

2007/02

March 2007

A laypersons guide to filibustering

Every parent's right - part 3: the final instalment (or so we thought...)

When Sue Bradford's Members Bill, the Crimes (Abolition of Force as a Justification for Child Discipline) Bill, was drawn from the ballot in 2005, it seemed unlikely to succeed. Although the Bill passed its first reading and was referred to select committee, there was no indication of further support beyond this. This was in a climate when the government appeared to favour positive parenting initiatives such as the Strategies for Kids, Information for Parents (SKIP) programme, rather than want to enter the debate around the repeal of section 59 of the Crimes Act.

Bradford's Bill, as introduced, sought to completely abolish section 59. A majority of the select committee's members, however, decided to amend the Bill to allow parents to use reasonable force for a number of specified purposes including stopping disruptive behaviour and "performing the normal daily tasks that are incidental to good care and parenting." Whether it was these amendments, or whether it was because we started the year with yet more horror stories of young children being physically abused by their parents, the Bill easily passed its second reading and looked set to pass into law.

Of course there were obstacles. Duelling legal opinions, intensive lobbying by opponents of the Bill and last ditch proposals to amend the Bill. National MP Chester Borrows proposed an amendment allowing smacking providing it was "trifling and transitory" and did not involve an implement or weapon, and United Future MP, Judy Turner, proposed that if the Bill passed with less than 60 percent majority, it needed to be confirmed by referendum at the next election. However neither of these amendments had the numbers to succeed because Labour MPs were to vote as a bloc and, crucially, the Maori Party had already publicly stated their support for the Bill.

So here we were. The stage was set for a long overdue piece of legislation to be debated for the last time and enact into New Zealand law important protections for children.

And then there was Taito Philip Field. If you are not familiar with the term filibustering, my dictionary defines it as "the process of obstructing legislation by means of long speeches and other delaying tactics." Depending on where you sit, filibustering is either A: a courageous attempt to delay and draw attention to the passing of legislation that no right-minded person or government should allow to be enacted, or B: a petty and pointless attack on an important piece of legislation that you do not have the numbers to stop and can only needlessly delay. At the eleventh hour Field filed **50** (yes fifty) amendments to change the Bill's date of commencement. Other MPs also filed rafts of amendments so that debate on the Bill could be drawn out. Driving home from work I was (un)lucky enough to hear some of the debate on the short title of the Bill. It was not edifying.

Of most significance, though, the opponents of the Bill managed to delay the crucial vote on Chester Borrow's amendment. The Bill will not be debated again until March 28, and the third reading will not take place until after the Easter recess.

It seems a very petty and hollow victory, and I wonder how many MPs remembered tonight why they were there. This Bill is an important part of the attitudinal change to children needed to address our appalling record of child abuse, and a necessary step to ensure all New Zealand children grow up in a safe and secure environment.

- Nicola Shirlaw

Parliament

Introduced

Criminal Proceeds (Recovery) Bill

This aims to make it easier for Government to confiscate property which either represents the profits of criminal offending or was used in commission of a crime. It repeals the 1991 Act, which allowed confiscation only after the owner's conviction of a criminal offence, and which has result in only a small amount being confiscated.

The new Bill introduces a conviction-based forfeiture regime limited only to instruments of crime. But under civil proceedings, property acquired by unlawful activity is targeted even though the owner may not have been criminally convicted. A restraining order can be made to preserve property while the Crown is gathering evidence to support a forfeiture application. It can apply to profits, benefits and assets. Action will be taken by a recovery body designated for that purpose by the Attorney General.

Reports due

Therapeutic Products & Medicines Bill

Submissions have closed and the Government Administration Select Committee report is due 15 June 07.

The bill aims to establish a new joint trans-Tasman regulatory scheme for the regulation of therapeutic products. This will cover: the regulation of the manufacture, supply, import, export, and promotion of therapeutic products; the setting of standards in relation to the quality, safety, and efficacy or performance of therapeutic products; post-market monitoring of therapeutic products; and enforcement of the joint scheme's requirements.

It also aims to repeal and replace the Medicines Act 1981 with updated legislation for controls on medicines, such as the scheduling of medicines, licensing of pharmacies, and prescribing rights, that apply after the medicines have been approved for the market and are in the domestic supply and distribution chain.

Reported back

Justices of the Peace Amendment Bill

The main purpose of this Bill is to require JPs to undertake training before assuming duties, and it introduces a new disciplinary regime. The committee recommended making it clear that new JPs must complete their training **before** they are appointed and that the current practice for training existing JPs becomes a statutory requirement. It lines up the JP retirement age with the judicial retirement age (now 70) and decided not to introduce a daily sitting fee payment.

Student Loan Scheme Amendment Bill (No.2)

The Bill aims to remove barriers that deter student loan borrowers from returning to New Zealand. It introduces an affordable payment regime for overseas-based borrowers (including a three-year repayment holiday for those going overseas for up to three years), offers a new start for those already in default (until 31 March 2008), reduces the late

payment penalty rate and allows flexibility in assessing hardship. It also allows data matching between the Customs and Inland Revenue records. The Commissioner for Inland Revenue can also exempt from interest repayments undergraduate students studying overseas.

The committee recommended a few technical changes and noted that pursuing small amounts (up to \$333) is uneconomical.

New Zealand Day Bill

The Justice & Electoral Select Committee has rejected this private member's bill (put forward by Peter Dunne) which proposed renaming Waitangi Day as New Zealand Day and Monday-ising it. While acknowledging the desire for a dedicated national day, committee members saw no benefit in making the change, saying they felt it could foster social disharmony in New Zealand. The Committee recommended the Bill not proceed.

Copyright (New Technologies and Performers' Rights) Bill

Now before the Commerce Select Committee, this Bill updates the main 1994 Act to include the impact of new technologies, especially around music copying, and takes account of international developments. It also seeks to create a more technology-neutral framework for the Act and introduces the term 'communication works' to cover broadcast processes.

Copying for education purposes is extended to cover digital copies given to a student and also storage on websites or other electronic retrieval systems. It regulates access to digital copies of works held by libraries or archives, covering remote access, and deals with technological protection methods. The Committee's report is due on 11 June 2007.

Submissions called for

Births, Deaths, Marriages, and Relationships Registration Amendment Bill

The Government Administration Committee has called for submissions on this Bill, which amends the Births, Deaths, and Marriages Registration Act 1995. Its aims are to improve the ability of the Registrar-General to collect and verify information, enhance privacy protection, make it difficult for certain kinds of identity fraud and modernise the Act to take account of technological and social developments. The Bill also changes the title of the amended Act to reflect the recognition extended to relationships other than marriage. Submissions close on 4 May 2007.

Protection of Personal & Property Rights Amendment Bill

Currently before Social Services Select Committee, this Bill amends the Act following the Law Commission 2001 report on Misuse of Enduring Powers of Attorney (EPA).

The Bill inserts a purpose statement in respect of the enduring power of attorney provisions of the Act.

It introduces two significant and possibly controversial changes - the need in future to go to a lawyer (or a trustee corporation) before granting an EPA, and the need in a number of situations to go to a doctor before being able to use

Legislation Update

Legislation	Stage and Progress	Impact
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.
Crimes (Substituted Section 59) Amendment Bill (Sue Bradford)	Renamed. Awaiting third reading. See p.1.	Specifies circumstances in which violence may be used with children, but not for disciplinary purposes.
Criminal Justice Law Reform Bill	Before Justice & Electoral Select Committee. Submissions closed.	Introduces measures to reduce 'sharp increase' in prison population recently
Criminal Procedure Bill	Passed second reading; awaiting committee stages. Amended by SOPs 50, 51	Omnibus bill to improve court efficiency, modify jury system, change double jeopardy rule.
Criminal Proceeds (Recovery) Bill	Introduced; awaiting first reading	Enables confiscation of property resulting from crime despite no conviction. See p.2
Disabled Persons Employment Promotion (Repeal & Related Matters) Bill	At committee of the House stage.	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' Bills, Jacqui Dean and Steve Chadwick	Committee reported 13 December, supporting principle but offering new mechanism. Conscience vote applies.	Grants partial exemption to shops in visitor districts from the requirement to be closed on Good Friday and Easter Sunday.
Education (National Standards of Literacy & Numeracy) Amendment Bill	Private member's bill, Bill English. Awaiting first reading.	Requires publication of agreed national standards of literacy and numeracy, and requires schools to report their progress.
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.
Foreshore & Seabed Act (Repeal) Bill, Private Members' Bill, Tariana Turia	Introduced.	Repeals the Foreshore & Seabed Act and restores previous legislation.
Human Tissue Bill	Before Health Select Committee.	Regulates supply and use of human tissue & organs and consent provisions.
Human Tissue (Organ Donation) Amendment Bill: Private Members' Bill, Jacqui Blue.	Before Health Select Committee. Report due 31 May 2007.	Sets up a register where people can place their legal binding wish (or objection) to be an organ donor; promotes donation.
Income Tax Bill	Submissions close 2 March 07.	Rewrites and consolidates existing Act.
Injury Prevention, Rehabilitation & Compensation Amendment Bill	Passed .	Merges self-employed and general work accounts.
Justices of the Peace Amendment Bill	Law & Order Committee reported. See p.2	Standardises JP training and introduces disciplinary regime.
Mental Health Commission Amendment Bill	Submissions to the Health Committee close 31 March 07.	Extends Commission's term to 2015 and changes some Commission tasks.
New Zealand Day Bill Private Members' Bill, Peter Dunne	Justice and Electoral Committee reported. See p.2.	Replaces Waitangi Day with a New Zealand Day.
Oaths Modernisation Bill	Awaiting second reading.	Modernises the language used in oaths.
Official Information (Openness of DHBNZ) Amendment Bill. Private Members' Bill, Jackie Blue	Submissions to Health Committee closed. Report due 31 May 2007.	Amends Official Information Act to ensure access to official information held by DHBs and entities representing more than one DHB.
Principles of the Treaty of Waitangi Deletion Bill Private Members' Bill, Doug Woolerton	Before Justice & Electoral Select Committee. Submissions closed 20 October.	Eliminates all references to "the principles of the Treaty", "the principles of the Treaty of Waitangi" and the "Treaty of Waitangi and its principles" from all New Zealand Statutes
Property Law Bill	Submissions closed	Consolidates and clarifies property law, and deals with some common law anomalies.
Protection of Personal & Property Rights Amendment Bill	Before Social Services Select Committee.	Amends enduring power of attorney provisions. See p.2
Sale of Liquor (Youth Alcohol Harm Reduction) Amendment Bill (Private Members' Bill Martin Gallagher)	Select Committee reported 20 October	Clarifies restrictions on and oversight of TV broadcast advertising of liquor.
Social Security Amendment Bill	Submissions closed.	Introduces pre-benefit planning and activity requirements for benefit applicants.
Student Loan Scheme Amendment Bill	Reported back from Select Committee.	Removes barriers that deter student loan borrowers from returning to NZ. See p.2
Succession (Homicide) Bill	Report from Justice & Electoral Committee due 9 April 2007.	Defines who may not benefit from an unlawful killing.
Wills Bill	Report from Justice & Electoral Committee due 9 April 2007.	Restates law in plain English, removes some anomalies & defines circumstances where a person may not benefit.
Young Offenders (Serious Crimes) Bill – Private Member's Bill, Ron Mark	Before Law & Order Select Committee; submissions closed. Report due 29 March 2007.	Makes 10-14 year olds who commit 'serious offences' subject to Youth Court.

an EPA. These changes reduce the accessibility and versatility of EPAs.

The Bill confirms the rights of a person (the donor) to grant an enduring power of attorney to another person, to act in relation to the donor's personal care and welfare, property affairs, or both, if the donor becomes mentally incapable; and to act in relation to the donor's property affairs despite the donor becoming mentally incapable.

It also states the requirements for creating an enduring power of attorney, defines when a donor is mentally incapable for the purposes of Part 9, states the duties of an attorney (in addition to those set out in the enduring power of attorney document), sets out the Court's jurisdiction in respect of an enduring power of attorney and provides for the review by the Court of any decision of an attorney. The Bill establishes the circumstances in which an enduring power of attorney may be suspended or revoked.

News

More people eligible for legal aid

400,000 more New Zealanders can claim for legal aid in civil, family and criminal matters as eligibility provisions widened last month. But more lawyers are claiming they can't afford to undertake the work because legal aid pay rates have not increased in 11 years. The Legal Services Agency has started work on a review of hourly pay rates which currently range from \$95 to \$165 per hour but this project is still at the scoping stage.

Physical punishment of children – legislation in various countries

This topical paper has been prepared by the Parliamentary research team. Its main findings are that

- Most countries allow parents or guardians to physically punish their children.
- In some countries, review has led to legislative codification of acceptable degrees of punishment, rather than prohibition.
- Reform of physical punishment legislation has sometimes led to a complete ban on physical punishment. This has happened in sixteen countries and two dependent territories.
- Sweden was the first country to ban physical punishment of children, in 1979.

For the full text, go to www.parliament.govt.nz and click on the [Publications and Research](#) and then select [Research Paper](#) link.

E-submissions

As part of a pilot process, people wanting to make submissions to the Commerce and Justice & Electoral Select Committees can now do so online. Submitters can upload their own documents or type a brief submission on the form provided. This saves having to send multiple hard copies by post.

Access the service by going to www.parliament.nz and click on the select committee link. During 2007 some evidence and advice released by these two (and some other) committees will be made available there.

Prior consultation

During its financial review by the Justice & Electoral Select Committee, the Parliamentary counsel Office noted the increasing practice overseas of releasing draft legislation for public consultation before it is introduced into the House, and suggested it could be useful here. The Committee agreed that issuing 'exposure drafts' for public scrutiny could save considerable expense as well as providing more transparency and beneficial public input. It has written to the Attorney general encouraging the facilitation of such a practice.

Abortion numbers decrease

For the first time abortion numbers and rates have decreased in sequential years. The Abortion Supervisory Committee's report says it is very pleased with the trend (though does not expect it will continue). It also can find no single reason for the decrease, though opinions range from the effectiveness of school sex education programmes to a decrease in overseas student numbers and the increased availability of emergency contraception.

Unlawful discrimination complaints rise

In the twelve months to June 2006, complaints to the Human Rights Commission alleging unlawful discrimination rose from 1862 to 2058. A further 3649 covered other human rights matters. 'Significant outcomes from the HRC disputes resolution included an end to the requirement for older drivers to have licence testing, acceptance of gay men in a sperm donor programme, compensation for sexual harassment claims and a complaint about workplace breast-feeding.'

Gambling spending drops

Spending by New Zealanders on the main forms of gambling dropped in the year to June 2006 to \$1.977 billion, down from \$2.07 billion in the previous year. Internal Affairs Minister Rick Barker says the overall reduction is due to reduced spending on non-casino gaming machines. The largest increase in spending was on Lotteries Commission products, with the introduction of Big Wednesday the major factor behind this. This increased spending on Lottery Board products resulted in a record \$138.5 million being transferred to the Lottery Grants Board in 2005-06 for distribution to community organizations.



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