

CHILDREN'S RIGHTS TO SAFETY AND PHYSICAL INTEGRITY RESPECTED

*Amendment to section 59 Crimes Act 1961
prohibits use of force in the correction of Children.*

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Introduction

On May 2nd 2007 the major political parties in the New Zealand Parliament reached agreement in support of a bill to ban the use of corporal punishment with children in New Zealand. This bill, (Crimes (Substituted Section 59) Amendment Bill 2007) became law when it achieved Royal Assent from the Governor General on May 20th 2007. It came into force on June 21st 2007. It now forms an amended section 59 of the Crimes Act 1961¹.

New Zealand has now complied with recommendations made by the UN Committee on the Rights of the Child in their Concluding Observations on New Zealand's implementation of the UN Convention on the Rights of the Child. In their first periodic report in January 1997, the UN Committee recommended that the New Zealand Government:

... reviews legislation with regard to corporal punishment of children within the family in order to effectively ban all forms of physical or mental violence, injury or abuse².

The UN Committee expanded upon this in their second periodic report issued in September 2003, recommending that the New Zealand Government:

¹http://www.legislation.govt.nz/act/public/1961/0043/latest/DLM328291.html?search=ts_act_Crimes+Act+1961_noresel&p=1

²[http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CRC.C.15.Add.71.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CRC.C.15.Add.71.En?OpenDocument)

(a) Amend legislation to prohibit corporal punishment in the home;

(b) Strengthen public education campaigns ... aimed at promoting positive, non-violent forms of discipline and respect for children's right to human dignity and physical integrity, while raising awareness about the negative consequences of corporal punishment³.

Both the UN Committee recommendations were influential in that they led to successive Governments setting up official work programmes aimed at examining the possibility of repeal of section 59 Crimes Act 1961. The recommendations also served as very valuable "evidence" used by child advocates calling for change

The repeal of section 59 Crimes Act 1961 also symbolizes greater respect for children's rights in New Zealand, in particular, rights under Articles 2, 3, 19 and 37 of the United Nations Convention on the Rights of the Child..

Eventual repeal came about as the result of a Green Party Member of Parliament's private bill that in an amended form was eventually supported by most other Members of Parliament.

During 2002, the Government initiated work on a national public education campaign to inform people about alternatives to the physical disciplining of children. In 2003 this strategy was revised and instead replaced with an initiative called SKIP (Strategies with Kids: Information for Parents)⁴. It had three components:

- The development of national parenting resources
- Partnerships with national organisations delivering positive parenting messages
- A contestable Local Initiative Fund (LIF) that supported community projects.

SKIP has been a successful initiative and the LIF has enabled the development of many creative, innovative local projects that promote positive parenting and discourage the use of physical discipline.

The process of law change

The process of law change began with the drafting of a Member's Bill by Sue Bradford, a Green Party Member of Parliament, that proposed full repeal of section 59 Crimes Act 1961. This Bill was drawn a ballot of private bills in June 2005. The first reading of Ms Bradford's Bill passed through Parliament 48 days after being drawn, with a majority of MPs voting in favour of it (63 for and 54 against). This allowed the Bill to proceed to the Select Committee stage during which 1718 written public submissions on the Bill were received. In addition numerous oral submissions were presented to the Justice and Electoral Select Committee. During the select committee stage amendments were made to the original bill.

The second reading of the Bill (now called the Crimes (Substituted Section 59) Amendment Bill), took place on 21 February 2007. The bill was passed after several hours of debate. It was supported by 70

³[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.216.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.216.En?Opendocument)

⁴<http://www.skip.org.nz/>

MPs and opposed by 51, allowing the Bill to proceed to a Committee of the House. The amended Bill was then debated line by line in Parliament on 14 and 28 March 2007. Further compromises were agreed between political leaders eventually leading to Parliament voting overwhelmingly in favour of the Bill, on May 2 2007 with 113 MPs supporting it and 8 opposing it.

In summary, it is notable that this reform came about when it did through a combination of factors - the luck of the draw (MP Sue Bradford's bill was drawn from the ballot), pressure from credible community advocates, leadership from strong and principled politicians and complex political maneuverings.

The provisions of the new law

The purpose of the new Crimes (Substituted Section 59) Amendment Act 2007⁵ was:

“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” (Section 4, Purpose).

Accordingly, section 5 of the Amendment Act repealed the previous section 59 and replaced it with a new section 59, which reads as follows:

59 Parental control

(1) Every parent of a child and every person in the place of a parent of the child is justified in using force if the force used is reasonable in the circumstances and is for the purpose of—

(a) preventing or minimising harm to the child or another person; or

(b) preventing the child from engaging or continuing to engage in conduct that amounts to a criminal offence; or

(c) preventing the child from engaging or continuing to engage in offensive or disruptive behaviour; or

(d) performing the normal daily tasks that are incidental to good care and parenting.

(2) Nothing in subsection (1) or in any rule of common law justifies the use of force for the purpose of correction.

(3) Subsection (2) prevails over subsection (1).

(4) To avoid doubt, it is affirmed that the Police have the discretion not to prosecute complaints against a parent of a child or person in the place of a parent of a child in relation to an offence involving the use of force against a child, where the offence is considered to be so inconsequential that there is no public interest in proceeding with a prosecution.

The key phrase of this new provision is in subsection (2), which states very clearly that corrective force is now illegal. Subsection (4) establishes a public interest test for the police to apply when determining whether to proceed with a prosecution.

The public debate pre-law reform

The very public debate about law reform in New Zealand which took place over many years was a divisive one that was widely reported in the media. Support for change came mostly from NGOs, the

⁵http://www.legislation.govt.nz/act/public/1961/0043/latest/DLM328291.html?search=ts_act_Crimes+Act+1961_noresel&p=1

Children's Commissioners, the early childhood education sector, some academics and child advocates. Over time support for law reform grew and included the voices of professional groups such as paediatricians, psychologists, some lawyers, many young parents and in time some faith groups. Opposition came from the public at large, many politicians and in particular from conservative Christian groups and conservative political lobbyists.

There were factors active in New Zealand at the time of the debate that influenced the positive outcome of the public and political debate including increasing public horror at violence to children. New Zealand ranked very poorly in the UNICEF Innocenti Report on child maltreatment deaths⁶. Additionally there was regular and extensive media reporting of horrific cases of child abuse. There was good evidence of the negative effects of physical discipline the efficacy of positive non-violent parenting. New Zealand was fortunate in having an excellent review of literature on the negative effects of corporal punishment conducted by staff at the University of Otago Children's Issues Centre available at the same time advocacy for repeal was growing. This informed many of the submissions made to the parliamentary select committee reviewing law change⁷.

Post law reform

Public debate about law reform did not end with the passing of the new legislation. Opponents of law reform capitalised on public fears and resentment about State intervention into family life and the possible criminalisation of parents who gave their child a 'light and loving smack'.

A non-binding citizen-initiated referendum which was begun before law reform and was initially intended to prevent law change was used in 2009 in an attempt to overturn the prohibition. The referendum was part of a continuing and well-funded campaign by groups opposed to law reform. The referendum was held by postal ballot in July 2009, on the question, *Should a smack as part of good parental correction be a criminal offence in New Zealand?*

Fifty-four percent of eligible voters voted in the referendum, and 87.4% of them answered 'no' to the question posed⁸. While this result has been widely interpreted as an overwhelming condemnation of the new law, the loaded and confusing nature of referendum's wording, the fact that it did not refer directly to the law and the low voter turnout give reasons to question that interpretation.

Despite the outcome of the referendum the Prime Minister, Rt. Hon. John Key, has steadfastly refused to revisit the law change stating that there is evidence that the law is working well. It is being implemented sensitively and sensibly. Regular Police monitoring of the implementation of the law

⁶<http://www.unicef-irc.org/cgi-bin/unicef/Lunga.sql?ProductID=353>

⁷http://www.occ.org.nz/_data/assets/pdf_file/0015/3318/OCC_Discipline_and_Guidance_Messages_from_Research.pdf

⁸<http://www.elections.org.nz/record/2009-referendum-result.html>

indicates that there has been very little increase in cases of very minor assaults on children being reported to the police, with prosecutions taking place only when serious assaults have occurred⁹.

In addition, two official reviews of the implementation of the law were carried out in late 2009 to examine the implementation of the legislation.

The first review was required under the 2007 legislation. Its aim was to report broadly on the impact of the change in the law. The review found no evidence that parents were being subjected to police intervention for occasionally lightly smacking their children, nor was evidence found of any other unintended consequences of the prohibition¹⁰.

The second review was released in December 2009. It examined the policies and procedures of the police and of Child, Youth and Family (New Zealand's statutory child protection service) to determine whether minor infringements of the law were being investigated or prosecuted, and whether existing laws were adequate to deal with more serious offences against children. This review was undertaken by the Chief Executive of the Ministry of Social Development, the Commissioner for Police and an independent psychologist, Mr. Nigel Latta. The agencies' policies and procedures were found to be effective and appropriate¹¹.

Recommendations were made to provide additional reassurances to the public. As a result, the New Zealand Police are continuing to monitor implementation of the new law and publish six monthly reports which can be viewed on the Police website¹².

Child Youth and Family recently released a pamphlet to inform parents what to expect when a social worker visits to investigate after a family is referred to them¹³.

The Boscawen Bill

A private bill drafted by Member of Parliament, John Boscawen, was drawn from the private members ballot in August 2009. It is aimed at overturning the new section 59 and reintroducing a statutory defence. It has yet to have its first reading. The Parliamentary Order paper of 17th March 2010 advised that the first hearing is postponed until September 2010. If enacted, the Bill would allow the use of force for correcting the behaviour of the child as long as the force was reasonable.

The Bill defines unreasonable force as force that:

⁹<http://www.police.govt.nz/search/node/section%2059%20reports>.

¹⁰<http://www.beehive.govt.nz/sites/all/files/20091110%20CE%20Monitoring%20Report%20on%20s59.pdf>

¹¹<http://yesvote.org.nz/files/2009/12/s59-report-to-prime-minister.pdf>

¹²<http://www.police.govt.nz/search/node/section%2059%20reports>.

¹³<http://www.cyf.govt.nz/info-for-parents/when-we-visit.html>

- causes the child to suffer injury that is more than transitory and trifling
- is inflicted by any weapon, tool, or other implement
- is inflicted by any means that is cruel or degrading.

At the present time indications are that this Bill will not receive the support necessary to proceed to a second reading.

Changing attitudes

There are indications that attitudes about the use of force for correction of children are changing in New Zealand. In 1981, 92% of men and 86% of women endorsed physical punishment in certain circumstances. In 2007, a survey carried out by the Office of the Children's Commissioner found that this proportion had decreased to 58%, and less than a third of respondents agreed that physical punishment should be part of child discipline¹⁴.

In another study 117 parents of preschool children were interviewed. Forty-one percent of parents reported using physical punishment at some time, but only 9% thought it was effective. Diaries kept by parents over a two-week period showed that less than 3% of parents had physically punished their children during that time. Data from the in-depth interviews indicated that most parents only rarely used physical punishment; if they did use it, they felt badly about it and believed it taught children the wrong messages¹⁵.

Nevertheless, there is room for an expansion of parenting programmes that encourage the use of positive non-violent discipline as well as understanding of, and support for the 2007 law.

It is the writer's view that acceptance of the law would likely be enhanced if the groups attempting to undermine it and promoting a place for "smacking" in parenting ceased their very public attempts to have the law overturned.

Conclusions

In repealing the old section 59 Crimes Act 1961 and replacing it with the provisions of the Crimes (Substituted Section 59) Crimes Act 2007 New Zealand has met its obligations to respect children's rights to physical integrity and protection from assaults in the name of discipline. New Zealand has complied with United Nations Committee recommendations that it amend legislation to prohibit corporal punishment of children.

The road to reform was a rocky one. It involved divisive public and political debates highlighting the intense personal feelings the public have about the issue of corporal punishment of children. The primary challenges were:

¹⁴http://www.occ.org.nz/data/assets/pdf_file/0008/5669/OCC_UMR-Research_141108.pdf

¹⁵<http://www.nzfamilies.org.nz/sites/default/files/downloads/discipline-in-context.pdf>

- engaging support for law reform (especially in light of organized opposition); and
- finding a way through the dilemma of expressly prohibiting all corporal punishment in law (and avoiding mixed messages about the place of corporal punishment in child discipline) but at the same time finding mechanisms outside the law to avoid prosecutions that are unhelpful because they undermine family functioning rather than support it.

A quiet time is needed for New Zealand to come to terms with the new law and grow its support for non-violent discipline. Opponents of the law change remain very active in their attempts to undermine confidence in the law. It is therefore important that New Zealand's politicians remain firm in their support for the new law and provide resources to assist in the growth of attitudinal changes.

Ultimately, the law change will contribute positively to the trend away from the use of corporal punishment with children in New Zealand as will ongoing support and information for parents about positive parenting.

Useful reference

For a full account of New Zealand's law reform story please refer to

Wood B., Hassall I., Hook G. and Ludbrook R. (2008). *Unreasonable Force: New Zealand's journey towards banning the physical punishment of children*. Wellington. Save the Children.

www.savethechildren.org.nz/new_zealand/nz_programme/section_59/unreasonable_force.pdf

Useful websites

The following websites contain useful historical information about law reform in New Zealand and the 2009 referendum. Both maintain up to date news and information.

www.epochnz.org.nz

www.yesvote.org.nz

The New Zealand Government's 3rd & 4th Periodic Report on the implementation of the United Nations Convention on the Rights of the Child can be accessed at the Ministry of Youth Development's website:

<http://www.myd.govt.nz/working-with-young-people/uncroc/uncroc-in-nz-3rd-and-4th-periodic-report-full.pdf>

Children and Youth in Aotearoa 2010

The following extract is taken from *Children and Youth Aotearoa 2010*, the NGO report to the United Nations Committee on the Rights of the Child regarding New Zealand's 3rd and 4th Periodic Report, June 2010:

The Crimes (Substituted section 59) Amendment Act 2007

1.51 *The Crimes (Substituted Section 59) Amendment Act 2007 repealed the defence, available to parents, guardians and caregivers under section 59 of the Crimes Act 1961, of reasonable force against a child for the purposes of correction. The Act was passed with an overwhelming majority in Parliament, with 114 members voting in favour and only six members against.*

1.52 *This important development followed the UN Committee's 2003 Concluding Observations which recommended legislative change in order to prohibit corporal punishment in the home,ⁱ and considerable work by non-governmental organisations, leaders in the children's movement and the Children's Commissioner.*

1.53 *The legislation, however, has generated a considerable amount of public debate and protest. It was commonly referred to in the media as the "anti-smacking law". In reaction to the Bill's enactment, some lobby groups generated a petition seeking to overturn the law. The petition collected the requisite 300,000 votes necessary to invoke a non-binding Citizens Initiated Referendum, which was held between 31 July and 21 August 2009. The Referendum asked voters the question "Should a smack as part of good parental correction be a criminal offence in New Zealand?" While a minority of eligible voters chose to vote in the referendum, 87 percent of those that did voted 'No' in response to the question.*

1.54 *Since the referendum, the Government has indicated that it does not intend to amend the law as it currently stands. The Government established a Review Panel which reported to the Prime Minister in December 2009. In addition, a private members Billⁱⁱ seeking to repeal the law was introduced to Parliament on 26 August 2009. However, despite considerable pressure from the lobbyists behind the petition, most Government and Opposition Members of Parliament do not wish to overturn the law and at this stage it appears that the private members bill is unlikely to proceed past its first reading. Public attitudes to physical punishment of children appear to be changing and it appears that fewer parents hit their children.ⁱⁱⁱ*

ⁱ CRC/C/15/Add.216, 3 October 2003, para 30(a).

ⁱⁱ Crimes (Reasonable Parental Control and Correction) Amendment Bill – Members Bill per John Boscawen MP.

ⁱⁱⁱ For example, a survey of 200 parents in July 2009 (New Zealand Herald Digipoll) found that 39% of mothers and 33% of fathers never hit their children, compared with below 10% over the past four decades. Two thirds of those interviewed admitted to smacking children "occasionally".