

BILLS DIGEST

CRIMES (SUBSTITUTED SECTION 59) AMENDMENT BILL 2005
(formerly: Crimes (Abolition of Force as a Justification for Child Discipline)
Amendment Bill 2005)

(SUPPLEMENTARY ORDER PAPER 2007 No 107)

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**CRIMES (SUBSTITUTED SECTION 59) AMENDMENT BILL 2005
(SUPPLEMENTARY ORDER PAPER 2007 No 107)**

*(formerly: Crimes (Abolition of Force as a Justification for Child Discipline)
Amendment Bill 2005)*

Date of introduction:	09 June 2005
Member:	Sue Bradford
Select Committee:	Justice and Electoral
Date report presented:	20 November 2006
SOP No 86 released:	20 February 2007 (Chester Borrows)
SOP No 107 released:	02 May 2007 (Hon Peter Dunne)

PURPOSE

The aim of the Bill is to amend Section 59 of the Crimes Act 1961 "to make better provision for children to live in a safe and secure environment free from violence by abolishing the use of parental force for the purpose of correction" (*Clause 3 (the purpose clause)*).

The Bill as introduced is described in [Bills Digest No 1278](#).

The Bill as reported by the Select Committee is described in [Bills Digest No 1481](#).

Supplementary Order Paper 2007 No 86 is described in [Bills Digest No 1484](#).

MAIN CHANGES PROPOSED

Police discretion to prosecute

SOP No 107 proposes that a provision be inserted in the Bill providing that: "... 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" (*Clause 4, New section 59 of the Crimes Act 1961, inserting new subsection (4)*).

Comment

"The Police have a long-established discretion as to the action they take in regard to complaints about minor breaches of the law reported to them. That discretion is essential to daily policing.

"If the Police were obliged to take extensive action about every minor complaint, they would have little time for investigating serious crime. So long as each case is assessed on its merits and the Police are not simply refusing to enforce a law that has been passed by Parliament, the courts have acknowledged the existence of the Police's discretion in individual cases.

"If the Police were required to prosecute every breach of the law that came to their notice, the courts would quickly become clogged with trivial cases and the law would be brought into disrepute. For that reason they exercise their discretion to warn, or take action other than prosecution, in thousands of cases each year. The existence of guidelines issued by the Solicitor-General as to the public interest factors that should be considered in making a decision whether or not to prosecute emphasises the importance of this discretion.

"While under the common law there is no doubt that this discretion applies to minor complaints of assault, it is desirable that Parliament expressly affirms it in cases to which this section applies"¹.

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¹ Crimes (Substituted Section 59) Amendment Bill, 2007 No 271-2, Supplementary Order Paper, 2007, No 107, Explanatory Note, pp. 1 and 2.