

A DOG'S BREAKFAST

NEW ZEALAND'S ANTI-SMACKING LAW 13 YEARS ON

JUNE 2020



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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 educate the public in their understanding of the institutional, legal and moral framework that makes a just and democratic society possible
- to produce and publish relevant and stimulating material in newspapers, magazines, and other media relating to issues affecting families
- to speak up about issues relating to families that are in the public domain



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This report is a follow-up to a report published in February 2016 – “*Defying Human Nature: An Analysis of New Zealand’s 2007 Anti-Smacking Law*”¹ (shown right).

The titles of both reports are based on phrases used during the anti-smacking debate by the then-Prime Ministers. Before the law was passed, Helen Clark said that to ban smacking would “**defy human nature**”; after the law was changed, John Key referred to the law as “**a dog’s breakfast**”.

The 2016 report (“*Defying Human Nature*”) found that not a single social indicator relating to the abuse of children had shown significant or sustained improvement in the seven years since the passing of the law.

This report continues to examine the social indicators affecting our children and families in the years leading up to the ban on smacking, and then the 13 years since the law was passed. Has there been *any* improvement? Has the law made *any* difference to the unacceptable child abuse rates in New Zealand? Has it impacted the general wellbeing of our children, and our families?

How do we know if a law is ‘good’ or not? A good law is clear and succinct to the public, especially to those people whose behaviour may be criminalised. Its necessity and purpose is clearly presented by those promoting it; it directly targets the problem at hand; there is at least *some* improvement as a result of the law; and it has public support.

On all counts, the anti-smacking law fails. Even the current Minister for Children Tracey Martin has admitted the law has had a chilling effect on parents and that she wants to improve the legislation to make it clearer.²

Some will argue the law should be left alone, and that any discussion of its success or failure is redundant. But any law – especially a controversial one like the anti-smacking law – should be able to withstand this type of scrutiny.

Even more importantly, it is crucial to assess whether the law may in fact be doing more harm than good.

At this stage it would appear that not only has the ban failed to reduce the harm perpetrated *against* children, but it has increased the harm inflicted *by* children.



It is crucial to assess whether the law may in fact be doing more harm than good.

Notifications of abuse to government agencies continue to increase at alarming rates.

Key findings of this report include the following:

- **Parents are confused by the law, both by the way it is worded and by conflicting messages from politicians who promoted it**
- **Notifications of abuse to government agencies continue to increase at alarming rates**
- **Successive governments have failed to reduce physical abuse as promised, and any government targets appear to have been abandoned altogether**
- **Child homicides continue to fluctuate with no sign of any long-term, sustained improvement. New Zealand has one of the worst abuse rates in the OECD, and Maori are disproportionately represented**
- **We have more children in care (especially Maori children)**
- **Rates of physical abuse (including serious physical abuse) found by both the police and Oranga Tamariki (OT) have increased significantly since the law was passed**
- **There are significant, warranted concerns around increasing levels of violence in schools, including bullying and physical violence targeting principals and teaching staff**
- **There are disturbing trends in the wellbeing of children, including the high rates of self-harm, suicide, and emotional and behavioural problems**
- **While politicians claim the new law does not criminalise “good parents” for lightly smacking their children, a legal analysis finds this is inconsistent with the actual legal impact of the new Section 59**
- **Law firm Chen Palmer has not been able to find any decision where the courts have, at sentencing, explicitly balanced the long-term effect of the prosecution or conviction on the parent-child relationship against the level of the physical discipline with which the parent is being charged**
- **Recent polling finds a significant proportion of the public continues to reject and disregard the law**

Successive governments have failed to reduce physical abuse as promised, and any government targets appear to have been abandoned altogether.

Violence against children continues to be a dark stain on the fabric of New Zealand society, and all New Zealanders are disturbed by the high rates of child abuse, but the anti-smacking law has not proven to be effective or warranted. Many New Zealanders predicted 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.

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

We can solve the problem 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.

The government should amend the law to give certainty and clarity to parents, and to target real child abuse, not real parents.



Interviewer: "...so, you don't want to see smacking banned..."
Clark: "Absolutely not! I think you're trying to defy human nature."

Prime Minister HELEN CLARK
Election Campaign, 2005^{3 4}



"From time to time, most parents will smack a child... [the law is] a complete and utter dog's breakfast... badly drafted... extremely vague... Linking a light smack with child abuse is 'bloody insulting.'"

Prime Minister JOHN KEY
Radio Live, September 2009⁵

When six-year-old Coral Burrows was killed by her stepfather Stephen Williams in 2003, then-Prime Minister Helen Clark said the government needed to amend Section 59 of the Crimes Act and ban smacking in order to address the "*high level of child violence and neglect*."⁶ 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 described, in her media release, as an 'anti-smacking bill'.⁷



Source: Green Party Media Release 2003

UNICEF's 2003 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.⁸ **New Zealand had the third-highest child homicide rate** of children aged up to 14 for the period studied – exceeded only by Mexico and the United States.

After the law change was voted for by politicians in 2007 by 113 votes for (including National MPs who had previously campaigned strongly *against* the proposed law) and 8 votes against, 87% of the public voted *against* the law in the 2009 Referendum.^{9 10}



Source: Referendum question 2009

THE CURRENT LAW

The amended Section 59 of the Crimes Act 1961¹¹ says (*our emphasis added*):

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.

Note the use of the words “preventing” and “correction”.

CONFUSION

“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.”

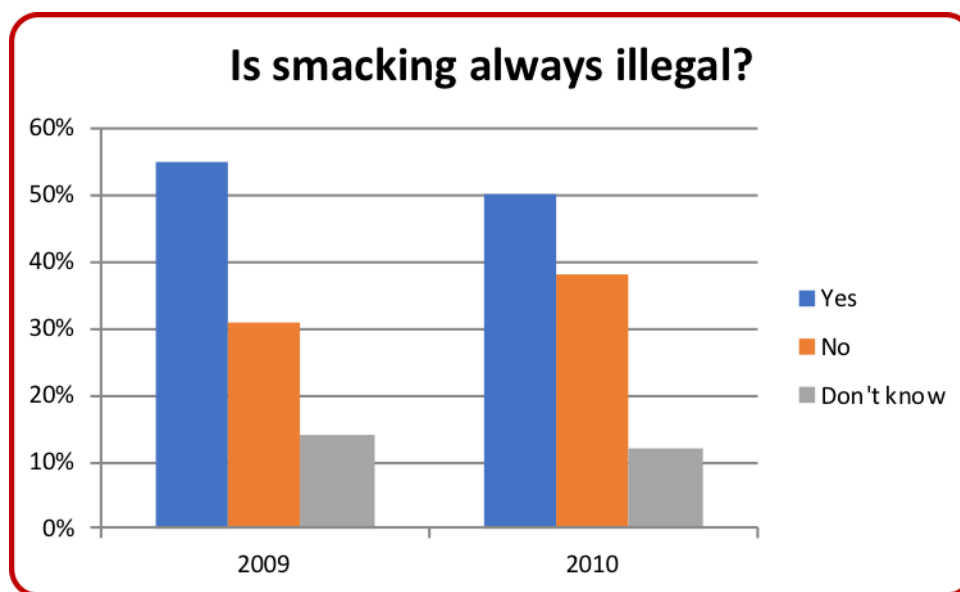
JIM EVANS – Emeritus Professor of Law,
Auckland University (2009)¹²

“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. Further, the cases also show that even lawyers and judges struggle to understand and apply Section 59 correctly.”

MAI CHEN – Chen Palmer, Legal Opinion (2018)¹³

In surveys conducted in 2009¹⁴ and 2010¹⁵, respondents were asked whether the new law makes it always illegal for parents to give their children a light smack.

As the responses show, parents were divided on the answer (The correct response is *no*. Smacking, or ‘force’, *may* be allowed for the purpose of ‘prevention’.)



Source: Curia Market Research

Parents have been given conflicting messages for years now, including being told that, “It’s ok to give light smacks”.¹⁶ This is not always legally correct. There is also no clear distinction between ‘correction’ which is illegal, and ‘prevention’ which *could* be legal under the new law.

Legal opinions have contradicted each other, and a further complication is the allowance for police discretion, but not Oranga Tamariki (formerly CYF) discretion, to investigate (Section 59(4) of the Crimes Act 1961).

How is police discretion being applied? We just don’t know, and that is part of the problem. Is it consistent, transparent, and clear to parents? The evidence suggests it is not.



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.”

Prime Minister HELEN CLARK
Dominion Post, 2007¹⁷

“The epidemic of child abuse and child violence in this country continues, sadly. The anti-smacking bill was never intended to solve that problem.”

Green MP SUE BRADFORD
Radio NZ, 2007¹⁸

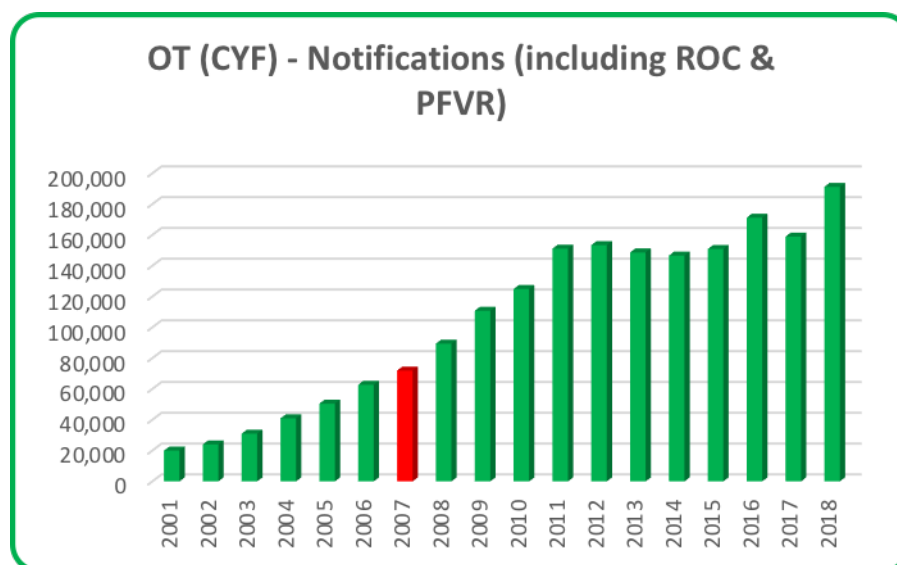
It is important to note that the data on child abuse cases differs depending on whether it was recorded by police or Oranga Tamariki (formerly CYF). Police figures represent cases “*when an offender is identified and dealt with. (E.g. prosecuted, warned, cautioned, diverted, etc.)*”¹⁹ On the other hand, CYF figures represent all cases where abuse has been investigated and substantiated, but not necessarily dealt with by police.²⁰

It is also worth noting that the population of 0-14 year olds has grown by just over 6% between 2006 and 2018.²¹

OT (CYF) NOTIFICATIONS OF ABUSE

In this report, **Oranga Tamariki (OT)** and **Child, Youth and Family (CYF)** are used interchangeably. In 2017, Oranga Tamariki, also known as the *Ministry for Children* and previously the *Ministry for Vulnerable Children*, replaced Child, Youth and Family. OT is a government department in New Zealand responsible for the wellbeing of children, specifically children at risk of harm, youth offenders and children of the State. Since its inception in 1992, CYF’s name has been subtly changed three times, and restructured at least 14 times.²²

KEY FOR ALL GRAPHS: ■ Anti-smacking law introduced



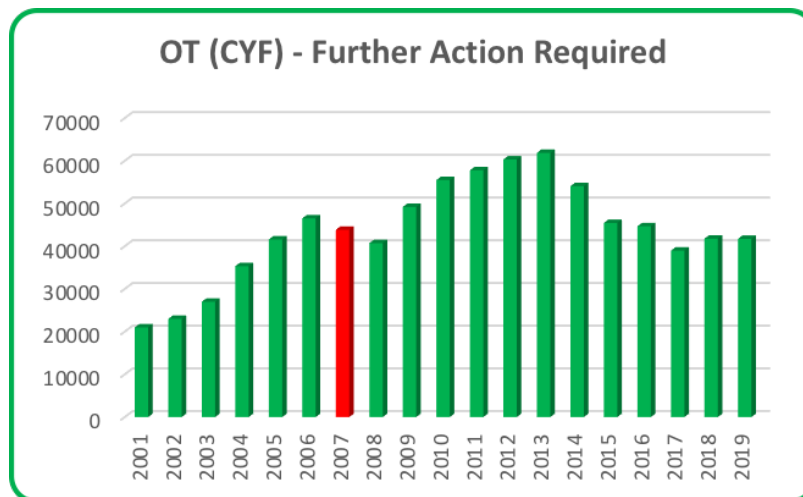
Source: OIA from Oranga Tamariki, December 2019²³,
2001/03 data sourced from “Family Violence Statistics Report 2009” - Families Commission²⁴

ROC = Reports Of Concern

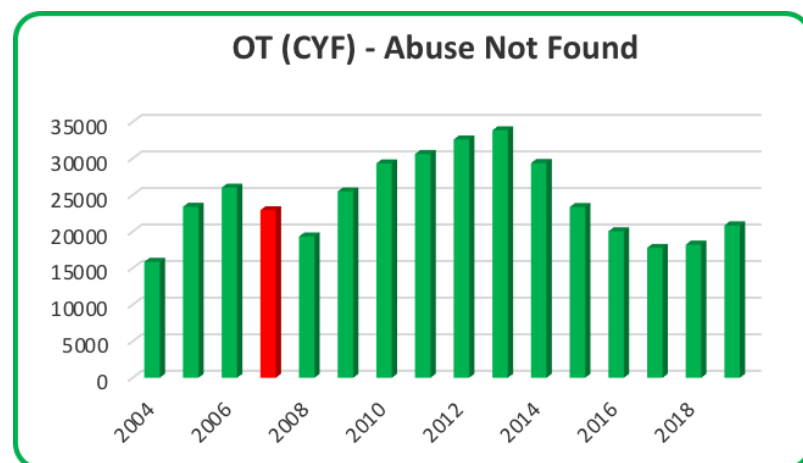
Under section 15 of the Oranga Tamariki Act 1989, any person who believes that a child or young person has been, or is likely to be, harmed (whether physically, emotionally, or sexually), ill-treated, abused, neglected or deprived may report the matter to Oranga Tamariki or the New Zealand Police. They are referred to as Reports of Concern.

PFVR = Police Family Violence Referrals

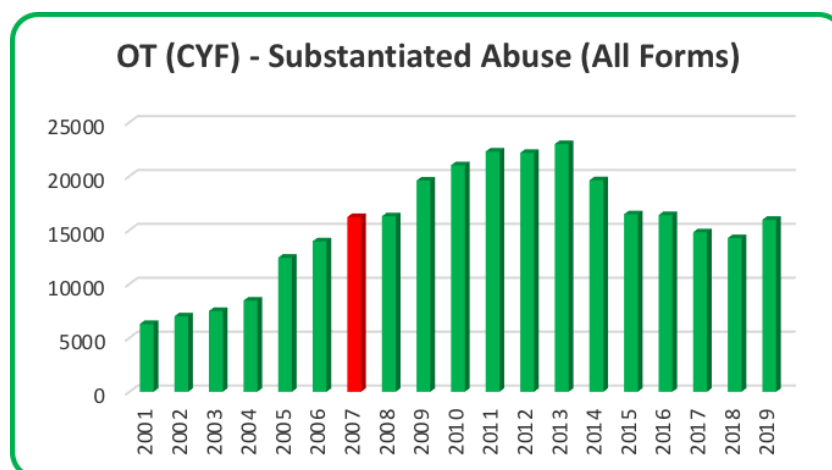
Family violence referrals are made to OT by New Zealand Police after they have attended a family violence incident where there is a child present or ordinarily resident at the premises.



Source: OIA from Oranga Tamariki, December 2019,
2001/03 data sourced from "Family Violence Statistics Report 2009" - Families Commission



Source: OIA from Oranga Tamariki, December 2019



Source: OIA from Oranga Tamariki, December 2019,
2001/03 data sourced from "Family Violence Statistics Report 2009" - Families Commission

As you can see in the last graph, substantiated cases of all forms of abuse found by Oranga Tamariki have increased from approximately 6,000 in 2001 to more than 15,000 in 2019 (**an increase of 150%**), and as high as 23,000 in 2013. **The levels of substantiated abuse in 2019 are identical to those in 2007 when the anti-smacking law was passed.**

Between 2013 and 2017, the data suggests a significant improvement, with a slight worsening in the last two years. Yet other reports – including police data - suggest that the decrease in this period (at a time when CYF was being reviewed and restructured into OT) may not present the true picture.

The levels of substantiated abuse in 2019 are identical to those in 2007.

Since 2014, a new strategy which “sees doctors or police directly refer to a group that specialises in preventing domestic violence, rather than refer to Child, Youth and Family (CYF)...” has accounted for a further fall.²⁵

There is also concern that part of the decrease between 2013 and 2017 happened because CYF reached ‘saturation point’ i.e. they simply couldn’t cope with the increased level of notifications and the amount of work these notifications entailed. Government reviews of CYF suggest this saturation point was the justification for the restructure of Oranga Tamariki.^{26 27 28}

A 2014 review by the Ministry of Social Development found CYF was massively understaffed and that social workers had unmanageable caseloads and workloads.²⁹ Agencies working in the community also seemed to support the premise that CYF had reached ‘saturation point’.^{30 31}

A 2019 report, titled *Cumulative Prevalence of Maltreatment Among New Zealand Children*, found that **almost one in four New Zealand children had been reported to child protection services**.³² The study by Auckland University of Technology followed 55,443 children born in 1998 until 2015, when they would be 17.

Notifications and cases of substantiated child maltreatment were more common in New Zealand than is generally recognised.

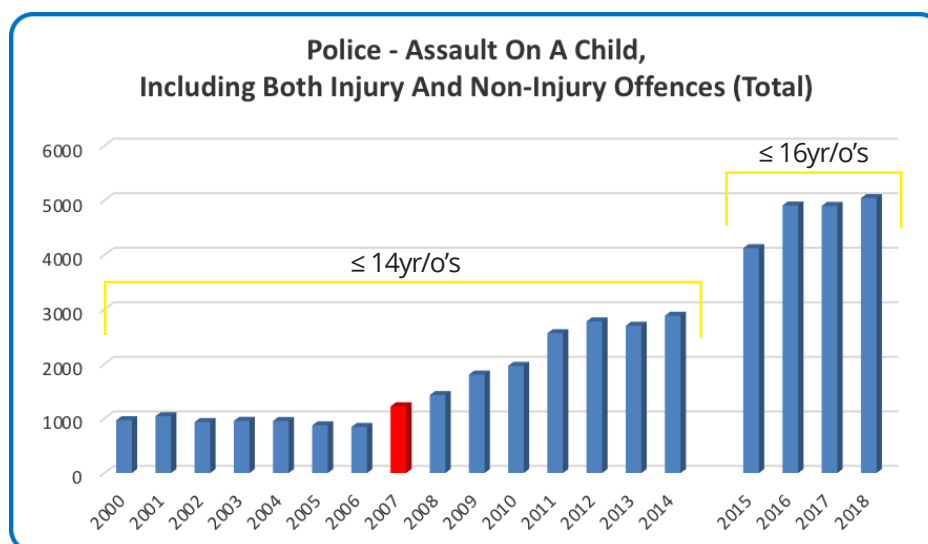
Despite the high prevalence of reporting, 9.7% were found to be victims of emotional, physical or sexual abuse or neglect – still a very high proportion. The report concluded that both notifications and cases of substantiated child maltreatment were more common in New Zealand than is generally recognised.

We now examine each type of abuse: not just **physical abuse, which the anti-smacking law was specifically designed to reduce**, but also other forms of abuse including sexual, emotional, neglect, and that of general wellbeing – as recorded by the police, CYF/OT and the Ministry of Health.

PHYSICAL ABUSE

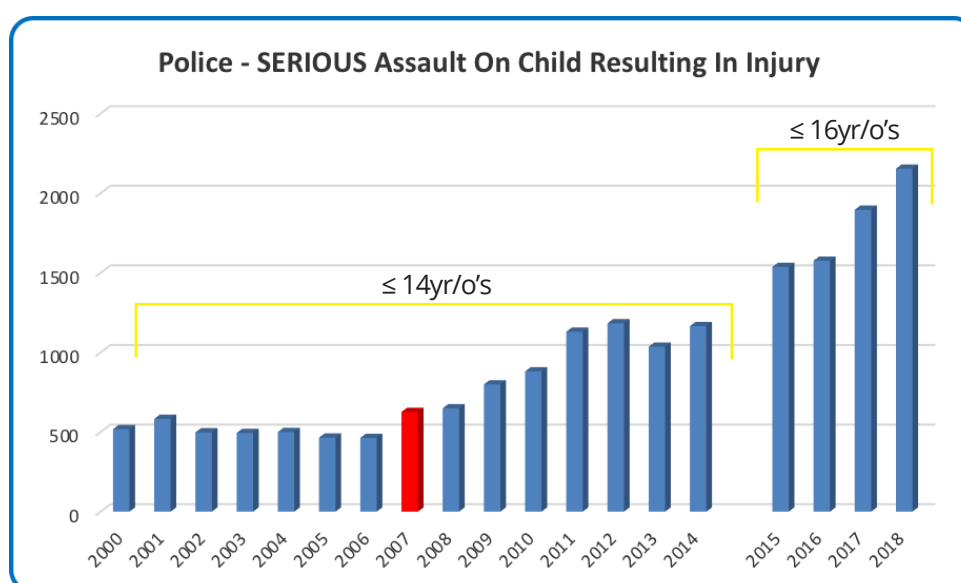
POLICE

It is important to note that until 2014, physical child abuse was recorded by police via Statistics NZ regarding children up to the age of 14.³³ From mid-2014 onwards, the recording system changed: incidents are now recorded for children up to the age of 16.³⁴ Direct comparison between the two timeframes is therefore not accurate. The *trends* of both sets of data should be noted, however.



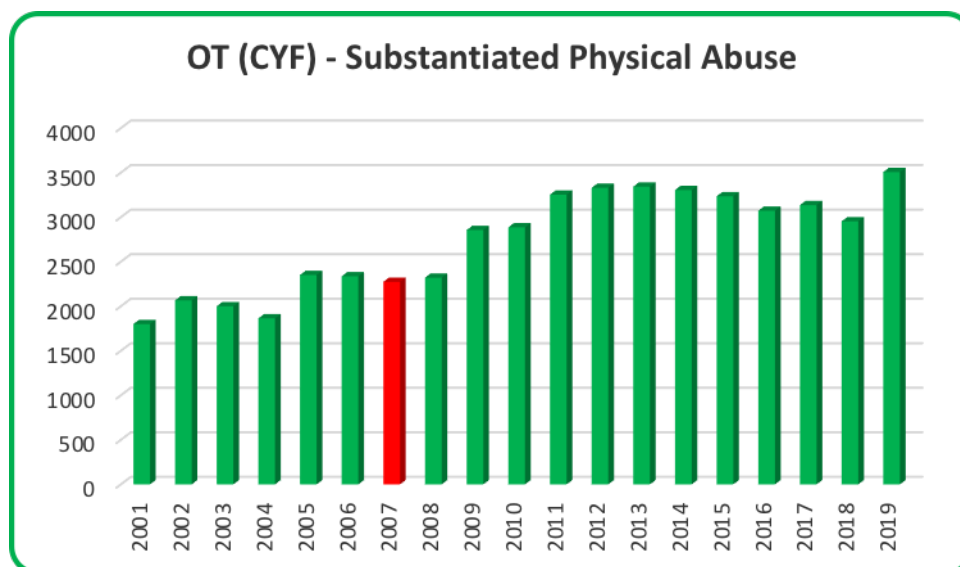
Source: Stats NZ (up to 2014). OIA from NZ Police, December 2019 (2015 onwards)

It is to be expected that there would be *some* increase in recorded offences after the introduction of the anti-smacking law, and this is indeed the case – although the level of the increase is concerning. However, if one looks solely at *serious* assaults – those resulting in injury, which would also have been caught under the old law – the trend is disturbing. It is particularly alarming considering the rate was largely static, and perhaps even decreasing, until the law change, and that according to the police in 2015, “Assaults on Child offences are likely to be significantly under-reported to police.”³⁵



Source: Stats NZ (up to 2014). OIA from NZ Police, December 2019 (2015 onwards)

OT (CYF)

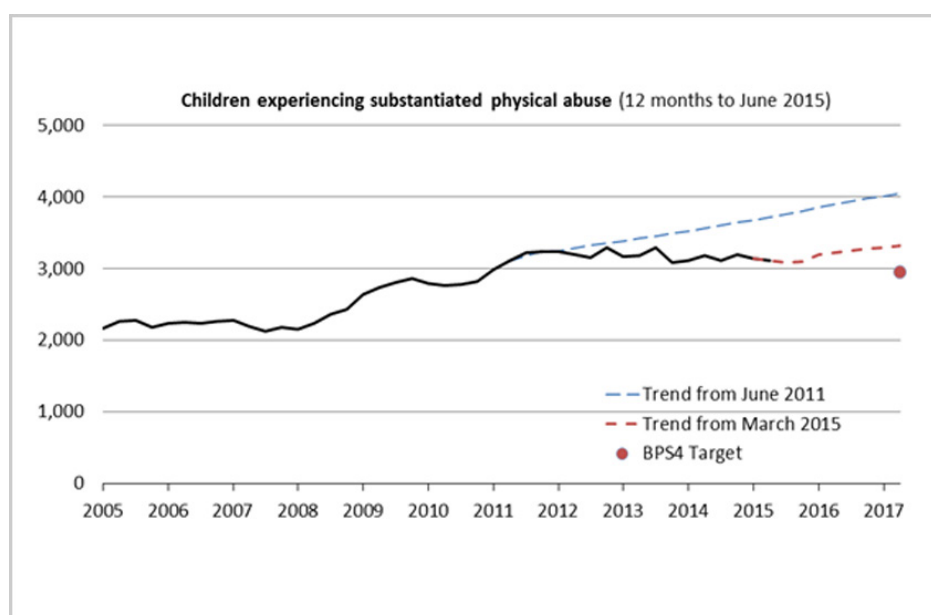


Source: OIA from Oranga Tamariki, December 2019,
2001/03 data sourced from "Family Violence Statistics Report 2009" - Families Commission

Physical abuse substantiated by Oranga Tamariki has almost doubled since the turn of the century, and has increased by 54% since the anti-smacking law was introduced.

The failure of Government targets

The laudable target to **reduce** physical child abuse was introduced by then-Prime Minister John Key in 2012. By 2017, the government aimed, "to halt the 10-year rise in the number of children experiencing physical abuse". However, they admitted at the time, "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." ³⁶



Source: State Services Commission Better Public Services: Supporting vulnerable children:
The number of children who experienced substantiated physical abuse in the 12 months to 30 June 2015.

This government target – based on CYF figures and not including police data - is represented on the graph as “BPS4 Target” (red dot). Note that this target of 3,000 attempts to reduce child abuse only to the levels reported in 2011, rather than to the lower levels experienced in and before 2007 when the anti-smacking law was passed.

In 2019, there were almost 3,500 substantiated findings of physical abuse by CYF – well above the target of 3,000. This does not include police findings.

When the 2015 figures were released, Labour Party children’s spokeswoman Jacinda Ardern said the Government’s targets 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...”*³⁷ In 2017, in response to an OECD report³⁸, Jacinda Ardern said that New Zealand should be setting goals and reporting on progress when it came to child health and wellbeing, and that the country needed to lift its game.

But **in January 2018, the new Labour Government led by Jacinda Ardern announced the abolition of the targets.**³⁹ Minister for Children Tracey Martin said in May 2019, *“If we don’t have a substantial reduction by 2021 then I have failed because the operating model for Oranga Tamariki should be making a difference.”*⁴⁰

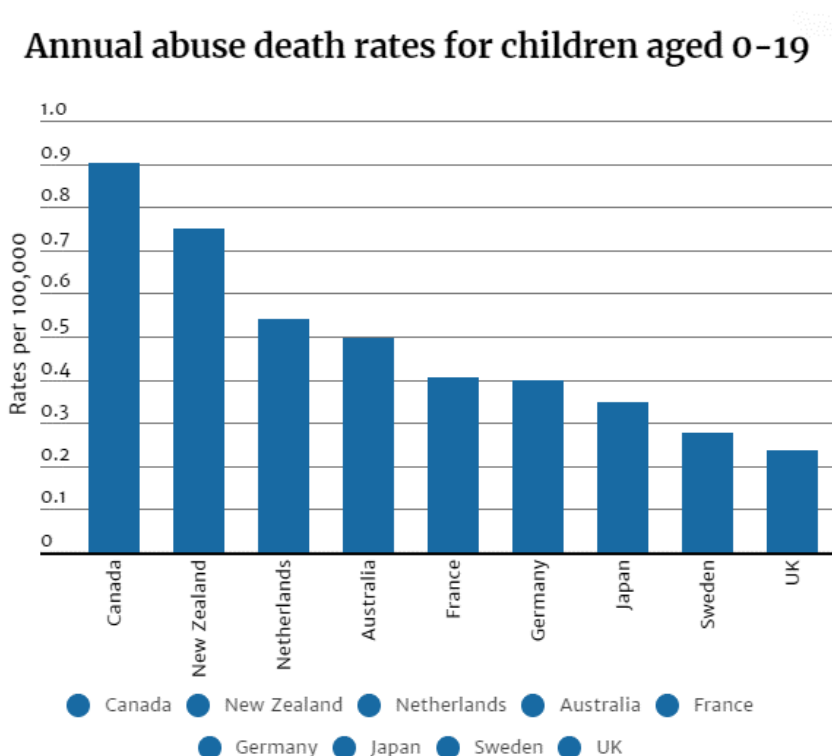
“Those are dreadful figures, yet police stats tell us the situation could be even worse than that...”

Jacinda Ardern (2015)



CHILD ABUSE DEATHS

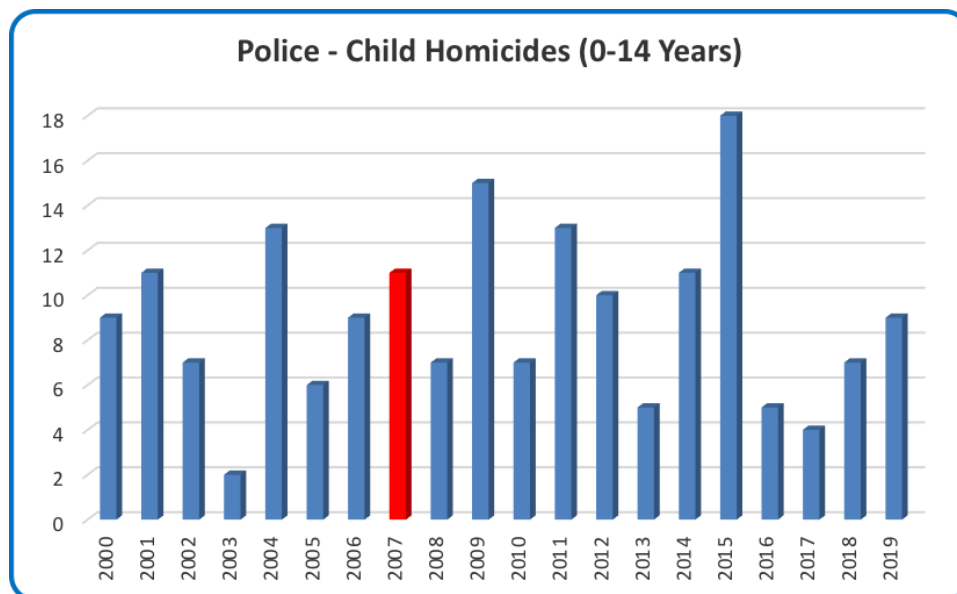
New Zealand has one of the highest rates of child abuse deaths in the OECD.^{41 42}



Source: OECD Family Database 2013

Source: Stuff (2015)⁴³

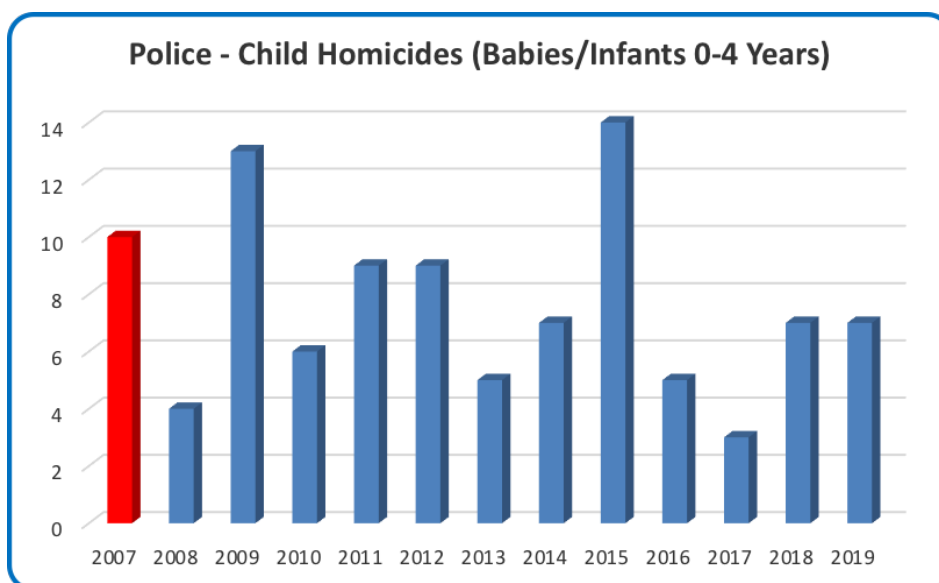
Child homicides continue to fluctuate each year with no sign of any long-term sustained improvement. 2015 was a horrific year, as was 2009.⁴⁴



Source: NZ Police – Homicide Victims Report 2017⁴⁵
 (2018/19 figures are provisional at time of printing – based on media reports⁴⁶)

At the beginning of 2019, Dr Patrick Kelly, clinical director of Auckland’s Starship Hospital’s child protection team Te Puaruruhau, told the media that the number of admissions in January and February was among the worst seen in recent history. He said it was difficult to detect trends over time “*because these things tend to happen in clusters,*” but that **there’s been no decrease**. The average age of a child admitted to Starship with non-accidental injuries is less than a year old. Mortality rates for those admitted to the hospital with abusive head trauma is about 20%. Most survivors have long-term disabilities.⁴⁷

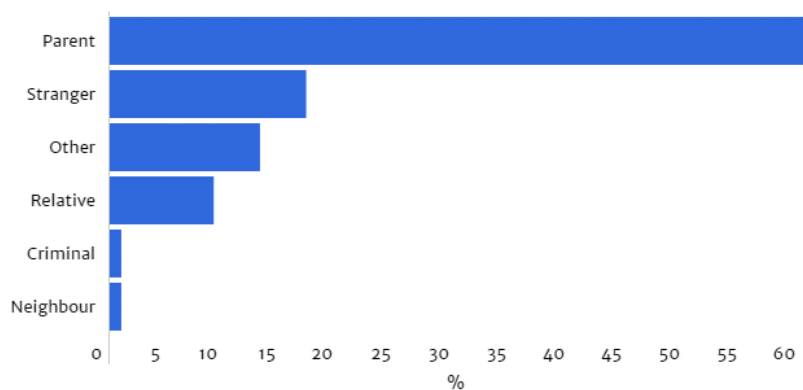
As the graph below shows, infants and babies are disproportionately represented as victims of child homicide.



Source: NZ Police – Homicide Victims Report 2017
 (The 2018/19 figures are provisional at time of printing – based on media reports)

According to Stuff's *The Homicide Report* (2019),⁴⁸ more than two-thirds of the victims were aged two or under. The most common cause of death was blunt force trauma, often from shaking. Almost half of child homicides occurred in the 20 per cent of most deprived neighbourhoods. Māori children were over-represented among the victims.

Relationship of killer to victim, 0 to 14 years (%)



SOURCE: THE HOMICIDE REPORT

Source: The Homicide Report (Stuff)⁴⁹

Maori and Pacific families have appeared disproportionately in child maltreatment statistics since the earliest data analysis in 1967. A 2006 CYF report found: “*Māori children are more exposed to the risk of **fatal** child maltreatment associated with having a stepparent, as Māori children are twice as likely as New Zealand European and other children to be raised in a blended family.*”⁵⁰ (our emphasis added)

This is confirmed in the latest data from the Family Violence Death Review Committee which shows that while Maori children represent 25% of the population aged under 19, they represent half of all victims of child abuse and neglect deaths.

Table 21: Ethnic-specific rates (per 100,000 people per year)* for deceased and offenders in CAN deaths, New Zealand, 2009-15

PRIORITISED ETHNICITY	Total New Zealand population aged under 19 years 2009-15		CAN deceased n=56			
Deceased	n	%	n	%	rate	95% CI
Māori	2,105,140	25	28	50	1.33	0.88-1.92
Non-Māori	6,412,780	75	27	48	0.42	0.28-0.61
Unknown			1	2		
PRIORITISED ETHNICITY	Total New Zealand population 2009-15		CAN offenders n=55			
Offenders	n	%	n	%	rate	95% CI
Māori	4,787,440	16	24	44	0.50	0.32-0.75
Non-Māori	26,334,670	84	24	44	0.09	0.06-0.14
Unknown			7	13		

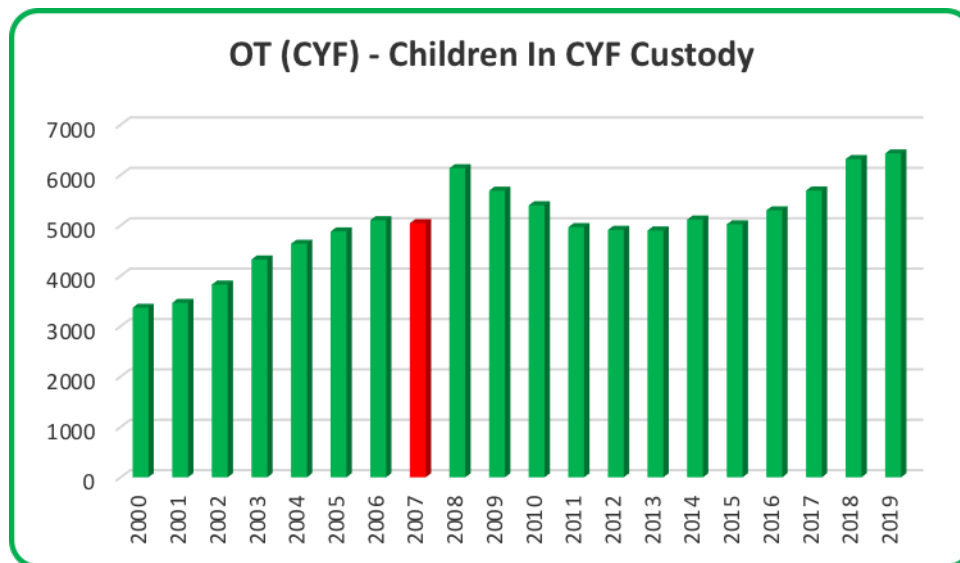
CAN = child abuse and neglect.

* Rates for CAN deceased were estimated per 100,000 people aged 19 years and under per year. Rates for CAN offenders were estimated per 100,000 people per year of the total population.

Source: Family Violence Death Review Committee, Fifth Report Data: January 2009 to December 2015⁵¹

CHILDREN IN CARE

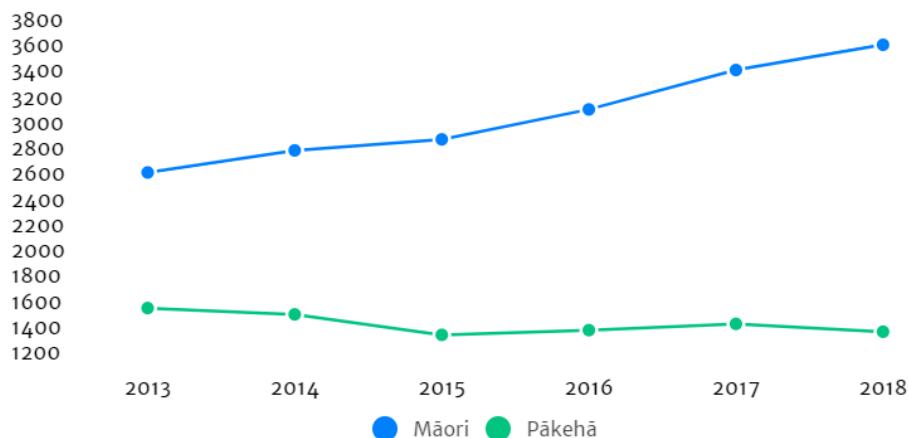
As the rates of child abuse have continued to climb, so too have the number of children and young people needing to be placed in the care or custody of Oranga Tamariki.



Source: OIA from Oranga Tamariki, December 2019

Māori children in care have increased since 2013, while Pākehā are in decline

Children in state care, as at June 30



SOURCE: ORANGA TAMARIKI
* FIGURES FOR PĀKEHĀ NOT REPORTED IN 2018

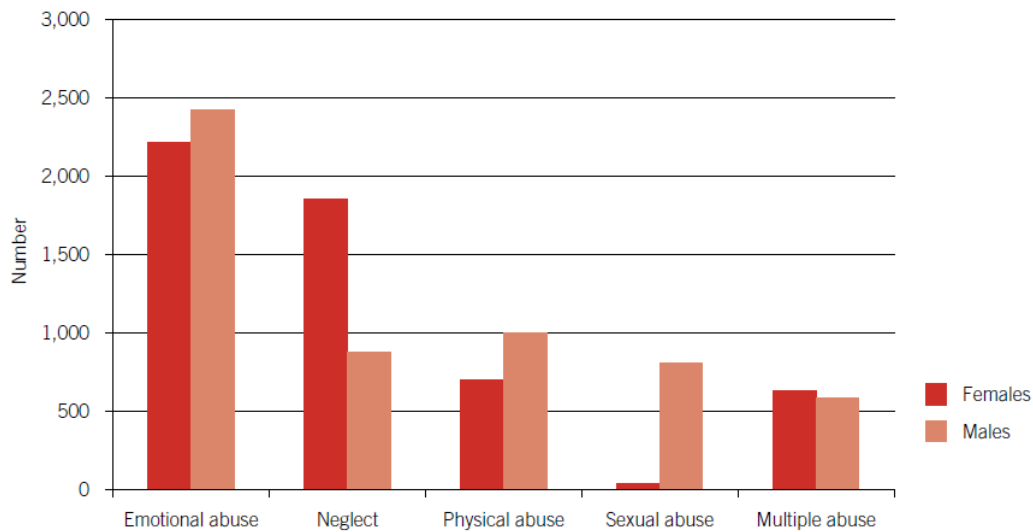
Source: Stuff ⁵²

GENDER OF OFFENDERS

It is generally assumed by the media that *men* are the primary abusers of children. Significantly, however, a 2009 report on family violence by the Families Commission identified that **48% of abuse and neglect of children in 2006 was committed by women**.⁵³ *The Homicide Report* (2019) found that where the killer's relationship to the victim was known, **27% were mothers, 24% were fathers, and 17% de facto fathers**.⁵⁴ This is backed up by professionals working in the field of child abuse.⁵⁵ Unfortunately, Oranga Tamariki admits that while they record the gender of the offender on *individual* files, they do not collate this material to give *overall* % figures.⁵⁶

In New Zealand, men are responsible for around 60% of physical abuse findings and are more likely to sexually abuse children; women are more likely to neglect them. Women are also more likely to inflict multiple types of abuse against children.

FIGURE 7: NUMBER OF FEMALE AND MALE ABUSERS OF SPECIFIC TYPES OF ABUSE AND NEGLECT, 2006



From CYF Appendix Table 8.

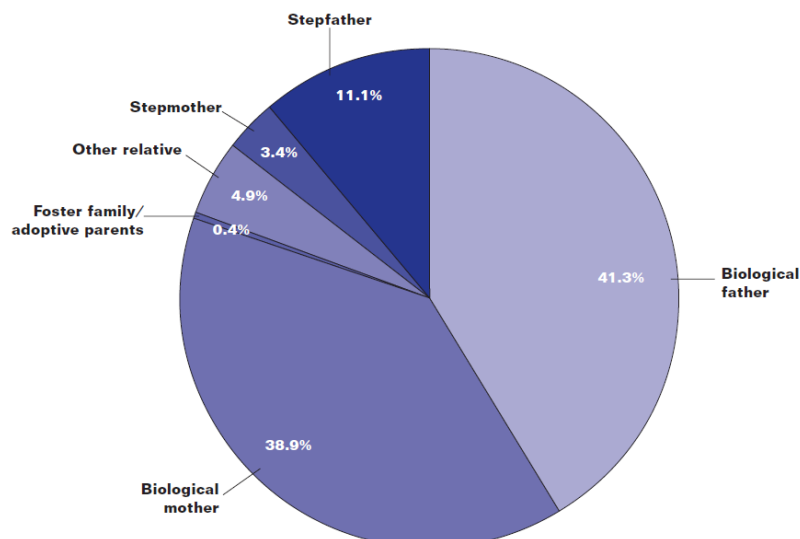
Note that abusers found to have committed more than one type of abuse are shown in the 'multiple abuse' category as well as in the individual abuse types.

Source: Family Violence Statistics Report, Families Commission, 2009.

“(I)n very young infants the mother can often be the offender, particularly if there are issues like postnatal depression.”

Dr Patrick Kelly⁵⁷
Starship Hospital child protection team leader

Stepfathers – a label which today covers a variety of male care-giving relationships with children - are significantly over-represented as perpetrators of child death from inflicted injury, both in New Zealand and other countries.



Source: A League Table Of Child Maltreatment Deaths In Rich Nations (2003)⁵⁸

For the causes of child abuse and its solutions to be properly addressed, factors such as the marital status of the parents and the biological nature of the caregiver-child relationship must be acknowledged. Child abuse cannot be reduced to just a gender-blame issue.

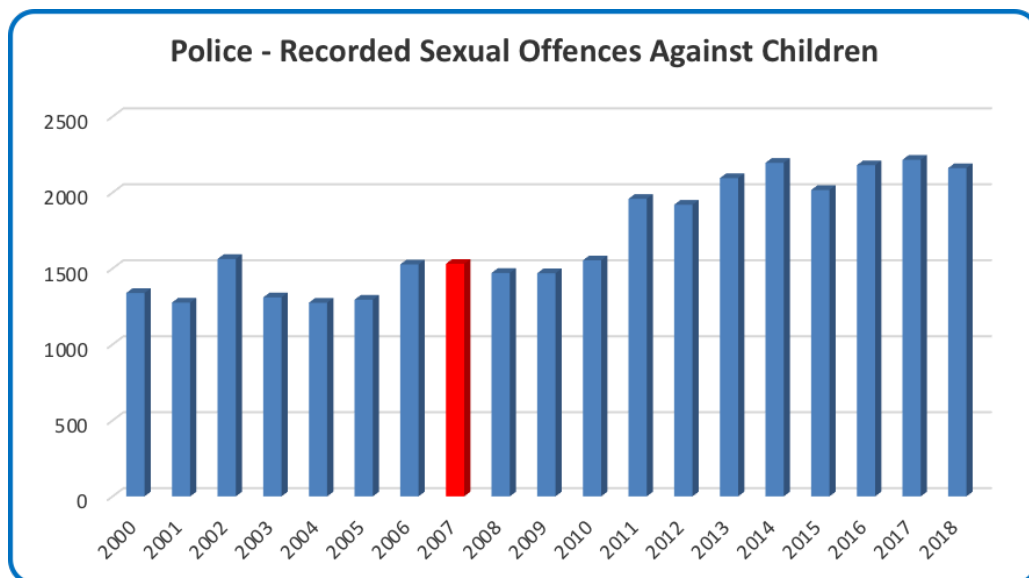
We now look at other forms of abuse to gain a general picture of child abuse and child welfare in New Zealand.

Factors such as the marital status of the parents and the biological nature of the caregiver-child relationship must be acknowledged.

SEXUAL ABUSE

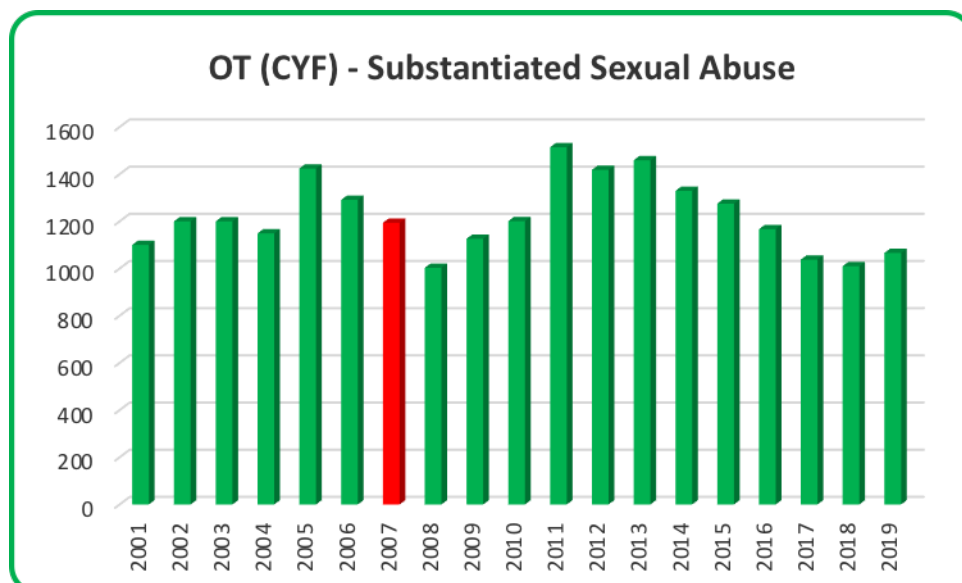
The rate of child sexual abuse found by police has steadily increased, with a 61% increase since 2000.

POLICE



Source: Stats NZ, OIA from NZ Police, December 2019

OT (CYF)



Source: OIA from Oranga Tamariki, December 2019,
2001/03 data sourced from "Family Violence Statistics Report 2009" - Families Commission

Sexual abuse rates of girls are four to five times that of boys.

It is significant that **while the rate of child sexual abuse found by police has increased, the CYF substantiation rate has been in decline since 2011.** This may support the CYF ‘saturation’ argument.⁵⁹

NEGLECT

OT (CYF)

It is important to note that there have been changing priorities within Child, Youth and Family (and subsequently Oranga Tamariki) which saw **emotional abuse** and **neglect** considered less serious than physical and sexual abuse. This trend of less importance being placed on emotional abuse and neglect seems to reflect the decline in such cases.⁶⁰

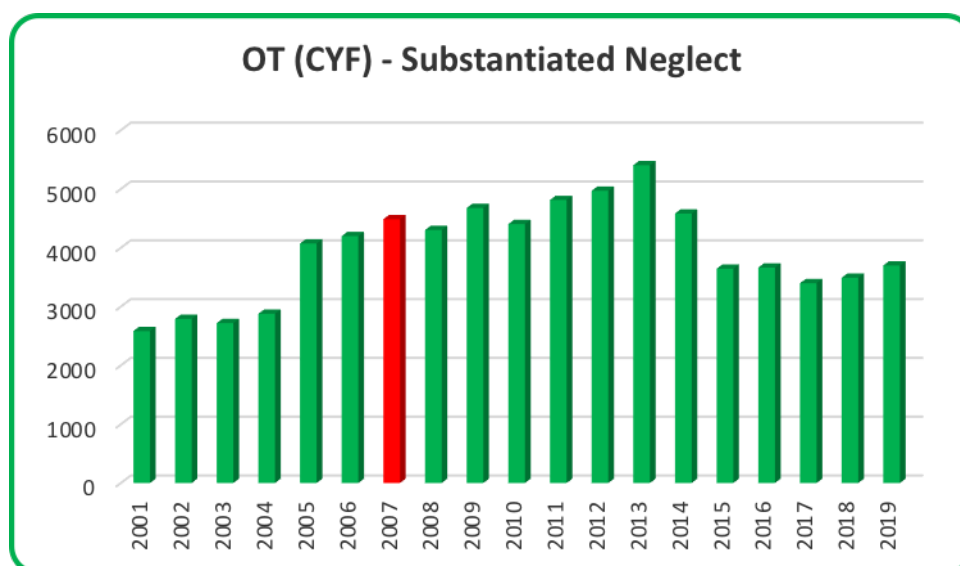
Neglect is when the basic needs of te tamaiti are not met.

Neglect can be:

- physical neglect — not providing the necessities of life such as adequate shelter, food and clothing
- emotional neglect — not providing comfort, attention and love
- neglectful supervision — leaving tamariki without someone safe looking after them
- medical neglect — not taking care of health needs
- educational neglect — allowing truancy, failure to enrol in education, or inattention to education needs.

Neglect could happen once or it could happen regularly.

Oranga Tamariki – Definition of neglect (April 2019)⁶¹



Source: OIA from Oranga Tamariki, December 2019,
2001/03 data sourced from “Family Violence Statistics Report 2009” - Families Commission

EMOTIONAL ABUSE

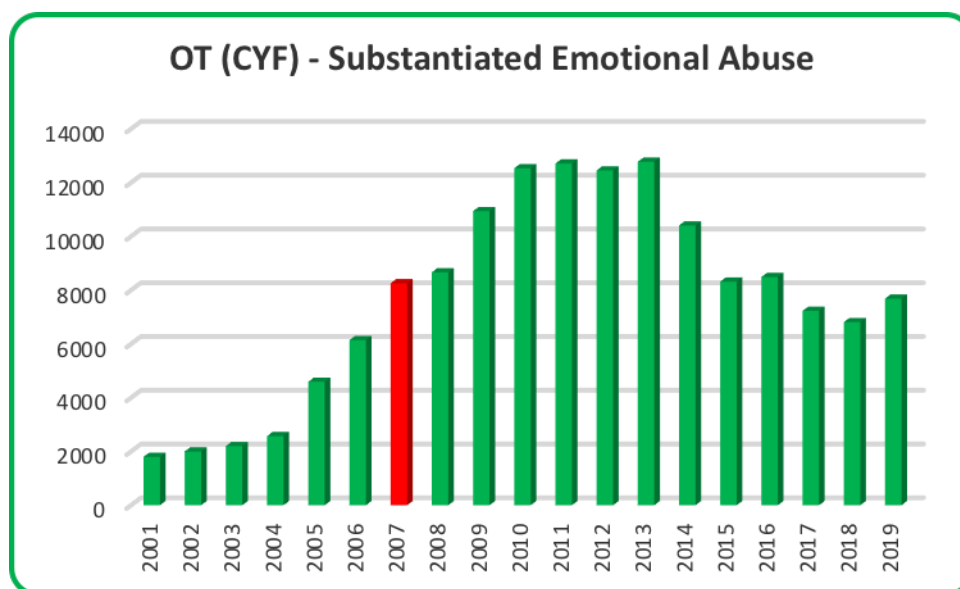
OT (CYF)

According to Oranga Tamariki, emotional abuse is when children's psychological, social, intellectual and emotional functioning or development has been damaged by treatment from their parents, caregivers or family/whānau.

Examples of emotional abuse include:

- patterns of degradation, constant and vitriolic criticism, or repeated negative comparison to others
- deprivation of contact with people significant to te tamaiti
- corrupting, exploiting, or actively scaring and threatening te tamaiti
- a significant period of denying access to cultural, faith or other associations that sustain the sense of normality, identity and self-esteem for te tamaiti
- ongoing exposure to family/whānau violence.

Oranga Tamariki – Definition of emotional abuse (July 2019)⁶²



Source: OIA from Oranga Tamariki, December 2019,
2001/03 data sourced from "Family Violence Statistics Report 2009" - Families Commission

The unexpected decrease over recent years is explained by the Ministry of Social Development:

"An important contributor ... was a change in Police procedures which resulted in a notification to care and protection services being made in respect of all children present at family violence incidents attended by the Police. This, together with recognition of exposure to family violence as a form of psychological abuse under the Domestic Violence Act (1995), was associated with a rise in the number and proportion of children with substantiated findings of emotional abuse...."

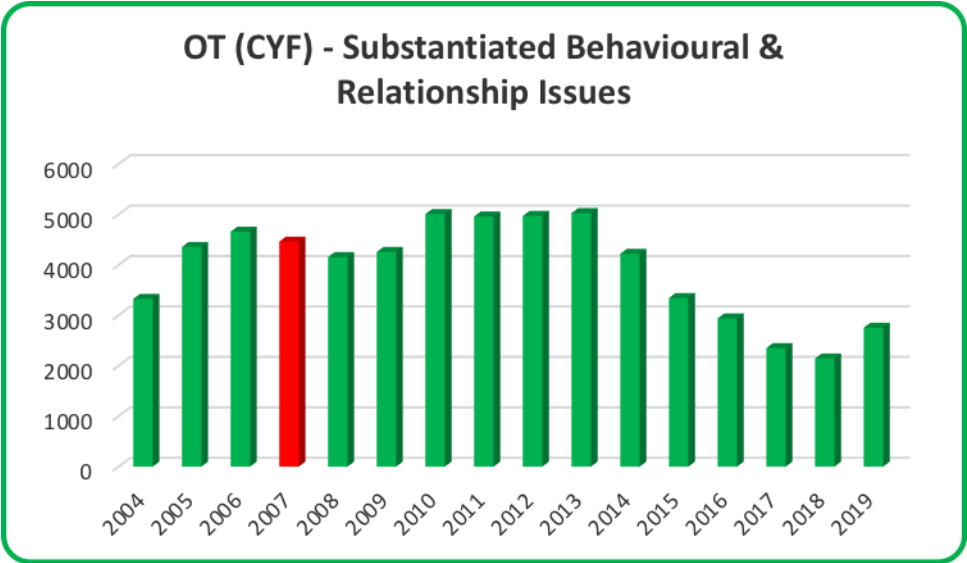
*"A further change in procedures for handling Police family violence referrals was introduced in July 2010. From that date, Police family violence referrals that require no further action do not result in care and protection notifications, but instead are recorded as "contact records". This appears to have been associated with a levelling off of numbers of findings of emotional abuse (2012)."*⁶³

Since 2014, a new strategy which “... sees doctors or police directly refer to a group that specialises in preventing domestic violence, rather than refer to Child, Youth and Family (CYF)...” has accounted for a further fall.^{64 65}

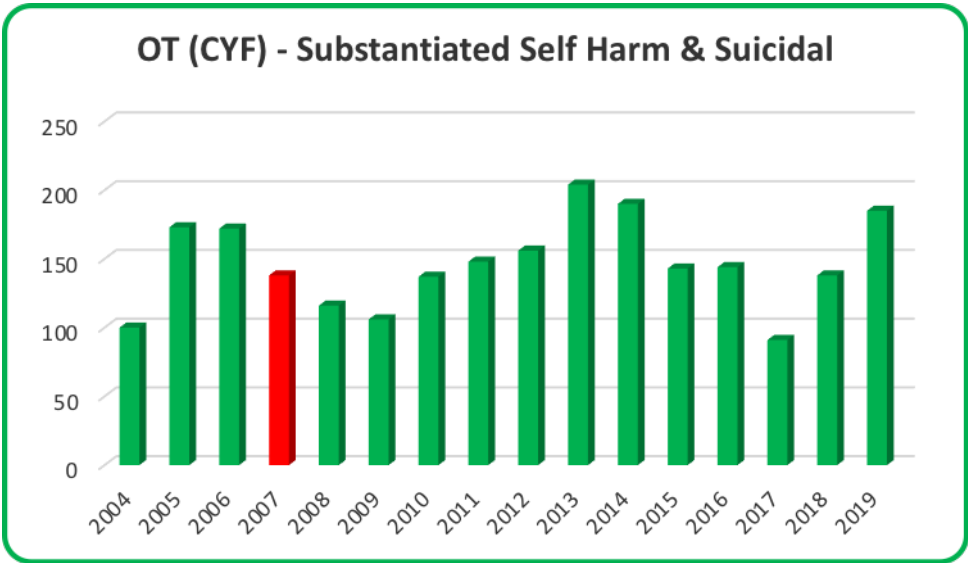
CHILD WELLBEING
(including behavioural, relational, mental health, self-harm, suicidal)

One of the arguments used by advocates of the smacking ban was that smacking increased the future risk of a child suffering mental health problems.⁶⁶ 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. The first Oranga Tamariki graph below appears to indicate this is the case, but this finding is contradicted by Ministry of Health data.

OT (CYF)



Source: OIA from Oranga Tamariki, December 2019

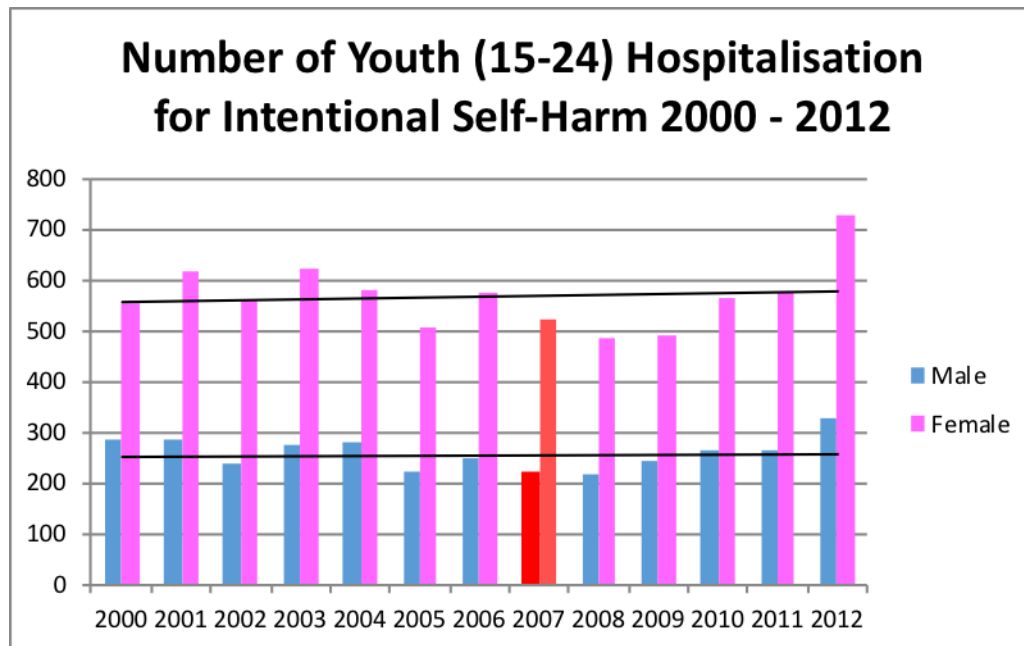


Source: OIA from Oranga Tamariki, December 2019

MINISTRY OF HEALTH

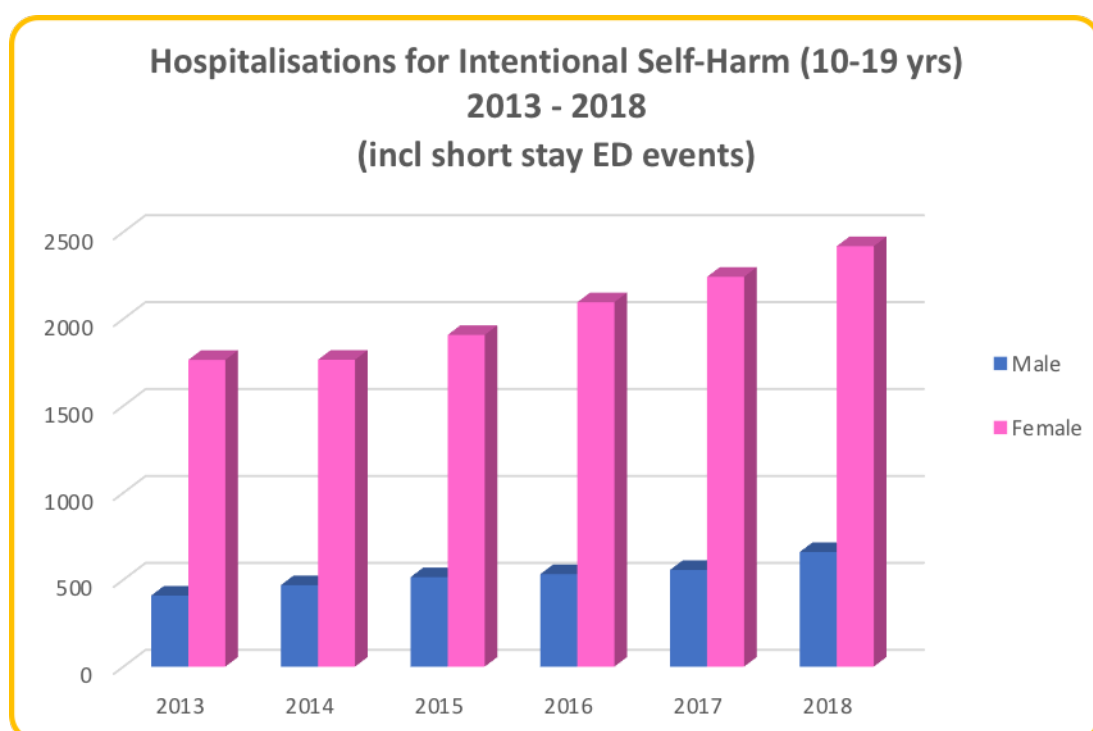
Self-harm

In our previous report⁶⁷ we included the Ministry of Health graph below, which showed a concerning rise in intentional harm from 2008 onwards.⁶⁸ When we applied for the latest data in 2019, the Ministry of Health told us that the data below *excludes short-stay emergency department events*, and that as a result it *excluded around half of all intentional self-harm hospitalisations* (59% of youth hospitalisations in 2013). In other words, the data is actually worse than what we showed below in our previous report.



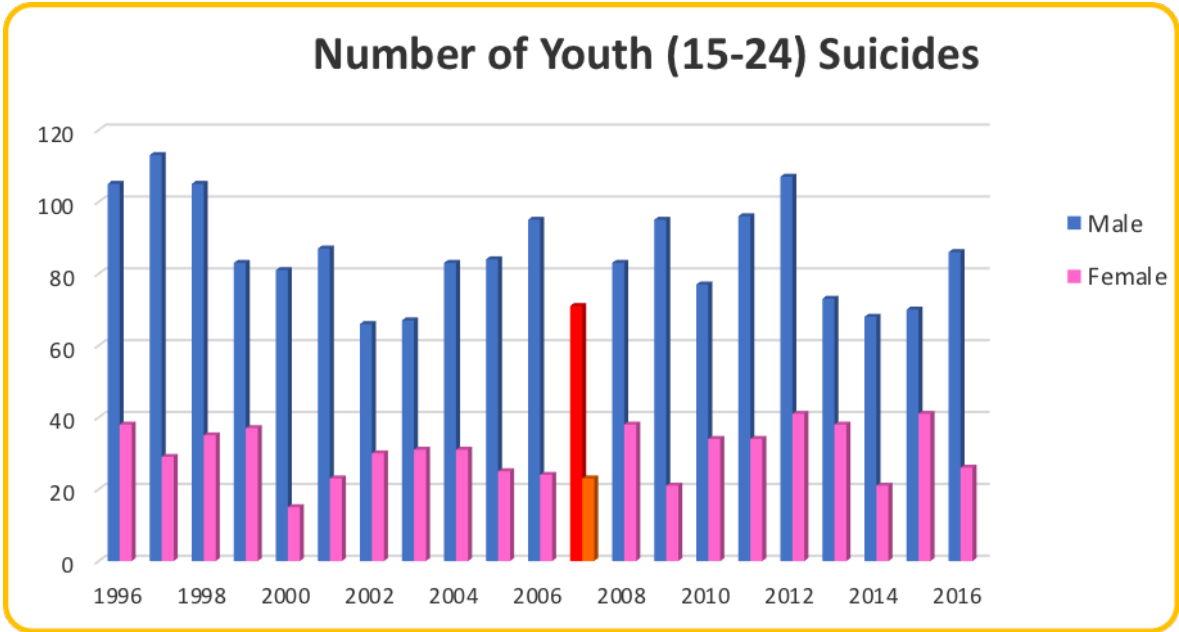
Source: Ministry of Health (2015)

Using the more accurate series provided by the Ministry of Health,⁶⁹ it is clear the disturbing – and increasing – trend continues from 2013 onwards.



Source: OIA from Ministry of Health, December 2019

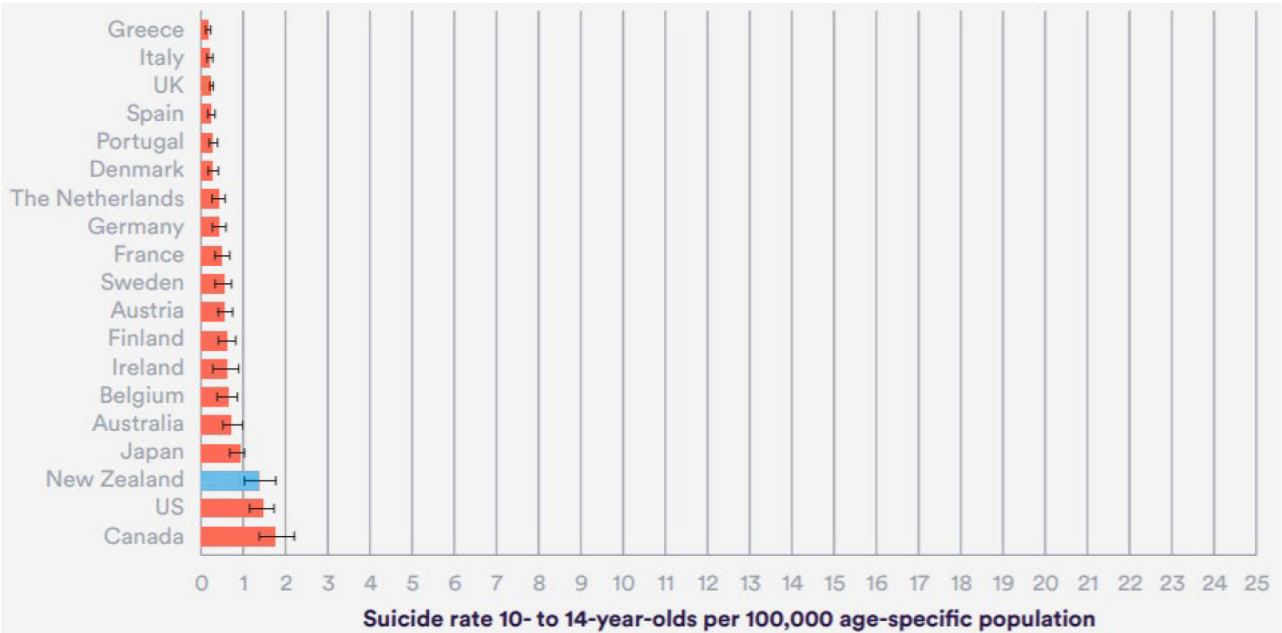
Suicide

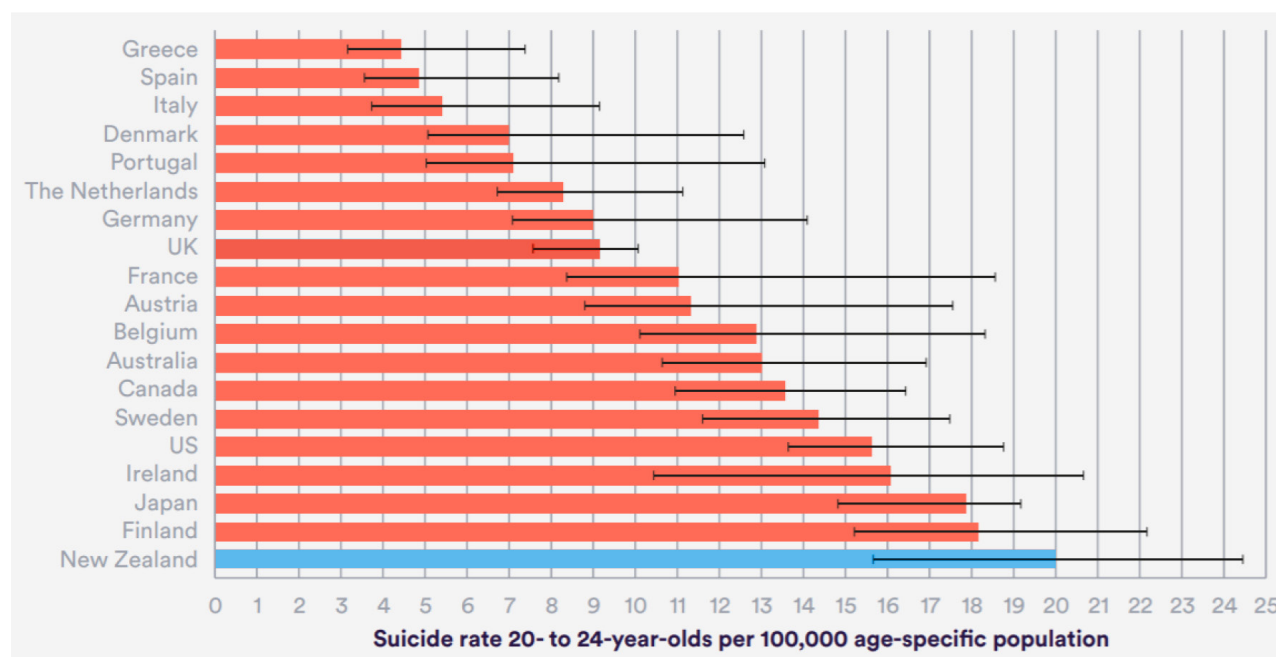
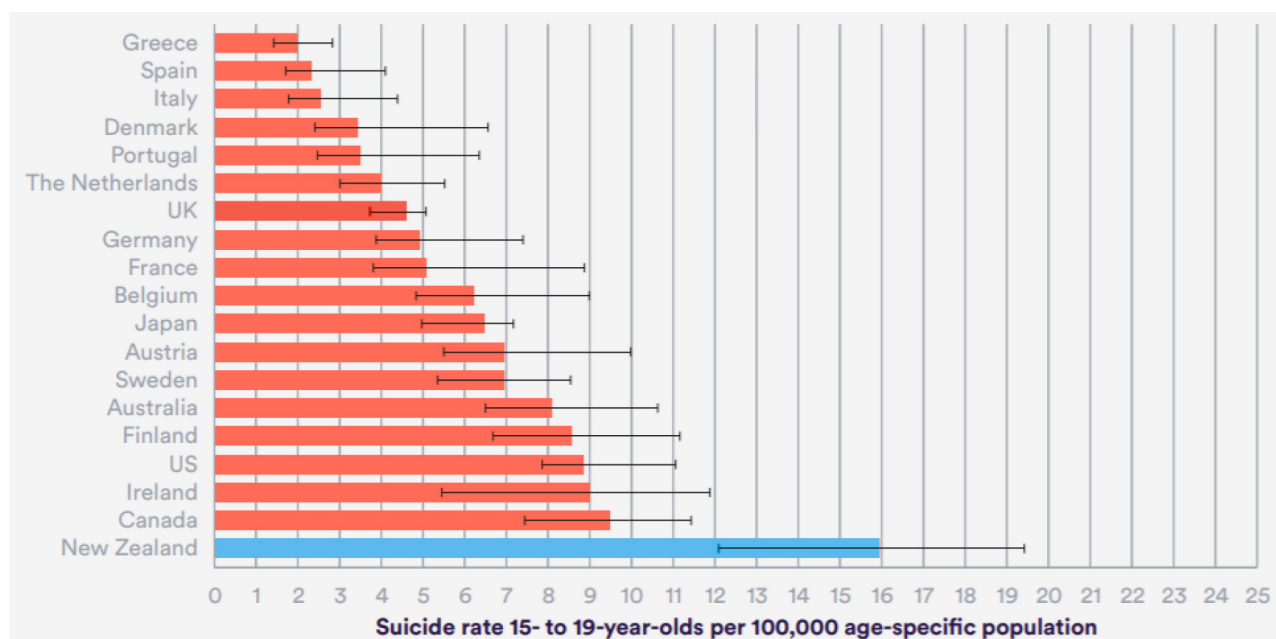


Source: Ministry of Health, Suicide Facts 2016⁷⁰

International comparisons

Tragically, the rates of suicide for young people in New Zealand are amongst the worst in OECD nations.⁷¹



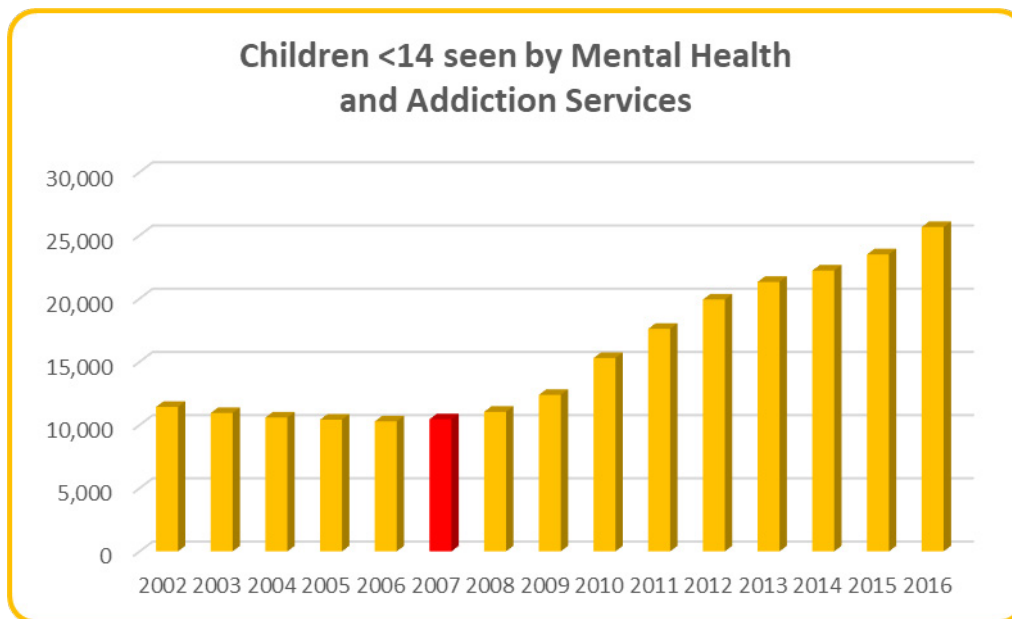


Source: International comparisons of health and wellbeing in adolescence and early adulthood, Nuffield Trust

Please note: No attempt is being made to argue that the anti-smacking law has directly contributed to rates of youth suicide or self-harm. This data is included to examine the claim that smacking increases the risk of mental health problems,⁷² and as part of an overall look at the wellbeing of our young people over the past two decades.

Mental health

The Ministry of Health's *Mental Health and Addiction Service Use* tables⁷³ give us statistics related to the number of children seen by the mental health and addiction services provided by DHBs and NGOs.

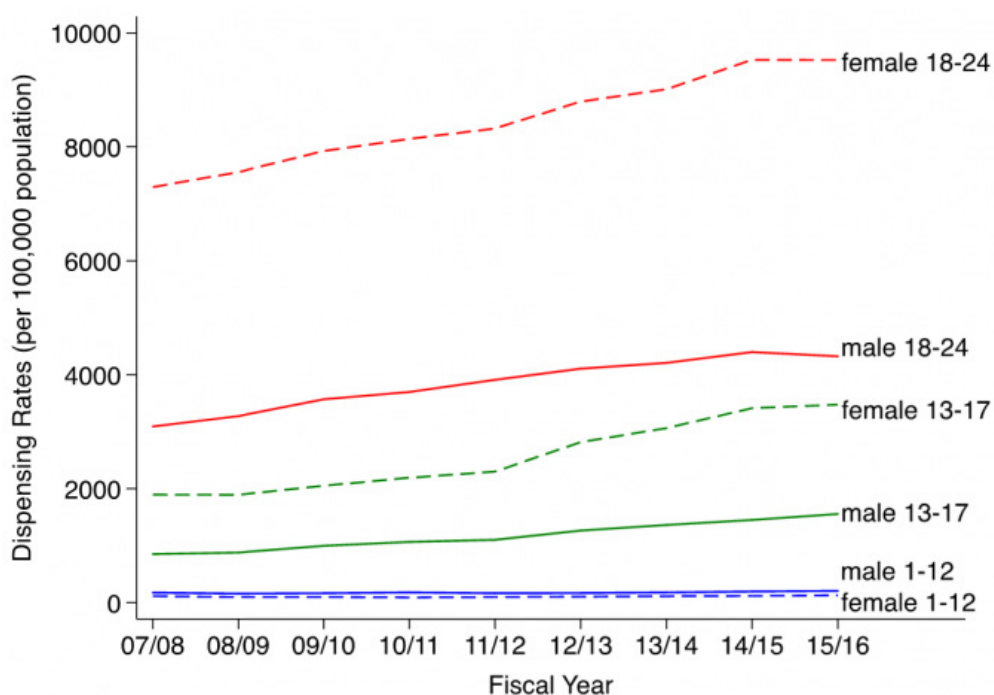


Source: Mental Health and Addiction Service Use (Ministry of Health)

Boys are significantly more likely than girls in the 5-9 age group referred to these services. This evens up between the ages of 10-14.

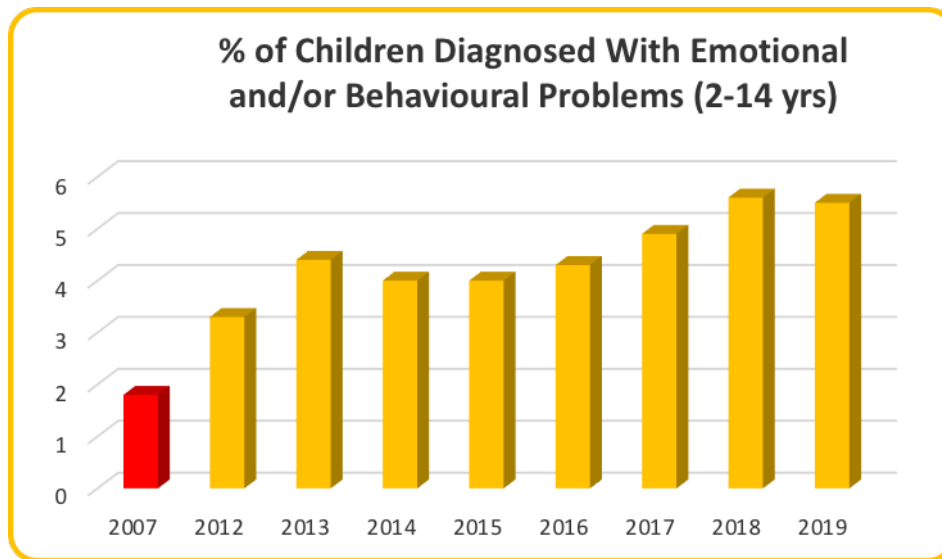
A study published in November 2019 in the *New Zealand Medical Journal* examined trends in antidepressants prescribed to young people from 2007-2016. It found the rates of antidepressants being dispensed were at an all-time high amongst youth. The biggest increase was in the 13 to 17-year-old age group, with an 83% rise over the nine years. Over the same period, the total number of annual antidepressant prescriptions dispensed to children and young people increased by 68%. The mental health disorders most likely to be treated with antidepressant medication were anxiety and depressive disorders. Pākehā were given antidepressants at nearly twice the rate of Māori and four times the rate of Pasifika and Asians. That was despite Māori and Pasifika people having higher rates of mental health problems than Pākehā.⁷⁴

The total number of annual antidepressant prescriptions dispensed to children and young people increased by 68%.



Source: "IDI trends in antidepressant dispensing to New Zealand children and young people between 2007/08 and 2015/16", NZ Medical Journal

The Ministry of Health's *Annual Update of Key Results 2018/19: New Zealand Health Survey* report⁷⁵ corroborates this trend. The 2018/19 New Zealand Health Survey estimates 5.5% of parents of children aged 2–14 (46,000 children) have been told by a doctor their child has depression, an anxiety disorder, and/or ADHD.

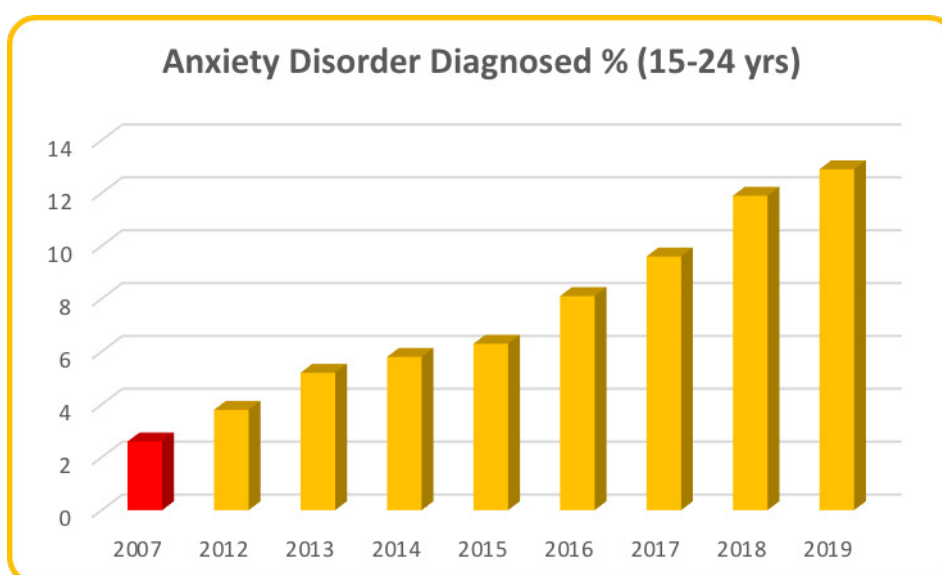


Source: NZ Health Survey (Ministry of Health)

(The survey – based on parent disclosure – was first carried out in 2007 and then annually since 2012).

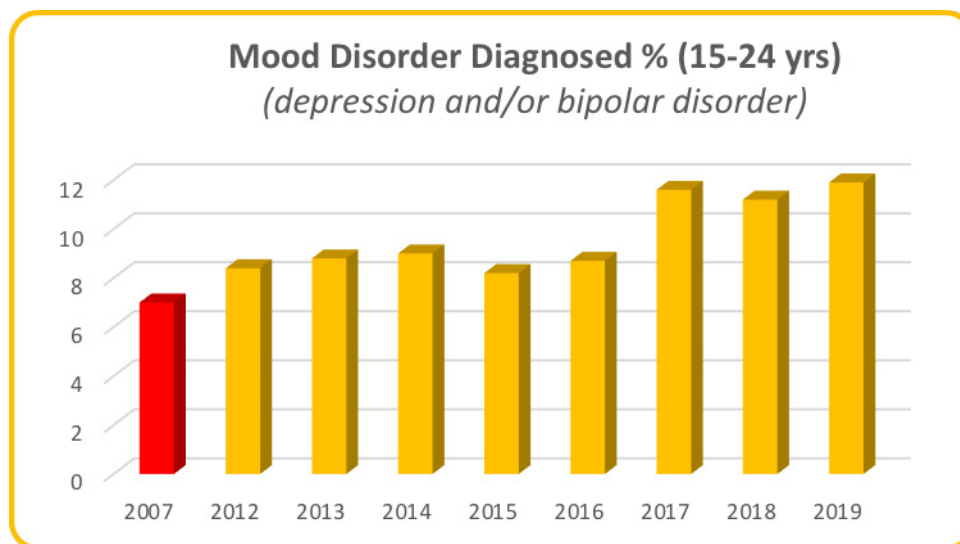
According to the survey, **boys were 1.7 times more likely to have ever been diagnosed with emotional and/or behavioural problems than girls** after adjusting for age differences.

It is also significant to note the trend among 15-24 year olds. These young adults would have been aged 3-12 when the law was implemented. The reason this is significant is that a 2007 Otago University study⁷⁶ 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. A large American study reported in 2013 found similar results.⁷⁷



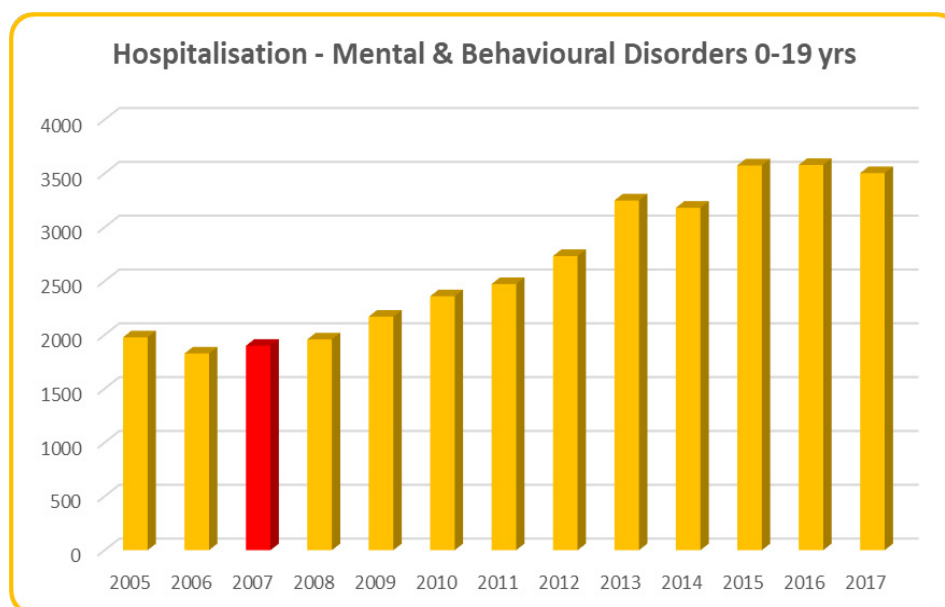
Source: NZ Health Survey (Ministry of Health)

(based on self-disclosure)



Source: NZ Health Survey (Ministry of Health)
(based on self-disclosure)

Hospitalisations for mental and behavioural disorders have almost doubled since 2007.



Source: Publicly funded hospital discharges (Ministry of Health)⁷⁸

Has the way parents can legally discipline their children had any effect on the standards of discipline and behaviour in schools? A school principal recently said the anti-smacking law had been interpreted as the anti-discipline law.⁷⁹ And the New Zealand Principals' Federation (NZPF) president said that the Crimes Act, which contained the anti-smacking law, and the Education Act, which covered how teachers were allowed to deal with violent and defiant behaviour, were at odds.⁸⁰ A recent nationwide poll found that half of New Zealanders believed the 2007 anti-smacking law had caused a decline in discipline, with a further 16% unsure.⁸¹

1. Stand-Downs For Students

At the beginning of 2018, the NZ School Trustees Association expressed concern about intermediate and primary schools being forced to consider excluding and suspending students, amid a **reported rise in extreme behaviour among children**. The President of the NZ School Trustees Association Lorraine Kerr said, *“Normally one would expect this type of behaviour in secondary schools. It's now becoming intermediate schools, and in some extreme cases ... it's presenting itself in primary.”*⁸²



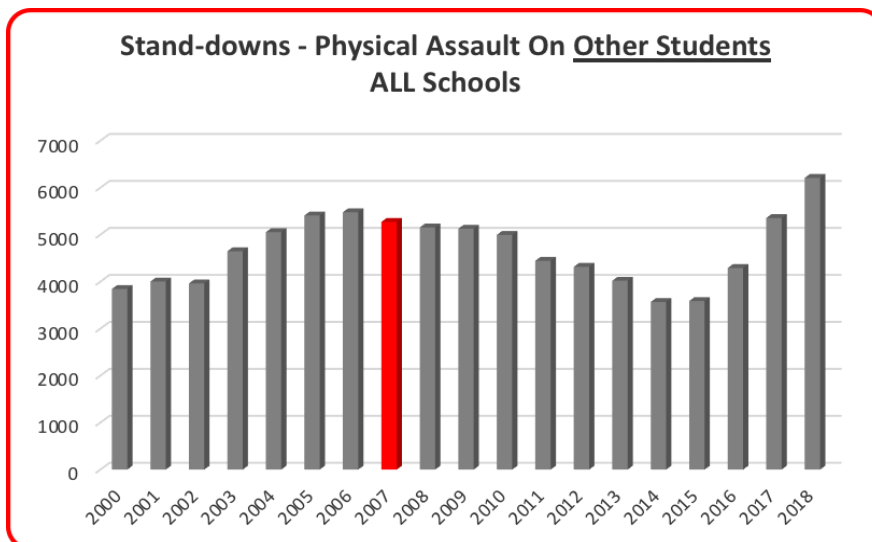
The most common form of punishment for severe behavior is a **stand-down (83% of the disciplinary cases in 2018⁸³)**, where a child is removed from school for a short period – no more than five days in a school term or a total of 10 days in a school year. A stand-down can be used only for:

- **continual disobedience** (regularly or deliberately disregarding rules or refusing to do as they are told) which is harmful or dangerous to other students;
- **gross misconduct** (serious misbehaviour) which is harmful or dangerous to other students; or
- when the **behaviour is likely to cause serious harm** to the child or others.⁸⁴

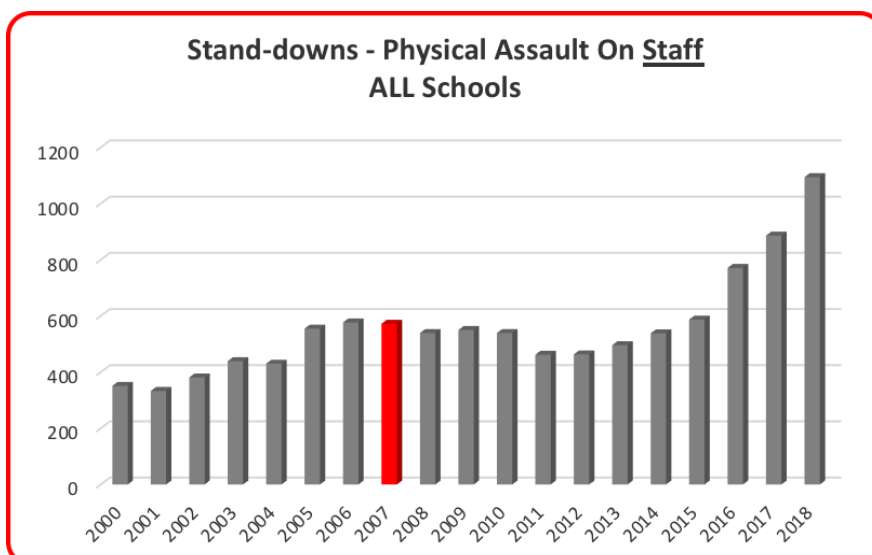
Other lesser-used disciplinary options are **suspension** - the formal removal of a student from school until the board of trustees decides the outcome at a suspension meeting - and **exclusion** (for students under 16) or **expulsion** (students over 16), both of which mean permanent removal from the school.

For the last 20 years, successive governments have been discouraging schools from suspending or excluding students.^{85 86} Despite this directive, schools have had to use these options as a last resort. Schools have also been asked by the Ministry of Education to take back students who were removed for attacking staff and threatening younger students.⁸⁷ At the time of writing this report, the Ministry of Education told Radio NZ, *“the ministry was currently trying to find schools for 240 excluded students, including 62 who were excluded because of physical assaults on other students, 16 for physical assaults on staff, 64 for continual disobedience, 22 for drugs, and 41 for other harmful or dangerous behaviour.”*⁸⁸

In 2017, Ministry of Education statistics showed that boys were more than three times more likely to be expelled than their female peers. More than 5% of Māori boys (57 per 1000) were stood down, compared with 4% of Pacific boys, 3% of European boys and less than 1% of Asian boys. Fourteen-year-olds continued to have the highest rates of stand-downs and suspensions.^{89 90} In 2018, physical assaults on other students continued to be the main reason for stand-downs; it accounted for 32% of all stand-downs.

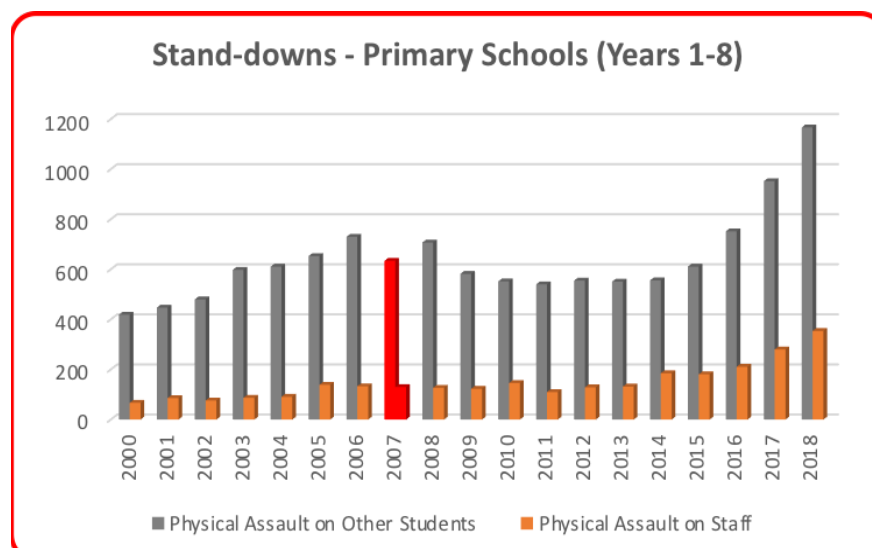


Source: Ministry of Education

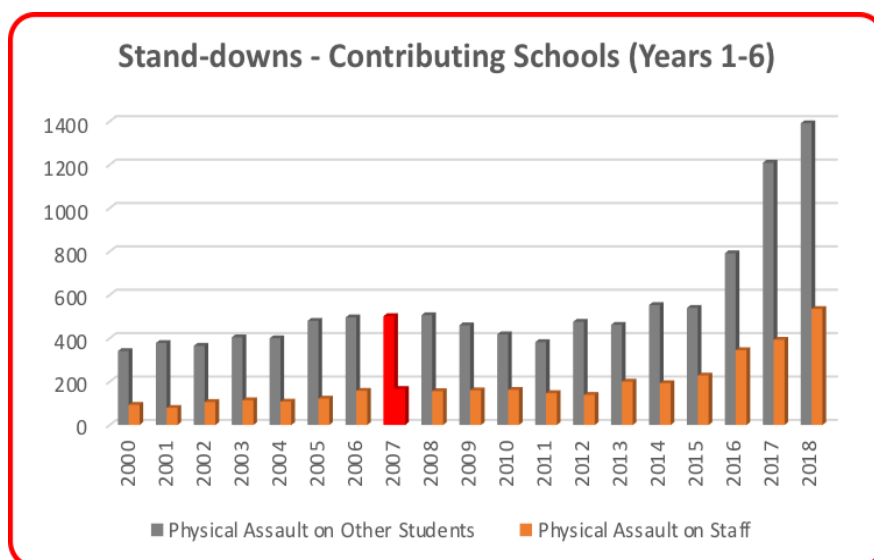


Source: Ministry of Education

The trend in **primary schools** signals the greatest concern. (“Primary schools” cater for years 1-8, and “Contributing schools” cater for years 1-6 only).



Source: Ministry of Education



Source: Ministry of Education

2. Principals And Teachers In Harm's Way

Physical assaults by primary school children on principals and staff are increasing.

The Principal Health and Wellbeing Survey 2018 was commissioned by NZEI Te Riu Roa and undertaken by the Institute for Positive Psychology and Education based at the Australian Catholic University.⁹¹ The survey collected data and monitored the health, safety and wellbeing of primary school principals (including deputy- and assistant-principals) in New Zealand for three years, up to and including 2018. Just over 1,400 school leaders responded to the survey; 21.9% of them had received threats of violence from students; 27% had experienced actual physical violence.

According to the survey, rates of threats and violence against female school leaders were higher than those against male school leaders in every year, increasing steadily since 2016. In 2018, 45% of female leaders were threatened with violence, compared to 41% of male leaders. Physical violence was reported by 48% of female principals, compared to 43% of male principals.

The anti-smacking law has been interpreted as the anti-discipline law.

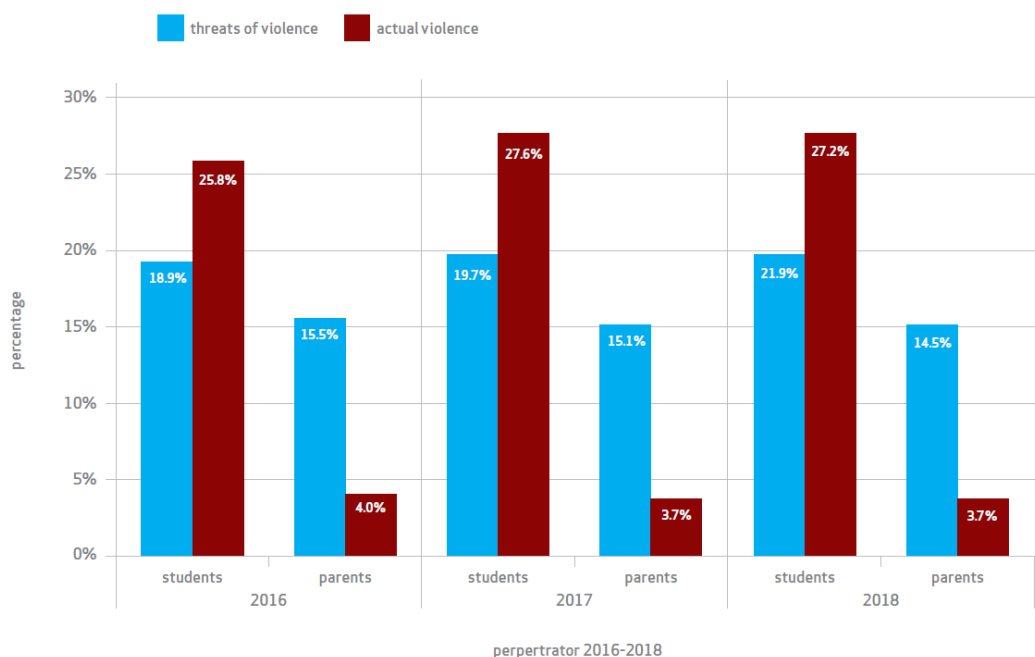
Edendale Primary School principal David McKenzie told media that an emerging group of children were entering the school system, or were already in it, who had never understood the word, 'no.' They had little ability to manage difficult situations without resorting to tantrums or violence which disrupted others in the classroom. He said, "*The anti-smacking law has been interpreted as the anti-discipline law.*"⁹²

Southland Primary Principals Association president Wendy Ryan confirmed more and more children were entering the school system with behavioural issues, including hitting other children, spitting at people and throwing furniture. She said she was not saying such behaviours never happened before, but it was now happening more often.

Principals are now 11.79 times more likely to be subject to physical violence at work than the rest of the population.⁹³

More and more children were entering the school system with behavioural issues, including hitting other children, spitting at people and throwing furniture.

Threats Of Violence / Actual Violence Against Principals (%)



Source: Principal Health and Wellbeing Survey 2018 (NZEI Te Riu Roa)

A report released last November from the Te Tai Tokerau Principals' Association revealed distressing and violent behaviour by students at Northland primary and intermediate schools. After surveying 83 principals in the area, the report found:

“Self-harm, students attacking and/or threatening to attack teachers or other students, students threatening or attacking property, students swearing at one another and students leaving school without permission are just some of the behaviours principals have said they experience in their schools.”

A number of organisations have also expressed concern about children threatening their parents.^{94 95} According to information just received under the Official Information Act at the time of finalising this report, the police have taken proceedings against more than 1,500 children aged 16 and under who have assaulted their parents between 2015 and 2019.⁹⁶

3. Physical Restraint Rules

New Zealand Principals' Federation (NZPF) president Whetu Cormick says the guidelines for restraining a student need urgent attention. He said, *“It is ridiculous that we cannot restrain a child who is trashing a classroom or principal's office. The Crimes Act and the Education Act are at odds on this issue and schools need this mess sorted quickly.”*⁹⁷

The comments came after a number of disturbing cases, including two primary school teachers censured for pushing or pulling young children.⁹⁸ The Tai Tokerau Principals Association said the cases should never have been heard by the tribunal, and the Principals Federation called for a review of the rules governing physical restraint.

Ministry Guidelines argue that, *“Physical restraint is a serious intervention,”* and that the *“emotional and physical impact on*

It is ridiculous that we cannot restrain a child who is trashing a classroom or principal's office. The Crimes Act and the Education Act are at odds on this issue.

the student being restrained” can be significant. They say school staff should **not** use physical restraint in the following situations:

- to respond to behaviour that is disrupting the classroom but not putting anyone in danger of being hurt
- for refusal to comply with an adult’s request
- to stop a student who is trying to leave the classroom or school without permission
- to stop a student who is damaging or removing property, unless there is a risk to safety
- “if escalation occurs, move further away”⁹⁹ (our emphasis added)



For any acts of physical restraint on a student, **five forms must be completed**: an incident report, information for the Ministry, a ‘staff reflection’ form, a debriefing for the Principal, and a form regarding debriefing the parents.

Ministry of Education data gained under the Official Information Act show that almost 6,000 reports of physical restraint have had to be lodged by schools since new rules were introduced for schools in August 2017. 71% of the incidences occurred in primary schools with children 10 years old and under. 82% of the incidences involved boys. This also means that 30,000 forms or reports will have had to be completed by school staff.¹⁰⁰

The Ministry suggests the number of reported incidents is “a small percentage” but the real issue is whether teachers are ignoring unruly and unacceptable behaviour in very young children, or are unable to deal with it, because they are no longer confident of their right to restrain students.¹⁰¹ This then places all students at risk. Teachers say that they are scared to even break up schoolyard fights¹⁰² or are standing back¹⁰³ while a student trashes the classroom.

Teachers say that they are scared to even break up schoolyard fights or are standing back while a student trashes the classroom.

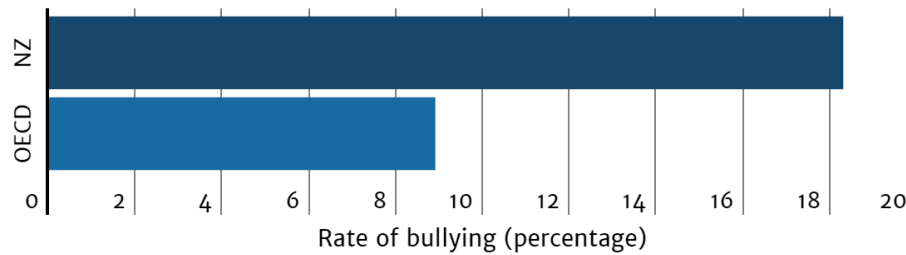
It seems ironic that while we are saying no to violence within families and the community, schools are expected to tolerate an unacceptable level of violence and unruly behaviour.

The government is now attempting to ‘fix’ the guidelines. New rules in the Education and Training Bill 2019 clarify that physical force can be used, as a last resort, to keep students safe from harm.¹⁰⁴

4. Bullying In Schools

New Zealand does not fare well in this area compared to other OECD countries. The OECD’s three-yearly survey as part of the Programme for International Student Assessment (Pisa) in 2015 found that 15-year-olds in New Zealand reported the second-highest rate of bullying out of 51 countries (Latvia had the highest rate). Just over a quarter of the students taking part reported experiencing some type of bullying at least a few times a month.¹⁰⁵ It included 6.7% who reported being hit or pushed around by other students, 8.3% who were threatened, and 6.3% who said other students took or destroyed things that belonged to them.

NZ's rate of frequently bullied students

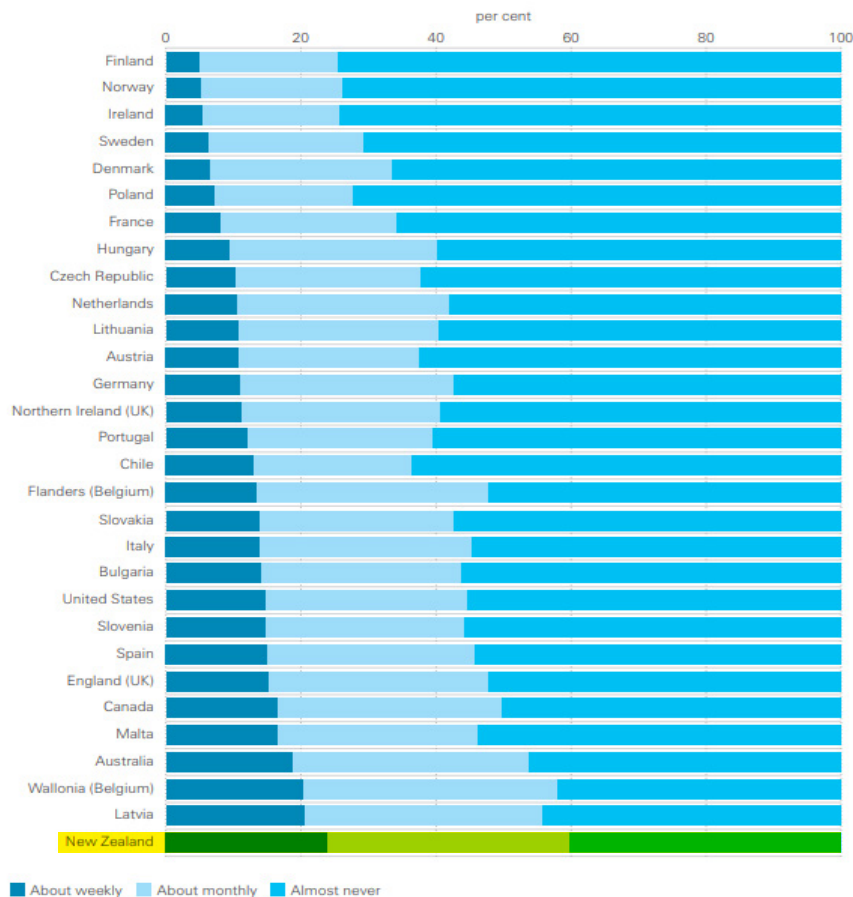


Source: PISA 2015 Results – Students' Wellbeing

UNICEF's annual Innocenti Report Card released at the end of 2018 ranked New Zealand as the worst in the world for bullying in schools, now behind Latvia.¹⁰⁶

Almost 60% of students experienced bullying either weekly or monthly - more than twice the rate of the countries with the lowest rates.

Figure 15: Percentage of Grade 4 children reporting bullying



Note: No data for Israel.
Based on the question "During this year, how often have other students from your school done any of the following things to you (including through texting or the Internet): 'made fun of me or called me names', 'left me out of their games or activities', 'spread lies about me', 'stole something from me', 'hit or hurt me', 'made me do things I didn't want to do', 'shared embarrassing information about me', 'threatened me'?"
Source: PIRLS 2016.

Source: UNICEF Office of Research – Innocenti

There have been two legal analyses of the anti-smacking law.

In 2014 an independent legal analysis by public law specialists Chen Palmer,¹⁰⁷ of court cases involving prosecutions for smacking since the anti-smacking law was passed, said that **statements made by politicians to the effect that the new Section 59 did not criminalise “good parents” for lightly smacking their children were inconsistent with the actual legal effect in practice.**

“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.”

An updated analysis in 2018 reviewed further cases and sounded yet more warning bells to families.¹⁰⁸ One of the most concerning comments read as follows:

“We have not been able to find any decision where the Court has, at sentencing, explicitly balanced the long term effect of the prosecution or the conviction on the parent-child relationship against the level and frequency of the physical discipline the parent is being charged with.”

Major concern was also raised about the ‘police discretion’ clause (Section 59(4) – see discussion on page 7), what the politicians said about the legal effect of this clause during the passing of the law, and its actual effect.

Other key points raised by the law firm include:

- **Difficulty in obtaining relevant cases to review**

“While District Court cases may have limited precedential value, the difficulty of obtaining copies of judgments at this level prevents a comprehensive analysis of how the relevant law is being interpreted at the level which most affects parents. Such analysis is desirable where amendment or clarification of the law is sought.”

- **Absence of police data (since 2012)**

“The Police are not able to provide an analysis of how many parents are prosecuted under this section, how many are discharged without conviction and why, and how many are convicted. The absence of this key data is a further impediment to an analysis of whether the law is working as Parliament intended.”

- **Confusing legislation**

“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, as well as equivocal guilty pleas being accepted.”

- **Little guidance on police discretion**

“Subsection (4) is a significant aspect of s 59, yet there is little to no guidance available as to how the Police should exercise its discretion, nor information available as to how it has and does. Consequently, it is worth considering making a request to try to obtain data in respect of this. While the type of information

The absence of this key data is a further impediment to an analysis of whether the law is working as Parliament intended.

There is little to no guidance available as to how the Police should exercise its discretion.

requested would need to be redacted by the Police before it could be disclosed, we do not see any reason why it could not otherwise be provided.”

- **Unclear definitions of ‘criminalise’ and ‘good parents’**

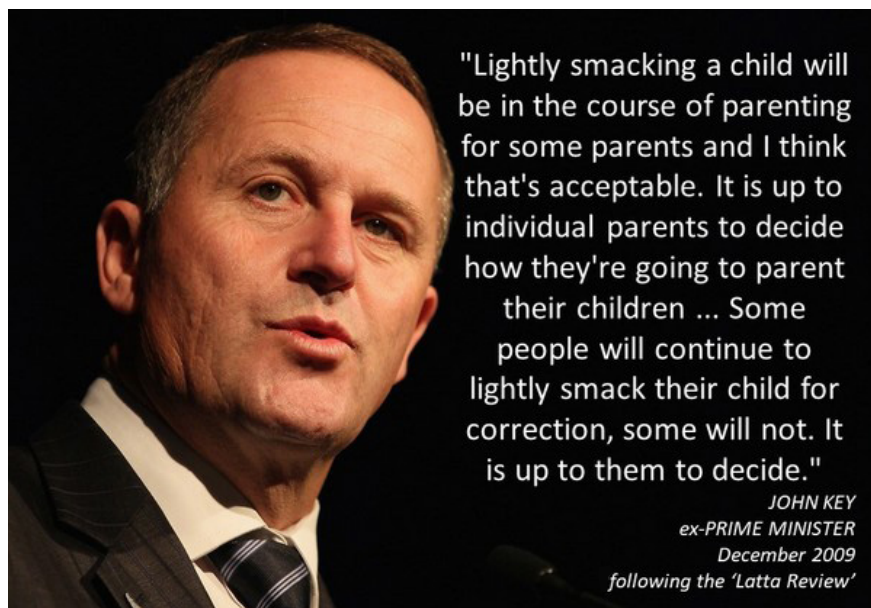
“The problem with interpreting Parliament’s intention as expressed by the politicians during the various stages of the debate on the Bill is that much depends on the definition of the words used by the politicians - to ‘criminalise’ and ‘good parents.’”

- **Subjective application of the law**

“The starting point in any case involving the use of force by a parent against their child is whether the force was used for the purposes of correction. This requires an examination of the parent’s subjective purpose.”

- **Confusion for parents**

“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. Further, the cases also show that even lawyers and judges struggle to understand and apply section 59 correctly.”



Source: "PM: It's okay to give light smacks," NZ Herald, 8 Dec, 2009¹⁰⁹

HAVE PARENTS BEEN PROSECUTED FOR SMACKING?

With police having stopped reporting the effect of the anti-smacking law in the middle of 2012,¹¹⁰ it is difficult to analyse how the law is being implemented, how police discretion is being used, and what the longer term trend is.

However, according to the police reviews for just the first five years up to mid-2012, there had been eight prosecutions for a smack on a nappy, smacks on the leg, or smacks on the bottom with no physical injuries at all. Other prosecutions included open-hand smacks just above or below the bottom, and even a smack on the back of a hand. There had also been 46 prosecutions for minor acts of physical discipline. A minor act of physical discipline is defined as a slap with the open hand on any other part of the body that does not result in any form of injury.¹¹¹

One of the last police monitoring reports on the law admitted that there had been an upward trend in

the number of smacking cases, and ‘more widespread use of the legislation’ by police.¹¹²

CYF admits that they can ‘find’ abuse where the police do not.

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 the five years after the introduction of the law - covered by the police monitoring reports¹¹³ - almost 600 New Zealand families were investigated by police for allegations of smacking or minor acts of physical discipline, yet only 9% of the incidents were serious enough to warrant charges being laid.

These investigations are independent of the many more investigations by Child, Youth and Family. CYF admits that they can ‘find’ abuse where the police do not.

“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)

OIA from CYF (2014)¹¹⁴

In 2018, a father was dragged through a lengthy court process for a smack on the bottom which left no physical marks, and the judge had to apply common sense and grant an appropriate discharge without conviction.¹¹⁵ In 2017, a father was convicted of assault for escorting his stepson - who had been rude to his mother – by the arm back to the kitchen table. The court agreed there were no physical injuries of any kind, but found it was an act of ‘correction’ and could not be justified under the new law.¹¹⁶

Family First NZ has released two documentaries on the anti-smacking law – “*My Mummy’s A Criminal*”¹¹⁷ in 2011, and “*Mum on a Mission*”¹¹⁸ in 2014 – which feature the experiences of 10 families. Mini-episodes which highlight the story of each family can be viewed at the website **ProtectGoodParents.nz**

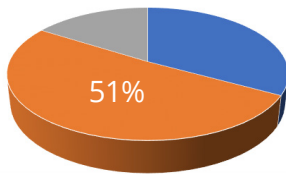
In 2009, Prime Minister John Key’s review of the smacking law,¹¹⁹ carried out by psychologist Nigel Latta, the Police Commissioner, and the head of CYF, in response to the overwhelming rejection of the law in the citizens-initiated referendum, contained glaring errors. These included errors of fact, the misrepresentation of basic facts by leaving out information, and the *alleged* actions of parents - accounts which were found to have no basis in court but which still presented the parent as abusive.

The review also failed to take into account the responses of the court, including discharges without conviction. A senior Wellington lawyer described the review as a ‘rubber stamping’ process. *Investigate* magazine did a full examination of the report¹²⁰ including seeking a response from panel member Nigel Latta, who responded to *Investigate*:

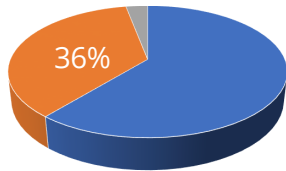
“The terms of the review were very clear. We were asked to look into what happens with (sic) Child, Youth and Family and Police respond to reports of smacking. Is their response appropriate? Did they do the right thing? We were certainly not asked to say whether we thought a criminal conviction **was warranted or fair.**” (our emphasis added)

THE VIEW OF THE PUBLIC

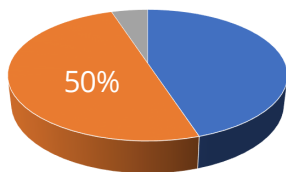
A Curia Market Research independent poll of 1,000 respondents, surveyed in late 2019¹²¹ found:



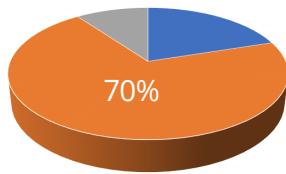
51% said the anti-smacking law has caused a **decline in discipline** amongst young children, with a further 16% unsure (33% said it hadn't)



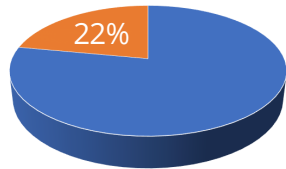
36% of parents of young children (aged under 12) said they have **smacked despite the law change** (3% unsure)



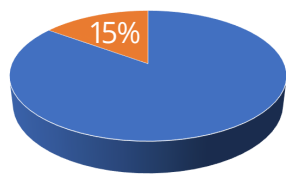
50% said that despite the law, **they would smack** their child to correct their behaviour if they believed it was reasonable to do so (45% said they wouldn't, 5% unsure). Low income families (63%), those living in rural areas, and National & NZ First supporters were far more likely to disregard the law



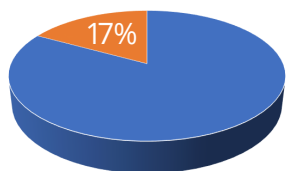
70% said they **would not report a parent** whom they saw smacking a child on the backside or hand, while 20% said they would (10% unsure)



22% of parents with young children said their child had **threatened to report them** to the authorities if they were smacked

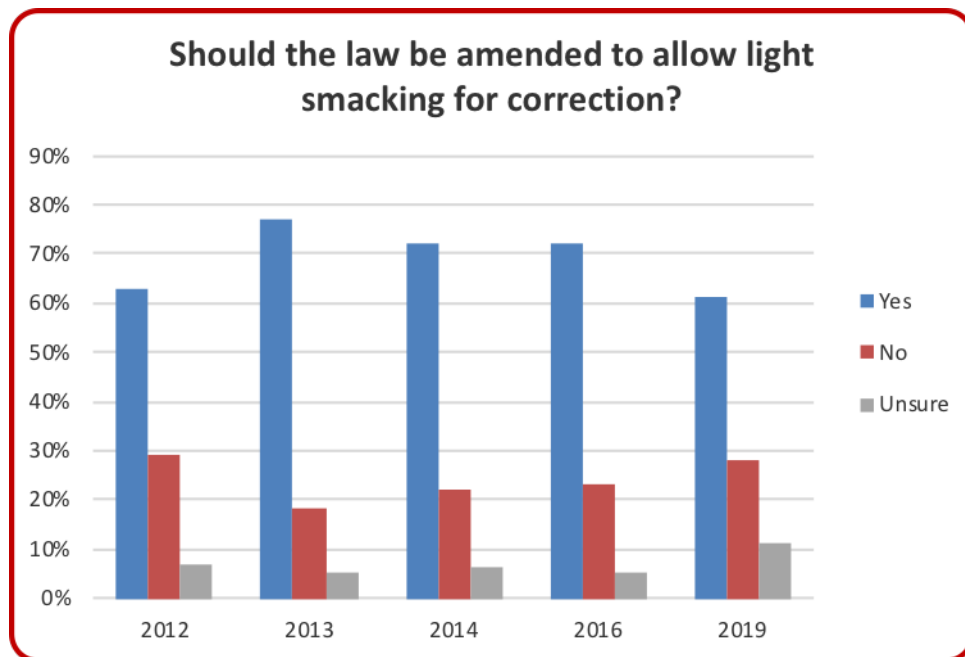


15% of parents with young children said they were aware of a family that had been **negatively affected by the law**



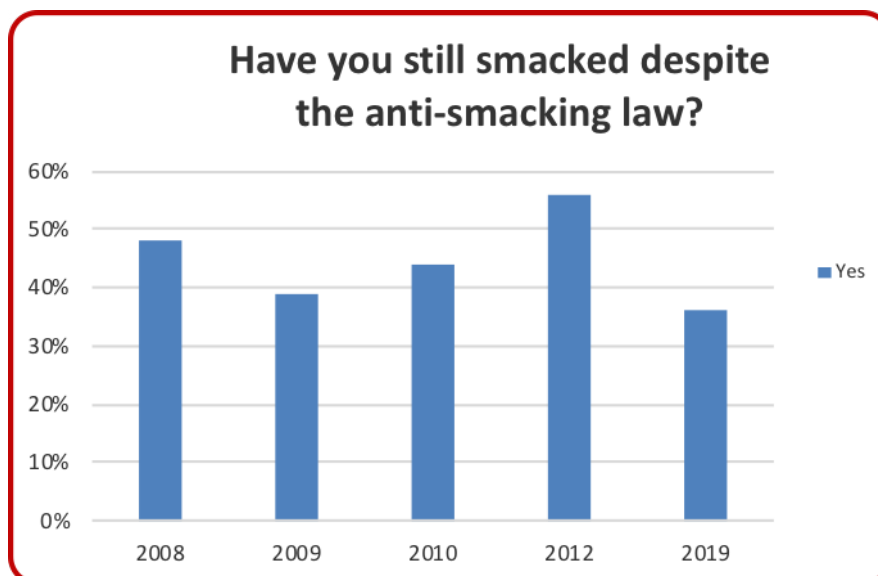
17% of parents with young children said the law had made them **less confident as a parent** (21% of fathers)

The current support for an amended law – while generally decreasing – is at a similar level to a survey in 2012, before a resurgence of opposition. The number of ‘unsure’ responses have increased.

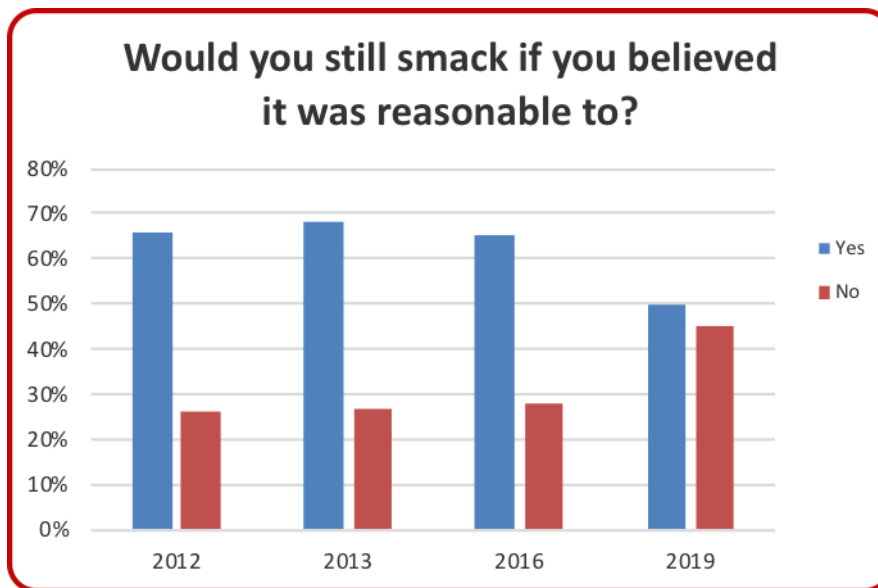


Source: Curia Market Research

Almost 40% of mothers of young children say they have smacked despite the law change, and 50% said that despite the law, they would smack their child to correct their behaviour if they believed it was reasonable to do so.



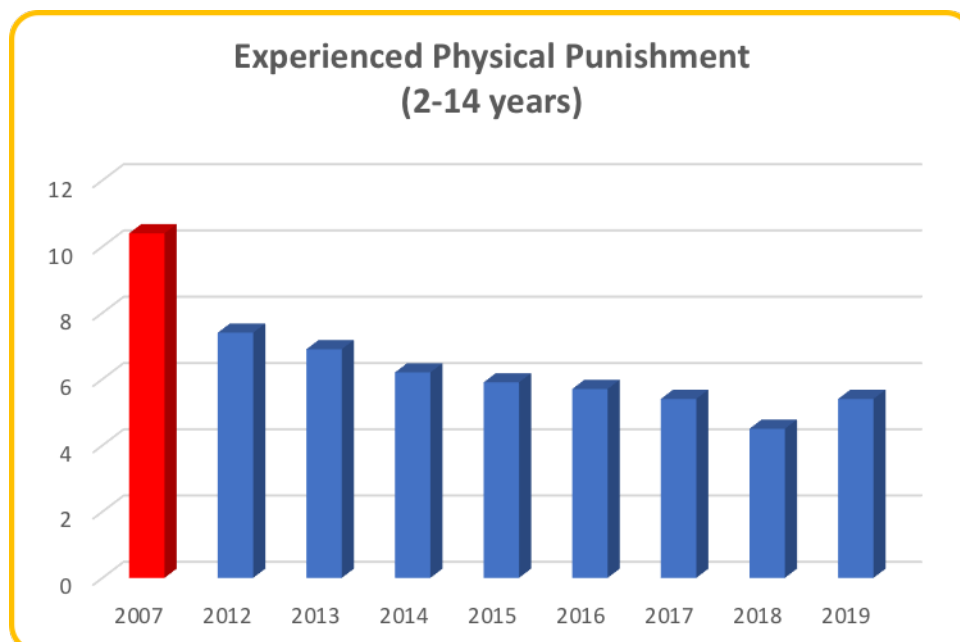
Source: Curia Market Research
(includes all respondents)



Source: Curia Market Research

This polling is similar to Otago University's Child Poverty Monitor report released in 2019.¹²² 40.8% of parents from the New Zealand Health Survey (NZ Health Survey) agreed that, "*There are certain circumstances when it is alright for parents to use physical punishment*" such as smacking.

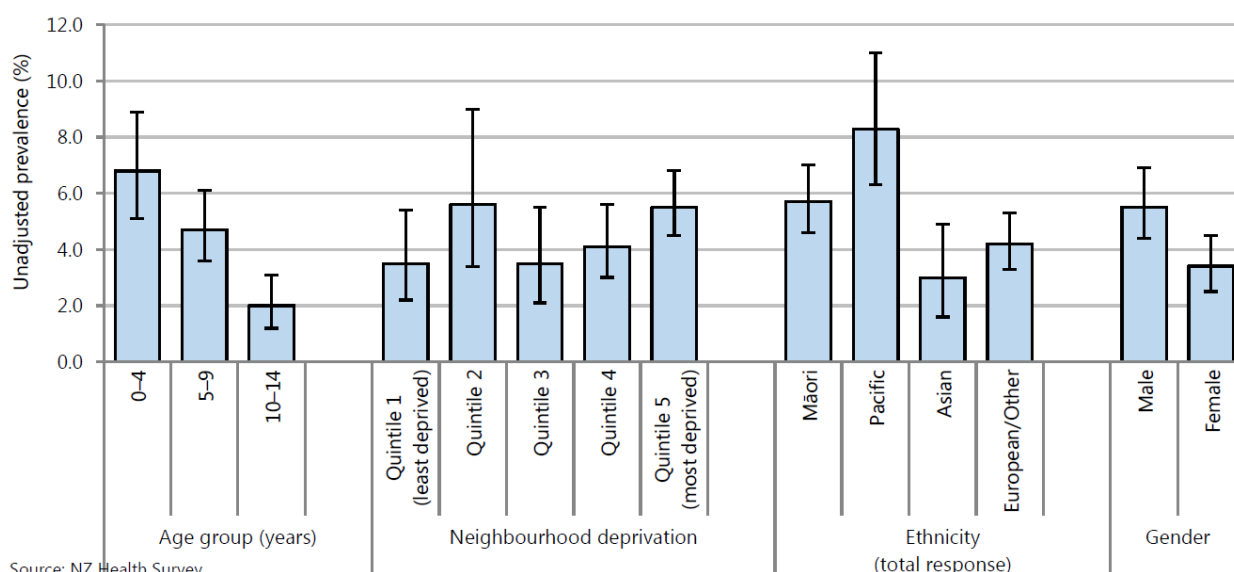
As expected with a parenting technique that is now a criminal act, there was an overall fall in the percentage of children aged 0–14 years who *received* physical punishment such as smacking from 2006 to 2017, but with an increase between 2018 and 2019.¹²³ Parents were asked whether they had used "*physical punishment such as smacking*" in the past four weeks. However, because parents would possibly feel nervous about admitting something which could potentially be illegal, it is likely the responses are less than the actual prevalence.



Source: NZ Health Survey (Ministry of Health)

Rates of physical punishment such as smacking were significantly higher for under-ten year olds when compared with older children. Rates of physical punishment were significantly higher for Pacific children (2.14 times as high as non-Pacific rates) and although somewhat higher for Māori children, compared with non-Māori, the difference was not statistically significant.

Figure 39. Physical punishment in 0–14 year olds, by demographic factor, New Zealand 2017



Source: NZ Health Survey.

Children who received physical punishment in past 4 weeks (0–14 years);

Quintile is NZDep2013 Index of deprivation (1 = least deprived; 5 = most deprived)

Source: Child Poverty Monitor 2019 Technical Report. Dunedin.
NZ Child and Youth Epidemiology Service, University of Otago

WHAT DOES THE RESEARCH SAY ABOUT SMACKING?

This topic was covered in detail in the previous report, “*Defying Human Nature*”, but it is worth reiterating some key points:

- In 2018, researchers from the University of Texas at Austin claimed that smacking is making children “more aggressive and more antisocial”, and makes their behaviour “worse not better”.¹²⁴ And in the same year, research published in the journal *BMJ Open* examined data on more than 400,000 youngsters from 88 countries, and said that in countries where full smacking bans were in force, the prevalence of physical fighting was 69% lower among young men and 42% lower among young women than it was in countries without any ban. The international team of researchers, led by Canadian experts, concluded: “*Country prohibition of corporal punishment is associated with less youth violence*”, although they then went on to acknowledge that “*whether bans precipitated changes in child discipline or reflected a social milieu that inhibits youth violence remains unclear*.”¹²⁵
- 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.¹²⁶ 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*.”¹²⁷



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.

- **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.**¹²⁸
- 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.¹²⁹
- In 1979, Sweden became the first country to outlaw smacking. Research has revealed a dramatic rise in cases of criminal assaults on minors since the smacking ban.¹³⁰ Based on official Swedish figures, the study, published in the peer-reviewed *International Journal of Criminology and Sociology*, 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), and 24 times as many assaults by minors against minors (up 114% in the first eight years).¹³¹
- The researchers 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.** They also 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.
- 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.¹³²

[Refer to “*Defying Human Nature: An Analysis of New Zealand’s 2007 Anti-Smacking Law*”¹³³ for the fuller discussion.]

DEALING WITH THE REAL CAUSES OF CHILD ABUSE

UNICEF reports in 2003 and 2007,¹³⁴ a CYF report in 2006,¹³⁵ and a Children’s Commissioner report in 2009¹³⁶ found the most common factors associated with the maltreatment of children included:

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

In the 2016 report, “*Child Abuse & Family Structure: What is the evidence telling us?*,”¹³⁷ the research suggests the growth of child abuse in New Zealand has accompanied a reduction in marriage rates and an increase in cohabiting or single-parent families – broadly, child stability versus instability. For the past 50 years, families which feature ex-nuptial births, one or both parents absent, large numbers of siblings or very young mothers have been consistently over-represented in child abuse statistics.

Maori and Pacific families exhibit more of these features and have therefore appeared disproportionately in child-maltreatment statistics since earliest the data analysis in 1967. The high numbers of single, step or blended families among Maori present a much more compelling reason for disproportionate child abuse rates than either colonisation or unemployment. Maori children with a single parent are four times more likely to be abused than those in a non-single parent family, and

children whose caregiver had spent 80% or more of the last five years on a benefit were 19 times more likely to suffer maltreatment than those with no benefit history. Like for non-Maori, Maori children with two-parent working families have very low abuse rates. The likelihood of a child being in poverty and abused is smaller than the likelihood of being on a benefit and abused.

The presence of biological fathers also matters. Generally, it protects children from child abuse. Marriage presents the greatest likelihood that the father will remain part of an intact family.

Author Lindsay Mitchell concluded: “New Zealand has been slow to analyse its own care and protection data, relying heavily instead on reviews of international research. A reluctance remains (compared to other jurisdictions) to identify which families are disproportionately associated with child abuse and deaths. There are certain family structures in which children will be far more vulnerable. Suspension of fact is an abrogation of our collective responsibility to children. In the same way, discussions about child poverty ignore the elephant in the room – family structure – so do analyses of the incidence of child abuse.”

These reports would suggest 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, to improve parenting skills. Families which have shown a propensity for drug and alcohol abuse, family violence, and where there are a number of agencies concerned with the welfare of the children, should be red-flagged and monitored closely until the issues are resolved. This is where Oranga Tamariki’s resources should be targeted
- tackling significant contributing factors such as family breakdown, declining marriage rates, drug and alcohol abuse, poverty, and mental illness
- immediate increase of support and resourcing of grass-root community organisations who are already educating and working with at-risk families
- increased investment into parenting organisations to make them more accessible
- substantially tougher sentencing for those who abuse and kill our children to provide both a deterrent and a clear message of the community’s disgust with the actions of people who abuse children

There are certain family structures in which children will be far more vulnerable. Suspension of fact is an abrogation of our collective responsibility to children.

CONCLUSION

How do we know if a law is ‘good’ or not? A good law is clear and succinct to the public, especially to those whose behaviour may be criminalised. Its necessity and purpose is clearly presented by those promoting it; it directly targets the problem at hand; there is at least *some* improvement as a result of the law; and it has public support.

On all counts, the anti-smacking law fails. Even the current Minister for Children Tracey Martin has admitted that the law has had a chilling effect on parents and that she wants to improve the legislation to make it clearer.¹³⁸

Child abuse continues to be a dark stain on the fabric of New Zealand society, and New Zealanders are disturbed with

Minister for Children Tracey Martin has admitted that the law has had a chilling effect on parents.

the high rates of child abuse in Aotearoa. Yet the anti-smacking law has not proven to be effective or warranted.

It is clear to many that supporters of the smacking ban were driven by political ideology rather than common sense, good science and sound policy-making. The politicians and anti-smacking lobby groups linked good parents who smacked their children with child abusers – a notion roundly rejected by Kiwis.

The anti-smacking law assumes that previous generations disciplined their children in a manner so harmful they should now be considered criminals. This undermines the confidence of today's parents in disciplining their children. It fails to understand the special relationships within families and the unique ways in which families function, and has communicated to some children that they are now in the driving seat: parents should be 'put in their place'.

The politicians and anti-smacking lobby groups linked good parents who smacked their children with child abusers – a notion roundly rejected by Kiwis.

The fact that so many social indicators around the welfare of children continue to worsen – rather than improve, or even abate - proves we simply are not tackling the real causes of child abuse. It demonstrates that the law has been completely ineffective in terms of tackling the problem it was supposed to confront. It is consistent with a lazy legislative approach: create a law to deal with a small minority and apply it universally.

The anti-smacking law has communicated the message that many politicians don't trust New Zealand parents to raise their own children responsibly.

The government should amend the law to give certainty and clarity to parents, and to target real child abuse, not real parents. We *can* solve the scourge of child abuse, but we must be willing to confront the real issues. The proposed bill is in the **Appendix**.

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

At this stage it would appear that not only has the ban failed to reduce the harm perpetrated *against* children, but it has increased the harm inflicted *by* children.

The government should amend the law to give certainty and clarity to parents.

Crimes (Reasonable Parenting) Amendment Bill 2020

Government / Member's Bill

Explanatory note

The purpose of this bill is to repeal and replace section 59 of the Crimes Act 1961 so that: parents, and those in the place of parents, are no longer committing a criminal offence if they use reasonable force to correct their children's behaviour; there are clear statutory limits on what constitutes reasonable force for correction; parents have certainty about what the law does and does not permit when they are controlling or correcting their children; and an explicit reliance on Police discretion is no longer used in an attempt to protect parents from the consequences of prohibiting the use of reasonable force for correction.

Parents have obligations to their children, including an obligation to teach them and provide guidance. Sometimes this requires parents to correct their children's behaviour for the children's own benefit, to help them grow into maturity. Article 5 of the United Nations Convention on the Rights of the Child, to which New Zealand is a signatory, states that "*States Parties shall respect the responsibilities, rights, and duties of parents ... to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.*"

In many cases, parental guidance and correction will be non-physical. However, in some cases a parent may reasonably decide that correcting their children's behaviour requires some degree of physical action. In these cases, section 59 currently says that parents are committing the crime of assault. Section 59(2) says that "Nothing ... justifies the use of force for the purpose of correction." This ban applies to any physical contact by a parent where the intention is to correct their child's behaviour. This includes, for example, lifting up an unwilling child to put them into their room for "time out" as well as giving a light "smack."

As a result, the law can prevent parents from parenting effectively. It is inconsistent with society's standards for good parenting. Opinion polls consistently reveal public agreement that parents should be able to use a mild degree of physical correction when appropriate.

This bill will allow parents, and those in the place of parents, to use reasonable force to correct their children's behaviour, while providing clear limits on what is reasonable. Force will be unreasonable if it causes injury that is "more than transitory and trifling," if it is "inflicted by any weapon, tool, or other implement," or if it is inflicted by "cruel or degrading" means. Courts are not limited from finding that other types or instances of force are unreasonable. The limitations on what is reasonable apply to corrective and non-corrective force.

However, there are circumstances where a parent may reasonably use force in a way that causes their child some harm to prevent a greater harm, for example by knocking them out of the path of an oncoming vehicle. So that the law does not rule this use of force unreasonable, this bill provides that the automatic prohibitions on force causing injury that is "more than transitory and trifling," or force that involves the use of a "weapon, tool, or other implement," will not apply where the person applying the force believes on reasonable grounds that it is necessary to prevent death or serious harm to the child or another person.

Section 59 is intended to provide children with protection against violence and abuse. However, reasonable physical correction by loving parents is not violent or abusive. Allowing parents to use reasonable physical correction, with clear limits on what is reasonable written into the law, will protect children from harm while offering parents appropriate legal protection.

The reasons for amending the current Section 59 are clear. A legal analysis of the anti-smacking law released in 2018 says that the law is confusing to parents, police and the legal profession. It could be argued that it's also confusing to Oranga Tamariki social workers

This bill will remove the reliance on Police discretion, which has created confusion. This has left parents unsure about what is, in practice, permitted, and what standard they will be held to. Citizens have a right to know what the law requires and not to be subject to arbitrary enforcement. This is part of the principle of the rule of law. The current Section 59 is inconsistent with this principle. It represents a failure by Parliament to make clear law that gives its citizens certainty about how they may act. In addition, section 59(4) refers only to the Police. It does not apply to any other agency, such as Oranga Tamariki (previously named Child, Youth and Family (CYF)). These agencies may apply the letter of the law in their interactions with parents. It also does not apply to any private citizen who initiates a prosecution against a parent who has used reasonable force for correction.

This Bill is designed to provide certainty to parents that appropriate and reasonable correction of children which may include a smack will not be treated as a crime. But it also clarifies what types of smacking are not deemed reasonable under the law, and will prevent section 59 being used as a defence by abusive parents.

Parliament should make laws that bring clarity and certainty, and should not leave agencies such as the Police and CYF to make social policy by way of guidelines.

Clause by clause analysis

Clause 1 is the title clause.

Clause 2 provides that the Crimes Act 1961 is referred to as “the principal Act.”

Clause 3 provides for the bill to come into force on the day after the date on which it receives the Royal assent.

Clause 4 sets out the purpose of the bill.

Clause 5 repeals section 59 of the Crimes Act 1961 and replaces it.

Name of MP
Crimes (Reasonable Parenting) Amendment Bill 2020
Government / Member's Bill
Contents

- 1 Title
- 2 Principal Act
- 3 Commencement
- 4 Purpose
- 5 Reasonable parental control and correction

The Parliament of New Zealand enacts as follows:

1. Title

This Act is the Crimes (Reasonable Parenting) Amendment Act 2020.

2. Principal Act

In this Act, the Crimes Act 1961 is called “the principal Act.”

3. Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

4. Purpose

The purpose of this Act is to amend the principal Act so that:

- (a) it is no longer a criminal offence for parents, and those in the place of parents, to use reasonable force for the purpose of correcting their children’s behaviour;
- (b) there are clear statutory limits on what constitutes reasonable force;
- (c) parents, and those in the place of parents, have certainty about what the law does and does not permit when they are controlling or correcting their children;
- (d) an explicit reliance on Police discretion is no longer used in an attempt to protect parents from the consequences of prohibiting the use of reasonable force for correction.

5. Reasonable parental control and correction

Section 59 is repealed, and the following section substituted:

“59 Reasonable parental control and correction

- “(1) “Every parent of a child and, subject to subsection (4), every person acting in place of a parent of a 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 is prohibited by an enactment creating a criminal offence; or
 - “(c) preventing the child from engaging or continuing to engage in offensive or disruptive behaviour; or
 - “(d) performing tasks that are incidental to good care and parenting; or
 - “(e) correcting the behaviour of the child.

- “(2) Without limiting the circumstances in which the use of force may be found to be unreasonable, subject to subsection (3) the use of force is unreasonable if—
 - “(a) it causes the child to suffer injury that is more than transitory and trifling or materially contributes thereto; or
 - “(b) it is inflicted by any weapon, tool, or other implement; or
 - “(c) it is inflicted by any means that is cruel or degrading.
- “(3) Subsections (2)(a) and (2)(b) shall not apply in circumstances where the person applying the force believes on reasonable grounds that the use of force is necessary to prevent death or serious harm to the child or another person.
- “(4) Nothing in this section justifies the use of force towards a child in contravention of section 139A of the Education Act 1989.”

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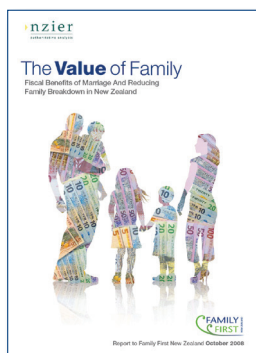
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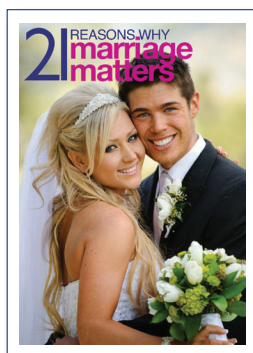
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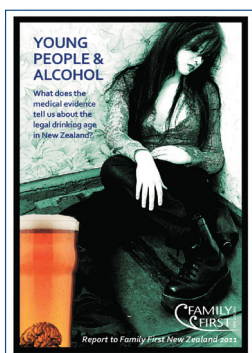
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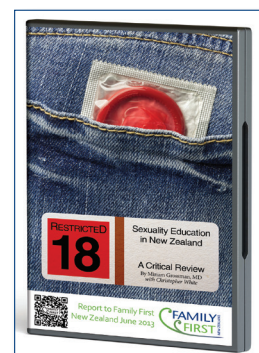
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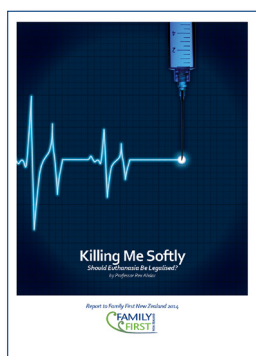
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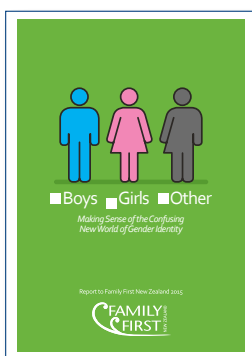
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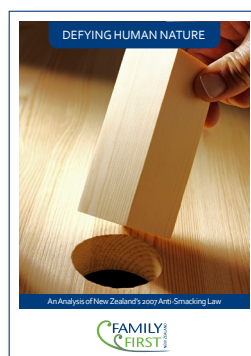
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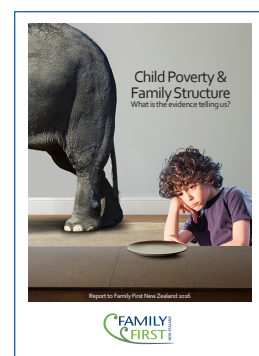
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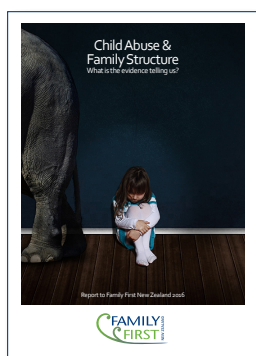
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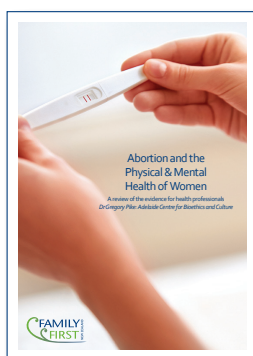
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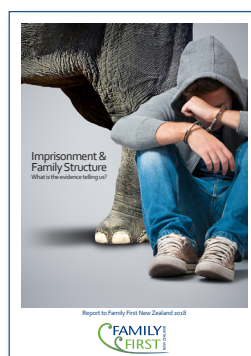
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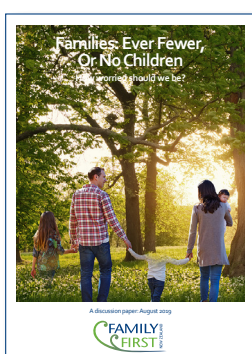
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