

2006/7

August 2006

Get thee behind me Satan

“Every parent or person in place of a parent of a child is justified in using force by way of correction toward a child if that force is reasonable in the circumstances.”

Section 59 Crimes Act 1961

Before you start reading this article please read the section of the Crimes Act printed above, and then consider the following: in a recent Family Integrity publication entitled *The Christian Foundations of the Institute of Corporal Correction*, parents are advised that “physical force should be used on children to drive out rebellious spiritual condition from their hearts”, and that “smacking is meant to drive the foolishness, sinful manifestations out of the child’s personality”.

Appalled? Well guess what. The author of that booklet uses section 59 of the Crimes Act to back his publication and under current law, parents who take his advice are protected. (Readers who live by Christian principles may be equally appalled that he also cites Bible texts as justification for his views.)

The Justice and Electoral select committee has finished hearing submissions on Green MP Sue Bradford’s Members Bill, Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill. The Bill promotes a full repeal of section 59 removing the defence of reasonable force from parents who badly beat their children (and meaning that New Zealand will finally meet its international obligations under the United Nations Convention on the Rights of the Child). The select committee is due to report back at the end of October.

The Bill has wide community support. Most recently, the Porirua City Council passed a unanimous resolution to support a full repeal of section 59. The Bill, however, also has plenty of detractors. Some of the opposition comes down to a war of words. Opponents of the Bill claim that repealing section 59 removes all rights of parents to effectively discipline their children. Supporters would claim that there are many safer and more effective ways of disciplining children than using force. National MP Judith Collins believes that the Bill will criminalise good parents who occasionally smack their children. Sue Bradford has said that this is not a “smacking ban” and a legal opinion from the Office of the Police Commissioner indicates that the police will not be interested in prosecuting parents who lightly smack their children, nor parents who use physical force to remove their children from danger.

Some of the opposition is more extreme. Like the aforementioned Family Integrity, and like the exotically named Garnet Milne, the pastor of a Wanganui church, who wrote recently that MP’s supporting the repeal of section 59 were under the control of Satan.

Let’s leave the last words to Children’s Commissioner Cindy Kiro. She acknowledges that talk of “children’s rights” makes many parents, even those who condemn violence towards children, anxious - that giving children rights will adversely affect our ability to exert adult rights. However she and her Office believe that repeal of section 59 is a fundamental and necessary step to ensure that New Zealand children grow up in a safe and secure family environment, free from all forms of violence. Hear, hear.

PARLIAMENT

A quiet month in parliament, with just three sitting days since the last issue of Law Scene, and with just three issues dominating the House: the release of the Ingram report on Taito Philip Field, the leak of the Auditor-General's draft report on election spending and the government's announcement of sweeping changes to criminal justice laws.

Introduced

Minimum Wage and Remuneration Amendment Bill

Introduced by Labour MP Darien Fenton, this Members' Bill seeks to extend the provisions of the Minimum Wage Act 1983 to apply to contractors. People employed as contractors under a contract for service (as opposed to being an employee covered by an employment agreement) have few of the protections of employees and can, for example, be paid at less than the minimum wage. In its preamble the Bill cites the example of pamphlet deliveries, which are not subject to minimum wage requirements because remuneration is paid under a contract for services. The Bill provides for contractors to be paid at the applicable minimum wage rate. At the time of writing the Bill is awaiting its first reading but has Labour Party approval.

Local Government (Rating Cap) Amendment Bill

Building on the current issue of local body rates increases, Act leader Rodney Hide is introducing a Members' Bill seeking to restrict or "cap" rates. His bill proposes that councils be prevented from raising rates any higher than the rate of inflation plus 2% in any one year. The Bill includes a provision to allow councils to apply to the Minister of Local Government for an exemption to the rates cap for large infrastructure projects. The first reading of Hide's bill is set down for 23 August but at this stage it looks unlikely to gain enough support to be sent to select committee.

Reported back

Employment Relations Amendment Bill

This Bill, which aims to protect employees when contracts are sold or transferred to a new employer or contractor, has been reported back from the Transport and Industrial Relations select committee. The committee recommends that the Bill be passed with some amendments. For example the committee clarified the provisions in the Bill that allow employment to be deemed as continuous when a position is "taken over". This would allow service related entitlements under the Holidays Act and the Parental Leave and Employment Protection Act to be transferred. The National party, who oppose the Bill, issued a minority view.

The full text of the report can be read on:

www.clerk.parliament.govt.nz

Briefing from the Human Rights Commission

The Commerce select committee released its report on women's participation in governance, professional and public life. The committee recommended that the House take note of the report and made several recommendations to continue to improve the participation of women in particularly the top levels of governance and business.

Passed

Retirement Villages Act Commencement Order

These regulations bring into force that part of the Retirement Villages Act 2003 dealing with dispute resolution. From 1 October it will be compulsory for retirement villages to have clear procedures for lodging and resolving resident's complaints, and to have a formal disputes procedure. One of the most problematic areas of the retirement village industry has been the selling of residential units and the repayment of resident's entitlements, and the dispute resolution provisions set out clear guidelines for managing such disputes. For more information see www.retirement.org.nz

Announced

Effective Interventions Strategy

This week the government announced significant changes to criminal justice laws – laws implemented by this same government in just 2002. The changes, designed to improve the current sentencing regime and introduce new sentencing options, are largely based on a recent Law Commission report highly critical of current laws. In particular the Commission's report found that the 2002 sentencing and parole laws had led to wide variations in sentencing throughout the country, that the current regime was too discretionary, and that setting parole eligibility after serving one-third of a sentence meant that in practice it was unclear how long any sentence actually would be.

The launch of the "Effective Interventions" package seeks to address these and other issues raised by the Commission. Key features of the government's proposal include:

- a "truth in sentencing" (note the colonisation of a key Act party slogan) approach to parole whereby prisoners will serve at least two thirds of their sentence
- as a trade-off judges will be asked to reduce sentences by 25%
- the establishment of a Sentencing Council to assist judges
- increased use of home detention and community-based sentences
- proposals to expand the availability of restorative justice processes
- the establishment of two new drug and alcohol treatment units in prisons, and the establishment of two new special treatment rehabilitative units.

The government intends to introduce legislation to the House in October. Predictably, political and interest group reaction to the package is mixed. For more information about the Effective Interventions strategy see www.justice.govt.nz or the Law Commission's report see www.lawcom.govt.nz.

LEGISLATION UPDATE

Legislation	Stage and Progress	Impact
Child Support Amendment Bill (No.4)	Passed second reading. Awaiting committee stages.	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	Going through committee stages.	Reforms coronial system for effectiveness and better response to bereaved families.
Crimes (Abolition of force as justification for child discipline) Amendment Bill (Sue Bradford)	Select Committee is hearing submissions. Report due 31 October	Removes the use of 'reasonable force' for correction as a defence against assault by a parent on their child.
Criminal Procedure Bill	Passed second reading; awaiting committee stages.	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	Select Committee is hearing submissions.	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.
Easter Sunday Shop Trading Amendment Bill: Private Members' Bill, Jacqui Dean and Steve Chadwick	Before Commerce Committee. Report due 13 December	Grants partial exemption to shops in visitor districts from the requirement to be closed on Good Friday and Easter Sunday.
Employment Relations Amendment Bill	Transport & Industrial Relations. Select committee recommends Bill be passed	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	Interim committee report considered by Parliament 3 May.	Enables employees with young and dependent children to request part-time, flexible & reduced working hours.
Employment Relations (Probationary Employment) Amendment Bill. Private Members' Bill, Wayne Mapp.	Transport & Industrial Relations Committee; submissions closed. Report due 14 September.	Introduces 90-day probation period for new employees.
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.
Human Tissue (Organ Donation) Amendment Bill: Private Members' Bill, Jacqui Blue.	Before Health Select Committee; submissions closed.	Sets up a register where people can place their legal binding wish (or objection) to be an organ donor; promotes donation.
Insolvency Law Reform Bill	Before Commerce Select Committee.	Modernises insolvency & personal bankruptcy law & liquidation options.
Kiwisaver Bill	Before Finance & Expenditure Committee; Report due 1 September	Sets up scheme to increase level of savings through workplace arrangements.
Minimum Wages (Abolition of Age Discrimination) Amendment Bill. Private Members' Bill, Sue Bradford	Before Transport & Industrial Relations Select Committee; report due 21 August.	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.
Oaths Modernisation Bill	Awaiting second reading.	Modernises the language used in oaths.
Residential Tenancies (Damage Insurance) Amendment Bill. Private Members' Bill: Maryann Street.	Before Social Services Select Committee; report due 2 November	Extends landlord's insurance cover to include accidental damage by tenants.
Young Offenders (Serious Crimes) Bill – Private Member's Bill, Ron Mark	Before Law & Order Select Committee; submissions closed.	Makes 10-14 year olds who commit 'serious offences' subject to Youth Court.

Submissions called for

If you are quick there is still time to make submissions on two Members' Bills:

- **Waste Minimisation (Solids) Bill:** Introduced by Green MP Nandor Tanczos, this Bill aims to minimise the amount of solid waste sent to landfills. Submissions to the Local Government and Environment select committee close 1 September.
- **Corrections (Mothers with Babies) Amendment Bill:** This Bill would require prisons holding women prisoners to provide baby and child care facilities for prisoners' children aged up to 2 years. Submissions to the Law and Order select committee close 8 September.

News

Social Report 2006

The Ministry of Social Development has released their Social Report 2006 – the annual publication that monitors the wellbeing of New Zealanders. For the first time the report looked at how New Zealanders' quality of life has changed over the past 10 years, and although the report found that we were better educated, healthier and more likely to be employed, it also shows a growing economic divide between citizens. Housing is less affordable, there is an increase in the number of people living in hardship, and the gap between rich and poor has widened significantly.

The government believes the report shows they were right to introduce targeted tax relief as part of the Working for Families package. Social agencies, however, are concerned and say that the growing gap between rich and poor is a worrying sign for the country's future. A full text of the report is available on: www.socialreport.msd.govt.nz

Review of Disability Strategy

The Terms of Reference to review the impact and the implementation of the New Zealand Disability Strategy have been released. (When the Strategy was first released in 2001, Cabinet asked for a review of progress at 5 and 10 years.) The recommendations from the review will help to guide future implementation of the Strategy, including expanding implementation beyond government departments. As part of the review a consultation plan will be developed, involving "engagement" with key stakeholders. A copy of the Terms of Reference can be read at:

www.odi.govt.nz/nzds/terms-reference.html

Government home ownership scheme widened

The scope of the government's "Welcome Home Loan" scheme, designed to help low income families into home ownership, has been widened. The scheme underwrites private lenders (such as banks and building societies) to give home loans to people who may not otherwise meet traditional mortgage criteria. The limit for the amount that can be borrowed without a deposit has been increased from \$150,000 to \$200,000 and there has been a change in the minimum deposit required for those borrowing over \$200,000. Opposition parties have criticised the increases, believing that it will encourage people on low income into unaffordable debt. However social agencies have welcomed the change, particularly for those people trying to buy a home in a main centre.

For more information see: www.welcomehomeloan.co.nz

Maori Electoral option

The four yearly Maori electoral option, whereby Maori voters can choose to be on the Maori or the General electoral roll has just closed. While there are now more Maori on the Maori roll than ever before (an additional 14,900 voters, with 80% of new Maori voters opting to be on the Maori roll) it is not yet known whether this is enough to increase the number of Maori seats from 7 to 8. Confirmed results will be made available by the Government Statistician in February 2007.

Maori leaders are said to be disappointed with the outcome, having hoped that sufficient numbers of voters would switch to the Maori roll to enable the number of Maori seats to increase to 10. Once the final results are confirmed, the number of Maori seats determined by that outcome will remain fixed for both the 2008 and 2011 elections.

Auditor-General's report on MP's spending

In what has been described as a "remarkably blunt" report, Auditor-General Kevin Brady has found that much of the public funding political parties spend on advertising, particularly during election campaigns, is unlawful. Parties are not supposed to use leaders and members' budgets, public money, on material or advertising intended to persuade voters to vote for a particular candidate or party, but it appears that Parliamentary Services has wrongly made payments for party political advertising. It is understood that the government is considering legislation to validate all expenditure on political advertising previously confirmed by Parliamentary Services.



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