

2005/8

October 2005

Legislate in haste... then languish at leisure?

Legislation used to pass through the NZ parliament at a cracking pace. Sir Geoffrey Palmer once famously described New Zealand MPs as “the fastest lawmakers in the west”, and in their book *Bridled Power*¹, Sir Geoffrey and Matthew Palmer wrote that New Zealand has been charged with suffering from hyperlexis – an overactive lawmaking gland. As expected, the introduction of MMP has seen the slowing of the legislative process, most particularly because minority governments usually have to consult with their support parties. Depending on where you sit this may be a good or a bad thing – certainly legislation is now more thoroughly scrutinised and there is more opportunity for public participation, however sometimes the length of time it takes for a bill to pass through parliament can be frustrating for the affected parties. Sometimes, it seems, they give up waiting and find another way.

Take for example, the Children, Young Persons and Their Families Amendment Bill (No 4). First introduced 22 June 2004, the Bill has been to select committee and been reported back, but is still languishing in the black hole otherwise known as the parliamentary Order Paper awaiting its second reading. The Bill, and the accompanying SOP (Supplementary Order Paper), proposes fundamental changes to the way Child, Youth and Family carries out its core care and protection functions. Currently CYF conduct a full care and protection investigation into 85% of notifications received, but with increases in the number of reports of child abuse and neglect there has been concern from all sectors about CYF’s ability to meet demand. In addition, research both in New Zealand and overseas has indicated that a full social work investigation is not always in the best interests of the child.

The response to both these concerns has been the development of a **differential response model** (DRM), that allows CYFs to respond to care and protection notifications in “more flexible and appropriate ways”. Under this model CYFS will carry out a preliminary assessment of every notification in order to determine which of a number of prescribed options is the most appropriate response. The options include a care and protection investigation (by a CYF social worker or the Police), or referral to another organisation for assistance. This last option has received a mixed response from NGOs. Some welcome the opportunity to work with CYFS to support children and families, some of whom may be already under their radar, and believe that children referred to CYFS may prefer to work with a community organisation. Others object to what they believe is essentially the privatisation of CYFS, and are anxious that agencies may accept CYFS referrals just for the money.

CYFS plan to pilot the new model this month in four locations, before it is decided how it will work nationally. Pilots? Hang on a minute... don’t we have to wait for the Bill to pass? As it happens, no. In their own words² CYFS have said that “although legislative change is desirable to underpin the practice changes sought, they (sic) are not essential.” And given the concern in some parts of the NGO community about the model, maybe it is a good thing it is trialled first.

For more information about the differential response model see www.cyf.govt.nz for links to background papers and a copy of the Bill.

Nicola Shirlaw

¹ *Bridled Power*: New Zealand Government under MMP, Sir Geoffrey Palmer & Dr Matthew Palmer, Oxford University Press

² *Differential Response Model – Practice System Discussion Paper*, 24 May 2005

Reports

Local Authority elections

The Justice and Electoral Select Committee recently reported on its enquiry into the 2004 local authority elections. Among its four pages of recommendations are:

- Polling day should be moved to the third Saturday in October to avoid coinciding with the school holidays and Labour Day weekend.
- There should be a clearer distinction between FPP and STV where both systems are used on combined voting documents.
- Further work should be undertaken on the impact of candidate order on election outcomes, including overseas research. This work should also include a further possible option of a “rotational alphabetical” order.
- The Ministry of Education should be encouraged to strengthen the place of citizenship education in the curriculum and make more teaching resources available for this purpose.
- The present arrangements for electoral systems (STV mandatory for district health boards and optional for councils and licensing trusts) and the means available to review decisions should be retained at least for the 2007 elections.
- The present statutory provision for diversity, by way of local decision-making, on the matter of the local electoral system should be reviewed after the 2007 elections.

The Committee made various suggestions for improving management, including:

- The Government should fund a single electoral agency to be responsible for improving voter turnout and awareness in general and local elections.
- The Government should fund a single agency to be responsible for education and information on all electoral systems used in New Zealand.
 - A central government agency should:
 - publish a code of good practice for the conduct of local elections;
 - develop memoranda of understanding for the conduct of local elections with appropriate agencies and bodies;
 - approve general formats for voting documents;
 - manage and maintain the STV calculator which it licenses to local authorities;
 - appoint an independent certifier for any new or modified computer counting program used at a local election (such as the STV calculator)
 - provide information on local elections (including district health board elections) to the public and to candidates through electoral officers; provide education and information on electoral systems; and
 - promote awareness of and participation in local elections, coordinating local-authority activities.

Equality of Arms

The NZ Law Society has released a report showing that defence lawyers acting for their clients on legal aid get paid far less than Crown lawyers prosecuting in the same case. According to the report Equality of Arms, this breaches the New Zealand Bill of Rights which requires a ‘fair and public hearing by an independent and impartial court’ and (S. 24) has the right to consult and instruct and ... the right to legal assistance without cost if the interests of justice so require ...’

Case law and governmental reporting, the report says, establish the principle of ‘equality of arms’. This means defence counsel must have a reasonable opportunity to prepare and present their case on a footing equal with the prosecution.

Comparing the current remuneration rates for similarly qualified lawyers, the report shows that legal aid rates range from \$100 - \$165 an hour depending on the lawyers’ qualifications and experience, while the Crown lawyers at the same level are paid from \$141-\$216 per hour. Further, travel rates per hour for Crown counsel are almost twice those of defence lawyers, and the allowable (payable) preparation time for defence lawyers is half that of the equivalent Crown counsel.

Recent Regulations

From mid-September, the Social Security (Long-Term Residential Care) Amendment Regulations 2005 came into force. These allow residents to make ‘allowable gifts’ in recognition of care, and introduce rules relating to deprivation of property and income. (SR 2005/183, SR 2005/265)

From 1 November, authorized nurse practitioners registered with the Nursing Council of NZ will be able to prescribe certain prescription medicines, provided they meet requirements related to competence, qualifications and training. (SR 2005/267)

Charities registration timeline

October 2005: revised draft forms on Charities Commission website www.charities.govt.nz for feedback.

End 2005: Registration check list available on website.

March 2006: Forms finalised by Regulation, available on website. Registration information begins - tel 0508 242 748. Fact Sheets on registration available.

April/May 2006: Workshops on form completion begin; on-line tutorial on website.

Mid-2006: Register opens to receive applications for registration.

April 2007: Organisations will have till April 2007 to register before their tax status is affected.

2007 onwards: annual return filing begins.

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LawScene is edited by Julia Stuart. IISSN 1172-2584

Comments or contributions are welcome.

Please send them to:
The Editor, *LawScene*
NZFVWO, PO Box 9517, Wellington
comms@nzfvwo.org.nz
10 Issues per year

Subscriptions: \$30 per annum; \$27 for voluntary organisations