

Why repeal of Section 59 will save children's lives

Murray Edridge

Chief Executive

Barnardos

Karl du Fresne, self-described curmudgeon, thinks that repeal of section 59 is a threat to law abiding parents (*Dominion Post*, 4 April 2006). He fears apparently that repeal will make criminals of law-abiding parents who smack their child. Trotting out that old canard is a poor substitute for a more thorough review of the issue.

Let's be clear from the outset: neither section 59 of the Crimes Act nor Sue Bradford's repeal bill refer to smacking at all. Let us also be clear we are talking about the Crimes Act and not legislation relating to child rearing.

Hitting anybody is a crime under the Crimes Act, except that you can get away with it if you are a parent and the victim is your child – just prove that you were disciplining the child and that the force you were using was 'reasonable in the circumstances'. The problem is that judges and juries find that a very flexible standard.

Last year, for example, a jury found it OK for a mother to beat her child with a riding crop. Try that on another adult and see how the courts treat you. In June 2001 a mother in the foyer of the Wellington District Court kicked her three year old in the back, pulled her up by her arm and jerked her head backwards by her hair. The Police prosecuted and the Judge found they had failed to prove beyond reasonable doubt that the force used was more than that allowed by a parent to discipline a child. Imagine how the court would have reacted if the woman's partner had committed such an assault on her in the court foyer.

So why the difference in law between adults and children? It wasn't always so. Back in the eighteenth century the law permitted the male householder to use 'reasonable force' in the correction of wife, children and servants – irrespective of age. Today there is zero legal tolerance of such violence towards (voting adult) wives and

employees. But the eighteenth century legal tolerance remains for hitting (non-voting) children.

In other words, section 59 is an archaic legal curiosity and irrelevant to modern child-rearing practice. In contrast, the Domestic Violence Act, twentieth century legislation, sets a contemporary standard. Under this law, domestic violence is given a comprehensive definition which is manifestly at variance with Section 59 of the Crimes Act. Similarly the Children, Young Person and Their Families Act sets a completely different standard of child care and protection from that reflected in section 59.

So where does this leave parents? Confused. Under one law it is alright for a parent to use physical force against their child. Under another law they may be subject to a protection order if their child has witnessed or heard violence or a threat of violence made by the parent.

The sooner New Zealand society stops giving ambiguous legal signals on violence in the home, the better it will be for our children. Our laws set a standard and ensuring that standard is clear and unambiguous is the first step in social change. The standard in itself does not change behaviour. Our law is very clear and unambiguous, for example, about murder or theft. These crimes continue to occur, but in the knowledge that they are wrong.

In the same way, repeal of section 59 will make an unambiguous legal statement about the use of violence against children. That in turn will create a better context in which to tackle our horrifying incidence of serious child abuse and intentional child homicide. That will be done by public and parental education.

And give us a break on the nonsense about wholesale prosecution of parents who smack. Police already exercise a substantial discretion in their decision whether to prosecute a minor or technical assault – just watch them in action controlling crowds at any sports event.

They already exercise that same discretion in the context of parent-child relations also. They do not prosecute the parent who smacks, although that action already constitutes an assault as defined in the Crimes Act. They do prosecute the woman who assaulted her three year old child in the Wellington courthouse or the woman who beat her child with a riding crop. Those acts were serious assaults. The problem is that section 59 provided a successful defence in court for the assailant and the law failed to protect those children.

It is that failure to protect that is so dangerous. Talk to those who deal with child abuse and they will tell you that many cases begin as child discipline which has spiralled out of control. Let's not forget that some of our intentional child homicide victims, killed within their family, died in the name of physical discipline.

Which is why, unlike Karl du Fresne, I do believe that repealing section 59 will save children's lives.