

2006/3

April 2006

Haven't we been here before?

Last month the government announced that the Department of Child Youth and Family (CYF) is to merge with the Ministry of Social Development (MSD). The merger will take effect from 1 July 2006, and came out of a State Services Commission (SSC) review to identify how to improve the performance of CYF. The review considered four options -

- retaining the status quo
- merging CYF with MSD
- splitting the functions of CYF (care and protection to MSD, youth justice to Ministry of Justice)
- creating a new Ministry of Human Services.

The merger option, seen by the review as the most effective and least disruptive, will see CYF operating as a business unit of MSD, having the wider policy and management support of a larger ministry but being able to maintain its own culture.*

The voluntary sector is understandably wary of this merger. The announcement was made without warning and without consultation with the sector, and a general feeling is that restructuring is not the answer. CYF has been the subject of a number of reviews since its inception as a stand-alone entity in 1999, and some of these are still in motion. For example, the department is only two years into the three-year implementation plan set after the Baseline Review in 2003. What about the Differential Response Model (DRM)? Pilot programmes to trial this new response model to care and protection notifications were to begin late last year (see *Law Scene* October 2005).

In addition, while being presented as a “new” option, placing work and income, social policy and CYF together under the same umbrella ministry is hardly that. People working in the voluntary sector need neither a good nor even a particularly long memory to feel a sense of déjà vu at this announcement, and perhaps an understandable level of frustration. This area of government has seen massive institutional change over the last ten years, and yet we feel like we are back where we started.

Reassurance is needed that the merger will really add value to the delivery of care and protection and youth justice services. Peter Hughes, CEO of MSD and acting CEO of CYF, intends that the merger will see minimal disruption to operating of CYF services and is looking to protect the CYF identity and culture within the larger Ministry. He is also committed to continued partnership between CYF and the voluntary sector, believing that it is critical to the delivery of service.

We hope he is right. This is a department that has undergone massive change and review in its short life, where staff work under sometimes intolerable stress, where frequent changes are made at the most senior management level, and yet which is charged with caring for the most vulnerable in our communities. Let's hope it works this time.

Nicola Shirlaw

* *Cabinet paper: Machinery of government arrangements for the delivery of child youth and family services – www.ssc.govt.nz*

PARLIAMENT

Introduced

Employment Relations Amendment Bill

This amends the ERA to protect employees where their employer loses a contract for services to a new contractor. Previous legislation aimed at protecting employees during restructuring was declared by case law not to apply.

The new Bill aims to ensure that specified employees will have the right to transfer to a new employer when:

- a business is sold or transferred
- an employer contracts out work currently being done in-house
- a contract ends and the work is transferred in-house
- a contract with a principal contract ends and is awarded to a new contractor (even if the work does not begin immediately).

Employees on fixed term contracts linked to the end of a contract have the right to choose to transfer to a new employer doing the same work on either a permanent or temporary basis.

Submissions closed on 21 April. The Transport & Industrial Relations Committee report is due on 31 August.

Law Reform (Epidemic Preparedness) Bill

The aim is to strengthen government ability to respond to a pandemic, mainly through amendments to the Health Act. These mostly cover the need to update and clarify quarantine powers. There are also a number of amendments to non-health legislation, such as the Social Security Act and the Holidays Act, but most of these can only be triggered by a Prime Minister's 'epidemic notice'.

The Bill:

- makes pandemic influenza a quarantinable disease
- enables quarantine powers at the border through issue of a Gazette notice
- supports action to prevent or manage a health emergency
- ensures resource consents are not needed to set up community treatment centres, mass graves etc.
- relaxes immigration and parole provisions and probation conditions
- relaxes benefit provisions and extends emergency benefits beyond present criteria
- amends the Births Deaths & Marriages Act so a doctor or nurse can certify death without necessarily having attended the person before death.

New Zealand Superannuation & Veterans' Pensions ... Amendment Bill

The Bill aims to extend eligibility for the higher single rate of NZ Superannuation, living alone payments or veteran's pension to those whose spouse or partner is in long-term residential care in a hospital or rest home. It also increases to three years, the period that a superannuitant or veteran work-

ing overseas for an aid agency can receive their entitlement. Submissions to the Social Services Select Committee closed on 31 March. Its report is due on 22 May.

Residential Tenancies (Damage Insurance)

Amendment Bill

A private member's bill put forward by Labour MP Maryan Street, this Bill adds to the responsibilities of landlords. It requires them to insure the interests of their tenants against liability for damage to the premises – unless the damage is intentional and the tenant is personally responsible for it. If unintentional damage occurs, no tenant is liable for the damage if the landlord has failed to take out the required insurance.

Submissions have closed; the Select Committee's report is due 22 May.

Submissions called for

Crimes of Torture Amendment Bill

So as to implement the international Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, this Government Bill sets up a Subcommittee on Prevention. Members of the subcommittee can visit any place of detention in New Zealand under Crown jurisdiction, and make recommendations on the protection of detainees and on the prevention of torture.

Submissions close 19 May.

Young Offenders (Serious Crimes) Bill

Put forward by NZ First MP Ron Mark, the Bill is intended to extend jurisdiction over conviction and sentencing of young offenders so they can be dealt with on a similar basis to adults. It extends the jurisdiction of the Youth Court to cover serious offences committed by children aged 10-14. 'Serious offences' are extended beyond murder or manslaughter (as at present) to include any carrying a maximum penalty of 3 months' imprisonment or a minimum fine of \$2000. It would also apply to repeat offenders in the same age group.

The Bill removes the present limitation on criminal responsibility for 10-14 year olds who commit the redefined serious offences. Currently such a child has to be shown to know that what they did was wrong or unlawful. A sentence of imprisonment could also be imposed on an under-17-year-old convicted of a serious offence.

As yet no closing date for submissions has been set.

Employment Relations (Probationary Employment) Amendment Bill

This private member's Bill introduced by National MP Wayne Mapp introduces a 90-day probation period for new employees. During this period none of the protections available under the Employment Relations Act would apply to employees. Employers could 'terminate the employment relationship' without notice and the employee would have no recourse to the remedies available under the Act.

Submissions close on 19 May.

LEGISLATION UPDATE

Legislation	Stage and Progress	Impact
Child Support Amendment Bill (No.4)	Before Social Services Select Committee; awaiting hearing of submissions.	Writes off late payment penalties for liable parents who resume child support contributions.
Children, Young Persons & Their Families Amendment (No. 4) Bill	Awaiting second reading. Amended by SOP 261.	Aims to improve youth justice processes, prevent persistent offending. CYFS may assign investigation and care to NGOs.
Coroners Bill	Reported from Select Committee. Awaiting second reading.	Reforms coronial system for effectiveness and better response to bereaved families.
Crimes (Abolition of force as justification for child discipline) Amendment Bill (Sue Bradford)	Awaiting Select Committee hearing of submissions.	Removes the use of 'reasonable force' for correction as a defence against assault by a parent on their child.
Criminal Procedure Bill	Awaiting second reading	Omnibus bill to improve court efficiency, modify jury system, change double jeopardy rule.
Criminal Procedures & Instruments Bill	Introduced 22 June 2005. Awaiting first reading.	Introduces civil forfeiture regime for proceeds of crime.
Crimes of Torture Amendment Bill	Submissions close 19 May	Introduces regular visiting of prisons to prevent torture or other cruelty.
Disabled Persons Employment Promotion (Repeal & Related Matters) Bill	Awaiting second reading.	Ensures people with disabilities in sheltered workshops have the same wage and employment rights as other workers.
Employment Relations Amendment Bill	Before Transport & Industrial Relations Select Committee; submissions close 21 April.	Protects employees in situations where contracts are sold/ transferred to new employer or contractor.
Employment Relations (Flexible Working Hours) Amendment Bill. Private Members' Bill, Sue Kedgley	Transport & Industrial Relations Committee interim report presented 24 March.	Enables employees with young and dependent children to request part-time, flexible & reduced working hours.
Employment Relations (probationary Employment) Amendment Bill	Before Transport & Industrial Relations Committee; submissions close 19 May.	Introduces 90-day probation period for new employees. See p.2
Evidence Bill	Before Justice & Electoral Select Committee. Report due 31 August	Draws together common law and statutory provisions for evidence.
Human Rights (Gender Identity) Amendment Bill Private Members' Bill, Georgina Beyer	Awaiting first reading	Includes 'gender identity' as a prohibited grounds for discrimination.
Insolvency Law Reform Bill	Before Commerce Select Committee.	Modernises insolvency & personal bankruptcy law & liquidation options.
Kiwisaver Bill	Before Finance & Expenditure Committee; submissions close 28 April.	Sets up scheme to increase level of savings through workplace arrangements. See p.2
Minimum Wages (Abolition of Age Discrimination) Amendment Bill. Private Members' Bill, Sue Bradford	Before Transport & Industrial Relations Select Committee; submissions closed 21 April.	Abolishes discrimination on grounds of age in setting minimum wage rates, but allows apprentice & other exceptions.
New Zealand Day Bill Private Members' Bill, Peter Dunne	Before Justice and Electoral Committee. Report due 31 August.	Replaces Waitangi Day with a New Zealand Day.
New Zealand Superannuation & Veterans' Pensions Amendment Bill	Before Social Services Select Committee; report due 22 May	Extends the higher (single) rate of NZ Superannuation to those whose partner is in long-term residential care
Parental Leave & Employment Protection (Paid Parental Leave for Self-employed Persons) Amendment Bill	Transport & Industrial Relations Select Committee reported 4 April; see p.2;	Extends parental leave provisions to self-employed people on similar conditions to employees.
Oaths Modernisation Bill	Government Administration Committee reported	Modernises the language used in existing oaths.
Young Offenders (Serious Crimes) Bill – private member's Bill, Ron Mark	Before Law & Order Select Committee; no closing date. see p.2	Makes 10-14 year olds who commit 'serious offences' subject to Youth Court.

Discharged

The **Residential Tenancies Amendment Bill** was discharged at the second reading stage on 4 April.

Reported back

Coroners Bill

The Justice & Electoral Committee has made several recommendations for change to this reform of the coronial regime. The Bill as drafted replaces the Coroners Act 1988, creates comprehensive systems of inquiry and inquest and establishes the office of chief coroner and a body of legally qualified, mostly fulltime coroners. The Bill recognizes the rights of families, and places emphasis on cultural and spiritual sensitivity while establishing procedures for the retention and release of body parts and samples.

Main recommendations for change are:

- including civil union partners in the definition of 'immediate family'
- requiring coroners to act without delay in their duties as far as is practicable and consistent with justice.
- clarifying the definition of body parts and samples that can be taken and retained for pathological examination, requiring pathologists to distinguish between minute parts and samples and larger ones. The immediate family must be notified of the intention to retain parts and samples. The committee recommends that return of body parts and samples can be made on request when they are no longer required.

After consideration, the committee decided not to reverse the present practice regarding minimal publicity about self-inflicted death.

Parental Leave & Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Bill

The Transport & Industrial Relations Committee has recommended clarifying the difference between parental leave and the payments, and defining what is classed as a self-employed person's income. They also propose creating a new offence of failing to supply information with the intent to mislead.

Employment Relations (Flexible Working Hours) Amendment Bill

An interim report from the Transport & Industrial Relations Committee says it is putting the Bill aside for one year to give time for reliable information to be gathered about current practice of flexible working hours, and to consult more widely.

Passed

NZ Sign Language Bill

This makes New Zealand Sign Language an official language of the country, giving it status in courts, Parliament and other public bodies.

Legal Services Amendment Bill (No.2)

This extends eligibility for legal aid and revises the merits testing regime. See *Law Scene* March 2006.

Reviews

Immigration Review

The long-awaited review of immigration law has finally been announced. The Immigration Act Review Discussion Paper (available at www.dol.govt.nz/actreview) says it is intended to make 'fundamental changes' to immigration legislation rather than being a direct review of policy or operation procedures.

The objectives of the review are to:

- ensure New Zealand's interests are protected and advanced;
- ensure compliance with international obligations;
- establish fair, firm and fast decision-making process, and modernize and simplify the legislation.

Possible changes include:

- simplifying the visa/permit system
- more comprehensive grounds for excluding people from entering New Zealand, and a more streamlined process for their expulsion;
- clarifying and simplifying review and appeal systems
- strengthening compliance, enforcement and detention provisions
- strengthening obligations on third parties, such as sponsors, employers, carriers and education providers
- establishing a single procedure to assess all international obligations protecting a person, rather than assessing them individually.

The deadline for written submissions is June 14th 2006.

Resources

Education Kit on Immigration Law

The Legal Services Agency has produced an Education Kit on Immigration Law. It contains material on immigration law and is designed for community groups that provide information and support to people with immigration law issues. Available from the LSA head office in Wellington, P O Box 5333 for \$70, tel 04 495 5910, email info@lsa.govt.nz



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