

# NZCPR Weekly

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NEW ZEALAND CENTRE FOR POLITICAL RESEARCH

## A SMACK IN THE FACE OF DEMOCRACY

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*“But this is about democracy, the right of people to be heard and it's the absolute height of arrogance that the prime minister is going to use a technicality within the law to circumvent people's rights to express their views on the issue.”* - John Key backs election smacking referendum, July 2008[1]

The extraordinary political posturing over the upcoming Citizens Initiated Referendum on the smacking law which is scheduled to take place by postal voting during the first three weeks of August - is breathtaking in its absurdity. To try to discredit both the question and the referendum process demonstrates how desperate the anti-smacking brigade has become. They not only want to turn people off voting but they want to bring the process and therefore the result into disrepute. Sue Bradford, the Green MP who is the architect of the anti-smacking law, has called the question “confusing”. Phil Goff, Leader of the Labour Party claims that it is “badly worded”. And Prime Minister John Key has said it is “ambiguous”. Both leaders have said they do not intend voting in the referendum.

Citizens Initiated Referenda are an important feature of New Zealand's democratic process. They are based on the principle that political sovereignty resides in the people, who may, from time to time, be called on to deliberate directly on policy matters, rather than leaving it to their chosen representatives in Parliament. As such, referenda are an important tool of representative government, enabling voters through their political sovereignty to make specific policy recommendations directly to government. While the results of a referendum are not binding, governments that ignore the overwhelming will of voters will be judged accordingly.

Citizens Initiated Referenda are not cheap to run. However, it is important to put that into perspective. Firstly, according to advice given by the Chief Electoral Officer, the difference in cost between a referendum held on its own or during an election is not significant between \$5.9 million and \$7.3 million for a referendum held at election time, and between \$6.5 million and \$8.1 million for a stand-alone referendum.[2] Secondly, such expenditure is exceedingly rare with only three other Citizens Initiated Referenda being held the 1995 fire-fighters' referendum, Margaret Robertson's 1999 referendum to reduce the number of MPs, and the 1999 referendum by Norm Withers to introduce tougher sentences for violent crime. Each gained overwhelming support from voters.

New Zealand's Citizens Initiated Referenda Act, which was passed unanimously by Parliament in 1993, sets into law a rigorous 6-stage process for the establishment of referenda.[3] It involves the proposed petition question being publicly advertised in all daily newspapers for a month, so that any interested parties can have their say on the wording of the question. The ultimate responsibility for the final wording rests with Parliament's Chief Clerk, who must be satisfied that it complies with the Act by clearly conveying the “purpose and effect” of the referendum, as

well as being a question that can be answered with “only one of two answers”.

In light of the criticisms that are being leveled at the 2009 Referendum question and process, I have invited the organiser of the petition, the former MP Larry Baldock to be this week's NZCPR Guest Commentator. The anti-smacking referendum was launched in February 2007, before the law was changed and asks, “Should a smack as part of good parental correction be a criminal offence in New Zealand?” With regard to the criticisms over the wording of the petition, Larry explains:

“The original question we submitted to the Clerk of the House of Representatives back in early 2007 was “should a smack in the context of positive parental correction be a criminal offence in NZ?” As required by the CIR Act 1993, the Clerk published the question in the Gazette and advertised the question in all major papers with an invitation for anyone to submit their opinion on the wording of the question over a 28 day period. Only two submissions were received. One from a couple who stated their opinion that a smack should never be a criminal offence, and the other from the Ministry of Justice. The Ministry's submission raised four concerns that were considered by the Clerk in consultation with myself and anyone else the Clerk wished to take advice from as required by S9 of the Act...

“At the time the Clerk of the House was David McGee QC who was widely acclaimed as the most experienced and qualified Clerk in the Commonwealth. Upon his retirement as Clerk in 2007 to assume the post of Ombudsman he was given many accolades by MPs for the diligent way he performed his duties. Surely it is inappropriate for the Prime Minister, Leader of the opposition and Sue Bradford to now be insinuating he did not do his job properly. Especially given that they did not bother to take the time to participate in the submissions on the question when they had every opportunity to”. To read Larry's full article go to [www.nzcpr.com](http://www.nzcpr.com).

Violence against children has always been a criminal offence in New Zealand. The 1961 Crimes Act is very clear on that point. For over 40 years Section 59 of the 1961 Crimes Act provided an exemption for parents who used “reasonable force” for the purpose of correcting their children. This was to protect parents who used light force for disciplinary purposes from charges of assaulting their children.

The law worked well. A review of case law carried out by the Maxim Institute, found only 6 cases with a successful Section 59 defence out of more than fifty cases examined over the last decade or two.[4]

However, in spite of the law working well, in 2003 Green Party MP Sue Bradford decided to draft an “Anti-smacking” private members bill to repeal Section 59 in order to impose a United Nation's ban on corporal punishment onto New Zealand.[5] Her bill was drawn in the ballot in 2005 and in a speech to Parliament she explained her underlying justification

for the law change: “When Pakeha colonists first arrived here, they brought a culture that taught that children, along with women and servants, were the property of their father, husband, or employer, and that they were mere chattels to be brought into line by force. Section 59 is the last legal vestige of that culture”.

The Bill did not have sufficient support to be passed until the resignation of Phillip Field in February 2007 provided an opportunity for a deal: the Greens agreed to support Labour if Labour supported the Bill. However, there was still doubt over the numbers until aspiring Prime Minister, John Key, saw an opportunity to demonstrate Parliamentary leadership by brokering the deal which finally enabled the Bill to pass. The rest is history.

Smacking a child in New Zealand is now against the law. No matter how light the smack or tap, prod or flick - anyone who uses any sort of physical force on a child for disciplinary purposes risks prosecution. Whenever a complaint is lodged, the Police are required to investigate and to inform the Department of Child, Youth and Family. Whether or not charges are laid depends on the circumstances.

What all of this means is that every day all over the country parents, grandparents, and other caregivers are being criminalized by the new law whenever they use any kind of physical force to correct a child's behaviour. Many live in fear that someone somewhere will tell the authorities what they have done. As a result some are becoming 'afraid' of their children - especially those that are being coached on their 'rights' at school. Such children are reveling in the power the anti-smacking law has given them.

Despite the incidence of child killings and violent abuse being virtually unchanged since the smacking bill was introduced, do-gooders have the audacity to claim that the law is working. Their assurances that the repeal of section 59 would stop such abuse are quietly forgotten.

John Key has said that if the new law is not working he will change it. That puts the onus onto the public to let him know if the law is not working. Larry Baldock and the 390,000 New Zealanders who signed the referendum petition believe that voting “NO” in the referendum is a powerful way of sending that message.

Given the controversy surrounding the referendum, I have used this newsletter to outline some of the key issues. I have also provided an opportunity for the organiser of the petition to

set the record straight regarding the referendum so that you are in a better position to decide for yourself the facts of the matter. I would therefore appreciate you circulating any relevant information to your friends and contacts so that they too can become better informed.

I also need to say that if you feel that these newsletters play a useful role in helping to keep *you* informed, then please support us - we can only keep our newsletter and website going if readers like *yourself* support our efforts. To help, please click [here>>>](#)

Finally, while these newsletters are published every weekend, starting on Wednesday, **Mid-Week Politics** on the NZCPR homepage will feature regular opinion pieces from our **four** NZCPR Columnists: **David Round** (law lecturer and author of “Truth or Treaty”) on the Treaty of Waitangi, **Marc Alexander** (former MP and author of “Justice With Both Eyes Open”) on law and order, **Allan Peachey** MP (Chairman of Parliament's Education Committee and author of “What's Up With Our Schools”) on education, and **Ronald Kitching** (Mount Perelin Society member and author of “Understanding Personal and Economic Liberty”) on economic reform.

*As you may be aware, the New Zealand Centre for Political Research is setting up a nation-wide public policy research panel so that we can conduct nation-wide indicative polls on topical public policy issues - such as whether the public really are confused by the referendum question! However we urgently need more volunteers for our panel. If you and others that you know - would like to register please click [here>>>](#)*

#### FOOTNOTES:

1. Herald, Key backs election smacking referendum  
<http://www.nzherald.co.nz/the-smacking-debate/news/article.cfm?id=1501165&objectid=10518079>
2. Annette King, Briefing Note: Conducting Citizens Initiated Referenda  
<http://www.thestandard.org.nz/wp-content/uploads/2008/06/referenda-at-elections1.doc>
3. CIR Act  
<http://www.legislation.govt.nz/act/public/1993/0101/latest/DLM317193.html>
4. Maxim, Supplementary Material on Crimes Amendment Bill  
[http://www.maxim.org.nz/files/pdf/supplementary\\_crimesamendmentbill.pdf](http://www.maxim.org.nz/files/pdf/supplementary_crimesamendmentbill.pdf)
5. Sue Bradford, Greens draw up their own Anti-Smacking Bill  
<http://www.greens.org.nz/node/12844>

## Supporting the NZ Centre for Political Research

The New Zealand Centre for Political Research is an independent public policy think tank run by former Member of Parliament Dr Muriel Newman. The NZCPR's mission is to educate and inform the public about the benefits of freedom, liberty and limited government through research, publications and open public debate.

The NZCPR Weekly electronic newsletter is the biggest in the country and the [www.NZCPR.com](http://www.NZCPR.com) website is one of the busiest political sites. Material produced by the NZCPR helps to shape public opinion by being widely circulated through local and international media, websites, blogs and by individuals.

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Thank you for your interest.