DEFYING HUMAN NATURE

An Analysis of New Zealand’s 2007 Anti-Smacking Law

FAMILY FIRST NEW ZEALAND
About the Author

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EXECUTIVE SUMMARY

When Prime Minister Helen Clark championed Green Party MP Sue Bradford’s anti-smacking bill through Parliament in 2007, she said that the law was “about trying to stop the appalling toll of death and injury for children in homes in our country.” On the other side of the House, Opposition Leader John Key was more cautious: “If I see good parents getting criminalised for lightly smacking their children for the purposes of discipline, I’m going to change the law if I’m in a position to do so. It’s as simple as that. It doesn’t matter if there’s a referendum or not. I want the law to work properly.”

The proposal to ban smacking was motivated by a commendable desire to reduce child abuse – a desire we all share, but was either leader accurate in their understanding of the effect of this law? Were their statements more about justifying the ideology behind the law without any real understanding or acknowledgement of just how this law would impact families and fail to achieve its stated aims?

This paper examines the social indicators relating to child abuse affecting our children and families in the years leading up to the ban on smacking and then since the law was passed. Has there been any improvement? Have the warnings about the anti-smacking law targeting the wrong parents been proved right? Is it time for politicians to respond to the concerns of law-abiding parents?

Key findings include:

- Notifications of abuse to CYF have increased more than six-fold since 2001. There is no evidence that this can be attributed simply to increased reporting or public awareness. Cases requiring further action have more than doubled since 2001 which has created a huge workload for CYF. In addition, substantiated cases of abuse found by CYF have increased from approximately 6,000 in 2001 to as high as 23,000 in 2013. While the past two years has seen a decrease in substantiated abuse found by CYF, this decrease is not matched by police convictions for abuse.
- While physical child abuse found by CYF continued its climb from 2001 right through to 2013 but dropped very slightly in the past two years, police statistics show a 200% increase since 2000 and a 136% increase since the anti-smacking law was introduced. The increase in serious physical abuse resulting in injury has increased by 86% since the law change. The government admits that numbers are projected to rise further.
- Sexual offences recorded by police and by CYF continue to rise but, once again, while the CYF rates have started to decrease in the past 48 months, there has been no matching decrease in police rates, with a 43% increase since the law change.
- Emotional abuse found by CYF has decreased since 2013 but is still 360% higher than 2001.
- Rates of neglect and ill-treatment of children have decreased in the past two years but are still unacceptably high each year, with a 45% increase in police rates since the law change.
- Child homicides continue to be a blot on NZ’s image. New Zealand has one of the highest rates of child abuse deaths in the OECD.
- There has been a statistically significant increase in children diagnosed with emotional / behavioural problems (including depression, anxiety disorder, and ADHD) – a 132% increase since the smacking law was introduced.
• The mental wellbeing of youth in terms of suicide and self-harm continues to be a huge concern.
• A survey in 2011—four years after the law was passed—found that almost a third of parents of younger children say that their children have threatened to report them if they were smacked. Also, almost one in four parents of younger children say that they have less confidence when dealing with unacceptable behaviour from their children since the anti-smacking law was passed. There has been a number of organisations expressing concern about children physically threatening their parents.
• Two out of three New Zealanders say they would flout the law, and three out of four New Zealanders want the law amended.
• The overwhelming majority of New Zealanders reject the notion that the anti-smacking law will reduce rates of child abuse in any significant way.
• Australia, with five-times the population of NZ, has just over double the incidence of child abuse—without a smacking ban.

In summary, there is not a single social indicator relating to the abuse of children that has shown significant or sustained improvement since the passing of the law. They’ve continued to get worse, in some cases a lot worse. Those working on the frontline in our communities are not seeing any significant improvement—in fact, they’re concerned about the ongoing unacceptably high levels of abuse, and believe that child abuse is still significantly under-reported.

It also appears that CYF has reached the point of ‘saturation’ and can no longer handle the level of notifications it is receiving, which in turn leads to its inability to investigate and find actual cases of child abuse which we need and expect them to find. A number of reviews of CYF have all highlighted problems within the organisation. A recent review by the Ministry of Social Development found that CYF is massively understaffed and that social workers do not have manageable caseloads and workloads. If CYF was a family, it would have had state intervention by now. Despite the important work it does and some excellent social workers, there is increasing evidence of massive systemic failure in the organisation as a whole.

The anti-smacking law has targeted law-abiding parents. An independent legal analysis at the end of 2014 of court cases involving prosecutions for smacking since the anti-smacking law was passed found that the anti-smacking law is complicated, difficult to apply, and lower courts are getting it wrong. The analysis by public law specialists Chen Palmer also said that statements made by politicians to the effect that the new section 59 does not criminalise ‘good parents’ for lightly smacking their children are inconsistent with the legal effect of section 59 and the application of that section in practice.

New Zealanders predicted all of this before the law was passed, but their concerns were ignored. The politicians and anti-smacking lobby groups linked good parents who smacked their children with child abusers—a notion roundly rejected by Kiwis. John Key was right—linking light smacking with child abuse was “bloody insulting”.

The anti-smacking law assumes that previous generations disciplined their children in a manner that was so harmful that they would now be considered criminals. This undermines the confidence of parents in disciplining their children, fails to understand the special relationship and functioning of families, and has communicated to some children that they are now in the ‘driving seat’ and parents should be ‘put in their place’.

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The anti-smacking law assumes that previous generations disciplined their children in a manner that was so harmful that they would now be considered criminals.

With police no longer reporting the effect of the anti-smacking law, it is now difficult to quantify how the law is being implemented.
In just the five years following the introduction of the law – covered by police monitoring reports - almost 600 kiwi families had a police investigation for allegations of smacking or minor acts of physical discipline, yet only 9% of them were serious enough to warrant charges being laid. That's a lot of wasted police resource. The other concern expressed by the police and families is the increase in false allegations.

This level of intervention also does not include the many more investigations by CYF. CYF claim that they can ‘find’ abuse where the police do not.

With police no longer reporting the effect of the anti-smacking law since 2012, it is now difficult to quantify how the law is being implemented, how police discretion is being used, and what the longer term trend is in terms of investigations.

The fact that so many social indicators around the welfare of children continue to worsen proves that we simply are not tackling the real causes of child abuse. It also proves that the law has been completely ineffective in terms of tackling the problem it was supposed to confront.

It may even suggest that the law is doing more harm than good.

Some lead researchers in this area suggest that, despite the best of intentions, the prohibition of all forms of physical correction may inadvertently undermine appropriate parental discipline with the result that a small but increasing percentage of boys may grow up with a dangerous combination of disrespect for their mothers and a lack of self-control. The researchers argue that physical chastisement should not be banned until there is scientific evidence that alternative disciplinary tactics are effective for defiant children as well as easily managed children. They note that neither supporters nor critics of anti-smacking laws have been able to identify alternative methods of discipline that are as effective in reducing child behaviour problems when using the same scientific methods used to denounce smacking. Without mild smacking, a parent’s frustration may continue escalating in such disciplinary situations, thereby increasing the risk of exploding with overly severe physical abuse and verbal hostility. Although milder disciplinary tactics may be sufficient for easily managed children, they are inadequate for controlling the behaviour of young oppositional defiant children.

Ultimately, the supporters of smacking bans were influenced by political ideology rather than common sense, good science and sound policy-making. It also communicated the message that political parties don’t trust kiwi parents to raise their own children responsibly.

We can solve the issue of child abuse, but we must be willing to confront the real issues. Criminalising good parents who simply want to raise law-abiding and responsible citizens is bad law-making.

What matters most is that the voice of New Zealanders is heard and respected!

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DEFYING HUMAN NATURE

Introduction

Interviewer: “…so, you don’t want to see smacking banned…”
Clark: “Absolutely not! I think you’re trying to defy human nature.”
Helen Clark (right) – Election Campaign 2005

When 6-year-old Coral Burrows was killed by her stepfather Steven Williams in 2003, then-Prime Minister Helen Clark said that we needed to amend section 59 of the Crimes Act and ban smacking in order to address the “high level of child violence and neglect.” Section 59 of the Crimes Act allowed a parent to use physical force to discipline a child if the force was deemed “reasonable” in the circumstances. Green Party MP Sue Bradford then introduced, what she called in her media release, an ‘anti-smacking bill’. (This is ironic given that the promoter and supporters of the law change then tried to argue that it was not an anti-smacking bill.)

Green Party Media Release, 6 Oct 2003

The proposal to ban smacking was motivated by a commendable desire to reduce child abuse – a desire we all share.

In 2003, UNICEF’s Innocenti Report Card “A League Table of Child Maltreatment Deaths in Rich Nations” was the first ever attempt to catalogue physical abuse of children in the 27 richest nations of the world. New Zealand had the third-highest child homicide rate of children aged up to 14 years for the period studied – exceeded only by Mexico and the United States. Ironically, of the 10 top countries which had an exceptionally low incidence of child maltreatment deaths, six hadn’t banned smacking.

However, the overwhelming majority of Kiwis rejected – and continue to reject – the anti-smacking law because they knew it would have no effect on child abuse rates, and would criminalise good parents raising great kids.

6 http://www.unicef-irc.org/publications/pdf/repcard5e.pdf
John Key’s assurances that good parents wouldn’t be affected by this law and that a light smack was okay were in direct conflict with what groups like Barnados, the Children’s Commissioner and Plunket were telling parents, and the way the anti-smacking law is being enforced by the police, CYF and the Family Court.

After the law change was voted for by politicians in 2007 (including National MPs who had previously campaigned against the law), the anti-smacking ideology received a well-deserved ‘spanking’ in the 2009 Referendum7 – a resounding 87% saying no to the law.8 Then in September 2010 all political parties, except for the ACT Party, sent a clear message that a light smack is not acceptable when they rejected the amendment that National MPs had been vigorously lobbying for whilst in Opposition!9 (More details on the amendment page 35)

Law-abiding parents are now confused.

This paper examines the social indicators relating to child abuse affecting our children and families in the years leading up to the ban on smacking and then since the law was passed. Has there been any improvement? Have the warnings about the anti-smacking law targeting the wrong parents been proved right? Is it time for politicians to respond to the concerns of parents?

“There are three reasons for concluding that the (anti-smacking law) was an inappropriate response to the problem. The first is that the amendment is an extremely poor piece of legal drafting in that it is calculated to create confusion rather than clarity. The second is that it criminalizes behaviour which should not be classified as a criminal offence. The third is that it fails to provide adequate protection for those whom it was designed to help.... In short, the current section is confusing, innocuous behaviour is classified as criminal, and children at risk have been short-changed in terms of the legal protection they are entitled to receive.”

Grant Illingworth QC – Barrister10

“...if the reality is that no one is ever going to be prosecuted for lightly smacking their child, then don’t make it illegal. Don’t make it a crime. It’s poor law-making to write a very strict law and then trust the police and the courts not to enforce it strongly. The law shouldn’t depend on which police officer or which judge or which jury you happen to get on the day.”

John Key – Salvation Army Conference 17 April 200711

Law-abiding parents are now confused.

Has there been any improvement? Have the warnings about the anti-smacking law targeting the wrong parents been proved right?

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In many cases, parental guidance and correction will be non-physical. Time out, withdrawal of privileges, a telling-off, grounding—they can often work. However, sometimes a parent may reasonably decide that a smack is required to correct or prevent defiant or unacceptable behaviour. Anti-smacking policies are problematic because they contradict many adults’ own childhood experiences with discipline and their long-term outcomes. Many of us received a well-warranted smack and didn’t think of it as abuse, just as we didn’t think of a good telling-off or grounding or time out as a form of abuse.

Sometimes these parenting techniques do become abusive, but that says more about the type of parent than the technique being used.

But if a parent uses a smack today, section 59 of the Crimes Act (the anti-smacking law) says that parents are committing the serious crime of assault. As a result, the law can prevent parents from parenting effectively and appropriately in the circumstances. Opinion polls consistently reveal the view that a strong majority of New Zealanders believe that parents should legally be able to use a mild and non-abusive degree of physical correction without fear of breaking the law.

Here’s the text of the law:

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.12

Do you understand the law as it is written? Is smacking illegal or not? If not, when is it justifiable?

If you’re confused, you’re one of many parents in New Zealand who share that confusion. Parents deserve to know whether they are parenting within the law or not.

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Confusion Reigns

“This is not clear legislation. In creating this law, Parliament abandoned its constitutional responsibility to say with clarity just which conduct is criminal. The section results from a political fudge. Whatever other views one takes about the topic of smacking, that much at least ought to be kept clear.”

Jim Evans - Emeritus Professor of Law, Auckland University.

In research done in 2009 and 2010, respondents were asked whether the new law makes it always illegal for parents to give their children a light smack.

As the graph shows, parents are divided on their answer.

This proves just how confusing the law is to parents and it is this confusion that is causing extensive harm. Parents have been given conflicting messages by the promoters of the law.

There is no clear distinction between ‘correction’ which is illegal and ‘prevention’ which could be legal. Legal opinions have contradicted each other and a further complication is the allowance for police discretion, but not CYF discretion, to investigate – “To avoid doubt, it is affirmed that the Police have the discretion not to prosecute complaints … where the offence is considered to be so inconsequential that there is no public interest in proceeding with a prosecution.” (subsection (4) of the applicable legislation).

Are the police actually using this discretion? A Nelson lawyer, who succeeded at the Court of Appeal in getting a mother acquitted after she admitted to police that she had occasionally smacked her child, said;

“I’m finding that CYFs and the police seem to prosecute on a fairly wholesale basis and they often say they’ll leave it to the judge to decide… It’s just my experience that a diversion is hardly ever applied in the domestic violence or child smacking area because it’s seen as such a hot potato…”

(You can view his comments and the facts of the case that he took to the Court)
of Appeal on the 2014 documentary ‘My Mummy’s a Criminal’ on YouTube.17)

As stated earlier, it is essential that public policy and laws relating to parents are clear as to what is allowed and what is prohibited. This law has just created confusion and, as a result, good parents are being victimised.

Listen to Sue Bradford attempt to explain the law to National Radio’s Sean Plunket two years after the law was passed – you’ll hear the confusion.

Flouted & Less Confident

This law is held in contempt by New Zealanders. Between 2008 and 2010, surveys showed that close to half of parents of young children (aged less than 12) were flouting the law despite the threat of criminal sanction or investigation by CYF.18 This is consistent with the level of smacking before the law change.19 Most parents use smacking in an occasional and responsible way, and at the same time they don’t think parents should be criminalised for it.

Most parents use smacking in an occasional and responsible way.

17 10 Good Reasons to Change the Anti-Smacking Law - Reason #7 - “Helen” https://www.youtube.com/watch?v=_DKyztZtOXc
Further surveys in 2012\textsuperscript{20} and 2013\textsuperscript{21} about \textit{future actions / intentions} found that two out of three respondents would flout the law and smack their child to correct their behaviour if they thought it was reasonable to do so.

\textbf{Despite the new law, would you smack to correct your child’s behaviour?}

\begin{center}
\begin{tikzpicture}
\begin{axis}[
    width=\textwidth,
    height=4cm,
    ybar=0pt,
    ymin=0,
    ymax=80,
    legend style={at={(0.5,-0.125)},anchor=north},
]
\addplot+ [ybar,fill=blue!50] coordinates{(2012,30) (2013,20)};
\addplot+ [ybar,fill=red!50] coordinates{(2012,70) (2013,80)};
\legend{Yes, No}
\end{axis}
\end{tikzpicture}
\end{center}

Some disturbing trends have also surfaced.

A survey in 2011 – four years after the law was passed - found that \textbf{almost a third of parents of younger children said that their children have threatened to report them if they were smacked}.\textsuperscript{22} This was a predicted outcome of the anti-smacking law and comes as no surprise. The authority of parents has been undermined by this law change, and children are now telling mum or dad they cannot touch them – even when the physical action is reasonable and appropriate to deal with the unacceptable, dangerous or defiant behaviour of the child.

\textbf{Almost one in four parents of younger children said that they have less confidence when dealing with unacceptable behaviour from their children} since the anti-smacking law was passed.\textsuperscript{23}

Additionally, there have been a number of organisations expressing concern about children physically threatening their parents.\textsuperscript{24, 25} The anti-smacking law has gone against traditional parenting and human nature, undermined the role of parents, failed to understand the special relationship and functioning of families, and has communicated to some children that they are now in the ‘driving seat’ and parents should be ‘put in their place’.

\begin{quote}
“it’s a complete and utter dog’s breakfast…”
“badly drafted…”
“extremely vague…”
\textit{linking light smack with child abuse is “bloody insulting”}
\end{quote}

\textbf{John Key – Radio Live, Sept 2009\textsuperscript{26}}

\begin{itemize}
\item\textsuperscript{21} https://familyfirst.org.nz/wp-content/uploads/2013/03/ANTI-SMACKING-LAW-2013-POLL.pdf
\item\textsuperscript{22} Boy’s 111 ‘parent assault’ call unfounded – Eastern Courier 2 Aug 2007 http://www.stuff.co.nz/ auckland/local-news/eastern-courier/16503/Boys-111-parent-assault-call-unfounded
\item\textsuperscript{24} Younger men use violence – stuff.co.nz 18 Dec 2014 http://www.stuff.co.nz/national/ crime/64260485/yonger-men-use-violence
\item\textsuperscript{25} Mother menaced with knife by son, 12 – Bay of Plenty Times 24 July 2009 http://www.nzherald. co.nz/bay-of-plenty-times/news/article.cfm?c_id=1503343&objectid=10984528
\item\textsuperscript{26} http://bobmccoskrie.com/wp-content/uploads/2015/11/0904-John-Key-on-Radio-Live-.mp3
\end{itemize}
Has the Law Reduced Child Abuse?

“The change was about trying to stop the appalling toll of death and injury for children in homes in our country.”
Helen Clark – Prime Minister, Dominion Post 2007

“The epidemic of child abuse and child violence in this country continues – sadly. The anti-smacking bill was never intended to solve that problem.”
Sue Bradford – former Green MP, National Radio 2007

What the people say

As stated earlier, all New Zealanders are ashamed of our atrocious child abuse statistics, but they also don’t want to see law-abiding parents being criminalised. Eight years on (and as summarised in the graph above showing polling on this issue), they still reject the link between a smack and child abuse.28 They also continue to reject the sales pitch that an anti-smacking law is necessary to tackle the cancer of child abuse.

Are they right? Let’s examine the evidence.

What the statistics show

Note: It is important to note from the outset that the following data recorded by police and CYF differs due to the nature of the information they represent. Police figures represent cases “when an offender is identified and dealt with. (E.g. prosecuted, warned, cautioned, diverted, etc.)”29 On the other hand, CYF figures represent all cases where abuse has been investigated and substantiated, but not necessarily dealt with by police. The primary functions of Police are to “address the immediate safety, investigate and hold perpetrators to account wherever

Let us look at the overall picture of child abuse.

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possible." The primary functions of CYF are to "assess the safety and wellbeing of children and provide care and protection where this is needed."[30]

Let us look at the overall picture of child abuse as shown by CYF statistics. (Note that the population of 0-14 year olds has grown by just over 4% since 2001.[31])

Notifications of abuse to CYF have increased more than six-fold since 2001. There is no evidence that this can be attributed simply to increased reporting or public awareness. The worsening rates started before these public campaigns and have continued since their introduction. (See further discussion of this issue on page 26). This means that more than one million notifications of abuse affecting children have been made to CYF since the passing of the anti-smacking law.

Further action having to be taken by CYF on notifications made to the agency—which has more than doubled since 2001, and was triple the rate in 2012/2013—is evidence of the huge increase in CYF’s workload.[32]

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32 Information obtained under the Official Information Act – letter dated 16 December 2015. Can
Substantiated cases of all forms of abuse found by CYF have increased from approximately 6,000 in 2001 to as high as 23,000 in 2013. The past two years has seen a decrease in abuse found by CYF.33

Is this welcome decrease because of an improving trend, or has CYF reached ‘saturation point’ i.e. they simply can’t cope with the increased level of notifications and the amount of work these notifications entail? It is actually likely that abuse is more prevalent than these figures suggest. Government reviews of CYF suggest that they have reached saturation point.34 35 36 A recent review by the Ministry of Social Development found that CYF is massively understaffed and that social workers do not have manageable caseloads and workloads.37 Agencies working in the community would also seem to support the premise that CYF have reached ‘saturation point’.38 39

To test this premise, police statistics and child abuse death trends were examined to see whether there has been a comparative decrease in the past two years. Has the positive trend in CYF statistics also been seen by other child welfare and government agencies? Is there any evidence that the wellbeing of children is improving?

Each type of abuse – physical, sexual, emotional, neglect, behavioural/relationship difficulties, and self-harm/suicidal – as recorded by the police and by CYF will now be examined.


Government reviews of CYF suggest that they have reached saturation point.

Is there any evidence that the wellbeing of children is improving?
Physical Abuse

Police records show increasing rates of recorded offences of physical abuse of children. While physical child abuse found by CYF has dropped slightly in the past two years (see next graph), police statistics show a 200% increase since 2000 and this trend shows no sign of abating. Most disturbing is the increase in serious physical abuse resulting in injury that has increased by 86% since the anti-smacking law was passed. The peaking of CYF figures is not matched by police statistics.

In addition, according to the police, “Assaults on Child offences are likely to be significantly under-reported to police.”

Most disturbing is the increase in serious physical abuse resulting in injury that has increased by more than 85% since the anti-smacking law was passed.

As just stated, physical child abuse found by CYF has dropped slightly in the past two years, but even the government is unconvinced by this trend. In fact, they are predicting higher child assaults in 2016 and beyond, as shown by the graph below.42

The target to reduce child abuse was introduced by Prime Minister John Key in 2012. By 2017, the government aims “to halt the 10-year rise in the number of children experiencing physical abuse”. However, they admit; “This is extremely ambitious. In 2011, numbers were rising, and projected to rise further without intervention. Meeting this target means bringing the projected number of approximately 4,000 children expected to experience substantiated physical abuse down to less than 3000 by June 2017, which is a reduction of approximately 25 per cent in projected numbers.”

This target of 3,000 children attempts to reduce child abuse only to the levels reported in 2011, rather than the lower levels as experienced in 2007.

42 http://www.ssc.govt.nz/bps-supporting-vulnerable-children#result4
This government target is represented on the graph as ‘BPS4 Target’ (red dot). Note that this target of 3,000 children attempts to reduce child abuse only to the levels reported in 2011, rather than the lower levels as experienced in 2007 when the anti-smacking law was passed, or even those experienced at the beginning of the decade.

When the 2015 figures were released, Labour Party children’s spokeswoman Jacinda Ardern said the Government’s targets had served to highlight its failure to tackle child abuse. “Those are dreadful figures, yet police stats tell us the situation could be even worse than that…”

The overall increase of almost double the number of cases found by CYF since 2004 alone shows that there is still much work to be done to protect our children from physical abuse.

**Sexual Abuse**

*POLICE*

*CYF*

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44 Information obtained under the Official Information Act – see earlier footnote
It’s significant that while the rate of child sexual abuse found by police has steadily increased (43% increase since 2007), the CYF rate has started to decline in the past two years - which supports our CYF ‘saturation’ argument.45

Neglect

While the rate of child sexual abuse found by police has steadily increased, the CYF rate has started to decline in the past two years.

(Nota**b**e that CYF have separate categories for neglect and for emotional abuse.)

**Neglect can take a number of different forms:**

- physical neglect - not providing the necessities of life like a warm place, enough food and clothing
- neglectful supervision - leaving children home alone, or without someone safe looking after them during the day or night
- emotional neglect - not giving children and young people the comfort, attention and love they need through play, talk, and everyday affection
- medical neglect - the failure to take care of their health needs
- Educational neglect - allowing chronic truancy, failure to enroll children and young people in school, or inattention to special education needs.

Child Youth and Family Policy Document September 201346

45 Ibid.
46 http://www.practicecentre.cyf.govt.nz/policy/assessment-and-decision-making/key-information/what-did-we-find.html#Neglect7
Police statistics show an almost 50% increase in cases of ill-treatment and neglect against children since 2007 when the anti-smacking law was passed.\footnote{47} Similarly, cases of neglect found by CYF were below 3,000 each year up until 2004, but have been consistently above 4,000 each year since then (reaching a peak of 5,400 in 2013), with a drop in 2014/15.\footnote{48}

**Emotional Abuse**

Examples of behaviours that may result in emotional abuse include:

- constant criticism, shaming and humiliating a child or young person; calling a child or young person names and making negative comparisons to others; telling a child or young person he or she is “no good”, “worthless”, “bad”, or “a mistake”; frequent yelling, threatening or bullying
- ignoring or rejecting a child or young person, or giving him or her the silent treatment
- limited physical contact with the child or young person - no hugs, kisses, or other signs of affection
- corruption of the child or young person through exposure to, or involvement in, illegal or anti-social activities
- the negative impact of the mental or emotional condition of the parent or caregiver or anyone living in the same residence as the child or young person
- the negative impact of substance abuse.

\footnote{49}http://www.practicecentre.cyf.govt.nz/policy/assessment-and-decision-making/key-information/what-did-we-find.html#Emotionalabuse6
These figures highlight one of the more disturbing trends identified by the research. Consistent with the explosion in notifications (page 13), there has been a comparative explosion in cases of emotional abuse – a massive increase since 2001 from fewer than 2,000 cases per year to more than 10,000 every year since 2009 and reaching a high of almost 13,000 in 2013.50 Family violence reporting will have contributed to part of the increase51, but this explosion began well before the “It’s Not OK” campaign. This could suggest that parents may end up being verbally hostile to children when they keep getting more frustrated because they cannot stop the escalation of defiant or unacceptable behaviour with a mild smack.

It is also significant to note that while the above graph shows a decrease from 2013-2015, family violence investigations recorded by NZ Police in 2014 increased 7% from 2013.52 This proves that the correlation between the two is not as direct as it is argued.

**Behavioural / Relationship Difficulties**

Parents may end up being verbally hostile to children when they keep getting more frustrated.
As with other CYF statistics, rates have not improved since 2004, although there has been a decrease in the last 24 months. We will also see that this reduction is not mirrored in Ministry of Health data (covered later in this report).

Self-Harm / Suicidal

After a welcome decrease between 2007 and 2009, there has been an almost-doubling of the numbers between 2009 and 2013/2014, with a decrease in 2015 having been reported. However, it is important to note that this decrease is also not matched by Ministry of Health data (covered later in this report).

Child Abuse Deaths

New Zealand has one of the highest rates of child abuse deaths in the OECD, behind USA and Mexico.

New Zealand has one of the highest rates of child abuse deaths in the OECD.

2015 has been a horrific year, almost matching the worst year of 2009.
Child homicides continue to fluctuate each year with no sign of any long-term sustained improvement. It would therefore appear that the anti-smacking law has had no impact on the rates of child abuse deaths. 2015 has been a horrific year, almost matching the worst year of 2009, and equal to 2004, 1994, and 1992.

Mental Health

One of the arguments frequently used by advocates of smacking bans is that smacking increases the future risk of a child suffering mental health problems. One would reasonably expect that the mental health of children in New Zealand would therefore improve or show some positive indicators as a consequence of the smacking ban in 2007. As shown in the next few pages, that is not the case.

The Ministry of Health’s Mental Health and Addiction Service Use tables provide us with statistics related to the number of children seen by mental health and addiction services provided by DHBs and NGOs.

It is significant that the numbers notably worsened immediately following the introduction of the anti-smacking law – almost doubling.

The Ministry of Health’s Annual Update of Key Results 2014/15: New Zealand Health Survey report corroborates this trend. In this report, ‘emotional and/or behavioural problems’ refers to depression, an anxiety disorder, attention deficit disorder (ADD) and/or attention deficit and hyperactivity disorder (ADHD).

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Surveyors recorded children as having been diagnosed with emotional and/or behavioural problems if their parents indicated that they had been told by a doctor at some time in their child’s life that the child had one of these conditions.

In 2015, around 32,000 children aged 2–14 years (4.0%) had been diagnosed with emotional and/or behavioural problems at some time in their life. The percentage of children with diagnosed emotional and/or behavioural problems has increased since 2007 (13,805 children – 1.8%). According to the survey, there has been a statistically significant change since 2007.

Boys were 1.6 times more likely to have ever been diagnosed with emotional and/or behavioural problems than girls after adjusting for age differences.

Hospitalisation for children and teenagers also shows a disturbing trend with a 71% increase in admissions for mental and behavioural disorders since 2007.60

Suicide / Self-Harm

Note: As seen on page 21, CYF reports cases where there is a finding related to 'self-harm / suicide'. No attempt is being made under this heading to argue that the anti-smacking law has directly contributed to increasing rates of youth suicide or self-harm. This section is included to examine the claim that smacking increases the risk of mental health problems61, and to look at the overall picture of the wellbeing of our young people over the past decade, and especially since the law was passed.

SUICIDE

The highest rate of suicide in 2012 was in the youth age group (15–24 years) with 107 male and 43 female youth suicides. Back in 2003, there were 66 male and 31 female suicides.

Males had higher rates of suicide than females for every age group. The highest rates for males were for those aged 15–19 and 40–44 years. The highest rate for females was in the 15–19 years age group.62 63

Between 2000 and 2012, the overall rate of suicide for young people has increased 62%. In the 10-14 age bracket, there were 7 male suicides and 5 female suicides in 2012. In 2000, there were four in total. In the 15-19 age bracket, there were 42 suicides in 2000, and 77 in 2012. Disturbingly, the rate for young women and girls has tripled over this time from 16 in 2000 to 48 in 2012.

Compared with other OECD countries, New Zealand's most recently reported male and female suicide rates for youth aged 15-24 years were the highest of the OECD countries covered in the Ministry of Health's 2012 Suicide Facts: Deaths and intentional self-harm hospitalisations report. 64

The New Zealand male youth suicide rate in 2012 was 32.3 per 100,000, followed by Finland (2011) with 26.4 suicides per 100,000 (chart next page). 65

65 Ibid.
New Zealand’s female youth suicide rate (2012) was 13.8 suicides per 100,000, followed by the Republic of Korea (2011) with 11.0 per 100,000.

Youth (15-24 years) suicide age-specific rates for OECD countries, by sex

SELF HARM

In 2012, the highest rate of intentional self-harm hospitalisations for both males and females was in the 15–19 years age group (103.1 per 100,000 for males and 279.5 per 100,000 for females). Youth aged 15-24 years accounted for 34.7% (1052) of all intentional self-harm hospitalisations in 2012. The female rate of intentional self-harm hospitalisations was 2.4 times the male rate.  

The female rate of intentional self-harm hospitalisations was 2.4 times the male rate.
Are the Increases Due to Better Reporting?

Supporters of anti-smacking laws argue that the increases in child abuse that we have documented in this paper have only come about because of campaigns such as “It’s Not OK” and increased public awareness which were introduced at the same time as the anti-smacking law.68

This could be a convincing argument if the rates of abuse highlighted in this research paper all experienced sharp increases following the introduction of the new law. However, **rates of child abuse were increasing before those campaigns, and have continued to increase at similar rates**. It can therefore be argued that the campaigns and the anti-smacking law have made no tangible difference.

It is accepted that some of the increase in notifications can be attributed to public campaigns and awareness.

However, there are a number of other contributing factors to consider:

- If the premise of increased reporting is true, the level of increase in negative statistics after the anti-smacking law was introduced would be greater than the increasing trend before the law was introduced. This has not happened. The situation has simply continued to deteriorate.70
- The problem should peak and start to improve as awareness is raised. However, there is no evidence that the ‘tide is turning’. Many researchers and those working in the community are seeing no real and measurable improvement.71
- The real problem of the ‘increase due to better reporting’ premise is that if there was a significant and ongoing decrease in an area of abuse, would that simply mean the problem is just being hidden and people don’t trust the authorities or can’t be bothered reporting it? (We note that the police don’t use this line of thinking when crime rates do improve.74)
- In addition to there being no noticeable jump related to the “It’s Not OK” campaign, the increase is just as strong or stronger in statistics less susceptible to a changing threshold for what gets reported e.g. injuries in police statistics, or hospitalisations.

The fact that so many social indicators continue to exhibit negative trends indicates that the real causes of child abuse are not being tackled. It also indicates that the law has been completely ineffective in terms of tackling the problem it was supposed to address.

**It may even suggest that the law is doing more harm than good.**75 (see further discussion page 36 onwards)

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68 http://www.areyouok.org.nz/
75 Sweden’s smacking ban: more harm than good http://www.families-first.org.uk/art/sweden.pdf

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Legal Analysis of the Effect of the Anti-Smacking Law

In 2014, an independent legal analysis of court cases involving prosecutions for smacking since the anti-smacking law was passed found that the anti-smacking law is complicated, difficult to apply, and lower courts are getting it wrong.

The analysis by public law specialists Chen Palmer\(^7\) also said that statements made by politicians to the effect that the new section 59 does not criminalise “good parents” for lightly smacking their children are inconsistent with the legal effect of section 59 and the application of that section in practice. (To read the full opinion, go to www.protectgoodparents.org.nz)

This opinion flies in the face of assertions made by the Prime Minister John Key and CYF\(^7\), and especially the ‘Latta Review’\(^8\) which argued that none of the cases highlighted by Family First NZ to ‘bolster their argument that good parents were being made into criminals for smacking stood up to scrutiny’.\(^9\)

Key statements in the legal opinion by Mai Chen also include:

- “An analysis of section 59 and the relevant case law shows that non-lawyers, including parents and the Police, struggle to understand and apply section 59. The cases also demonstrate that even lawyers and judges struggle to apply section 59 correctly, with examples of cases going to the District Court, the High Court and then being overturned by the Court of Appeal.”
- “Case law confirms that the section 59 amendment has criminalised the use of force by a parent against their child for the purposes of correction.”
- “Parents will struggle to know whether their actions constitute an offence under section 59 or not, and in cases of doubt, the police will prosecute and leave it up to the Court to determine. This is demonstrated in the cases we have analysed.”
- “The law is complicated and difficult to apply, such that even the lower courts are getting it wrong.”
- “Smacking a child for the purpose of correction is illegal regardless of whether the Police decide to prosecute or not.” (our emphasis added)

This is despite Prime Minister John Key telling parents that a light smack is ok.\(^5\) It is disappointing that the political parties have been so quick to mislead Kiwi families. Documents obtained under the Official Information Act reveal that the Minister of Justice Amy Adams\(^1\) and the then-Minister of Police Michael Woodhouse\(^2\) sought no further advice and took no actions following the release of this opinion. They simply ignored it.

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\(^7\) Nigel Latta gives OK to anti-smacking law – Stuff.co.nz 8 Dec 2009
\(^9\) Smacking law appropriate as is, says Key - NZ Herald 7 Dec 2009
The Minister of Justice, in a letter to Family First NZ, said;

“I am confident that the legal provisions have struck the right balance. There are no plans to review or amend this legislation. The Government is committed to ensuring that responsible parents are not convicted for a light smack, and this is not the intention of the law.”

The smacking law has been so bereft of success that supporters have had to commandeer a claim that “there has been no increase in prosecutions of parents for minor and occasional smacking of children” — a claim which has now been shown to be patently false.

View The Examples

Family First NZ has released two documentaries on the anti-smacking law — “My Mummy’s A Criminal” in 2011, and “Mum on a Mission” in 2014 — which feature the experiences of ten families. These documentaries have been viewed on YouTube over 23,000 times (despite being 30 minute documentaries) and 15,000 copies of the DVD’s have been distributed.

You can view mini-episodes which highlight the story of each family. Watch and judge for yourself. Go to www.protectgoodparents.org.nz

It is disappointing that the political parties have been so quick to mislead Kiwi families.

Smacking a child for the purpose of correction is illegal.

85 https://www.youtube.com/watch?v=BQn4lWMU1
86 https://www.youtube.com/watch?v=f7ch3I5Lo
Are Parents Being Prosecuted For Smacking?

Yes, they are. Some of these cases were included in the legal analysis (refer to page 27). According to the police reviews for the five years up to mid-2012, there have been seven prosecutions for a smack on a nappy, smacks on the leg, or smacks on the bottom with no physical injuries at all. Other prosecutions have included open hand smacks just above or below the bottom, and even a smack on the back of a hand.

One of the last police monitoring reports on the law admitted that there had been an upward trend in smacking cases, and “more widespread use of the legislation” by the police.\(^7\) The other huge concern expressed by police themselves is the increase in false allegations of assault. This may come from neighbours or even the children themselves.

In just the five years immediately following the introduction of the law – covered by the police monitoring reports\(^8\) - almost 600 kiwi families had a police investigation for allegations of smacking or minor acts of physical discipline yet only 9% of them have been serious enough to warrant charges being laid. That’s a lot of wasted police resource.

With police having ceased reporting the effect of the anti-smacking law in the middle of 2012,\(^9\) it is difficult to analyse how the law is now being implemented, how police discretion is being used, and what the longer term trend is.

\(^8\) http://www.police.govt.nz/sites/default/files/resources/other-reports/11th-review-section-59.pdf
These investigations are also independent of the many more investigations by CYF. CYF admit that they can ‘find’ abuse where the police do not. Every NZ family should be concerned by that statement of intent!

*Please note that an alleged perpetrator is not a confirmed abuser – they may not have been found guilty of any offences against children or young people. Thresholds of abuse for Child, Youth and Family and the New Zealand Police differ in that Child, Youth and Family determines abuse on the balance of probability while the Police – through the Courts – determine abuse beyond reasonable doubt. This explains how Child, Youth and Family can find abuse where the Police do not.* (our emphasis added)

Official Information Act Response from CYF (2014)\(^90\)

“*If I see good parents getting criminalised for lightly smacking their children for the purposes of discipline, I’m going to change the law if I’m in a position to do so. It’s as simple as that. It doesn’t matter if there’s a referendum or not. I want the law to work properly.*”

John Key – PM - Investigate Magazine June 2008

**The Review of the Law (2009)**

The Prime Minister’s review of the smacking law carried out by psychologist Nigel Latta, the Police Commissioner, and the head of CYF\(^91\), in response to the overwhelming rejection of the law in the citizens initiated referendum, contained glaring errors. These included being factually wrong, misrepresenting basic facts by leaving out material information, and containing the alleged actions of parents which were found to have no basis in court but which still presents the parent as being abusive. The review also failed to take into account the response of the court, including discharges without conviction.

A senior Wellington lawyer described the review as a ‘rubber stamping’ process. Documentation obtained under the Official Information Act seems to indicate that the review involved only two meetings of the full panel\(^92\), rides in a police car, sitting at the police Communications Centre for a couple of hours\(^93\), and misinterpreting and misrepresenting cases put forward by Family First NZ.

A group of parents, whose experiences were included in the report, released a statement immediately after the Prime Minister and Nigel Latta presented the report in 2009, saying:

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We, the parents who were accused of misrepresenting the facts of our smacking cases and therefore misleading Family First, are refuting the claims, and reject the findings of the report commissioned by the Prime Minister.

Why were we never consulted in the process? It appears that our accounts of what happened and the supporting documentation we provided, including court, police and CYF documents, to Family First have been ignored and the only opinion that matters has been that of the police and CYF. The terms of reference of the Review failed to allow our voice to be heard.

The report contains glaring errors including:
- misrepresentation of basic facts,
- contains alleged actions of parents which were found to have no basis in court but which still presents the parent as being abusive,
- fails to take into account the response of the court including discharges without conviction for what were previously claimed as serious assaults,
- reports a case where the police prosecution was dismissed by the court, yet the report still argues that all police action was appropriate,
- fails to address a number of cases where parents were investigated by police or CYF for erroneous claims of smacking made by passers-by or the children themselves ringing 111.

... As parents referred to in the report, we believe that we should have had the opportunity to respond to the claims made by the police and CYF. This is a one-sided report and fails to objectively hear the evidence from both sides.

We reject the notion that we have misrepresented the facts to Family First, and that Family First has lied in their advocacy work in this area. Family First has been one of the few organizations willing to hear our side of the story and advocate for our concerns. We are not child abusers, yet this report continues to make that accusation, and does so without providing an opportunity for rebuttal or a full assessment of the facts.

The effect of the experience of being investigated and in some cases prosecuted has had a huge effect on our families including our children, yet this has been minimised or ignored.

Newspaper advert (2010)
Investigate Magazine did a full examination of the report including seeking a response from panel member Nigel Latta, who responded to Investigate:

“We were certainly not asked to say whether we thought a criminal conviction was warranted or fair.”

Nigel Latta

You can read the full article on this link: http://protectgoodparents.org.nz/wp-content/uploads/2014/04/INVESTIGATE-ARTICLE.pdf


Didn’t Almost All MPs Vote for the Anti-Smacking Law?

Yes they did, but many National party MPs who were vehemently and vocally opposed to the law were suddenly, within a 24 hour period, forced to vote for it! It was supposed to be a ‘conscience vote’ but the two major parties – Labour and National – were ‘whipped’ by their leaders (had to vote along party lines) to vote for the law.

What Does the Research Really Say About Smacking?

A 2007 Otago University study found that children who were smacked in a reasonable way had similar or slightly better outcomes in terms of aggression, substance abuse, adult convictions and school achievement than those who were not smacked at all. This is significant in light of the statistics earlier in this report highlighting worsening rates of behavioural / emotional problems, self-harm, and mental / behavioural disorders amongst our young people. A large American study reported in 2013 found similar results.

Further, a study by the Christchurch School of Medicine found there was no difference in outcomes between no smacking and moderate physical punishment. They said; “It is misleading to imply that occasional or mild physical punishment has long term adverse consequences”.

99 Submission to Select Committee considering the anti-smacking law – made by the researchers http://bobmccoskrie.com/wp-content/uploads/2015/12/Otago-medical-School-research.pdf
100 Gunnoe, M. L. (2013). Associations Between Parenting Style, Physical Discipline, And Adjustment In Adolescents’ Reports. Psychological Reports: Disability & Trauma, 112(3), 933-975. http://dx.doi.org/10.2466/15.10.49.PR0.112.3.933-975
A recent study of teenagers by a team from the Albert Einstein College of Medicine in New York, published in the journal Parenting: Science and Practice, found the effects of discipline – such as verbal threats or smacking – are offset by the child’s feeling of being loved and the child believes their punishment is coming from ‘a good place’.

They said, “Maternal warmth protected adolescents from the negative effects of harsh discipline such that, at higher levels of maternal warmth, there was no relation between harsh discipline and externalising problems.”

It also said anti-smacking policies are problematic because they contradict many adults’ own childhood experiences with discipline and their long-term outcomes, and that this study demonstrated one condition - maternal warmth - under which discipline does not result in negative outcomes for the child in later life.

This study joins what the researchers refer to as “emerging theoretical and empirical evidence” which challenges the academic and political view that smacking is child abuse and should be banned.

Studies cited by opponents of smacking do not adequately distinguish the effects of smacking as practiced by non-abusive parents from the impact of severe physical punishment and abuse.

What About Other Corrective Actions Used By Parents?

A peer-reviewed study from Oklahoma State University titled “Making Valid Causal Inferences About Corrective Actions by Parents from Longitudinal Data”, and published in the December 2013 edition of the Journal of Family Theory & Review, referred to three recent studies of 12 disciplinary tactics that parents could use instead of smacking. They found that;

“no disciplinary tactic was ever associated with reduced child behaviour problems, and 7 of the 12 tactics predicted significantly worse behaviour problems in at least one analysis.”

Other studies have shown that expressing disappointment and yelling or scolding were associated with as many significantly adverse outcomes as smacking, and time-out and shaming were also significantly associated with internalising problems. Psychotherapy for children and using Ritalin for ADHD appear just as harmful as smacking when using the best research methods used in anti-smacking studies.

The study by Oklahoma State University argues that selection bias taints the conclusions of most studies which criticise smacking. They say:

Expressing disappointment and yelling or scolding were associated with as many significantly adverse outcomes as smacking.

Anti-smacking policies are problematic because they contradict many adults’ own childhood experiences with discipline and their long-term outcomes.
“Parents are less likely to use corrective actions when children do well in school... do not smell of tobacco smoke, are not at risk for precocious sex, demonstrate trustworthiness with non-deviant peers, are cooperative, and respond well to reasoning. Quite simply, parents do not need to use corrective actions when there are no problems to correct.”

According to the researchers, this bias makes all corrective disciplinary actions look more harmful than they actually are, making it nearly impossible for research to identify effective ways to use smacking or any alternatives that parents could use instead. This failure to make obvious discriminations leads to premature absolute conclusions for or against favoured or disfavoured disciplinary actions. They conclude that studies which criticise smacking all failed to investigate alternative disciplinary tactics that parents could use in similar disciplinary situations:

“Instead, these studies implicitly compared high spanking (smacking) frequency versus doing nothing... Doing nothing, however, is not an acceptable option when parents are dealing with defiance or dangerous behaviour... Before spanking can be discounted as a viable disciplinary tactic, it needs to be compared with alternatives such as time-out which parents could use in similar disciplinary situations. The failure to make such comparisons has undermined the scientific basis for alternatives to recommend to parents when spanking is proscribed, thus undermining the success of spanking bans.”

Half the parents said the law change had caused a decline in discipline.

NZ’ers Overwhelmingly Reject The Anti-Smacking Law

In the most recent independent poll of 1,000 New Zealanders in 2014105, 72% of respondents backed a law change, with only 22% supporting the current law, and 6% unsure. In 2013, the support for a law change was 77%106 and in 2012 it was 63%107. Slightly more men than women support a law change, and the highest support for a law change was in rural areas and was lowest in metropolitan areas.

In the 2012 polling, half the parents said the law change had caused a decline in discipline. A further 12% were unsure. In addition, only 9% of parents said they would report another parent whom they saw smacking a child on their backside or hand.108

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The ‘Borrows’ Solution

“I’m not arguing people like the law, nor am I arguing we would’ve got to that point if we had been the government of the day, we would’ve gone to the Chester Borrows’ amendment, I’m not arguing about that actually. What I am saying is the law is on the books now, so if we want to change the law, don’t underestimatet that there won’t be such a ferocious debate coming back the other way... So my view is if the law doesn’t work, I’ll change it. There - I think there will be a strong no vote and if there is a strong no vote it should give parliament and future parliaments if the law still works and then one day doesn’t, the backbone to actually do something about it.”

John Key – TVNZ Breakfast 3 Aug 2009 (before the Referendum)

During the debate on Sue Bradford’s bill, virtually all of the National MPs supported a sensible and practical amendment by National MP Chester Borrows. The amendment was considered and worded by Sir Geoffrey Palmer and Dr Warren Young of the Law Commission.

Smacking would be deemed an offence and ‘unreasonable’ if:
• it causes or contributes materially to injury that is more than transitory and trifling; or
• any weapon, tool, or other implement is used; or
• it is inflicted by any means that is cruel, degrading or terrifying.

The phrase "transitory and trifling" is currently in our common law and refers to a sting or redness from a smack which disappears after a few minutes, but nothing more serious than that. Mr Borrows, in asking for other MPs to support his amendment, said; “Any protection for parents must be written into the law, and re-drafting section 59 is law making not social policy writing. I believe that we should make laws that work and not abrogate our responsibility as parliamentarians and hand law making over to social agencies. That is not why we were elected to parliament.”

The amendment was defeated.

SUPPORT 58:
New Zealand National 48; New Zealand First 5 (Brown, Mark, Paraone, Peters, Stewart); United Future 2 (Copeland, Turner); ACT New Zealand 2; Independent: Field

OPPOSE 63:
New Zealand Labour 49; New Zealand First 2 (Donnelly, Woolerton); Green Party 6; Māori Party 4; United Future 1 (Dunne); Progressive 1

Just two months later, National MPs were ‘whipped’ by John Key to support the anti-smacking law. Some of those MPs had been helping groups such as Family First NZ raise the necessary signatures to force a Referendum on the issue.

If there is a strong no vote it should give parliament the backbone to actually do something about it.

We should make laws that work and not abrogate our responsibility as parliamentarians and hand law making over to social agencies.

109 http://www.parliament.nz/resource/en-nz/48DBHOH_SOP987_1/2b0e51bc12c30d-d5e33e16266cfb2356bd8d24a0
Didn’t 87% Reject the Law in a Referendum?

Yes they did, but incredibly John Key’s government ignored the Referendum result.

To add insult to injury, just a week after the result of the Referendum was announced, a private member’s bill by ex-ACT MP John Boscawen, which would have met the demands of New Zealanders, was drawn from the ballot.112

It was virtually identical to the sensible amendment proposed by National MP Chester Borrows during the 2007 anti-smacking law debate113 which was being supported by virtually all of the National MPs.

As John Boscawen said in Parliament, “My bill was drawn out of the ballot just 3 days after the results of the referendum were announced. It was drawn out of the ballot at 12.00 on a Wednesday, and by 4.30 that afternoon, 4½ hours later, National had called a press conference and said it would not be supporting my bill. National members said they would not give effect to those 1.4 million people, the 87 percent of New Zealanders, who voted in the referendum for a change in the law.”114

John Key’s government rejected the private members bill – despite having heavily campaigned for a similar amendment previously, and having been told by 87% of voters that they wanted this amendment.

International Experience

Case Study: Sweden

In 1979, Sweden became the first country to outlaw smacking. New research has revealed a dramatic rise in cases of criminal assaults on minors since the smacking ban. Based on official Swedish figures, the study, published in the peer-reviewed *International Journal of Criminology and Sociology*115, shows that, compared with 1981, criminal statistics in 2010 included:

- 22 times as many cases of physical child abuse (up 55% in the first eight years after the ban);
- 24 times as many assaults by minors against minors (up 114% in the first eight years); and
- 73 times as many rapes of minors under the age of 15 (up 92% in the first eight years).

Compared to the increases in criminal assaults against children in Sweden for the first seven or eight years after it banned smacking, New Zealand is follow-

“4½ hours later, National had called a press conference and said it would not be supporting my bill.”

ACT MP
John Boscawen

John Key’s government rejected the private members bill – despite having heavily campaigned for a similar amendment previously.

Will NZ continue to mimic these Swedish trends?

113 http://www.parliament.nz/resource/en-nz/48DBHOH_SOP987_1/2b0e51bc12c30d-d5e33e16266cbf2356bd8d42a0
ing a similar pattern, according to police records (increase of 136% for physical abuse and 43% for sexual offences against children). Will NZ continue to mimic these Swedish trends?

Although the researchers from three American universities recognise that changes in reporting practices may account for the increases to some extent, the magnitude and consistency of the figures suggest that there has been a real increase in criminal assaults on minors in Sweden over the course of the past three decades.

Parental discipline undermined
The study concludes that Sweden’s ban on smacking may have contributed to an increase in criminal assaults rather than achieving its intended outcome of decreasing the incidence of violence. The authors suggest that, despite the best of intentions, the prohibition of all forms of physical correction may inadvertently undermine appropriate parental discipline, with the result that a small but increasing percentage of boys may grow up with a dangerous combination of disrespect for their mothers and a lack of self-control:

“Without appropriate parental discipline, such boys learn to get whatever they want when they want it regardless of their mothers’ disapproval… For some boys, this disregard for others’ disapproval may generalise to other females, who are then at risk of becoming their rape victims. We are not claiming that this is the only possible explanation of the increase in rapes of minors, but it is a plausible explanation for part of the increase.”

A small but increasing percentage of boys may grow up with a dangerous combination of disrespect for their mothers and a lack of self-control.

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“Without appropriate parental discipline, such boys learn to get whatever they want when they want it regardless of their mothers’ disapproval… For some boys, this disregard for others’ disapproval may generalise to other females, who are then at risk of becoming their rape victims. We are not claiming that this is the only possible explanation of the increase in rapes of minors, but it is a plausible explanation for part of the increase.”

Reported criminal assaults against children in Sweden, 1981-2010

Permissive parenting
The researchers suggest that bans on smacking may undermine appropriate parental discipline if physical chastisement is not replaced with alternative disciplinary tactics that are effective for defiant children as well as easily managed children. Yet, at the same time, they note that neither supporters nor critics of anti-smacking laws have been able to identify alternative methods of discipline that are as effective in reducing child behaviour problems.¹¹⁶

Only 31% of 10- to 12-year-olds thought that Swedish parents had the right to use even ‘grounding’.

Many countries listed as outlawing smacking do not enforce laws against mild smacking.

The ability of parents to enforce appropriate discipline continued to erode until, in 2000, only 31% of 10- to 12-year-olds thought that Swedish parents had the right to use even ‘grounding’. The perceived right for parents to threaten to forbid something decreased from almost 39% to under 4% in the same study.117

**Banning only Severe Physical Punishment Works Better**

Many countries listed as outlawing smacking do not enforce laws against mild smacking. For example, in 2007 fewer than a third of parents thought that mild smacking had been banned in Austria and in Germany even though smacking-ban advocates claim that smacking has been outlawed there since 1989 and 2000 respectively.118

Further, the survey of five European nations found that **mild smacking led to decreases in severe physical punishment in the next generation** when comparing families who were similar in their endorsement of severe physical punishment.

This supports a conclusion in Larzelere & Johnson’s (1999) review of available evidence on the effects of Sweden’s smacking ban that its primary effect, which was to reduce mild smacking, might account for the apparent increase in physical child abuse cases from 1981 to 1994 in that country. Mild smacking may provide a means to enforce compliance and thereby stop the escalation of frustration in parents when young children are especially persistent in their defiance. Without mild smacking, their frustration may continue escalating in such disciplinary situations, thereby increasing the risk of exploding with overly severe physical abuse.

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**Child Abuse Rates in Australia**

[Graph showing Child Abuse Rates in Australia from 2000/01 to 2011/12]

The survey of five European nations found that mild smacking led to decreases in severe physical punishment in the next generation.

Substantiations of abuse dropped with no equivalent law banning smacking.


119 Australian Institute of Family Studies - May 2013 http://bundlr.com/clips/529345528f-d57513ad0000c8
According to government statistics, as with New Zealand, Australia had an increase in notifications through to 2008/09, a significant drop to 2010/11, and has started to increase again. Most noticeably, substantiations of abuse dropped during the four year period 2006/2007–2010/2011, with no equivalent law banning smacking.120

Australia, with five-times the population of NZ, has just over double the incidence of child abuse – without a smacking ban.

Child Abuse Is Not a Gender Issue

It is generally assumed in the media that children (and women) are the victims of abuse by males. It is significant to note however that a 2009 report on family violence by the Families Commission identified that 48% of abuse and neglect in 2006 was committed by women – (one of the few reports we could find that analysed this gender breakdown.)121 This is backed up by professionals working in the field of child abuse.122

Before the causes of child abuse and its solutions can be properly addressed, this factor must therefore be acknowledged i.e. child abuse is not a gender issue.

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123 Ibid.
Let’s Deal With the Real Causes of Child Abuse

The people of New Zealand have been quite clear on this point - they are sick of hearing case after case of innocent children being beaten and killed.

UNICEF reports in 2003124 and 2007125, a CYF report in 2006126, and a Children’s Commissioner report in 2009127 listed factors most commonly associated with the maltreatment of children as including:

- drug and alcohol abuse
- family breakdown
- children not living with biological parents
- single parenthood / weak family ties
- poverty and stress
- low maternal age at birth

These reports suggest, by implication, that strategies to address the prevalence of child abuse in New Zealand should include:

- **Working with families where children are at obvious risk of physical and emotional abuse and neglect, and improving parenting skills.** Families which have shown a propensity for drug and alcohol abuse, family violence, and where there are a number of agencies who are concerned with the welfare of children should be red-flagged and monitored closely until the issues are resolved. This is where the resources of CYF should be targeted. In 2004, most of the notifications made to CYF were for children not previously known to the agency. In 2014, six out of ten notifications were for children the agency already knew about. Many of these children had extensive history with the agency - on average, these children had engaged with CYF on three previous occasions.128

- **Tackling significant contributing factors** such as family breakdown and declining marriage rates, drug and alcohol abuse, poverty, mental illness and teenage pregnancy.

- **Introducing policies which strengthen marriages, families and parental responsibility.**

- **Immediate increase of support and resourcing of grass-root community organisations** who are educating and working with at-risk families - for example Barnardos, Salvation Army, Crosspower Ministries in Otara, Homes of Hope in Tauranga, Te Whare Ruruhau O Meri in South Auckland, Arnokura in Northland, Family Help Trust in Christchurch, and the many other charitable groups around the country working in their local communities and acting as the ‘ambulance at the top of the cliff’.

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• **Increased investment and availability of parenting programmes** such as The Parenting Place, Triple P and other early childhood home-based programmes e.g. HIPPY run by Great Potentials, Early Start, Parents as First Teachers, Plunket Helpline etc.

• **Media-based anti-child abuse and positive parenting campaigns.** This would follow the model of the road safety ‘shock’ campaigns and would encourage ‘positive’ parenting and the identifying of abuse.

• **Sentencing for those who abuse and kill our children to be substantially toughened** to provide both a deterrent and a clear message of our community’s disgust with the actions of people who abuse children.

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**Target real child abuse, not real parents.**

*Billboard used during Referendum 2009*

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**Tackle significant contributing factors such as family breakdown and declining marriage rates.**

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**Sentencing for those who abuse and kill our children to be substantially toughened.**
There is not a single social indicator relating to child abuse and wellbeing that has shown significant and/or consistent improvement in the seven years since the passing of the anti-smacking law. Overall, they’ve continued to get worse; in some cases, a lot worse.

In addition, the data would appear to suggest that CYF has reached the point of ‘saturation’ and can no longer handle the level of notifications it receives, which in turn has led to the inability to investigate and find actual cases of child abuse.

New Zealanders predicted this before the law was passed, but their concerns were ignored. Politicians and anti-smacking lobby groups linked good parents who smacked their children with child abusers – a notion strongly rejected by Kiwis. John Key was right – linking light smacking with child abuse is “bloody insulting”.

The fact that so many social indicators continue to get worse indicates that New Zealand is simply not tackling the real causes of child abuse. These negative trends also prove that the law has been completely ineffective in terms of tackling the problem it was supposed to resolve.

There is evidence that the new law is doing more harm than good.

It is clear to many that supporters of smacking bans were driven by political ideology rather than common sense, good science and sound policy-making.

The issue of child abuse can be solved, but in order to achieve this, the real issues must be identified, agreed upon, and confronted.

Criminalising good parents who simply want to raise law-abiding and responsible citizens is bad law-making.

What matters most is that the voice of New Zealanders is heard and respected!

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About Family First NZ

Family First NZ is a charitable organisation formed in 2006, and registered as a charity with the Charities Commission. Its purposes and aims are:

- to promote and advance research and policy regarding family and marriage
- to participate in social analysis and debate surrounding issues relating to and affecting the family
- to produce and publish relevant and stimulating material in newspapers, magazines, and other media relating to issues affecting families
- to be a voice for the family in the media speaking up about issues relating to families that are in the public domain

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