

**Report to:**  
**Prime Minister**  
**Minister of Police**  
**Minister for Social Development and Employment**

**Review of New Zealand Police and Child, Youth and  
Family Policies and Procedures relating to the Crimes  
(Substituted Section 59) Amendment Act**

Howard Broad, Commissioner of Police, New Zealand Police  
Peter Hughes, Chief Executive, Ministry of Social Development  
Nigel Latta, Clinical Psychologist

1 December 2009

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## **Executive summary**

We were directed by the Government to review New Zealand Police and Child, Youth and Family policies and procedures, including the referral process between the two agencies, in order to identify any changes that are necessary or desirable in the interest of ensuring that:

- good parents are treated as Parliament intended under the Crimes (Substituted Section 59) Amendment Act 2007 (the Section 59 Amendment Act)
- provisions of the law (both criminal and under the Children, Young Persons, and Their Families Act 1989) are applied to those who abuse children.

A key element of the review was the work carried out by Nigel Latta, who was appointed as the independent member of the review group. Mr Latta examined a number of cases, including ones where it was reported that family members were inappropriately investigated or prosecuted as a result of the Section 59 Amendment Act. He also spoke to New Zealand Police and Child, Youth and Family management and staff about applying section 59 of the Crimes Act (section 59) and observed frontline staff dealing with allegations of family violence and child abuse.

## **Findings**

We have reviewed the two agencies' policies and procedures and found that they provide effective guidelines for ensuring good parents are treated as Parliament intended. In his review of cases, Mr Latta found that the New Zealand Police and Child, Youth and Family responded appropriately and proportionately to the child safety concerns that were raised.

With regard to the second aspect of the review, we note that police officers and Child, Youth and Family social workers are legally required to apply the law to those who abuse children, and that this is clear in both organisations' policies and procedures.

We do believe there is more that can and should be done to assure and demonstrate to parents that they will not be criminalised or unduly investigated for lightly smacking their children. We have identified three main areas for improvement.

## **Recommendations**

### *Greater transparency*

Parents are understandably anxious when they have to deal with the New Zealand Police or Child, Youth and Family and may not understand what is happening or what their rights are. We are recommending that police officers and social workers be required to provide families with specific information on what to expect, what their rights are and what they can do if they want to question what is happening. We are also recommending that Child, Youth and Family publish its practice guidance to social workers, including its guidance for social workers dealing with reports where smacking is noted.

### *Better support for parents*

When parents have questions or concerns about how they are being treated by the New Zealand Police or Child, Youth and Family they should be able to get these dealt with quickly. We are recommending that a new parent support helpline be established, within Child, Youth and Family, so that issues are identified earlier and problems dealt with quicker than currently happens. This will provide parents with access to information and

resources that may help them to better understand what is happening. Families will be able to discuss their concerns with, and get information from, an experienced worker not assigned to their case.

#### *Improved monitoring*

More specific information on the application of section 59 should be collected to provide a clearer picture of how the law is operating in practice. We are recommending that the New Zealand Police and Child, Youth and Family make changes to the data they collect to allow for more informed public scrutiny of their actions.

### **Responding to concerns about a child**

As a society, we look to police officers and Child, Youth and Family social workers to take quick and decisive action when concerns are raised about the safety of children and young people. We expect this to happen even when the information provided is incomplete or, at least initially, unverified. Until the facts can be checked, we rely on these agencies of the state to check to make sure those children and young people are safe. At the same time, we expect responses by state agencies to be appropriate and proportionate.

These views underpin the relevant legislation and New Zealand Police and Child, Youth and Family policies and procedures.

In cases of alleged or suspected abuse or assault:

- the primary function of the New Zealand Police is to investigate whether an offence has occurred and, where appropriate, to prosecute offenders
- the primary function of Child, Youth and Family is to assess the needs of children and young people and to make sure they are safe.

Under the Children, Young Persons, and Their Families Act 1989 (the CYPF Act), Child, Youth and Family is the agency with primary responsibility for dealing with child abuse and neglect. Police officers also have similar duties under the CYPF Act, in addition to their responsibility for enforcing criminal law. The CYPF Act places a duty on police officers and social workers to investigate reports that a child or young person has been, or is likely to be, harmed, ill-treated, abused or neglected. The CYPF Act also emphasises that responses should be proportionate. One of the CYPF Act's guiding principles is that any intervention into a family's life should be the minimum necessary to ensure a child's safety and protection. The policies and procedures that guide police officers' and social workers' responses are clear that they have discretion in how they respond to allegations and reports that are made.

The Section 59 Amendment Act did not alter the threshold for agencies taking action in response to reports of suspected child abuse, harm or neglect under the CYPF Act. One of the consistent messages from police officers and social workers, spoken to as part of the review, was that the change in the law did not alter the way they thought about or responded to reports of concerns about child safety and wellbeing. Frontline New Zealand Police and Child, Youth and Family staff said that they had not been asked to deal with smacking allegations differently as a result of the Section 59 Amendment Act.

## Recommendations

### *Greater transparency*

Action	By when
<b>We recommend that the New Zealand Police:</b>	
1. Requires (where practicable) police officers attending Family Violence/Child Assault events to inform parties about: <ul style="list-style-type: none"> <li>• the legal basis for the action being taken</li> <li>• their legal rights</li> <li>• the process for complaints</li> <li>• what they can expect to happen and an indication of when things should happen</li> <li>• the opportunities available to them and their families to address issues that have been identified, eg through the family group conference process.</li> </ul>	1 April 2010
2. Develops a pamphlet containing key information to be available for distribution by police officers at family violence events.	
<b>We recommend that Child, Youth and Family:</b>	
3. Publishes guidelines for social workers dealing with child abuse reports that involve smacking.	Immediately
4. Ensures all Child, Youth and Family social workers receive a briefing on these guidelines.	16 December 2009
5. Provides public access to its online Practice Centre, which details the policies and procedures that guide social workers' responses when a concern has been raised about the safety of a child.	1 April 2010
6. Requires social workers to inform parents about: <ul style="list-style-type: none"> <li>• the legal basis for the actions being taken</li> <li>• their legal rights</li> <li>• what they can expect to happen and an indication of when things should happen</li> <li>• the opportunities available to them and their families to address issues that have been identified, eg through the family group conference process</li> <li>• who they can contact if they have questions or concerns about what is happening, eg contact details for the case worker, new parent support helpline and complaints process.</li> </ul>	1 April 2010
7. Develops a pamphlet containing key information to be available for distribution by social workers.	1 April 2010
8. Provides training to social workers in implementing the new requirements.	1 April 2010

### ***Better support for parents***

<b>Action</b>	<b>By when</b>
<b>We recommend that Child, Youth and Family:</b>	
9. Puts in place a new parent support helpline to ensure parents who have questions or concerns about the actions being taken by police officers or Child, Youth and Family social workers: <ul style="list-style-type: none"><li>• have access to information and advice on what is happening, why it is happening and what to expect</li><li>• can raise concerns about what is happening to them</li><li>• can get help to resolve problems where a legitimate issue has been identified with the process.</li></ul>	1 April 2010
<b>We recommend that the New Zealand Police:</b>	
10. Puts in place District capability to respond to calls for information regarding specific cases (from the parent support helpline), clarifying process and dealing with victim enquiries.	1 April 2010

### ***Improved monitoring***

<b>Action</b>	<b>By when</b>
<b>We recommend that the New Zealand Police:</b>	
11. Continues to report on a six-monthly basis and make the reports publicly available. Noting that future Police reviews will include information identifying cases where the parent says that the force used was reasonable.	February 2010
<b>We recommend that Child, Youth and Family:</b>	
12. Collects data on cases where smacking is cited as the primary reason, or as one of the reasons, for the report of concern about a child's safety or wellbeing.	1 April 2010
13. Reports annually on its application of section 59 of the Crimes Act in the Ministry of Social Development's Annual Report.	From 2010

## **Purpose of the Review**

The Government does not want to see good parents criminalised for a light smack and does not believe the Crimes (Substituted Section 59) Amendment Act 2007 intends for this to occur.

Following the Citizens Initiated Referendum on the question “Should a smack as part of good parental correction be a criminal offence in New Zealand?”, Cabinet agreed to a number of measures to give parents comfort that they will not be criminalised for lightly smacking their children.

One of these measures was a review of New Zealand Police and Child, Youth and Family policies and procedures. This report presents the findings and recommendations of that review.

The review has been carried out by:

- Howard Broad, Commissioner of Police, New Zealand Police
- Peter Hughes, Chief Executive, Ministry of Social Development
- Nigel Latta, Clinical Psychologist.

Mr Latta was appointed to assist with the review as an independent person of standing.

### **Terms of reference**

“To review New Zealand Police and Child, Youth and Family policies and procedures, including the referral process between the two agencies, in order to identify any changes that are necessary or desirable in the interest of ensuring that:

1. good parents are treated as Parliament intended under the Crimes (Substituted Section 59) Amendment Act 2007
2. provisions of the law (both criminal and under the Children, Young Persons, and Their Families Act 1989) are applied to those who abuse children.

To consider any other matters which, in the reviewers’ opinion, will assist in ensuring that parents are treated as Parliament intended under the Crimes (Substituted Section 59) Amendment Act 2007.

To make recommendations concerning these matters.”

### **Timing**

“The reviewers will provide a report and make recommendations to the Prime Minister and Ministers of Police and Social Development and Employment by 1 December 2009.”

The terms of reference are attached (Appendix 1).

## **Review process**

Three main lines of enquiry were used to carry out the review:

1. New Zealand Police and Child, Youth and Family internal policies and procedures were reviewed to ensure they are in line with Parliament's intent and the Government's position.
2. Nigel Latta interviewed New Zealand Police and Child, Youth and Family staff and observed frontline staff dealing with allegations of family violence and child abuse.
3. Nigel Latta reviewed the details of a number of cases where it was reported that family members were inappropriately investigated or prosecuted as a result of the Section 59 Amendment Act. This was based on information provided to Mr Latta by Family First New Zealand. These cases were considered as part of the review on the understanding that Family First New Zealand had confirmed that the families were happy for Mr Latta to look into their cases. In total, the New Zealand Police and Child, Youth and Family were able to identify 12 cases from the information provided.

Appendix 2 provides more information on the review process.

## **Statutory review**

This work has been undertaken with reference to the findings of the statutory review of the effects of the Section 59 Amendment Act, which was carried out by the Chief Executive of the Ministry of Social Development, pursuant to section 7(2) of the Amendment Act. The Chief Executive was required, under the Section 59 Amendment Act, to review the available data, and any trends indicated by that data, about the effects of the Act.

The Chief Executive was not able to find evidence to show that parents are being subject to unnecessary state intervention for occasionally lightly smacking their children or of any other unintended consequences of the Section 59 Amendment Act.

We note that the statutory review did raise a question about whether more could be done to improve the data to allow for the future review of any negative or unintended consequences for ordinary New Zealand families of the Section 59 Amendment Act. We believe that the recommendations we have made will go some way to addressing the issue identified in the Chief Executive's report.



## **Findings**

We have reviewed New Zealand Police and Child, Youth and Family policies and procedures and found that they provide effective guidelines for ensuring good parents are treated as Parliament intended. In the next section of this report we describe in more detail the relevant parts of New Zealand Police and Child, Youth and Family policies and procedures.

As the subject of this review is section 59, we have focused our work on reviewing New Zealand Police and Child, Youth and Family policies and procedures as they relate to the legislative changes made in 2007. With regard to the second aspect of the review, we note that police officers and Child, Youth and Family social workers are legally required to apply the law to those who abuse children. This requirement is clear in both organisations' policies and procedures.

### **Review of cases**

Mr Latta, in his review of the cases referred to him by Family First New Zealand, found that the agencies responded appropriately and proportionately to the assault or safety concerns that were raised with them. In all cases where New Zealand Police or Child, Youth and Family were involved, the information initially reported indicated that an offence may have been committed or that a children or young person may have been harmed, ill-treated or abused.

The sorts of allegations that police officers and social workers were responding to included:

- reports of children being hit about the face, hit with an object, or hit multiple times
- allegations of assaults on other people, as well as a child
- indications/reports of previous violence or abuse in the family
- allegations from teenagers that they had been assaulted.

In some cases, Child, Youth and Family arranged for the children concerned to stay elsewhere while the allegations and safety issues were looked at. In some cases, family group conferences were held and plans were agreed with families to provide for the ongoing care and protection of their children. Outcomes of the cases reviewed also included parents being offered and accepting support to deal with difficult behaviour, and referral to community services or family counselling. Cases where no ongoing safety issues were identified were closed with no action taken by Child, Youth and Family. Some of the cases resulted in prosecutions by the New Zealand Police.

Appendix 3 provides summaries of the cases reviewed, including information from New Zealand Police and Child, Youth and Family files. We have not included some information to protect the identity of individuals and to maintain the confidentiality of sensitive information disclosed by people involved in the cases. The information withheld does not materially affect the facts of these cases, as set out in Appendix 3.

Notwithstanding that Mr Latta was not able to find evidence of families being engaged by the New Zealand Police or Child, Youth and Family inappropriately, we are recommending improvements to the information that is available to parents and families about the processes of these organisations. We believe more can be done to assure and demonstrate to parents that they will not be criminalised or unduly investigated for lightly smacking their children.

## **Greater transparency**

Parents are understandably anxious when they have to deal with the New Zealand Police or Child, Youth and Family. Getting a call or a visit from a police officer or social worker can be stressful and emotional for parents. More information should be available on what parents can expect if a concern is raised about the safety of their children.

The cases we looked at show that parents, especially those who believe they have done nothing wrong, want to know what they can do to get on with their lives, without the involvement of police officers and social workers.

Information should be readily available on what parents can expect to happen if a police officer or social worker turns up asking questions about their children, or their parenting. We believe it is important that parents are provided with information that clearly sets out:

- what their rights are
- what is happening and why
- when things will happen
- what they can do and where they can get support.

The New Zealand Police has published its practice guide for police officers applying section 59. Child, Youth and Family's position on and approach to applying section 59 should also be clear to the public. The fact that Child, Youth and Family does not routinely investigate allegations of light smacking if there are no other aggravating factors may not be widely understood or known. The review of cases suggests that this means parents will not know what to expect when social workers are responding to concerns that may involve smacking.

We also believe that the publication of all Child, Youth and Family's policies and procedures would help to strengthen the organisation's accountability to the public and provide parents with better information on what actions are appropriate and reasonable given the concerns that have been raised.

While this information may not completely alleviate the distress experienced by parents, it may help them to understand the reasons for New Zealand Police and Child, Youth and Family actions and what they can do and where they can go to get help.

## **Better support for parents**

We have identified that there is a gap in how the New Zealand Police and Child, Youth and Family respond to concerns parents may have about how they are being treated. What is missing is something that gives parents access to information and resources that help them to understand what is happening and provides an early opportunity to get any problems addressed. Issues could be identified earlier and problems dealt with quicker than currently happens.

Given the highly emotional and potentially traumatic nature of situations where the state intervenes in families' lives, it is important that police officers and social workers act with respect. Police officers and Child, Youth and Family social workers are acting with the power of the state behind them and always need to be respectful of, and responsive to, the rights and needs of parents. If someone is concerned that this is not happening, their current options are to raise it with the police officers or social workers concerned, ask to speak to their supervisors or to make a formal complaint.

We are recommending that, in addition to current complaint mechanisms, a new phone helpline be established, within Child, Youth and Family, to ensure better information and support is provided to parents when they are dealing with police officers and Child, Youth and Family. This will provide parents with access to information and resources that may help them to better understand what is happening. Families will be able to discuss their concerns with, and get information from, an experienced worker not assigned to their case.

We want to try and ensure that parents:

- do not feel powerless or inappropriately subject to actions by the New Zealand Police or Child, Youth and Family
- have an early opportunity to question what is happening to them and, where necessary, get any problems addressed.

Appendix 4 contains information about New Zealand Police and Child, Youth and Family complaint processes.

### **Improved monitoring**

Improvements can be made to how the application of section 59 is monitored. Improved monitoring will provide better information on how the law is operating in practice and allow for more informed public scrutiny of the actions of the New Zealand Police and Child, Youth and Family.

The New Zealand Police has undertaken to carry out six monthly monitoring reviews of the impact that section 59 has on Police activity from its enactment in 2007. Initially, two years of monitoring was to be completed, however, the Prime Minister invited the Commissioner of Police to continue to monitor New Zealand Police activity for a further three years. The Commissioner has accepted this invitation and Police will carry out six monthly monitoring to June 2012 and include additional information on when the defence of reasonable force is used.

The methodology used for the Police reviews was designed specifically to inform Police of any changes in activity and to enable Police to proactively monitor any practice issues that might arise.

The New Zealand Police has publicly released all the monitoring reports and will continue to do so for the next three years. All New Zealand Police reviews are available on the Police website ([www.police.govt.nz](http://www.police.govt.nz)).

As noted in the statutory review of the Section 59 Amendment Act, Child, Youth and Family data does not provide evidence of any change in practice in response to allegations of light smacking. However, the available data did not enable the Chief Executive of the Ministry of Social Development to conclusively discount the possibility that there may have been isolated cases where practice was different.

Child, Youth and Family does not currently identify which notifications allege that a child is being harmed by smacking. This is because the Section 59 Amendment Act did not alter its obligations as the Government agency primarily responsible for responding to child abuse. To give the public assurance that Child, Youth and Family is not acting differently now, we are recommending that it monitor and report on its response to any notification where smacking is involved.

## **Policies and procedures: Responding to concerns about children and young people**

### **Expectations and legal framework**

As a society, we look to police officers and Child, Youth and Family social workers to take quick and decisive action when concerns are raised about the safety of children and young people. We expect this to happen even when the information provided is incomplete or, at least initially, unverified. Until the facts can be checked, we rely on these agencies of the state to check to make sure those children and young people are safe. At the same time, we expect responses by state agencies to be appropriate and proportionate.

These views are reflected in the legislation and New Zealand Police and Child, Youth and Family policies and procedures, which together set the legal and practice frameworks police officers and social workers operate within.

The key pieces of legislation that underpin New Zealand Police and Child, Youth and Family policies and procedures are:

- the Policing Act 2008
- the Children, Young Persons, and Their Families Act 1989
- the Crimes Act 1961
- the Summary Offences Act 1981.

In cases of alleged or suspected abuse or assault:

- the primary function of the New Zealand Police is to investigate whether an offence has occurred and, where appropriate, to prosecute offenders
- the primary function of Child, Youth and Family is to assess the needs of children and young people and to make sure they are safe.

Under the Children, Young Persons, and Their Families Act 1989 (the CYPF Act), Child, Youth and Family is the agency with primary responsibility for dealing with child abuse and neglect. In addition to their responsibility for enforcing criminal law, police officers have similar powers and duties to social workers under the CYPF Act when it comes to responding to reports of child abuse.

Any person who believes that a child or young person is, or is likely to be, abused, harmed or neglected should report that concern to the New Zealand Police or Child, Youth and Family. The New Zealand Police and Child, Youth and Family have to respond to these reports – the CYPF Act places a duty on social workers and police officers to investigate, or arrange for an investigation of, the concerns as soon as is practicable (section 17).

The CYPF Act emphasises that responses should be proportionate – it states that any intervention into family life should be the minimum necessary to ensure the child's safety and protection (section 13). In cases of suspected child abuse, the CYPF Act is also clear that:

- the welfare and interests of the child should be the first and paramount consideration (section 6)
- the family has the primary role in caring for and protecting the child (section 13).

## **The threshold for responding to reports of suspected child abuse, harm or neglect**

Section 59 states that nothing in the section or in the common law justifies the use of force for the purpose of correction. Under section 59, parents are justified in using reasonable force for four purposes:

- 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
- performing the normal daily tasks that are incidental to good care and parenting.

The Section 59 Amendment Act specifically “affirmed that the Police have the discretion not to prosecute complaints against a parent... 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.”

The Section 59 Amendment Act did not alter the threshold for agencies taking action in response to reports of suspected child abuse, harm or neglect under the CYPF Act. The definition of what constitutes child abuse, harm or neglect was not changed.

One of the consistent messages from police officers and social workers, spoken to as part of the review, was that the change in the law did not alter the way they thought about or responded to reports of concerns about child safety and wellbeing. Frontline New Zealand Police and Child, Youth and Family staff said that they had not been asked to deal with smacking allegations differently as a result of the Section 59 Amendment Act.

This is supported by the statutory review of the effects of the Section 59 Amendment Act, which concluded that

[t]he data does not disclose any changes, during the two years the [Amendment] Act has been in force, in the way the New Zealand Police or Child, Youth and Family have responded to reports of light smacking or other minor acts of physical discipline or evidence of unwarranted investigation or prosecution for light smacking of children.

The policies and procedures that guide police officers’ and social workers’ responses are clear. They reinforce that the New Zealand Police and Child, Youth and Family have discretion in how they respond to allegations and reports that are made. If the New Zealand Police or Child, Youth and Family receives a report that involves a parent smacking a child, a number of factors will be considered before decisions are made on what response, if any, is needed.

### **Police**

Allegations of physical abuse may be the subject of criminal investigation by police officers.

The Commissioner of Police has issued Practice Guidelines on applying section 59. The Practice Guidelines emphasise Parliament’s intent that Police have discretion not to prosecute where the offence is considered to be so inconsequential that there is no public interest in a prosecution. The Guidelines also explain that force used against children that is not inconsequential and justified under the specific situation specified under section 59 is covered by the Police Family Violence Policy.

The Practice Guidelines are available at <http://www.police.govt.nz/news/release/3149.html>.

### **Police's approach**

There are a number of ways Police can receive a complaint:

- 111 emergency call
- face to face complaint made at a local station customer counter
- referral from another agency (including Child, Youth and Family)
- approach of an Officer on duty, or
- a call to the local Police station phone number.

In every case where a complaint of child assault has been received Police will initiate contact to clarify the situation and determine if an offence has been committed.

The Practice Guidelines for section 59 state that "[t]he use of objects/weapons to smack a child, strikes around the head area or kicking would not be inconsequential assaults. While all mitigating and aggravating circumstances would need to be considered, such assaults will generally require a prosecution in the public interest. In addition, while smacking may, in some circumstances, be considered inconsequential, a prosecution may be warranted if such actions are repetitive or frequent, and other interventions or warnings to the offender have not stopped such actions."

If Police consider the event to be inconsequential they will use their discretion and no further action will be taken.

If the event is not inconsequential Police will generally proceed with a prosecution.

### *The use of discretion*

The statutory review of the effects of the Section 59 Amendment Act indicates that police officers are exercising discretion. It found that Police data "does not suggest that parents are being subject to more attention from the New Zealand Police in terms of responses to light smacking".

## Child, Youth and Family

The common understanding of “smacking” involves the use of an open palm, sharp slap, leaving no enduring mark or injury to the child. Child, Youth and Family has informed us that light smacking of this nature is most unlikely to constitute physical abuse within the meaning of the CYPF Act. Child, Youth and Family is concerned primarily with the abuse and neglect of children, not incidents of light smacking.

### Child, Youth and Family’s approach

If the Child, Youth and Family Contact Centre (0508 FAMILY) receives a report where the primary concern for the child is smacking or hitting, social workers are expected to use common sense and their professional judgement, and assess the information before deciding how to respond.

Sometimes it will not be clear from the initial information whether smacking is occurring or whether it is something more serious. The social worker will therefore need to canvass issues such as severity, how the child is being hit, where on their body, whether there are any injuries, whether any weapons are used, and frequency.

To make a decision, a social worker will explore:

- the nature of the concern – is this an allegation of physical harm, drug or alcohol abuse, violence between the adults, supervisory neglect?
- the vulnerability of the child – eg a child is considered to be more vulnerable if he or she is under five years old or is disabled
- whether there is any substance to the report, eg what did the caller actually see?
- whether the child was harmed
- whether the child’s care, safety, or wellbeing is at risk
- what, if anything, is known about the child and his or her family, eg is this a one off incident – is there cumulative harm? are the caller’s concerns based on previous incidents? is there a history of concern known to Child, Youth and Family
- whether Child, Youth and Family, Police or another agency has already addressed the situation.

If the concern is based on the child being lightly smacked on the backside or hand and there was no harm to the child, no other aggravating features (eg information indicating neglect or safety concerns) and no history indicating a pattern of harmful events, then it is very likely that a decision will be made that **no action is required**.

If the information gathered indicates that a child is being harmed, it will be appropriate for Child, Youth and Family to make further enquiries.

In addition to current policies and procedures, Child, Youth and Family has developed (and will publish) guidance for social workers on dealing with child abuse reports involving smacking. This is attached at Appendix 5.

### *The use of discretion / Using professional judgement*

In the year ending 30 June 2009, Child, Youth and Family received 110,797 notifications: 49,224 were assessed as requiring further action; and 2,855 cases of physical abuse were substantiated.

Notifications to Child, Youth and Family have been increasing since before the Section 59 Amendment Act took effect (27,507 were received in 2001/02, compared to over 110,000 in 2008/09), however, the number of notifications that required a further response has not increased to the same extent. Many of the notifications assessed as not requiring further action by Child, Youth and Family will still have resulted in families receiving advice, or assistance from community organisations.

### **Referrals between Police and Child, Youth and Family**

Policies and procedures for referrals between agencies cover child sexual abuse and serious physical abuse. Light smacking does not come within the definition of “abuse” used. It is therefore unlikely that cases involving light smacking, where no other aggravating factors have been identified, will be referred between agencies.

Child, Youth and Family social workers will offer advice and/or referral to community organisations if they think that a family just needs support. Police officers will also seek to assist families as much as possible when this is needed. These types of support are often accepted by families.



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Howard Broad  
Commissioner of Police  
New Zealand Police

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1/12/2009

Date



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Peter Hughes  
Chief Executive  
Ministry of Social Development

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1/12/2009

Date



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Nigel Latta  
Clinical Psychologist

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1/12/2009

Date



## **Appendix 1: Terms of reference**

### **Introduction**

A citizens-initiated referendum was held between 31 July and 21 August 2009 on the question "Should a smack as part of good parental correction be a criminal offence in New Zealand?" Eighty-seven per cent of those who voted, responded 'no' to this question.

The Government does not want to see good parents criminalised for a light smack and does not believe the Crimes (Substituted Section 59) Amendment Act 2007 intends for this to occur. It wants safeguards to be put in place to give parents comfort that this will not happen. Cabinet [CAB Min (09) 30/23] has agreed to a number of measures to provide such safeguards. These include this review of New Zealand Police and Child, Youth and Family policies and procedures.

### **Terms of Reference**

To review New Zealand Police and Child, Youth and Family policies and procedures, including the referral process between the two agencies, in order to identify any changes that are necessary or desirable in the interest of ensuring that:

1. good parents are treated as Parliament intended under the Crimes (Substituted Section 59) Amendment Act 2007
2. provisions of the law (both criminal and under the Children, Young Persons, and Their Families Act 1989) are applied to those who abuse children.

To consider any other matters which, in the reviewers' opinion, will assist in ensuring that parents are treated as Parliament intended under the Crimes (Substituted Section 59) Amendment Act 2007.

To make recommendations concerning these matters.

### **Reviewers**

Peter Hughes, Chief Executive of the Ministry of Social Development  
Howard Broad, Commissioner of Police  
Nigel Latta, Clinical Psychologist.

### **Timing**

The reviewers will provide a report and make recommendations to the Prime Minister and Ministers of Police and Social Development and Employment by 1 December 2009.

## Appendix 2: Review process

### 1. Review of policies and procedures

#### *New Zealand Police*

Internal policies and procedures relating to family violence were reviewed. This covered those policies and procedures that focus on family violence generally and those dealing with child assault and abuse allegations. Police also reviewed its inter-agency policies and practices relating to child abuse (primarily these documents are between Child, Youth and Family and Police).

The policies and procedures reviewed included:

<p><i>Commissioner's Circular Crimes (Substituted Section 59) Amendment 2007</i></p>	<p>The <i>Commissioner's Circular</i>:</p> <ul style="list-style-type: none"> <li>• is available at <a href="http://www.police.govt.nz/news/release/3149.html">http://www.police.govt.nz/news/release/3149.html</a>.</li> <li>• sets out the law and identifies key aspects that need to be considered when applying it.</li> <li>• explains the application of section 59 in the context of the Police Family Violence Policy.</li> </ul>
<p><i>Police Manual</i></p>	<p>The <i>Police Manual</i> contains all guidelines and instructions for the New Zealand Police, including:</p> <ul style="list-style-type: none"> <li>• <i>Prosecution Family Violence Desk File</i>: Charging decisions and accepting pleas covers domestic discipline (section 59) prosecutions and clearly outlines that Police will take special care when considering whether to continue prosecuting a parent assaults child case involving domestic discipline. Guidelines for prosecution decisions are outlined.</li> <li>• <i>Police Family Violence Policy</i>: This policy outlines the principles, policy and procedures for best practice when members of police deal with family violence.</li> </ul>

#### *Child, Youth and Family*

Internal policies and procedures relevant to Child, Youth and Family decision-making in response to reports of concern about child wellbeing and safety, and social workers working with families, were reviewed.

The policies and procedures reviewed included:

<i>Smacking Guidelines</i>	The <i>Guidelines</i> are attached at Appendix 5.
<i>Decision Response Guidelines</i>	The <i>Decision Response Guidelines</i> outlines the options social workers have for responding to a report of concern about the safety and wellbeing of a child and sets out the factors that need to be considered to decide what should be done. It is used to help social workers determine the appropriate response for each family and the timeframe for a Child, Youth and Family response, if that is considered to be appropriate.
<i>Care and Protection Service Pathway</i>	The <i>Care and Protection Service Pathway</i> provides an overview of the process for responding to families where there is a potential care or protection concern, from the report of concern through to an intervention.
<i>Engagement and Safety Policy (Care and Protection)</i>	The <i>Engagement and Safety Policy</i> identifies the key practice requirements for social workers when they are working with families to assess and respond to safety concerns for children and young people.
<i>Seeking Solutions with Families Policy (Care and Protection)</i>	The <i>Seeking Solutions with Families Policy</i> explains that family decision-making is at the heart of the CYPF Act and focuses on working with families to develop solutions to respond to care and wellbeing concerns for their children and young people.

## 2. Interviews and frontline observations

Nigel Latta carried out a series of interviews with New Zealand Police and Child, Youth and Family management and frontline staff. He also went on a ride-along in a Police I-Car and visited the Police Northern Communications Centre and Child, Youth and Family Contact Centre (where calls to 0508 FAMILY are taken).

## 3. Review of cases

Nigel Latta reviewed the details of a number of cases where it was reported that family members were inappropriately investigated or prosecuted as a result of the Section 59 Amendment Act. This was based on information provided to Mr Latta by Family First New Zealand. Family First New Zealand obtained consent from the individuals involved in these cases to provide personal information to Mr Latta so that Police and Child, Youth and Family files could be identified and reviewed for the purpose of this review.

In total, Police and Child, Youth and Family were able to identify 12 cases from the information provided.

The findings from Mr Latta's review of this information are covered in this report.

Before having access to the personal information held by the New Zealand Police and Child, Youth and Family, Mr Latta signed a confidentiality and non-disclosure contract.

### Appendix 3: Case summaries

Summary information on the cases identified by the Police and Child, Youth and Family is presented in the following way.

<b>What was reported</b>
<ul style="list-style-type: none"><li>• This section quotes information as reported on the Family First New Zealand website or, in one case, quotes the summary provided by Family First New Zealand.</li></ul>
<b>Agency information</b>
<ul style="list-style-type: none"><li>• This section provides information from Police and/or Child, Youth and Family files.</li></ul>






We have not included some information to protect the identity of individuals and to maintain the confidentiality of sensitive information disclosed by people involved in the cases. The information withheld does not materially affect the facts of these cases, as set out below.

1.

**What was reported**

*Father charged for 'shoulder shake' of defiant daughter refusing to get out of bed*

*North Island*

*Sep 2007*

Dad had been having major difficulties with his 15 year old daughter who was stealing money from home, sneaking out without permission, and coming home very late. One particular night she sneaked back into the house at 4am! When dad went to wake her at 6am a shouting match ensued. He pulled the blankets off her bed and shook her to hurry up and get out of bed. She alleges that dad punched her at least three times in the face and mouth, but the police statement says that 'no medical attention was required', and her sister in the top bunk did not witness the alleged punching. The daughter rang the police and the father was handcuffed and taken to the police cells for a couple of hours. He was convicted and discharged on condition of six counselling sessions – which he described as a 'waste of time'.

**Agency information**

- Police responded to a call from a 15 year old female alleging that she had been assaulted by her father. It was alleged the 15 year old was punched at least three times in the face and mouth.
- The Police attended the home and the father was removed to the police station. The father was arrested and charged with assault.
- Child, Youth and Family was informed of the allegation by the Police and spoke with the young person, her mother and father, and a staff member at her school. It was identified that there was a breakdown in the relationships within the family and that the young person was significantly challenging her parents. The parents' however were not willing to engage with any support/community services and determined that they would manage the situation by setting clear boundaries for their daughter.
- Child, Youth and Family ensured that the young person knew what action to take if there was another incident and took no further action in relation to the allegations.
- The father was subsequently convicted for assault and discharged on condition of counselling sessions.

2.

### **What was reported**

*Father charged for 'shoulder shake' of boy refusing to get out of bed*

*Auckland*

*Nov 2007*

"Around 3 years ago CYFS placed my son in my care after my ex wife could not handle him. My son has behavioural problems. One morning when he wouldn't get out of bed and was getting stroppy towards me, I grabbed him on his shoulders and told him to pull his head in and behave. My ex wife found out and reported me to the police who in due course charged me under this new legislation with assault on child. CYF themselves found nothing wrong with my son or what happened and gave him back to me. I in the end was found guilty and received a 9 month suspended sentence. At the present moment I am a punching bag as my son knows I can't do anything."

### **Agency information**

- Police received a report from a family member alleging that a 12 year old boy had been assaulted by being strangled around the neck and shoulders by his father.
- As a result of the allegation the Police arrested the father and temporarily placed the 12 year old in the custody of Child, Youth and Family.
- The Child, Youth and Family file indicated that there had been extensive involvement with the family, including family violence concerns and previous physical abuse allegations.
- During Child, Youth and Family's involvement the father acknowledged having difficulties coping with the stresses of single parenting and his son's challenging behaviours. The father had sought assistance prior to the incident reported to the Police, however this had not resulted in adequate support for him.
- Following a family group conference a plan was developed to provide the boy and his father with support, and therapeutic interventions.
- The father was subsequently convicted of assault and sentenced to nine months supervision.

### 3.

#### **What was reported**

*Father charged for smacks for 'correction'*

*North Island*

*2008*

"John\* and Mary\* had been having difficulties with their teenage daughter – especially her secretive behaviour with her boyfriend. When John attempted to confiscate a ring, she started to scratch and John had to physically restrain her from attacking him. Despite giving her a warning she continued to be defiant so he gave her three smacks on the bottom with an open hand. His daughter eventually calmed down and apologised. But the next morning rang a teacher from school and complained that she had been held in a headlock, had been tied up to a post using a dog lead, and hit with an electric fence pole. John was charged with assault. He was advised to plead guilty to the smacks on the bottom as they were not used to 'restrain' the child but to 'correct' the child. All other charges and claims were dropped. John will be discharged without conviction if there are no further problems."

#### **Agency information**

- The Police received a report that a 14 year old girl alleged to her teacher that she had been beaten by her step-father. She alleged that he hit her, put her in a strangle hold and tried to tie her up using a dog lead.
- The Police interviewed the stepfather who admitted aspects of the incident (including attempting to tie his step-daughter up) and to hitting her three times on the bottom. The step-father was charged with assault (male assaults female).
- Child, Youth and Family involvement identified that there were significant concerns regarding the safety of this young person and she was removed from her mother and step-father's care.
- The concerns related to both the initial allegation and ongoing concerns regarding physical punishments and parenting. A family group conference was held and a plan put in place to address the ongoing concerns.
- The stepfather was subsequently discharged without conviction.

#### 4.

##### **What was reported**

*Daughter rude to police. Father charged for smack*

*North Island*

*Oct 2008*

"My daughter went through a difficult patch and became highly rebellious, including wagging school. She was picked up by the Police whilst wagging and taken to the Police Station and was highly belligerent towards them. I took her home in the car and attempted to communicate with her as we drove. She refused to talk and responded to everything with a "yeah right". To get her attention I smacked her once on the leg with an open hand and said "listen to me – this is serious." The next day she again wagged school and went instead to CYF, encouraged by her friend, and told them I had 'assaulted' her. Despite my explanation to CYF, they asked the police to charge me. The officer who had charged me visited me at my home expressing concern about charging me but as I had admitted giving her a smack and the way the law was worded he had very little leeway. I was convicted of assault but discharged without further penalty. My daughter never thought it would go so far and has admitted to CYF that it was purely 'I'll get you'-based."

'I asked for help but instead got conviction'

*NZ Herald Jul 28, 2009*

A Wellington solo father says he went to Child, Youth and Family Services for help - and ended up with a conviction for smacking his daughter.

[http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10586994](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10586994)

##### **Agency information**

- A 13 year old girl alleged she was being physically abused by her father. The allegations included being struck with a telephone book a number of times and being punched in the side of the head.
- The Police reported the allegations to Child, Youth and Family. The father denied all allegations and advised that his daughter was displaying challenging behaviours which he was struggling to deal with.
- Child, Youth and Family were unable to substantiate any care or protection concerns and referred the father to a community agency for support.
- The father was convicted of common assault.



5.

**What was reported**

Grandfather charged and convicted for tipping child out of chair to get a 'move-on'

South Auckland

*January 2008*

A grandfather was charged and convicted of assaulting his grandson for tipping him out of a bean bag-type chair in order to 'get him moving'. He had refused to turn the tv volume down and then refused to turn the tv off when asked. The grandchild rang 111. The grandmother and grandchild pleaded with the police not to take granddad away, yet he was held in prison cells for 2 nights, then bailed back home, despite police objections! His lawyer advised him to plead guilty to avoid cost and hassle.

**Agency information**

- Police were contacted following alleged assaults on an 11 year old boy and his grandmother, by the grandmother's partner. It was alleged that the partner was acting aggressively and had tipped the 11 year old from his chair causing him to land on the floor heavily striking his head on a metal pole.
- It was also alleged that a verbal argument between the grandmother and her partner took place and that the grandmother was hit by her partner with a pair of trousers he was holding. The grandmother feared for the safety of her grandchild and herself.
- The defendant was removed from the house by the Police and charged with assault.
- The Police reported the incident to Child, Youth and Family. The Child, Youth and Family file indicated that there had been previous involvement with the family.
- Child, Youth and Family assessed there were no ongoing concerns for the boy's safety and took no action.
- The defendant was convicted of assault.

6.

### **What was reported**

*Father charged yet case dismissed in court*

*Glen Innes*

*NZ Herald 11 April 2008*

A 30-year-old Glen Innes father was charged by police for allegedly hitting his five-year-old daughter with an open hand on the back of the head and swinging a pair of jeans at his six-year-old daughter. He had to spend a day in the police cells and police opposed bail! CYF also investigated the family yet found nothing to be concerned about. The complaint was made by a sister-in-law with whom there was believed to be animosity with because of her interference with the children.

When the matter eventually came to court, the police offered no evidence and the case was dismissed. His lawyer said that the dad had pushed one of the girls to get her to hurry for school and threw the jeans at the other to get her attention. He said "When the whole issue was being discussed in Parliament and in public, they said that minor matters would not end up in court, it would only be the serious ones... the public were given assurances that the police would consider this law carefully, and in this case they have not."

[READ FULL REPORT<sup>1</sup>](#)

### **Agency information**

- Police were called to a family member's address following a five year old girl telling a family member she had been hit on her head by her father and that he had started throwing furniture around the room. The family member called Police concerned for the child's safety.
- The father was not residing at the house, but was visiting the address at the time of the alleged incident.
- The matter was subsequently dismissed by the Court.
- At the time of the incident Child, Youth and Family were advised by the Police and assessed that the girl was safe in the care of her mother. No involvement from Child, Youth and Family was required, however a referral was made to a community agency for follow-up and support.

<sup>1</sup> [http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10503491](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10503491)

## 7.

### **What was reported**

#### *CHILDREN REMOVED*

*Parents seek help - CYF remove children*

*South Island*

*Nov 2008*

John\* and Sue\* sought help from a social service because of the behaviour of their daughter (9). The two case workers were very affirming of them as a family and seemed both positive and helpful. On a subsequent night, the daughter had a major tantrum which involved throwing toys, banging the bunks against the wall and verbal abuse of mum. Dad warned her that if the behaviour continued she would receive a smack on the bottom (she had already been sent to her room at this point). She continued and dad gave her a smack on the bottom. She stopped the bad behaviour, and shortly afterwards came out remorseful and apologetic. At the next meeting with the social workers, Sue mentioned that they did smack their children but only when their behaviour warranted such discipline, and that John had smacked their daughter the previous day. That Friday, Sue received a call from CYF to inform them that an allegation of abuse had been made and that they needed to find alternate accommodation for their two children over the full weekend until Monday morning. They were interviewed by the police for 5 hours and later found out that the report to CYF said that 'they admitted to hitting their children'. CYF have since apologised and admitted they would learn from this!

UPDATE: **CYF says sorry to 'traumatised' family**<sup>2</sup>

*NZ Herald July 29, 2009*

**CYFS admit they "could have done a better job" in the way it handled an allegation that a couple had smacked their daughter**

### **Agency information**

- Child, Youth and Family were notified of a 10 year old being smacked by her father, causing a bruise on her back. The smack, aimed at the child's bottom, hit her on the back leaving what was reported as a "tennis ball size bruise". The notification was received from a health professional, and there were also concerns expressed for the child's safety in the home from a mental health social worker.
- The parents had previously sought assistance from a health organisation in managing the daughter's behaviour and had found the involvement helpful.
- Child, Youth and Family acknowledged its response (which included the child staying elsewhere for a couple of days) following the smacking incident "could have been better" however it had become involved following "being asked to ... see whether a family that appeared to be struggling needed help."
- Child, Youth and Family took no further action as the family remained working with other agencies.

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[http://www.familyfirst.org.nz/index.cfm/media\\_centre/recent\\_news/news/cyfs\\_says\\_sorry\\_to\\_\\_traumatised\\_\\_family.html](http://www.familyfirst.org.nz/index.cfm/media_centre/recent_news/news/cyfs_says_sorry_to__traumatised__family.html)

8.

**What was reported**

*Parents seek help - Referred to CYF Instead*

*Auckland*

*July 2008*

Jeff\* and Mary\* were having behavioural problems with their 10 year old son. At times, their son would scream at, kick and hit his mother. Their usual forms of discipline were time out, writing lines, and as a last resort, a smack. They realised other help was necessary and were referred to a child and youth mental health service. At the initial interview they mentioned that as a last resort they occasionally used a smack. As soon as the social worker heard the "smack" word, she short-circuited the conversation and insisted on interviewing the son alone while Jeff and Mary were asked to leave the room. They were subsequently reported to CYF and were petrified that their kids might be removed. They say that there is a warning here to all parents who use physical discipline as a means to curb absolute defiant behaviour in their children - with the current law as it stands, if parents go to any health agency for help, they will be reported to CYF. The case has been subsequently closed by CYF.

**Agency information**

- The father of a 10 year old boy advised a mental health professional that he occasionally used physical punishment with his son. The family was working with the professional around behaviour management strategies, as the 10 year old was displaying challenging and at times violent behaviours.
- The professional interviewed the child who disclosed being hit with a wooden spoon and fly swat, usually on his legs and that sometimes resulted in bruising. The mental health professional, concerned about this and the mental health of the 10 year old, made a referral to Child, Youth and Family.
- Child, Youth and Family interviewed the parents and noted that the father regretted hitting his son. They discussed the use of alternative methods of discipline and the parents agreed that they would no longer discipline their child in the reported manner.
- Child, Youth and Family recommended further psychological help for the child and for the family to work with a counsellor. Child, Youth and Family then closed the case.

9.

**What was reported**

*Boy interrogated at sleepover. CYF called*

*North Island*

*Sep 2008*

Briar's\* 7 year old son John\* stayed over at a friends. When he returned home the next day, he told Briar that his friend's mum had interrogated him about whether Briar smacked him. John confessed to Briar that he had answered that sometimes she did. Ironically, the friend's mum sometimes smacked her own children while John was staying! The friend's mum told John to run away to her place the next time Briar gave him a smack. Within a few days, Briar was rung by CYF and was told that an anonymous complaint of child abuse had been made and that they were going to interview Briar's other children at school. CYF told Briar that they had informed John that mum was never to smack him and if she did, he should ring CYF. A couple of months later, CYF rang Briar to say that the case was closed but she was not to smack. Since then John has become very angry, defiant and rebellious. Briar, a solo mum, is struggling to cope and is very stressed by the whole ordeal. However, because she has decided to continue smacking when necessary, Briar is afraid to seek outside help for fear of further interference.

**Agency information**

- Child, Youth and Family received a notification that a seven year old was hit with a number of objects such as a hose, stick and metal spoon.
- While staying overnight at a friend's home the seven year old boy told the friend's mother that his mother hit him and his siblings. On returning home, the child told his parents that the mother had asked him about this and had told him to run to her house if this happened again.
- Child, Youth and Family spoke with the seven year old, his mother and his school. Child, Youth and Family assessed that the child and his siblings were safe, cautioned the mother against further use of physical discipline and decided to take no further action.

10.

**What was reported**

*Daughter (10) dobs mum to CYF after grounding*

*Auckland*

*November 2008*

Two CYF workers arrived at Tania's\* home to say there was a complaint by her daughter (10) that mum had smacked her. Tania was distraught but said that they could talk to her daughter uninterrupted to determine if she was unsafe. The social workers simply wanted to remove her (but ironically they left Tania's 8 year old at home.) Eventually they agreed that the daughter could stay the night with the godmother. The following day, the investigation found no basis for the complaint and that it had stemmed from Tania's daughter and a friend being angry with mum for preventing her from attending the friend's party. Mum and Dad are now feeling very powerless with their parenting. They say "every time someone gets told off in our home you feel like you will be told on, we are being held to ransom by this new law." Their daughter has told them that if they discipline her "we'll go through all this again."

**Agency information**

- Child, Youth and Family were notified that a 10 year old girl, was distressed after being hit by her mother with a wooden spoon twice on her shoulder and once on her face. The 10 year old said that her father had called her a "devil child" while the mother was hitting her and that she and her younger sister had been hit by the parents previously.
- Social Workers visited the home and spoke to the mother who was distressed but agreed for her to stay overnight with her godmother.
- Child, Youth and Family interviewed the 10 year old the following morning. She said that she was not hit but that sometimes her mother got stressed and angry, and yelled at her.
- The parents acknowledged that there was stress and yelling and were keen to get information on parenting support groups or counselling. The 10 year old went home with her parents following the interview. The investigation found no basis for the complaint.
- Child, Youth and Family forwarded details to the parents on the services they were interested in and closed the case.

11.

**What was reported**

“My daughter ran from our house after she was calmly and gently confronted by me over her behaviour towards her mother. She ran to a family and told them a tale of horrific abuse. The parents of this family then called the police and got my daughter to repeat her stories, which those parents then corroborated despite not witnessing anything. The Police turned up and interviewed my wife and I. The next day CYF turned up. They placed our daughter with the very family she ran away to, even though we expressly asked them not to. I have not been arrested and charged with assault for various alleged assaults between 2003 and 2009 and removed from my house based on the allegations from my daughter. I am not allowed contact with my children. My wife has become a solo mum over night. I am treated as a criminal even though there is no evidence. All of my 4 children have been subject to a medical examination and nothing was found. Despite my daughter trying three times to make a retraction and my wife giving an affidavit swearing that there is no violence in the home and the children are safe with me, the charges and bail conditions still stand. My children, at home are beside themselves with grief. My daughter wants to come home but the police won't let her.”

**Agency information**

- Police were contacted when a twelve year old girl, ran away from her home to friends' place. The friends contacted the police when the girl made an allegation that following an argument with her mother, her father had told her to go and get his belt. She stated she was scared her father was going to hit her with the belt. Police visited the father to tell him of the situation at which point he refused to allow the girl to remain at the friends' home.
- The Police contacted Child, Youth and Family to request they find a place for the 12 year old to stay.
- The Police arrested the father for assault with a weapon. This related to numerous alleged offences over a number of years. The father was required to leave the house in order to ensure the safety of the children.
- The family were unhappy with this action and believed that they were being unfairly treated. The family reported that the girl wanted to retract her statement regarding the physical discipline however this was not accepted by Child, Youth and Family.
- The family was willing to work with a non-government organisation to restore relationships in the family and Child, Youth and Family linked them to a support organisation.
- The father attended a family violence programme and was discharged without conviction.

12.

**What was reported**

*They had no right to make dad look like a criminal – daughter (13)*

*North Island*

"My name is Steven and I am 11, this is what happened – I was late home and my dad was angry with me because I was out on the street when it was dark, he smacked me a couple of times on my bum but it did not hurt, the next day I told my neighbours what had happened and they rung CYF. CYF came to my school and talked to me and also my brother and sister without my mum and dad knowing. When I got home after school we were told that we could not see our dad, my brother and sisters and I were hurt by this. I wish CYF never got involved they hurt my family. dad was allowed home again because we told them it wasn't abuse. The police also said it wasn't."

"I am Steven's older sister and I am 13 years old. I think what CYF did was wrong. they told my mum that my dad couldn't see us for two weeks. they didn't interview me even though steven told them he had an older sister. if they had've interviewed me i would have been outraged because my dad is hard working and watches us play sports and takes us to music lessons. our family was in tears even my dad. they had no right to make my dad look like a criminal."

**Agency information**

- Child, Youth and Family was contacted by a neighbour reporting that a 10 year old boy had told her son he had been hit by his father with a belt and a belt buckle. The child was allegedly sore to sit down and reported this had happened before. The neighbour also reported other serious concerns for the children in the home.
- Child, Youth and Family spoke with the 10 year old, a number of his siblings, his school and parents. The child confirmed the allegations by the neighbour. The father admitted to hitting the child with a belt, but said it was not hard enough to cause an injury. The father was requested to leave the home while the Child, Youth and Family investigation was underway.
- Child, Youth and Family spoke with the parents regarding this type of discipline. The family developed a plan to manage the boys challenging behaviours in the future. The children expressed a high level of distress during the investigation, in particular their distress over the treatment of their father.
- Child, Youth and Family assessed that the father had used inappropriate discipline and he was warned by Child, Youth and Family and the Police. No further action was taken.



## **Appendix 4: Complaints**

### **Police**

There are two ways to make a complaint regarding Police.

Expression of dissatisfaction: this is intended for less serious cases where someone wants to voice dissatisfaction about police conduct, receive an explanation or ask for information. These are dealt with by local police staff who will work to address concerns and provide a satisfactory resolution. To make an expression of dissatisfaction, people can:

- contact any police station by mail, phone or in person
- write or speak to the officer in charge of the police station.

Formal complaint: this is an independent process to address serious concerns about misconduct or neglect of duty by a Police employee, or grievance concerning a policy, procedure, or practice of New Zealand Police.

Details for how to make a complaint are available at <http://www.police.govt.nz/contact/complaints.html>.

### **Child, Youth and Family**

The Child, Youth and Family complaints process has two steps. The first step is a review and assessment by Child, Youth and Family. The second is a review by a Chief Executive Advisory Panel, which is made up of an independent chair and two independent panel members, appointed for their expertise and their standing in the community.

The complaints process has been established to address disagreements about decisions, or concerns about the actions of Child, Youth and Family. Child, Youth and Family will initially try to resolve the issue at a local level. If the complainant is not satisfied they can apply to the Ministry of Social Development to have their complaint reviewed by the Advisory Panel to the Chief Executive, which is designed to provide an additional avenue of independent review.

When a complaint goes to the Advisory Panel complainants get a chance to make their case in person to the Panel. Once the Panel has considered the evidence, it sends its recommendations to the Chief Executive who decides what action (if any) should be taken. To date, the Chief Executive has implemented all of the recommendations made by the Panel.

Details for how to make a complaint are available at <http://www.msd.govt.nz/about-msd-and-our-work/contact-us/complaints/index.html>.

### **Further options**

If people are not satisfied with the outcome of their complaint, other options include contacting their local Member of Parliament, the appropriate Minister, the Office of the Ombudsmen or the Privacy Commissioner.

Complaints about Child, Youth and Family can also be taken up with the Office of the Children's Commissioner. If the complaint is about a registered social worker's practice it can be taken up with the Social Worker's Registration Board.

## **Appendix 5: Child, Youth and Family guidance for social workers dealing with reports of concern where smacking is noted**

### **The Smacking Issue**

#### **What's Important to Us**

Whenever we respond to reports of concern we need to exercise good professional judgement and social work common sense.

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Most children in New Zealand are raised in a loving and caring environment that includes discipline and correction of unacceptable behaviour. Many parents may occasionally lightly smack their children as a means of discipline. This key information will provide guidance to assist social workers to assess and respond to reports of concern where smacking is noted.<sup>3</sup>

#### **What does the law say?**

In 2007 the law in New Zealand about the use of physical force for the purposes of correction was amended. Section 59 of the Crimes Act 1961 was substituted with the following provisions.:

- “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;
  - preventing the child from engaging or continuing to engage in conduct that amounts to a criminal offence;
  - preventing the child from engaging or continuing to engage in offensive or disruptive behaviour;
  - performing the normal daily tasks that are incidental to good care and parenting.”

Substituted section 59 further clarifies that neither it nor any rule of common law justifies the use of force for the purpose of correction.

This means, for example, that a parent can physically restrain a child from hurting themselves, or from hurting others. They can pull them away from a dangerous road, or they can take an unwilling child to time out. The parent can, therefore, use reasonable force to control behaviour in certain circumstances.

Whether or not the use of physical force on a child constitutes a crime is a matter for the New Zealand Police. They must always use their professional judgment in deciding what matters will proceed to prosecution, as they must do in all matters relating to crime.

The Act which substituted section 59 also made provision for the police to “have discretion not to prosecute complaints against a parent of a child or person in the place

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<sup>3</sup> It is important to note that Child, Youth and Family has a no hitting or smacking policy for caregivers who undertake care for children in the custody of the Chief Executive.

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.” This strengthens further the discretion the police already had when deciding what matters may proceed to prosecution.

### **Does Child, Youth and Family investigate “smacking?”**

The change to the Crimes Act did not change what constitutes physical abuse within the context of child protection. Our working definition of physical abuse remains:

“an act, or acts that result in inflicted injury to a child or young person. It may include, but is not restricted to bruises and welts, cuts and abrasions, fractures or sprains, head, abdominal or internal organ injuries, strangulation or suffocation, poisoning, burns or scalds” <sup>[1]</sup>

It also did not change the definition of when a child or young person is in need of care or protection in section 14 of the Children, Young Persons, and Their Families Act 1989 (CYPFA). Section 14(1)(a) requires actual or likely harm, abuse, or ill-treatment. If a report of concern relating to smacking or hitting is referred to CYF, social workers need to consider it in the same way as they would any other allegation of assault or violence against a child. Social Workers should continue to apply the same threshold level of harm as we do when considering whether a child is in need of care and protection

Given the common understanding of “smacking” involves an open palm, sharp slap, leaving no enduring mark or injury to the child, it is most unlikely to constitute physical abuse. Child, Youth and Family are concerned primarily with the abuse and neglect of children, not incidents of light smacking. A report to Child, Youth and Family of a light smack of a child will not, in the absence of any other aggravating circumstances, constitute grounds for further action.

### **How do we deal with a report of concern for smacking?**

If the Contact Centre or a site receives a report of concern where the primary or sole concern for the child is smacking or hitting, they need to use common sense and professional judgement to assess the information before deciding how to respond. Sometimes it won't be clear from the initial information whether 'smacking' is occurring or whether it is something more concerning. The social worker will therefore need to canvass issues such as the age of the child, severity of the smacking, how the child is being hit, where on their body, whether there are any injuries, whether any weapons are used, and the frequency of the hitting. If the information gathered raises no concerns in terms of these areas, it is likely that the action is smacking and there is no role for Child, Youth and Family.

If the information gathered indicates that a child is being harmed, it is appropriate for us to make further enquiries to make sure that the child is safe. As noted above, if the report alleges light smacking only, there is unlikely to be any basis for further action.

Concerns relating to smacking may more appropriately be dealt with by the New Zealand Police. Child Youth and Family become involved when matters are serious and there are concerns that a child is being abused.

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<sup>[1]</sup> Recognition of child abuse and neglect- Child, Youth and Family

## Following up concerns that look serious at first but prove not to be

There will be times when we receive a report of concern where the small amount of presenting information suggests that a child might be being seriously hurt. After looking into this information further and talking it over with the family, it may become apparent that the report of concern information is incorrect and that the parents are either lightly smacking the child or in fact using no physical discipline at all. Social workers in this situation need to use their common sense and professional judgement. If the assessment of the situation indicates that the child is not at risk of abuse, then it is appropriate to take no further action, but don't forget that parenting is a hard job and most people at some time could use support. So, if it's appropriate, ask the family if they would like you to connect them to services within the community that could support them in their parenting.

## How about when smacking is part of other concerns for a child?

While it is not appropriate for us to become involved in situations of light smacking, in some families where smacking occurs there may be other concerns for the child's care or safety. The report of concern may provide indications of more serious concerns such as parental drug and alcohol abuse, mental illness, neglect or intimate partner violence impacting on a child's care and safety. This is where good assessment is important and we need to use our professional judgement about whether we, or some other service, need to work with the family. Similarly, if we know that children in the family have been at risk in the past and smacking is reported as a concern, we need to use our professional judgement to decide whether we need to be involved.

## So how should I deal with smacking in the context of other issues?

Most of the time these situations will be assessed in a [Child and Family Assessment](#). This means the social worker undertakes an assessment of the family's strengths and needs and methods of discipline will be considered as part of this fuller assessment.

Sometimes parents will be smacking children to try and manage poor behaviour. We should encourage them to think about other child management techniques and provide them with this information or link them to services or programmes that can assist them. They might need support to enrol in and attend a parenting programme to provide them with alternatives to smacking. Some parents also need help to understand the developmental stages of their children and what behaviour management techniques are appropriate and successful at different ages.

For families where stress or tiredness is contributing to their smacking it may be helpful to discuss with them how they can access support. A whanau hui can draw together wider family support to ease some of the stressors parents may be experiencing; [Strengthening Families](#)<sup>4</sup> can organise education, health and other government agencies to support a family who is struggling with access to, or relationship with government

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<sup>4</sup> Strengthening Families is a community-based initiative that helps families get access to the services they need. It brings together a family and all the agencies that have a part to play in helping that family. Together, the family and agencies develop an action plan that reflects the family's needs.

agencies. Sometimes a [partnered response](#)<sup>5</sup> is the right pathway to ensure community support for a family who need some help for a period of time.

When a report of concern involves smacking and the family are new citizens, we need to be aware that some immigrant families may come from a country with different laws and cultural norms around child discipline. Families new to New Zealand may need to be supported by their own cultural or community leaders to understand and observe NZ cultural practices and law relating to the disciplining of their children.

**In summary, Child Youth and Family's role is to respond to situations of child abuse and neglect. Occasional light smacking, unless it's part of more serious concerns, does not require a response from us. So use your professional judgement in these situations and if in doubt, talk it over with your supervisor or practice leader.**

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<sup>5</sup> "Partnered response" is pathway for families to receive services in the community rather than a formal CYF response. For families that could benefit from services in the community it is a way of providing an earlier, more comprehensive and coordinated response to their individual needs.