

## **9th review of police activity since enactment of the Crimes (Substituted Section 59) Amendment Act 2007**

### **Background**

This report details results from the 9th review of relevant Police activity since enactment of the Crimes (Substituted Section 59) Amendment Act 2007. This review covers the period 22 December 2010 to 21 June 2011.

Monitoring initially took place for a two year period since enactment on 22nd June, 2007.

In December 2009, the Prime Minister invited Police to continue monitoring for a further three years. This followed the review into the policies and procedures used by the New Zealand Police and Child, Youth and Family. Police was also invited to include data on cases in which a parent or caregiver said the force used on the child was reasonable in the circumstances.

Monitoring was originally undertaken so that Police could respond proactively to any issues which might arise following the enactment. It was also done to provide specific information on the number of calls to police about child assaults involving 'smacking' and 'minor acts of physical discipline'.

### **Summary**

- (i) Results for the ninth review are consistent with previous reviews.
- (ii) The fifth prosecution for a smacking event since June 2007 has occurred during this latest review period.
- (iii) There is an increase in the number of events attended by police during this review period which is consistent with reduced tolerance and increased reporting of child assault events.

### **Methodology**

The number of child assault events identified in each review period does not reflect the total number of child assault events attended by police during this time. The events are those most likely to identify incidents which might involve 'smacking', as 'smacking' in itself is not a separate offence.

Nine different offence codes were examined to identify such incidents.

The rationale used to allocate each event to a category of 'smacking', 'minor act of physical discipline', 'other child assault' involved consideration of the:

- Actual physical action used in the child assault; and
- The context and the surrounding circumstances, as outlined in the practice guidelines (Commissioner's Circular).

## Outcomes of 9th review period

456 child assault events attended by police during this period were considered for the 9th review. 18 of these events were identified as involving 'smacking' and 58 involved 'minor acts of physical discipline'.

Event	Number
'Smacking'	18
'Minor act of physical discipline'	58
'Other child assault'	332
'No offence disclosed'	48
<b>Total</b>	<b>456</b>

Of the 18 'smacking' events, one resulted in prosecution, 12 resulted in a warning, and five resulted in other/no further action being taken. Of the 58 'minor acts of physical discipline' events, nine resulted in prosecutions, 38 resulted in warnings and 11 resulted in other/no further action being taken.

Of the 'smacking' and 'minor acts of physical discipline' events, files indicate that 50 events were referred to Child Youth and Family, 21 were referred to an inter-agency case management meeting (Family Violence Inter-Agency Response System or FVIARS) and 14 were referred to other support agencies.

A breakdown of referrals is provided in the following table:

Events	Referral to CYF	Referral to FVIARS	Referral to other agency	Referral not specified
'Smacking'	12	5	2	3
'Minor act of physical discipline'	38	16	12	7

Some events were referred to both CYF and another agency. 'Referral not specified' indicates that the information is not recorded on the electronic file and does not necessarily mean that a referral was not completed.

## Extra information on the seven prosecutions

In the current review period, Police prosecuted one 'smacking' event for a charge of Common Assault (Domestic) (Manually) where a child was smacked with an open hand at least five times on the buttocks with no physical injury. The defendant was ordered to come up for sentence if called upon by the Court over a one year period.

Police prosecuted nine 'minor act of physical discipline' events during this review period. Case one involved a father who slapped his son on the face three times with his open palm after the son stated he did not want to go to school. The father pleaded guilty to a charge of Assault Child (Manually) and received nine months supervision.

Case two involved a father who slapped his son twice across the head. He pleaded guilty to a charge of Assault Child (Manually) and was ordered to come up for sentence if called upon over a one-year period.

Case three involved a father who slapped his daughter on the side of her head with an open hand. The father was charged with Assault Child (Manually) but was subsequently discharged without conviction.

Case four involved a mother who slapped her daughter twice to the head. The mother pleaded guilty to a charge of Assault Child (Manually) and has yet to be sentenced.

Case five involved a father who slapped his son on the back and twice on the face. The father pleaded guilty to a charge of Assaults Child (Manually) and was subsequently discharged without conviction.

Case six involved a father who slapped his son once across the head with an open hand. Although the father was charged with Assaults Child (Manually) this charge was subsequently withdrawn due to insufficient evidence.

Case seven involved a father who slapped his daughter across the nose and mouth. The father pleaded guilty to a charge of Assaults Child (Manually) and was ordered to come up for sentence if called upon over a nine-month period.

Case eight involved a grandmother who slapped her grand daughter on the head. Although prosecuted for Assaults Child (Manually) the grandmother pleaded not guilty and successfully defended the charge.

The ninth case involved a mother who slapped her daughter once on the side of her head. Although charged with Other Assault on Child (Under 14 Years) the charge was subsequently withdrawn due to lack of evidence.

According to information on the electronic file, none of the defendants prosecuted for 'smacking' or 'minor act of physical discipline' events stated that the force used was reasonable in the circumstances.

## Parent Call Centre

A recommendation from the *Review of New Zealand Police and Child, Youth and Family Policies and Procedures relating to the Crimes (Substituted Section 59) Amendment Act* was the development of child safety pamphlets, to be distributed when police attend an incident involving child safety. The pamphlet provides a number for a parent call centre which is able to answer any questions around a police visit or about child safety and services available. The Victim Liaison Officers nationally advise they received no calls during the ninth review period through the parent call centre relating to smacking.

## Comparison with previous reviews:

(Note the different durations of review periods 1 and 5)

### Cases by Review Period

Period 1: 23 June 2007 - 28 Sept 2007	(3 months)
Period 2: 29 Sept 2007 - 4 April 2008	(6 months)
Period 3: 5 April 2008 - 3 October 2008	(6 months)
Period 4: 4 October 2008 - 4 April 2009	(6 months)
Period 5: 5 April 2009 - 23 June 2009	(2 months)
Period 6: 24 June - 22 December 2009	(6 months)
Period 7: 23 December 2009 - 22 June 2010	(6 months)
Period 8: 23 June 2010 - 21 December 2010	(6 months)
Period 9: 22 December 2010 - 21 June 2011	(6 months)

### Incidents by Review Period

Event type	Review									
	1	2	3	4	5	6	7	8	9	Total
<b>Smacking</b>	3	13	9	8	3	11	25	18	18	<b>108</b>
<b>Minor act of physical discipline</b>	12	69	49	39	10	39	38	45	58	<b>359</b>
<b>Other child assault, or not specified</b>	96	206	200	211	105	262	314	352	332	<b>2078</b>

<b>No offence disclosed<sup>1</sup></b>	–	–	–	21	9	56	39	29	48	<b>202</b>
<b>Total:</b>	<b>111</b>	<b>288</b>	<b>258</b>	<b>279</b>	<b>127</b>	<b>368</b>	<b>416</b>	<b>444</b>	<b>456</b>	<b>2747</b>

As with the previous review, there were 18 'smacking' incidents in this review period and one prosecution for 'smacking'.

There was a notable increase in the number of 'Minor Act of Physical Discipline' (MAPD) occurrences. Although the number of MAPD incidents increased by 14 occurrences from the eighth review, and is 18 over the average across all nine review periods, the 58 recorded incidents in this review period is still lower than the peak of 69 MAPD incidents recorded in the second review.

Although the total number of section 59 events is the highest ever recorded, it is still unclear whether this is either because the number of actual physical assaults is increasing, or because more incidents are being reported to Police.

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<sup>1</sup> No statistics are available for the number of occurrences "not disclosed" in review periods 1-3.