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**February 2006**

**To: The Justice & Electoral Committee**

***Re: Crimes (Abolition of Force as a Justification for Child Discipline)  
Amendment Bill***

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## 1. Introduction

**Child Poverty Action Group** (CPAG) advocates for better policies for children. We thank the committee for the opportunity to make a submission and **would also like to make oral submissions (in Auckland)**.

This submission is on behalf of the members of Child Poverty Action Group. This Bill directly affects the well-being of all children, and CPAG urges the Committee to place the interests of children at the centre of their considerations. This Bill is not about criminalising parents who smack their children, it is about the rights of the child to be protected from violence. Child Poverty Action Group supports full repeal of Section 59 of the Crimes Act 1961. We do not support the amendment that seeks to define “reasonable force”. Our reasons are set out below.

## 2. Children’s rights

- 2.1 Children have an inalienable right to be free from physical violence and treatment that threatens their physical or mental health. Many European Union states,<sup>1</sup> as well as numerous international and New Zealand documents recognise the right of children to be free from abuse and violence.
- 2.2 Article 19 of the United Nations Convention on the Rights of the Child, which New Zealand ratified in 1993, states unequivocally: “children have a right to protection from all forms of violence and abuse.”
- 2.3 In New Zealand the Human Rights Commission has explicitly recommended the repeal of section 59 as part of its “*New Zealand Action Plan on Human Rights*” published in 2005. This recognises the right of children to be protected from physical violence.
- 2.4 The *Agenda for Children*, signed off by the government as official policy in 2002, recognises that adults need to learn to respect the rights and values of children. A crucial part of this is the prevention of family violence. This necessarily includes violence against children.
- 2.5 We note the recommendation of the United Nations Committee on the Rights of the Child Report to the New Zealand government in respect of corporal punishment:<sup>2</sup>

“The committee emphasises the Convention [on the Rights of the Child] requires the protection of children from all forms of violence, which includes

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<sup>1</sup> For example Sweden, Finland, Denmark, Iceland, Hungary and Germany.

<sup>2</sup> Report September 2003.

corporal punishment in the family...The Committee recommends that the state party amend legislation to prohibit corporal punishment in the home..."

The Committee was "deeply concerned" that New Zealand had not amended section 59 of the Crimes Act. While it welcomed public education programmes, it noted these needed to be accompanied by legislation protecting children from violence.

- 2.6** Section 59 has been used by parents to escape liability for what can only be described as physical abuse, for example beatings with a riding crop. Protecting parents in this manner is a violation of the child's right to be free from abuse. Moreover, it signals that this abuse is acceptable.
- 2.7** Physical punishment harms children. While the vast majority of parents discipline their children by smacking too many children suffer physical and psychological harm as a result of physical discipline. We note that international research conclusively demonstrates that physical punishment is ineffective in helping children learn to behave. In fact a recent New Zealand study shows that physical punishment is often viewed by children as hurtful and unfair.<sup>3</sup>
- 2.8** Section 59 has been inconsistently applied by the courts. In some cases serious assaults have been justified as "reasonable force". In such cases the law does not provide adequate protection from abuse. The ability of the courts to define "reasonable force" must be removed in the interests of clarity and consistency. Any attempt to define "reasonable force" through legislation may still fail to protect children, especially if the intent of the smacker becomes a factor for consideration. The difficulties inherent in defining and interpreting what is "reasonable" is the key reason CPAG does not support the amendment to redefine "reasonable force".
- 2.9** We emphasise that the present Bill does not "ban smacking". As it stands section 59 enables physical harm to be justified as "reasonable force" where this justification would not stand if that harm had been perpetrated against an adult. The law must protect the right of children to be free from violence in the same way it protects adults. The removal of this defense is not tantamount to criminalising parents who smack their children.

### **3. Equality before the law**

- 3.1** There is no legal or moral justification for excusing the abuse of children as "reasonable force" when such an excuse would not be available against an adult. In fact the law as it stands provides much less protection to children. How

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<sup>3</sup> Dobbs, T. (2005) *Insights: Children and young people speak out about family discipline*. Wellington. Save the Children. Available from <info@savethechildren.org.nz>.

much less can be seen clearly when one considers that an adult can press an assault charge even in the absence of physical contact. The mere apprehension of violence is sufficient.

- 3.2** Many European countries have long ago removed the differential treatment of adults and children in respect of assault from the statute books. Instead, the focus changed to one of treating children with respect, and prohibiting the use of force or inflicting physical punishment, or humiliating the child. These prohibitions bring the treatment of children into line with the general European and international conventions prohibiting the physical and psychological abuse of adults.
- 3.3** Children deserve greater protection from violence than adults, not less. They are less able to defend themselves, and the potential long-term harm is far greater for a child than an adult. The legislature has recognised that vulnerability requires specific legal protection with respect to animals. Our children deserve no less.

#### **4. Signal that violence is unacceptable**

- 4.1** The legislature has before it an opportunity to send a powerful signal to the community that violence against children will not be accepted by the courts or society generally. Many horrific cases of child abuse have been before the courts over the years. It is noteworthy that these cases take place against a backdrop of general public and judicial acceptance of the explicit right of parents to smack or hit a child. The message is that violence against children is acceptable when in fact it is not.
- 4.2** While it may be argued that the law cannot change peoples behaviour, it can change attitudes when it takes a leadership role. The law mandating equal pay when men and women do the same job is an example of this. What is now considered normal met with fierce resistance when the legislation was first enacted many years ago.
- 4.3** It is unlikely the abuse of children will ever be eliminated altogether. However, there is evidence to suggest that if violence against children was clearly signaled as being unacceptable, and that its occurrence would be dealt with seriously by the courts, then violence towards children would become increasingly unacceptable, and the number of cases would fall accordingly.

**4.4** Physical punishment is a risk factor in child abuse, especially in homes where physical punishment is the norm. Children who suffer violence in childhood have a much greater chance of becoming violent adults.<sup>4</sup> Moves to decrease the violence suffered by children at the hands of adults today will contribute to a less violent society tomorrow.

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<sup>4</sup> Office of the Children's Commissioner and Children's Issues Centre (June 2004). *The discipline and guidance of children: A summary of research*. Wellington. Office of the Children's Commissioner.