



**Justice and Electoral Select Committee
Criminal Procedure (Reform and Modernisation) Bill 2010
FREEPOST Parliament
Parliament Buildings
Wellington 6160**

January 2011

Criminal Procedure (Reform and Modernisation) Bill 2010 - Submission

1.1 This submission is being made by **Family First NZ**, a charitable organisation that researches and advocates on family issues in the public domain.

1.2 Family First supports the purposes of the Bill to simplify criminal procedure, and reduce unnecessary delay and stress to victims and witnesses

RIGHT TO TRIAL BY JURY

1.3 Family First completely rejects the proposal that offences that are punishable by a term of imprisonment that does not exceed three years do not have the option of electing trial by jury

1.4 We do agree that tying up the justice system and 12 members of the public for lesser cases such as driving while disqualified on their 3rd offence or shoplifting goods to the value of less than \$1,000 is not warranted

1.5 We are asking for an exemption for assault on a child, or by a male on a female, assault with intent to injure, and aggravated assault covered under the relevant sections of the Crimes Act. This would cover potential 'smacking' cases.

1.6 By removing the right to juries for crimes punishable by less than three years in prison, the Government has not thought carefully about the implications that would have for parents who are prosecuted for

minor acts of physical discipline or smacking.

- 1.7 The anti-smacking debate has led to an ill-conceived and confusing law and if this new regime is implemented, it would further exasperate good parents who find themselves before the courts because it takes away their choice to choose to be tried before their peers who will take a realistic and appropriate approach taking into account all factors rather than a strictly legal application of a flawed law.
- 1.8 The new regime also suggests that an assault – including domestic assaults - is a more minor offence, yet a conviction of assault is actually a serious conviction. And it is vital that parents have the right retained to be judged by their peers. Ultimately, they will still make the choice as to whether judge or jury.
- 1.9 When a similar proposal was put forward in the UK, the [Law Society](#) opposed it warning that *“a conviction for an offence of dishonesty, irrespective of value, has fundamental implications for a person’s job prospects, ability to obtain insurance, and right to travel freely, among many other potential consequences. It would be entirely wrong if they did not have a right to jury trial before suffering such life-changing effects”*.
- 1.10 Law Society chief executive Desmond Hudson said that the *“proposal is one more example of disjointed and haphazard attempts to save money with apparently no guiding intelligence to safeguard justice. Trial by jury is a fundamental right in cases where the defendant is at risk of imprisonment for a serious criminal offence or loss of their good reputation. Juries enhance the transparency of the court process and promote public confidence in the criminal justice system and the rule of law. The centuries have proved that the jury system provides a fair and respected means of deciding guilt or innocence and we should be slow to reduce the number of jury trials just to save costs. There are some values that are above the issue of mere accounting and budgets.”*
- 1.11 The Queensland Law Society were also concerned when similar provisions were proposed, labelling it “deeply disturbing”.
- 1.12 They [said](#) *“The Society asserts that while some matters heard in the District Court may appear “less serious” on their face, it does not necessarily mean that they are being unjustifiably brought before the superior courts. The personal implications of conviction for even a minor offence may be serious for some alleged offenders and in such a case it is understandable if the accused were to elect Trial by Jury upon being advised that they have a greater chance of acquittal before a jury, particularly if they are facing a custodial sentence. For example, a relatively minor traffic matter may see a professional truck driver lose their livelihood upon conviction.”*

- 1.13 Jonathan Krebs, convenor of NZ's Law Society criminal law subcommittee [said](#) that the change proposed in this bill would only have a marginal effect on speeding up the process and that an important consideration was the "*impact on the fundamental right of everybody in our society to have a fair trial.*"
- 1.14 In an Editorial by the [NZ Herald](#) entitled **Limiting jury trials may be a step too far**, they said "*To raise the threshold from three months to three years is too drastic. The right to be judged by fellow citizens rather than an officer of the law is important, particularly when someone's liberty is at stake.*" With time saved on other measures, they argue that "*the system surely can afford to retain the right to trial by jury in every case where liberty may be lost.*"
- 1.15 **Recommendation: That cases of assault on a child, or by a male on a female, assault with intent to injure, and aggravated assault covered under the relevant sections of the Crimes Act be excluded from Category 2 offences and be included as Category 3 offences.**
- 1.16 We wish to appear before the committee.

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