

2005/6

August 2005

## Jam today or fiscal sustainability tomorrow

*“The rule is jam tomorrow and jam yesterday – but never jam today.”*

*“It must come sometime to jam today”, objected Alice.*

*“No it can’t” said the Queen. “It’s jam every other day: today isn’t any other day, you know.”*

*Lewis Carroll; Through the Looking Glass*

It may seem odd to quote Lewis Carroll when asked to write an article about the sustainability or otherwise of tax cuts, but Alice’s bewilderment in the face of the Queen’s logic may be an excellent expression of how the rest of us feel.

Perhaps, unsurprisingly, tax cuts are proving to be one of the central issues of this election. Public disappointment after the Budget (when highly anticipated cuts to personal income tax were both small and not to be implemented until 2008) hasn’t really abated, and there is a general sense that after several years of strong economic performance we are all entitled to a little something. Just for once, couldn’t we have jam today?

One of the most obvious difficulties with tax cuts is that, in the current climate, small reductions in personal income tax are affordable but unpopular, while cuts that are large enough to be noticed and make people happy, are hugely expensive to a government in lost tax revenue. For example, if everybody received a tax cut of \$25.00 per week, this would cost approximately \$4 billion per year, every year. Other criticisms of tax cuts are that they are more likely to favour the wealthy, and that the initial injection of cash fuels spending, leading to inflation, an increase in the Reserve Bank official cash rate and then an increase in mortgage interest rates and rent payments.

In a recent speech<sup>1</sup>, economist Brian Easton, discussed the issue of “fiscal sustainability” - whether promises by some political parties to substantially cut income tax are affordable and sustainable. In terms of the two major parties Labour has already expressed their preference for targeted tax relief, rather than “across-the-board” tax cuts, in the form of the Working for Families scheme (announced in the May Budget) which adds to the income of households with at least one working parent. At the time of writing, National is yet to release its tax policy, however it is understood that they are considering cuts to both income and corporate tax. Easton believes that cuts to income tax are only affordable if there are major cuts in government spending to offset the loss of tax revenue and strongly warns against tax cuts funded by borrowing. He acknowledges that cuts can be funded by raising revenue in other ways, eg. by raising indirect taxes and cutting spending in perceived areas of waste but believes that a decline in government spending is inevitable. Until National releases the details of its policy it is impossible to compare the policies of the two major parties but it seems likely that tax will be a major point of difference.

Is there an alternative to tax cuts? Many New Zealanders, particularly those on a low income, would prefer an increase in their wage or benefit, or a reduction in their cost of living, but that discussion can wait for another time or another article.

*Nicola Shirlaw*

<sup>1</sup> **In praise of fiscal sustainability** [www.eastonbh.ac.nz](http://www.eastonbh.ac.nz)

# PARLIAMENT

## Announced

### **Superannuation extended for volunteers**

Pensioners volunteering overseas with aid agencies will be entitled to receive superannuation payments for up to three years of their assignments, Aid Minister Marian Hobbs announced on 1 August. Currently superannuitants make up 11 percent of the VSA field workforce, and they can be paid NZ Super for up to 52 weeks while working overseas for an aid agency.

Changes to the NZ Superannuation and Retirement Income Act 2001 and the War Pensions Act 1954 will extend this period to a maximum of 156 weeks (three years). This will ease the costs of short-term placements for aid agencies and increase the pool of workers. VSA says that two years is the optimum assignment period for a volunteer to make a worthwhile contribution and adapt to the local culture and community.

The legislation will come into effect on 1 July 2006.

## Introduced

### **Child Support Amendment Bill**

Introduced in the last week of the 47<sup>th</sup> Parliament, this Bill offers an incentive to liable parents who have stopped paying child support, by offering relief from some late payment penalties. They will, however, still be required to pay off the original amount of child support they owe. Inland Revenue is empowered to initiate a review of liable parent's financial affairs if it is suspected they are paying less child support than they should; previously it was up to the custodial parent to start this process.

Currently \$987 million is owed in child support debt, of which core debt was \$416 million and unpaid penalties another \$558 million.

Once liable parents have kept up paying their regular amount owing plus arrears for six months, the penalties (which are owed to the State, not the custodial parent) will start to be written off.

Work is under way on developing international agreements to enforce payment of child support by New Zealanders living abroad. Already there is a reciprocal arrangement between New Zealand and Australia.

### **Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Bill**

This Bill, also tabled in the last week of Parliament, entitles self-employed persons to paid parental leave if they are engaged in more than one type of work consecutively, or if they have a break of less than 30 days between engagements. Like employees they will be required to stop working while receiving payments. However, they will be able to maintain a level of oversight of their business during the leave period. Pay rates are equal to their average weekly income up to the maximum rate paid to employees (currently \$357.30 per week before tax).

## Submissions called for

### **Crimes Amendment (Abolition of Force as a Justification for Child Discipline)**

#### **Amendment Bill**

This private member's bill in the name of Sue Bradford (Green Party) aims to repeal S. 59 of the Crimes Act. This section at present says that every parent of a child (or person in the place of the parent of the child) is justified in using force by way of correction towards the child, if the force used is 'reasonable' in the circumstances. 'Reasonable' force is not defined.

The Bill would also amend S 139A of the Crimes Act which prohibits the use of corporal punishment in schools, by removing the right of a parent who works a school or early childhood centre to use force towards their own child in that setting. The Bill was read a first time and sent to the Justice and Electoral Select Committee for submissions, which have been publicly called for. However, no closing date is given.

### **Sale of Liquor (Youth Alcohol Harm Reduction) Amendment Bill**

Put forward by Matt Robson (Progressive) this private member's bill amends the Sale of Liquor Act to raise the drinking age from the present 18 to 20, tightens up the provisions on supply of liquor to minors, and provides a statutory restriction on broadcast liquor advertising before 10 p.m. The Broadcasting Standards Authority would have jurisdiction of broadcast liquor advertising issues rather than the self-regulating Advertising Standards Authority.

Submissions close on 12 August.

## Reported back

### **Education Amendment Bill**

The report from the Education Select Committee, tabled on 29 July, expands the definition of the sector to include 'services' as well as 'centres', defines 'playgroups' and 'home-based care and education service' and provides for voluntary certification and licensing of a range of early childhood services.

### **NZ Sign Language Bill**

The Select Committee changed the commencement date to 1 March 2006. It suggested changes to the Bill to include interpretation of spoken words in Maori as well as English, and requires a review of its operation three years after it commences. While not including provision for a NZ Sign Language Commission (similar to the Maori Language Commission) it strongly recommended setting up an advisory group to monitor the effects of the legislation.

### **Statutes Amendment Bill**

This grab-bag of miscellaneous changes to legislation, reported back on 1 August, includes amendments to the Retirement Villages Act 2003. It requires the operator to submit financial statements of a retirement village with the annual return, tidies up the timing of the disputes procedure, and clarifies the role of the Retirement Commissioner in the complaints process.

## Criminal Procedure Bill

This Bill, which speeds up some administrative procedures, limits the right to jury trials, replaces unanimous jury verdicts with 11-1 majority verdicts, and makes exceptions to the 'double jeopardy' rule, has been reported back from select committee with minor changes.

The original bill suggested limiting the right to a jury trial (making it judge-only) where the case was likely to be overly long and complex, or where there was evidence of juror intimidation.

The Law and Order Select Committee proposed that judges consider the nature of the case, not just its complexity, when considering a no-jury decision, and that defendants have the right to be heard before the decision is made.

The exception to the double jeopardy rule was opposed by National and NZ First and the Law Society. However the majority of the Committee considered it should stand, thus allowing a new trial if the tainting of evidence is proved or if 'compelling new evidence' after end of the trial suggests guilt.

## Miscarriage of justice

Arising from the petition over the Peter Ellis/Civic Creche case in Christchurch, the Justice and Electoral Select Committee recommends a change in present procedure.

Currently claims of miscarriage of justice are dealt with by application to the Governor-General for the exercise of the Royal Prerogative of Mercy. The Committee says that while this is an important safeguard in our criminal justice system, it is very lengthy and 'lacks adequate transparency'. More applications are being heard than ever before with over 60 since 1996.

The Committee says the system should be reformed to include the establishment of a Criminal Cases Review Authority, similar to that in the UK, or equivalent body to independently examine allegations of miscarriage of justice. It says this would

- reinforce the constitutional separation between the power of the Executive and the courts
- reduce pressure on the resources of the Ministry of Justice
- enable the development of a centre of expertise on examination of miscarriages of justice
- be an appropriate response to the increasing complexity of claims of miscarriage of justice.

## Evidence of children

Another issue arising from the Ellis case was the admissibility of children's evidence and also that of expert witnesses. The Justice & Electoral Select Committee is also hearing submissions on the Evidence Bill, and notes in this report that, in the new Bill, admissibility of expert evidence in child sexual abuse cases will be dealt with in the same way as expert evidence in any other case.

As far as children's evidence goes, the Committee recommends that the next Parliament:

- examine the operation from 1990 of the 1989 amendments to the Evidence Act 1908 relating to rules in sexual

abuse cases involving child complainants, and the role of experts in the consideration of the evidence from such children, bearing in mind the risk that professional thinking can be affected by evolving theories, and make appropriate recommendations in its consideration of the Evidence Bill.

- inquire as to whether the evolution of the trial process in the Family Court into an inquisitorial-type hearing may not be a pointer to a better way of determining criminal guilt in allegations of sex abuse by vulnerable children.

## Carry-over of legislation to next Parliament

In a 'fairly new' practice, according to Parliament's Bills Office, the Parliament which has just ended makes no decision as the fate of legislation currently before the House when the 47th Parliament was dissolved. So there is no 'held over' list.

The incoming Government makes its decisions on what legislation-in-process to revive and what lapses. And that decision is unlikely to be until some time after the new Government has been sworn in.

This may well affect your decisions about what submissions to make in the next few weeks. Bills for which submissions close in mid-August include the Evidence Bill, Coroners Bill, Sale of Liquor Amendment Bill (drinking age), the Bill of Rights (Private Property) Amendment Bill, and Taxation (Miscellaneous Provisions) Bill.

## Legislation still in process on Dissolution Day

- Child Support Amendment Bill
- Children, Young Persons & Their Families Amendment (No. 2 & No. 4) Bills
- Coroners Bill
- Courts and Criminal Matters Bill
- Crimes Amendment (Abolition of Force as a Justification for Child Discipline) Amendment Bill *Private Member's Bill, Sue Bradford*
- Criminal Procedures Bill
- Criminal Proceeds & Instruments Bill
- Disabled Persons Employment Promotion (Repeal & Related Matters) Bill
- Education Amendment Bill
- Employment Relations (Flexible Working Hours) Amendment Bill. *Private Members' Bill, Sue Kedgley*
- Evidence Bill
- Human Rights (Gender Identity) Amendment Bill *Private Members' Bill, Georgina Byer*
- Injury Prevention, Rehabilitation & Compensation Amendment Bill
- Legal Services Amendment Bill (No. 2)
- Members of Parliament (Pecuniary Interests) Bill
- New Zealand Day Bill *Private Members' Bill, Peter Dunne*

Legislation in process cont.

- NZ Sign Language Bill
- Oaths Modernisation Bill
- Residential Tenancies Amendment Bill
- Sale of Liquor (Youth Alcohol Harm Reduction) Amendment Bill *Private Member's Bill, Matt Robson.*

## Election count-down

Dissolution Day - August 11th. Writ Day - 17 August. Election Day - 17 September.

## Announcement deferred

The Ministry of Economic Development has completed a comprehensive review of the Financial Reporting Act. The Cabinet paper of 3 August 2005 says it has been decided that, with the exception of one issue, the set of decisions does not need to be made until after the General Election. This means that there will be no announcement about the Review decisions on third sector financial reporting requirements for a couple of months at least.

## Appointments

To the Legal Education Council: Wayne Chapman of Wellington, Christine Grice of Hamilton and Dr Richard Worth, MP for Epsom, for a term of three years.

## Reviews

The terms of reference for the Review of the Immigration Act include:

- purposes and principles of immigration legislation;
- entry to New Zealand and migrant obligations;
- grant of protection in New Zealand (such as to refugees);
- enforcement, expulsion, review and appeal
- inter-related issues such as level of decision-making.

Part IV of the Act, which covers security risk issues, is to be reviewed separately.

The Minister of Immigration says the review is part of a wider push from government to attract skilled migrants, improve border security and regulate immigration agents.' Public input to the review has not yet been called for.

## Announced

### Civil court fees to be reviewed

The Government has agreed to review the regulations that set civil court fees, taking into account the concerns about the drop in cases following increased court fees in the Regulations Review Committee's February 2005 report. The Ministry of Justice is to lead the review over the next 12 months, in consultation with the NZ Law Society and other stakeholders.

## Misuse of Drugs Orders

By a motion of the House proposed by the Hon Jim Anderton, both amphetamine and ecstasy are reclassified to Class B1 drugs. This means police officers can detain, search and seize for these drugs without warrant. The presumption-of-supply level for methamphetamine is reduced from 56 to 5 grams.

## Review reported

### Pre-trial processes should be more efficient – Law Commission

After years of work, and much consultation and research, the Law Commission has released *Criminal Pre-Trial Processes: Justice Through Efficiency*.

This 176-page report notes that most criminal cases are not defended and that 9 out of 10 are resolved before trial.

It says 'This means that the pre-trial process is essential to the quality of criminal justice. However, it has received scant legislative attention, and is enormously inefficient.'

Everybody in the court process is affected, the report says; there is a focus on court appearances as the means of progressing cases, because there are few case management mechanisms other than judicial authority. Delay is habitual; everyone accepts repeated adjournments as the norm.

This pattern has developed because adjournment does not have immediate adverse consequences and some people benefit from delay.

The report therefore proposes that court-rooms should be by-passed for all administrative matters and judges should only be involved when a judicial decision or judicial authority is required.

Recommendations include:

- processes to facilitate early Police Prosecution Service decisions about which charges should proceed;
- reducing the number of court appearances for administrative matters (such as bail, name suppression, legal aid, custodial remands);
- out-of-court discussions between the parties about appropriate charges, whether the defendant will plead, and the conduct of the trial;
- defendants must identify disputed issues before trial;
- legislation to regulate the informal but common practice of sentence discounts for defendants who plead guilty early;
- a range of sanctions for procedural non-compliance by prosecutors or defence counsel;
- new Criminal Procedure Rules and a review of the Solicitor-General's Prosecution Guidelines.

The publication can be downloaded as PDF files from [www.lawcom.govt.nz](http://www.lawcom.govt.nz)

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