

House of Representatives

Supplementary Order Paper

Wednesday, 2 May 2007

Crimes (Substituted Section 59) Amendment Bill

Proposed amendments

Hon Peter Dunne, in Committee, to move the following amendment:

Clause 4

New section 59: to add the following subsection (after line 19 on page 2):

- “(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.”

Explanatory note

This Supplementary Order Paper amends the Crimes (Substituted Section 59) Amendment Bill by adding a *new subsection (4)* to the substituted section 59.

The Police have a long-established discretion as to the action they take in regard to complaints about minor breaches of the law reported to them. That discretion is essential to daily policing.

If the Police were obliged to take extensive action about every minor complaint, they would have little time for investigating serious crime. So long as each case is assessed on its merits and the Police are not simply refusing to enforce a law that has been passed by Parliament, the courts have acknowledged the existence of the Police’s discretion in individual cases.

If the Police were required to prosecute every breach of the law that came to their notice, the courts would quickly become clogged with trivial cases and the law would be brought into disrepute. For that reason they exercise their discretion to warn, or take action other than prosecution, in thousands of cases

each year. The existence of guidelines issued by the Solicitor-General as to the public interest factors that should be considered in making a decision whether or not to prosecute emphasises the importance of this discretion.

While under the common law there is no doubt that this discretion applies to minor complaints of assault, it is desirable that Parliament expressly affirms it in cases to which this section applies.
