***2. Why the law change was necessary – a history of the child discipline law***

There were many reasons why organisations working with children and their families supported the Crimes (Substituted Section 59) Amendment Act 2007.

Among them:

- Section 59 of the Crimes Act 1961 had allowed some parents to get away with serious acts of violence against children.
- New Zealand has unacceptably high rates of child deaths resulting from maltreatment.
- Physical punishment is a demonstrated risk factor in child abuse.
- Hitting children is harmful. Research repeatedly shows physical punishment is linked to poor developmental outcomes and negatively impacts emotional, cognitive and relational skills.
- The law contributes to societal norms. By providing the defence of ‘reasonable force’ Section 59 suggested physical punishment was an expected and accepted part of parenting.
- Consistent laws and public education support parents in the use of positive parenting, which is safer and more effective.
- Research shows many New Zealand children experience harsh physical punishment.
- The old Section 59 discriminated against children by not providing them with the same legal protection from assault as adults and animals.
- The old Section 59 breached international law.

In New Zealand culture, the use of physical discipline of children has its origins largely in Roman law and the absolute power of life and death over children (and slaves and wives) that male heads of households had. It also has origins in some interpretations of Old Testament scriptures.

The debate on physical punishment is sometimes presented by opponents of the law as a conflict between the rights of children and the rights of parents.

Under scrutiny, this argument, like many about human rights, resolves itself into the wish of one group to have unrestricted power in relation to another.

The argument is complicated in the case of children by the fact that legitimate parental authority is essential to children’s good development. This need for the exercise of parental authority, however, is all the more reason for there to be carefully designed rules of conduct which will be followed by most without serious question but which will be enforceable by law when necessary. Children are surely entitled to the basic human rights standard of freedom from physical assault and the threat of assault. This is no more an encroachment on parental rights than any other legitimate limit placed on citizens in preservation of the rights of others.

As early as the 1960s some parents in New Zealand began questioning the value of physical punishment and noticing its negative consequences. Through the 1970s and 1980s lonely voices such as those of the psychologists Jane and James Ritchie and lawyer Robert Ludbrook questioned the effects of physical punishment and pointed out that it breached of children’s rights. In 1993 the first Children’s Commission, Dr Ian Hassall, accelerated the discussion by promoting repeal of section 59 Crimes Act 1961.

The UN Convention on the Rights of the Child is the world’s foremost human rights instrument for children. It has been ratified by all but two of the countries of the World. New Zealand ratified the UN Convention in 1993. It has strong statements of children’s rights and is also equally clear about the right of families to bring up their children according to their traditions. By repealing section 59 and prohibiting physical punishment, New Zealand is now in compliance with the Convention.

The old Section 59 of Crimes Act 1961 provided a statutory defence for adults prosecuted for assaulting a child if the force used in the assault was for the purposes of correction and reasonable in the circumstances. It was regarded as permission to strike children and led to cases of serious assault being acquitted in court.

In 2005 when Sue Bradford's bill to repeal section 59 was drawn from the private members ballot the matter of physical discipline of children became the subject of intense media, public and political debate.

The case for reform included the following arguments:

- The existence of the statutory defence was inconsistent with public education aimed at promoting positive non-violent parenting.
- Positive non-violent discipline works well (see section on Positive Discipline).
- Research shows that there are many negative effects associated with children experiencing physical discipline and children in New Zealand still experience harsh or heavy-handed physical discipline.
- Parents who physically abuse their children often explain their behaviour as discipline. Physical discipline is a known risk factor for abuse (see section on The law and Child Abuse).
- Children were not always well protected in the courts under the old section 59 Crimes Act 1961 statutory defence.

In 2007 a heavily amended version of Sue Bradford's bill became law in New Zealand. It was supported by 113 of 121 members of Parliament. New Zealand became the first English speaking country to introduce legal measures to ban physical punishment of children.

For full information on the history see the book *Unreasonable Force: New Zealand's Journey towards banning corporal punishment of children* (Save the Children NZ).

Visit [www.scnz.org.nz](http://www.scnz.org.nz)

### **3. An overview of the law – including the review scheduled for 2009/ 2010**

The provisions of this law, supported by an overwhelming proportion of politicians in 2007 now largely sit in Section 59 of the Crimes Act.

The purpose of the law was 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.

It repealed the old section 59 statutory defence which read:

*“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.”*

The law repealed that section and introduced other provisions:

- Reassurance that reasonable force could be used to keep children safe and provide normal care.
- A clear statement that the use of force for correction was never justified.
- An affirmation of the fact that Police could use discretion and not prosecute in cases of inconsequential assault.
- That the Chief Executive (of the Ministry of Social Development) must review the effects of the Act and report to the Minister as soon as practical after the act has been in place 2 years.

To view the law visit:

<http://www.legislation.govt.nz/act/public/1961/0043/latest/DLM328291.html>

The initial private members bill to repeal section 59 was designed to achieve straightforward repeal. However, during its passage through Parliament additional sections were added to address the major anxieties that the public and politicians had raised in debate:

- Would adults be prosecuted for using reasonable force in situations where a child was a danger to himself or others (eg grabbing a child about to run onto the road), or where children were being disruptive or in need of care?
- Would inconsequential assaults (for example, a small smack) be prosecuted?
- Would there be any unintended effects of the new law?

Unfortunately there has been no public education campaign to ensure the public understand the law and it is likely its provisions are not well understood. NGOs are distributing information currently.

While attitudes towards the law are changing, some of those opposed to it make unverifiable claims that the law is leading to unnecessary investigations. (see section on “How the law is working”)

Another source of resistance to the new law is the claim that it is an unwarranted breach of parents rights to treat their children as they wish. The law places children on the same basis as adults in regard to assault and increases their protection – this is surely fair.

## *What the law means*

### *1. The new law means parents who assault children no longer have the defence of “reasonable force”.*

It is no longer a defence to a criminal charge of assault on a child to prove that the child’s parent or carer used only reasonable force and that that force was intended to correct the child behaviour. Children can now expect to be treated the same as adults in the eyes of the law if they are the victims of an assault.

### *2. Adults who have to restrain a child are protected.*

Another worry that people had during the debate about physical discipline was that they might get prosecuted if they held or restrained a child to keep them or someone else safe.

The new law says that parents can hold or restrain or pick up children to:

- Keep them safe, for example, from running on the road or touching a hot stove
- Prevent them hurting other people or damaging property
- Remove them from a place where they are being disruptive
- Provide children with care like changing their nappies (even against their will) or to take them to their room or put them to bed. Such restraint has to be reasonable in the circumstances.

### *3. A review is scheduled two years after the law was passed.*

The law also says that Parliament is to review the law as soon as practicable after June 2009 to see how it is working. Some of the things that might be looked at are:

- Have parents been prosecuted in cases where the assault is minor?
- Have more parents been reported to Child, Youth and Family Services?
- Have more parents come to understand that there are better ways to teach children to behave well than hitting and smacking them?
- Are fewer children being hit and smacked or hurt and injured?

### *4. The law sets a standard that is consistent with what we know about helping children behave well and with the goals of child discipline.*

We know from research into children’s behaviour and development that it takes time for children to learn to how to behave in socially acceptable ways. Making acceptable behaviour something a child chooses to do because it is part of who they are rather than something done only out of fear of punishment is one of the goals of raising a child. It is about learning self-discipline. Indeed learning self-discipline extends through adolescence and even into adulthood. There are many things a parent can do to help this process - positive things that help the child feel safe, loved and guided. Smacking and hitting are not part of these things.

### *5. The law sends a message that violence to children is unacceptable.*

Many children are raised in loving non-violent homes. However, some children in New Zealand are treated violently – much of this violence happens in the name of discipline. All children in New Zealand will be better protected when everyone knows that New Zealand is a place where you don’t hit children.



#### **4. How the law is working: are parents being unnecessarily criminalised?**

During the debate about section 59 one of the major objections to the removal of the section 59 Crimes Act 1961 statutory defence was that parents who only occasionally smacked a child lightly would be prosecuted and, if convicted, criminalised. The Police discretion provision was inserted in the legislation late in its passage through parliament to provide reassurance on this matter.

Police completed a initial three month review of how the law was working, followed by six monthly reviews ([www.Police.govt.nz/resources/2008/section-59-activity-review/table-stats-2.html](http://www.Police.govt.nz/resources/2008/section-59-activity-review/table-stats-2.html)). In their regular reports Police monitor the use of their discretion not to prosecute. In reporting on how Police are using the law, they take into account a variety of factors including the degree of force used, the length of the assault, and other issues. The cases they report on do not include cases of significant injury. These were never “legal”.

Key points are that:

- New Zealand’s child discipline law is working well. The new law is not leading to mass – or event scattered - criminalisation of good parents. Parents are not being prosecuted for minor assaults.
- The law increases children’s protection from assault. It is appropriate that some action is taken where assaults are heavy handed – although not necessarily prosecution.
- To suggest that children who are subjected to heavy handed assaults should not be protected is to suggest that their safety is not a paramount consideration.
- The law supports positive parenting.

Claims have been made that the law is resulting in unwarranted investigations into family lives. The cases used to support these claims cannot be verified because Police and CYF information about them is confidential.

## 5. Public awareness and attitudes to the law

In 2008 the Children's Commissioner, Dr Cindy Kiro, thought it important to establish a benchmark for monitoring knowledge of the child discipline law, attitudes to the law and attitudes about the use of physical punishment. She commissioned the research company UMR to include relevant questions in an omnibus survey.

Key findings included:

- 43 percent of respondents in the independent omnibus survey supported the law while about one-third opposed it. The remainder was neutral.
- 37 percent clearly oppose the use of physical discipline. Support for the use of physical discipline appears to be declining over time.
- Awareness of the law change is high, although understanding of what the law means, is lower.
- There are relatively high levels of support, at least in principle, for the concept that children should be entitled to the same protection from assault as adults.

Is use of physical discipline declining? It is more difficult to accurately assess whether use of physical discipline is declining over time because surveys have not asked the same question. Results from recent relevant surveys include:

- From the **2007 youth health survey** - participants were asked whether they had seen an adult hitting or physically hurting a child in their home (other than themselves) in the last 12 months. Approximately 17% of students had witnessed adults hitting or physically hurting a child in their home and many categorised the assault as severe.

(See [www.youth2000.ac.nz/publications/reports-1142.htm](http://www.youth2000.ac.nz/publications/reports-1142.htm), and click on **Youth 07: The Health and Well Being of Secondary Students in New Zealand: initial Findings**).

- From the 2006/2007 New Zealand Health Survey - primary caregivers were asked about their responses to child misbehaviour during the four weeks preceding a face to face interview with a researcher. One in ten children from birth to age 14 were reported as having experienced physical punishment in the previous four weeks. The researchers warned that the results were likely to under represent use of physical discipline because only one caregiver in each household was questioned, for example.

The Children's Issues Centre at Otago University completed research in August 2008<sup>1</sup> which canvassed the views of parents about the ways in which they discipline their children and their views of the child discipline law. The research showed that the majority (46%) of parents were in favour of the new legislation with 27% being against and an equal number undecided (27%).

The research showed knowledge of the law was least accurate among those who haven't decided whether or not they support the law, and those who are opposed to it (see table below).

This will undoubtedly impact on the way people respond to the referendum question and will reinforce the need to await the formal review of the law in order to gain an accurate view of how the law is working.

---

<sup>1</sup> Smith, A. & Taylor, N. (2008) Repealing a Defence for the physical punishment of children: Changing the Law in New Zealand in *Children's Issues, Journal of the Children's Issues Centre, Vol. 12, No. 2, 2008*.

Knowledge of the legislative changes

	<b>Pro repeal</b>	<b>Anti repeal</b>	<b>Undecided</b>
<b>Accurate</b>	58%	30%	19%
<b>Inaccurate</b>	42%	70%	81%

## **6. The law and child abuse**

While no one would claim that a light smack is a form of child abuse, the boundary where the degree of physical assault becomes abusive and damaging to a child's health and development cannot be defined. It depends on contextual factors like the warmth or lack of it in the child's household and the extent to which there is other violence in the home.

But it is clear that the existence of physical punishment in a home is a risk factor for child abuse – research indicates that children in homes where physical discipline is used are more at risk of abuse than those where it is not. Factors such as escalating levels of force in situations where mild smacking does not appear to work, growing lack of empathy for a child's pain over time and unintended injury arising from the assault play a part.

Claims that the new law has not led to a reduction in child abuse misrepresent one of the aims of people supporting law reform: to contribute to a change in the social norm about hitting children and thus reduce abuse over time. This will take generations.

Using child deaths, particularly individual cases, to say that law reform is not working is not only distasteful but also misleading because child deaths represent the extreme end of the child abuse spectrum, and usually involve complex factors like poverty, drug and alcohol abuse, and intergenerational violence. A law reform alone cannot be expected to impact on such situations.

Claims that the law has led to a large increase in referrals to the child protection service (CYF) are misleading. There was a significant increase in notifications to Child Youth and Family (CYF) in the year 2007/08. In their Briefing to the Incoming Minister CYF attribute this to an increase in notifications by the Police of children witnessing violence between their parents. See page 18, [www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/corporate/bims/cyf-bim-2008.doc](http://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/corporate/bims/cyf-bim-2008.doc)

Throughout the Western world child protection services have been experiencing an increase in notifications over the last decade. This is thought to arise from increased awareness of abuse and willingness to make referrals.

Should there indeed be an increase in notifications of children being assaulted this should be regarded as a positive thing in that children and families deserve help and support where discipline is inappropriate and heavy handed. The principles of the Children, Young People and their Families Act 1989 are such that help and support are regarded as the appropriate intervention unless the child is unsafe or a significant assault has occurred.

Children are let down by a system that does not respond to concerns about their safety.

### ***What else needs to be done to address child abuse?***

#### ***Public education***

Community organisations were keen to see a public education campaign mounted on the new law after it was enacted. The purpose would have been to ensure that as many parents as possible had a clear idea of what the law meant. The need for public education about the law, and about positive parenting, remains.

Parenting education and education in schools should convey information about the different stages of development and what to expect from children at each stage. This should encourage reflection on parents and students own attitudes and beliefs regarding what - and how - they want to role model to their children.

### ***Addressing the attitudes and themes that support abusive behaviour***

Throughout the 2005-2007 campaign on Section 59, we saw in public debate some of the themes that actively support abusive behaviours towards children and create barriers to the prevention of child abuse. These themes are:

- A view of children as the property of parents.
- Parents having rights over children, and
- A prevalence of attitudes that actively support the rights of parents and nominated others to hit or assault children as part of a regime of physical punishment.<sup>2</sup>

As part of the Campaign for Action on Family Violence, a literature review<sup>3</sup> has shown there are six things needed to reduce the chances of child maltreatment (physical and psychological):

- Establishing a positive ideology of children.
- Addressing beliefs about the physical punishment of children.
- Reducing adult partner violence.
- Addressing alcohol and drug abuse.
- Creating support systems that parents are willing and able to engage with.
- Providing parent education and skills.

Changing Section 59 is one step in the process of addressing beliefs about physical punishment of children.

### ***Addressing other social issues***

In addition to dealing with the beliefs and attitudes that feed into maltreatment, there is a need to address the stressors that may cause parents to lose patience, and be less resourceful than they need to be.

These include poverty, social isolation, unemployment, and overcrowded housing. Many of the organisations supporting the Crimes (Substituted Section 59) Amendment Act 2007 are also working on these issues.

In addition, the mental health of parents/ caregivers is an important part of the picture and it is vital that post-natal depression and other mental health disorders are diagnosed and treated in a timely way.

---

<sup>2</sup> Public Health Group, Ministry of Health, *Child Abuse Prevention: The health sector's contribution to the Strengthening Families Initiative*, Public Health Issues 1995-96 series, Wellington, 1996, p16

<sup>3</sup> Rhonda Pritchard and Jennifer Martin, *Preventing the Physical and Psychological Maltreatment of Children*, Ministry of Social Development, Wellington, March 2008

## **7. Positive discipline**

Positive discipline (also known as positive parenting) is about guiding children's behavior in ways that enhance children's self esteem, model desirable behaviors and encourage the development of self-regulation of behavior and responsibility (rather than dependence on external threat to achieve conformity). It does not mean that children do not have limits set on their behaviour or that they are not expected to conform with rules.

Physical punishment is not a part of positive discipline – it is a painful form of punishment that models a violent act, is often administered in anger and retribution rather than as part of guiding a child's behaviour. Children often don't understand what they are being punished for and what is expected of them. It detracts from the development of a strong bond between a parents and child or to the child's sense of safety and security so essential to their healthy development.

Effective discipline is underpinned by:

- Warmth and parental involvement.
- Clear communication of expectations.
- Giving children reasons.
- Clear limits.
- Being consistent.
- Protecting children from situations that will lead to difficult behaviour occurring.

These ideas underpin the work of the Government initiative SKIP (Strategies with Kids: Information for Parents). SKIP is part of the work of the Community and Family Service division of the Ministry of Social Development. It works in partnership with major community organisations, has developed informational pamphlets and other resources and provides funding for locally led positive parenting initiatives many of which have been extremely successful in engaging local parents and their communities.

Before Section 59 of the Crimes Act 1961 was amended in 2007, the statutory defence contained in it was regarded as implicit permission and therefore endorsement of the use of physical discipline. Its existence was inconsistent with what is now known to be best for children.

Two of the most significant reasons for maintaining the present law as it stands are to:

- Set a standard in law that is consistent with positive and effective discipline.
- To support government and community efforts to promote positive and effective parenting.

Children are influenced to behave well when their parents behave well around them. Children copy their parents' behaviour. Children also like to please their parents.

Smacking children sometimes works to stop a particular behaviour in the short term but it does not contribute to a child developing self-discipline. When we discipline children we are often trying to get the child to behave well in the short term (like to stop them kicking the cat) and of course that matters. But we should not forget that our ultimate goal is long-term. We want children to grow up to be caring, confident and respectful people (like to avoid hurting animals because they know it is wrong and they care about animals).

## **8. Yes Vote Referendum – Frequently Asked Questions**

### *1. Why is a referendum being held on this issue?*

The referendum is happening because a group of people opposed to the current laws protecting children from assault and physical punishment organised a nationwide petition last year which gathered more than 300,000 signatures. This was enough to force a referendum on the issue.

### *2. Why is this particular question being asked?*

The question, “Should a smack as part of good parental correction be a criminal offence in New Zealand?” was the question proposed by the petition. Clearly this is designed to ensure that there is an overwhelming “No” vote rather than getting any real understanding of what New Zealanders think about this issue. The proponents of the referendum hope that this will influence the Government to reverse the law change protecting children. The law, the Crimes (Substituted Section 59) Amendment Act was passed by an overwhelming majority of votes in Parliament in 2007. The law is working well.

The referendum question is a misleading and irrelevant question. \$10m will be spent on the referendum at a time when the nation can least afford it. It is a pity that such a large sum is being spent in this way instead of providing practical support to parents to enable them to understand the law and provide positive parenting.

### *3. Why are community organisations supporting a Yes vote in the referendum?*

Despite the misleading question, a YES vote will help keep the current law protecting children safe.

A coalition of the leading agencies working with children and families, called The YES Vote strongly believes that children need, and should be given, the same protection from assault and abuse as adults.

New Zealand is a signatory to the United Nations Convention on the Rights of the Child (UNCROC) which states that:

- all children have the right to protection from discrimination on any grounds
- the best interests of the child should be the primary consideration in all matters affecting the child
- children have the rights to life, survival and development
- All children have the right to an opinion and for that opinion to be heard in all contexts.

Under the previous law New Zealand was not fulfilling its international obligation because the law discriminated against children by not giving them equal protection against assault. It resulted in parents who were charged with seriously assaulting children being acquitted.

### *4. Is the referendum binding on the government?*

No, the referendum is not binding. The law will be subject to a thorough review by the Ministry of Social Development and it is likely the government will pay particular attention to the factual information contained in that review.

### *5. Why was the change necessary in the first place? Most parents don't want to hit their children and only use hitting or smacking as a last resort.*

Research shows that there are many negative effects associated with children experiencing physical discipline and children in New Zealand still experience harsh or heavy-handed physical discipline. Parents who physically abuse their children often explain their behaviour as discipline. Physical discipline is a known risk factor for abuse. The law change was needed to grant children the same legal protections as other citizens and to make the law consistent with government and community efforts to promote positive, non-violent, parenting.

*6. Doesn't the law mean that good parents who give their children a light smack will end up as criminals?*

No, the evidence is that the law is not leading to the criminalisation of good parents.

During the debate about the law change one of the major objections to the removal of the section 59 Crimes Act 1961 statutory defence was that parents who only occasionally smacked a child lightly would be prosecuted and, if convicted, criminalised. The Police discretion provision was inserted in the legislation late in its passage through Parliament to provide reassurance on this matter.

A review of six-monthly Police reports indicates that the number of complaints about smacking is very small. There appears to have been some increase in complaints about use of more heavy handed force and some prosecutions. It is appropriate that some action is taken where assaults are heavy handed – although not necessarily prosecution. To suggest that children who are subjected to heavy handed assaults should not be protected is to suggest that their safety is not a paramount consideration.

Claims have been made that the law is resulting in unwarranted investigations into family lives. The cases used to support these claims cannot be verified because Police and CYF information about them is confidential.

*7. Doesn't this cut across parents' rights to bring their children up in the way they see fit?*

No, the only thing that has changed is that children are now protected from physical assault in the same way that adults are. It has never been legal to hit a child but previously the law stated that if a person was charged with assault on a child they could use the Section 59 "reasonable force" defence. This has been used to try to justify extreme forms of physical punishment such as the use of a horse whip and other instruments. Children have the same rights as adults to protection from physical violence and assault.

*8. Shouldn't parents just be left to get on with bringing up their own children in the way that best suits them, rather than having nanny-state interference?*

The role of the government is to enact laws to protect people, and in particular the most vulnerable. Children are amongst the most vulnerable people in any society.

The law identifies a range of situations in which parents may need to use force such as restraining a child in a situation of danger, or when property or another person is at risk. The law acknowledges the need for parents to get on with the job of normal parenting but is explicit that parents should not use force for the purposes of correction.

*9. What was the point in changing the law because parents who abuse children will not stop just because of this legislation?*

Along with laws protecting children, community organisations are supportive of many initiatives that help promote positive parenting. There is a need for more education about positive parenting and how to bring up children in happy, secure, safe and positive environments. Positive non-violent discipline works well for both parents and children. It is more effective in teaching children to behave well and it improves the outcomes for children.

*10. It won't stop the real abuse that's out there so shouldn't we instead be focussed on real child abusers and not good parents trying to do a good job?*

Unfortunately, there is too much violence in many sectors of New Zealand society and in many of New Zealand's homes. Having laws preventing physical discipline on children, along with a package of other measures such as educating parents, will all help towards reducing family violence. Using physical punishment is a known risk factor for abuse and we need to work to change attitudes and behaviours over time.



*11. Doesn't the law create confusion given that Police can use their discretion about whether or not to prosecute?*

Police discretion on whether to prosecute was inserted in the legislation to help alleviate concerns that parents who lightly hit their child could be criminalised. If Police deem the assault to be “inconsequential” then they can use their discretion about whether or not to charge. Reports show that this is working well. Good parents are not being charged with assault over inconsequential assault. There are a many other laws that Police can use discretion about whether to charge and no public concern over potential confusion.

*12. Won't children grow up spoilt and badly behaved, as the saying goes “spare the rod and spoil the child”?*

All the evidence shows that children who are brought up in secure, non-violent and positive environments are better adjusted, happier and better behaved. They have a much better chance of growing into healthy happy adults.

‘Spare the rod and spoil the child’ is the most quoted biblical endorsement for physical punishment. Yet these words do not appear in any Bible. They are from an anti-Puritan poem by Samuel Butler<sup>4</sup>. The poem is about sex, not child discipline.

*13. Is it true that most New Zealanders don't support the legislation, and doesn't this mean the law needs to be revised?*

Although many New Zealanders do not fully understand the law, because there has been no government-funded campaign to educate people, there is growing support for the law.

In 2008 the Children’s Commissioner, Dr Cindy Kiro, thought it important to establish a benchmark for monitoring knowledge of the child discipline law, attitudes to the law and attitudes about the use of physical punishment. She commissioned the research company UMR to include relevant questions in an omnibus survey.

Key findings included:

- 43 percent of respondents in the independent omnibus survey. supported the law while about one-third opposed it. The remainder was neutral.
- 37 percent clearly oppose the use of physical discipline. Support for the use of physical discipline appears to be declining over time.
- Awareness of the law change is high, although understanding of what the law means, is lower.
- There are relatively high levels of support, at least in principle, for the concept that children should be entitled to the same protection from assault as adults.

When the law was going through parliament many New Zealanders were concerned about the law change because they believed that good parents would be criminalised. That has not happened. The law is working well. As more people understand the law and modern parenting, there is growing support for non-violent methods of raising children. This legislation has given children the same protection from assault as adults. Under the previous law they had less protection than adults and animals and therefore were discriminated against.

The law sets a standard that children should have the same protection from assault as other New Zealanders. In other countries that have changed there laws it has taken time for attitudes and behaviours to catch up with the norm set by the law.

---

<sup>4</sup> The poem, called Hudibras, was written between 1663 and 1678. According to theological researcher Robert Gillogly, it ‘was an anti-Puritan tract, portraying the Puritans as obnoxious nuisances whose hypocrisy and stupidity needed to be exposed.’

## **9. Spokespeople available to speak with media about the referendum and the child discipline law**

### **For further information contact:**

**Deborah Morris-Travers** Phone: 0274 544 299  
Yes Vote Coalition Spokesperson  
Email: [children1st@xtra.co.nz](mailto:children1st@xtra.co.nz)  
[www.yesvote.org.nz](http://www.yesvote.org.nz)

**Murray Edridge** Phone: 04 385 7560  
Chief Executive 027 485 1896  
Barnardos New Zealand  
Email: [murray.edridge@barnardos.org.nz](mailto:murray.edridge@barnardos.org.nz)  
[www.barnardos.org.nz](http://www.barnardos.org.nz)

**Beth Wood** Phone: 027 443 7370  
EPOCH NZ  
Email: [bethwood@xtra.co.nz](mailto:bethwood@xtra.co.nz)  
[www.epochnz.org.nz/](http://www.epochnz.org.nz/)

**Brian Gardner** Phone: 04 802 5402 or 0274 529 556  
National Network of Stopping Violence Services  
Email: [brian.gardner@nnsvs.org.nz](mailto:brian.gardner@nnsvs.org.nz)  
[www.nnsvs.org.nz](http://www.nnsvs.org.nz)

**Dr Ian Hassall** Phone: (09) 921 9999 ext 8466 or 027 588 8639  
Senior Lecturer, Institute of Public Policy, Auckland University of Technology  
Email: [ian.hassall@aut.ac.nz](mailto:ian.hassall@aut.ac.nz)

**Rev'd Dr Hone Kaa** Phone: 021 245 9140  
Te Kahui Mana Ririki  
Email: [hone@whataamo.co.nz](mailto:hone@whataamo.co.nz)

**Tau Huirama** Phone: (04) 802 0891 or 027 293 7437  
Chief Executive, Strategic Relationships, Jigsaw  
Email: [tau@jigsaw.org.nz](mailto:tau@jigsaw.org.nz)  
[www.jigsaw.org.nz](http://www.jigsaw.org.nz)

**Dr Dawn Elder** Phone: 0274-491836  
Paediatrician, Paediatric Society of New Zealand,  
Email: [dawn.elder@otago.ac.nz](mailto:dawn.elder@otago.ac.nz)  
[www.paediatrics.org.nz](http://www.paediatrics.org.nz)

**Sophi Nauman** Phone: (04) 474 1572 or 027 2407926  
Marketing and Communications Manager, Plunket,  
Email: [sophi.nauman@plunket.org.nz](mailto:sophi.nauman@plunket.org.nz)  
[www.plunket.org.nz](http://www.plunket.org.nz)

**Phil Abraham** Phone: (04) 3856847 or 027 2333968  
Acting Executive Director, Save the Children NZ,  
Email: [phil.abraham@savethechildren.org.nz](mailto:phil.abraham@savethechildren.org.nz)  
[www.savethechildren.org.nz](http://www.savethechildren.org.nz)

**Barbara Lambourn** Phone: (04) 496 9612 or 029 9700853  
Advocacy Manager, Unicef New Zealand,  
Email: [barbara@unicef.org.nz](mailto:barbara@unicef.org.nz)

**Dennis McKinlay** Phone: (04) 496 9610 or 021 396 966  
Executive Director, Unicef New Zealand  
Email: [dennis@unicef.org.nz](mailto:dennis@unicef.org.nz)  
[www.unicef.org.nz](http://www.unicef.org.nz)

**Elaine Dyer** Phone: (09) 8374849 or (09) 416 8774 (a/h)  
Project Manager Violence Free Waitakere, Promoting Great Parenting,  
Email: [elainedyer@clear.net.nz](mailto:elainedyer@clear.net.nz)

**Heather Henare** Phone: (04) 802 5078 or 0274 490 885  
Chief Executive, National Collective of Independent Women's Refuge  
Email: [heather@refuge.co.nz](mailto:heather@refuge.co.nz)  
[www.womensrefuge.org.nz](http://www.womensrefuge.org.nz)