

Section 59 of the Crimes Act

Where to from here?

With the passage of the Crimes (Substituted Section 59) Amendment Bill, this country will have an unprecedented opportunity to improve the lives of many children through successive generations.

But law change alone is insufficient. To be fully effective the new law needs to be accompanied by a plan encompassing —

- information on the new law
- comprehensive parent education
- monitoring of reporting and prosecution for child assaults
- monitoring of court decisions
- tracking of the social impact of the new law.

This briefing sheet has been provided by the following organisations —

- Barnardos NZ
- EPOCH NZ
- National Collective of Independent Women's Refuges
- Plunket
- Save the Children NZ
- Unicef

The passing of the Crimes (Substituted Section 59) Amendment Bill will be a historic and significant event in the history of children's rights in New Zealand and indeed in the wider world. New Zealand will be first English speaking country to have introduced a specific ban on the use of corporal punishment for 'correction' of children.

Perhaps, it will also be the first to have found an answer to the challenge of respecting children's best interests by both —

- banning the use of force in correction, and at the same time
- minimising the risk that their parents would be prosecuted for minor transgressions of the law (without prescribing acceptable hitting).

The new law offers a number of potential benefits — reducing violence to children, encouraging use of positive parenting, protecting children better in the courts, respecting children's rights and changing attitudes. If these benefits are to be achieved then there is work to be done.

Let's do a thorough job for children and not leave the impact of the new law up to chance. Here is what needs to be done.

Public information about the new law

There needs to be an well planned information campaign — accurately stating the intentions of the law in a way that invites support rather than one that engenders fear and opposition.

Inevitably the public will be confused about what the new law means and opponents may attempt to further frighten parents. While it never possible to say with certainty how law might be interpreted in the courts, the Bill's intentions are clear. Public awareness of the law and its implications will be a critical factor in changing attitudes and behaviour over time.

Comprehensive parent information

All parents and prospective parents need comprehensive information on effective alternatives to corporal punishment. The SKIP initiative is popular but its coverage is limited and its messages about not hitting children muted. With the new law there is a place for stronger and clearer messages about the disadvantages of corporal punishment and expanded availability of community based opportunities for parents to become aware of, and make extensive use of, positive alternatives to physical discipline.

Monitoring reporting and prosecutions

The possible risk of the new law leading to increased prosecution for minor assaults on children has been exaggerated publicly. There is a provision in the bill for monitoring the impact of the new law relating to so-called "criminalisation" of "good" parents. Such monitoring should include the number of complaints to Police and CYF; the nature of the Police and CYF response to complaints; and the nature of the prosecutions that do occur.

Monitoring interpretation of the new law.

Sub-clause 1 of the Bill (Parental Control) is intended to provide protection to parents where restraint is used in specific circumstances.

Several lawyers believe that this clause might be misused as a legal defence for having hit a child as a part of control (not correction). Children should never be hit — hitting should not be part of control.

The use of this clause must be monitored to ensure that in practice it is not used in this way.

Tracking the attitudinal impact of the new law.

Having introduced specific bans on the use of force for correction most affected countries have then failed to systematically measure the impact of law change on attitudes and behaviour.

Anecdotal information lends itself to misinterpretation by opponents of change who have invested in the use of force for a variety of reasons.

Sweden systematically monitors the social impacts. The results provide evidence of a highly significant and steady reduction in the number of parents that approve of the use of physical punishment and a huge reduction in the number of children who report ever being exposed to physical discipline.

Baseline surveys asking the right questions should be done within a year of the bill in New Zealand becoming law and these should be repeated regularly.

The impact of the new law on attitudes and behaviour is more than of academic interest — we need to know if the law is working for children and if not ask why. The focus of such research should not initially be on reduction in child abuse — this is a long term goal. It is

likely that in the short term that there will be an increase in reporting as the population becomes more sensitised to violence to children.

NGO Government co-operation

The question arises “Who is responsible for these necessary steps?” While some of these steps can only be implemented by Government others will be most effective if they involve Government working together with NGOs. There is a place for a round table discussion between officials and key advocates and providers in the NGO sector.

Making a success of the new law - an action plan

Passing the Crimes (Substituted Section 59) Amendment Bill is not enough. If New Zealand is to achieve the full benefit of the new law, a comprehensive implementation plan involving the government and community sector working in partnership is needed. Such a plan will include —

Public information on the new law

What the new law means, how parents should now act in relation to the new law.

Comprehensive parental education

Strong messages on the risks of physical punishment and alternative effective parenting techniques.

Monitoring the impact of the new law on reporting and prosecutions

Do the number of reported breaches of the law increase? How many are prosecuted? What actions other than prosecution are taken by the Police?

Monitoring the interpretation of the new law by the courts

How do the courts interpret sub-clause 1? Is it interpreted as authorising the use of restraint only or does it include hitting of children?

Tracking the impact of the new law

Do social attitudes relating to the use of physical punishment of children change over time? Has the bill contributed to any measured change?