

April 2009

Getting our human rights, right?

On 7 May at 7.00pm (NZ time) New Zealand will undergo its first Universal Periodic Review with the United Nations Human Rights Council. Under the Universal Periodic Review process, UN member countries have their human rights record scrutinised every four years and countries must submit a 20 page report on the current state of human rights in their country. A copy of New Zealand's report can be read on www.mfat.govt.nz. The very keen can watch the review on webcast at www.un.org/webcast/unhrc.

The introduction to the report states New Zealand has a long tradition of promoting and protecting human rights both at home and internationally. And, I suspect, most of us would believe this to be true. Recent reports and events, however, are starting to make the human rights situation in this country look a bit shabby.

In February, Ministry of Foreign Affairs officials advised the Government that their proposed new parole laws risked damaging New Zealand's international reputation and would most likely violate the UN International Covenant on Civil and Political Rights. And the Attorney-General warned that "disproportionate" sentences could breach the Bill of Rights. Despite this advice National introduced the Sentencing and Parole Reform Bill (*Law Scene* March 09) which contains both National's policy to abolish parole for repeat violent offenders, and ACT's three strike policy which imposes a life sentence with a minimum non-parole period of 25 years on the third "strike" offence. The Bill is currently before the Law and Order committee.

In March, our bid for a seat on the UN Human Rights Council was withdrawn to make way for the United States. If elected New Zealand would have been the first Pacific region nation on the Council. Chief Human Rights Commissioner, Rosslyn Noonan, expressed concern that the withdrawal of New Zealand's bid could be interpreted as a lessening of our commitment to strengthening human rights internationally.

In April, the Australian Government announced that they would officially support the UN Declaration of Rights of Indigenous peoples. Adopted by the UN General Assembly in 2007, NZ was one of just four countries to vote against the adoption of the declaration (the government was concerned that the Declaration had the potential to grant indigenous peoples more rights than other citizens). Our Government has yet to make a firm decision, but is "monitoring" Australia's position.

Also in April, the Leitner Centre for International Law and Justice, who choose one human rights issue to study each year, presented its report on New Zealand's domestic violence record, and in particular, our failure to protect Maori women. Police dispute some of the findings in the report about their prevention work in this area, but even so our record remains damning. Recent police statistics show a 15% increase in family violence statistics in 2007-08, and that family violence affects a third of all New Zealand women.

It would be wrong to suggest this is all the fault of our current Government, but by the nature of politics it is their responsibility. On a positive note, the Government has made domestic violence a priority, and introduced legislation to allow the Police to issue "on-the-spot" protection orders. However, two warnings from the Attorney-General (who is after all a National MP) that Government Bills could breach the Bill of Rights appear to have been ignored. Whether you think the Government's tougher sentencing policies are good or bad, we should all care about the way our laws are made.

And the Government's response to Australia's—that famous champion of indigenous rights—adoption of the UN Declaration? Disappointing.

Nicola Shirlaw

Parliament

Announced

Review of Holidays Act

The Government has announced a review of the Holidays Act.

Two years ago the then-Labour Government amended the Holidays Act to increase employees annual leave entitlement from three to four weeks and specifically legislated that employees could not sell or trade their leave entitlement. This was opposed by National and they promised to amend the Act if elected.

The Government has said that under their proposed amendment only employees will have the option to ask to trade-in a week's leave for a cash payment—employers will not be able to make this offer. The details of how much this cash payment will be are yet to be decided, but Business New Zealand expect that employers are likely to have to pay twice the normal weekly rate.

The proposal is opposed by unions. They are concerned that, particularly in a tight labour market, employees could be asked to sign employment contracts agreeing to only three weeks leave and an acknowledgement that their salary includes payment for the fourth week. They also believe there is a risk that three weeks' leave becomes the "norm". The Government says that surveys show that most workers only take three weeks' leave anyway.

The Government have formed a working party to consider this and other aspects of the Holidays Act. The working party includes members of the Council of Trade Unions and Business New Zealand. The Government would like legislation passed this year, to take effect from April 2010.

Election Finance Reform

Following on from the repeal of the ill-fated Electoral Finance Act (*Law Scene* March 09), the Government has announced its review process for the development of new election finance laws. There are three parts to the review:

1. An issues paper will be released in May.
2. A proposal document—setting out the Government's proposed reforms—will be released in August.
3. A cross-party select committee will be established to consider the new Bill.

Public consultation and participation will be possible at each stage. Public forums will be held in Auckland, Wellington and Christchurch after the release of the issues paper, and at any stage submissions can be made to electoralfinancereform@justice.govt.nz or to Electoral Campaigning and Political Funding Review, PO Box 180, Wellington 6140. The Government's intention is that the new law will be in place for the 2011 election campaign.

It is important to note the review will only consider electoral campaigning and funding of political parties. Other aspects of electoral law (such as a review of MMP) will not be included. For more information see www.justice.govt.nz/electoralfinancereform.

Introduced

Corrections (Contract Management of Prisons) Amendment Bill

Introduced in March, this Government Bill allows for competitive tendering for management of prisons—effectively reopening the door to private prisons in New Zealand. Legislation providing for the private management of prisons was first introduced by National in 1995, and the Auckland Central Remand Prison was managed under contract from 2000-2005. Labour repealed the legislation in 2004.

Strong support for this Bill has come from the Maori Party. Co-Leader Pita Sharples believes that "Maori should be running prisons for Maori" and that private management would provide opportunities for Maori to become more involved in running prisons and working with Maori inmates (see page 4). And this is an issue Maori have been involved with before. In 1999, Northland iwi Ngati Hine held talks with an Australian company about running the proposed prison site at Ngawha as a joint venture. (Labour set up Ngawha as a state run prison).

As you would expect, there is also strong opposition to the Bill. The CTU has called on the Maori Party to drop their support for the Bill, as has the Green Party. Green Party MP Metiria Turei recently proposed establishing a Maori justice system (to run alongside the current system and available to all) but rejected the idea of private management of prisons.

Submissions to the Law and Order committee close 22 May.

Submissions requested

Legal Services Amendment Bill

First introduced by Labour in 2008, this Bill has been carried over into this Parliament and had its first reading this month. The Bill amends the Legal Services Act 2000 to assist victims of crime during Parole Board hearings and coronial inquests. Under the Bill, victims who need legal representation at a hearing or inquest will not be subject to financial eligibility tests and will not be required to repay legal aid grants.

Submissions to the Justice and Electoral committee close 22 May.

Disputes Tribunal Amendment Bill

Initially announced as part of the Government's small business relief package, this Government Bill expands the jurisdiction of the Disputes Tribunal by increasing the maximum claim levels. Currently, the maximum claim level that a Tribunal may hear is \$7,500 (or \$12,000 if both parties agree to have the claim heard in the Tribunal). The Bill raises the claim level to \$15,000 or \$20,000 respectively. Jurisdiction levels have not been increased since 1998. The Government estimates that an additional 3,600 claims will be heard by the Tribunal each year, reducing pressure on the District Court.

Submissions to the Justice and Electoral committee close 27 April.

Legislation Update

Legislation	Stage and Progress	Impact
Children, Young Persons & Their Families Amendment Bill (No.6)	Labour Government. Bill Reported back from select committee. Reinstated.	Increases the age of young people covered by the Bill to 17 years.
Children, Young Persons & Their Families (Youth Court Jurisdiction & Orders) Amendment Bill	Government Bill. Submissions to Social Services committee closed 17 April.	Proposes several measures aimed at reducing violent and repeat offending by children and young people.
Corrections (Contract Management of Prisons) Amendment Bill	Government Bill. Submissions to Law and Order committee (see page 2).	Allows for competitive tendering for the management of prisons.
Criminal Investigations (Bodily Samples) Amendment Bill	Government Bill. Submissions to Justice and Electoral committee closed 6 April.	Gives Police wide powers to collect DNA samples from people before they are charged or convicted of a criminal offence.
Disputes Tribunal Amendment Bill	Government Bill. Submissions to Justice and Electoral committee close 27 April (see page 2).	Expands jurisdiction of Disputes Tribunal.
Domestic Violence (Enhancing Safety) Bill	Government Bill. Submissions closed 27 February.	Introduces “on the spot” orders issued by Police to protect victims of domestic violence.
Education Amendment Bill (No.3)	Labour Government Bill. National removed requirement for Police checking for parents and volunteers.	Police vetting for school volunteers, removes early leaving provisions, introduces School Plus.
Employment Relations Amendment Bill (No.3)	Labour Government Bill. Introduced 9 September. Reinstated.	Allows employers and employees to determine whether an employee should be classified as an employee or a casual worker.
Gambling Amendment Bill (No.2)	Labour Government Bill. Reported back from select committee. Reinstated.	Contains technical amendments to allow original Act (2003) to operate as intended.
Gangs and Organised Crime Bill	Government Bill. Submissions closed 27 March.	Increased penalties for participation in organised criminal groups.
Immigration Bill	Labour Government Bill. Reported back from select committee. Reinstated.	Rewrites and consolidates immigration legislation, introduces new visas.
Judicial Matters Bill	Labour Government Bill. Submissions closed 6 October. Reinstated.	Establishes Office of Judicial Conduct Commissioner to receive complaints about conduct of Judges.
Land Transport Amendment Bill (No.4)	Labour Government Bill. Report was due 6 October. Reinstated.	Increases powers of police to deal with drug-impaired drivers.
Legal Services Amendment Bill	Labour Government Bill. Introduced September 2008. Reinstated	Simplifies legal aid process for victims of crime at Parole Board hearings and coronial inquests.
Maori Trustee and Maori Development Amendment Bill	Reported back. Bill divided into two. Reinstated.	Amends Maori Trustee Act to make the Maori Trustee Office a stand-alone organisation.
Organised Crime (Penalties and Sentencing) Bill	Labour Government Bill. Reported back from select committee. Reinstated.	Increases the maximum penalty for participation in an organised criminal group.
Public Health Bill	Labour Government Bill. Reported back from select committee. Reinstated.	Revises public health legislation including border protection and quarantine provisions.
Residential Tenancies Amendment Bill (No.2)	Labour Government Bill. Introduced 29 May. Reinstated.	Reflects significant changes in the rental market since the 1986 Act.
Sale and Supply of Liquor and Liquor Enforcement Bill	Has been Labour Government Bill. Reinstated. Submissions called for.	Gives communities greater say in liquor licensing decisions, makes it an offence for adults to supply alcohol to minors without parental consent.
Sale of Liquor (Objections to Applications) Amendment Bill	Member’s Bill (George Hawkins). Submissions closed. Reinstated.	Restricts the number of liquor outlets and makes wider provisions for objections to licenses.
Sentencing (Offender Levy) Amendment Bill	Government Bill. Submissions to Justice and Electoral committee closed 6 April.	Imposes a \$50 levy on offenders at a time of sentencing.
Sentencing and Parole Reform Bill	Government Bill. Submissions to Law & Order Committee close 24 April.	Introduces tougher parole laws. Bill also introduces “three strikes” policy for serious offences.
Taxation (International Taxation, Life Insurance and Remedial Matters) Bill	Labour Government Bill. Reinstated Submissions closed 15 January.	Introduces business tax reforms and payroll giving system for charitable donations.
Waka Umanga (Maori Corporations) Bill	Labour Government Bill. Reported back from select committee. Reinstated.	Provides for the establishment of new legal entities by tribal groups or Maori associations.

Passed

Parole (Extended Supervision Orders) Amendment Bill

This Bill was introduced and passed through all its stages on 2 April, receiving its Royal Assent on the following day. It was introduced by the Government as an essentially technical Bill to remove two potential loopholes in an amendment to the Parole Act in 2007. Extended Supervision Orders are used for managing the release of those child-sex offenders presenting a high risk of re-offending. The Orders require child-sex offenders to be on parole-type conditions for up to 10 years after release. Changes to the Parole Act in 2007 had created doubt about whether electronically monitored curfews could be extended beyond 12 months and whether the Parole Board could impose residential conditions without the offender's agreement. The Bill clarified these two points.

What was perhaps most interesting about the passing of this Bill, (particularly in light of the front page article), is that a report tabled in the House by the Attorney-General on the same day warned that the Bill was inconsistent with the Bill of Rights.

Of particular concern to him was that the Bill allows the Parole Board to impose conditions similar to home detention for up to 10 years after release. Whether the Attorney-General's interpretation is right or wrong, what is concerning is that his report did not even cause the Government to pause for breath. Nor were other parties, who gave leave for the Bill to be introduced and read on the same day, given notice of the Attorney-General's report. Legislation that could breach the Bill of Rights deserves more attention and scrutiny than this (see front page article).

Criminal Proceeds (Recovery) Bill

This is not a Bill that Law Scene has been following, but its passing last week is worth noting. Originally introduced as part of Labour's plan to address serious and organised crime, the Bill was carried over by National. The new law gives the Crown the power to confiscate profits and assets obtained through criminal activity - aimed, for example at gang leaders obtaining benefits from their members' criminal activities. Significantly the law does not require a conviction to be triggered, it will be sufficient to prove, on the balance of probabilities, that a person has unlawfully benefited from criminal activity.

News

Review of social spending for Maori

Minister for the Community and Voluntary Sector, Tariana Turia, has suggested that up to \$1 billion could be removed from specific projects for Maori to a bulk fund aimed at broader goals around Maori health and education. The Minister believes that bulk funding will be better for all - make it easier for agencies currently providing services for the same families under a number of contracts, and reduce compliance costs for agencies and the government by reducing the number of small contracts.

Bulk or integrated funding models are not new to the sector and while open to the discussion there is concern that a "one size" funding model does not suit all, and that bulk funding can result in more, not less, compliance. Of greater concern, however, is that the Government has yet to announce its intentions for the future of the funding model introduced by the former Labour Government.

Update: referendum on section 59

Organisations working with children and families, and more particularly with the long-term consequences of family violence, have formed the YesVote coalition. The coalition is campaigning for voters to vote 'Yes' to the question "Should a smack as part of good parental correction be a criminal offence in New Zealand" in the postal referendum on section 59 later this year. For more information go to: yesvote.org.nz

Alternative rehabilitation units for Maori prisoners

Maori Party Co-Leader, Dr Pita Sharples, is promoting the idea of alternative rehabilitation centres for Maori prisoners. The centres will expand on work already being done in Maori focus units currently running in five prisons. Prisoners in the units do not have to identify as Maori, but cultural practices, such as tikanga, are a focus. A recent Corrections Department report, yet to be released, has found that prisoners in Maori focus units are 7% less likely to re-offend than those in the general prison population.

Under Sharples' proposal—which is aimed at prisoners nearing the end of their sentence—prisoners would have to "earn" their way into the centre by learning to speak Maori. Instead of living in cells, prisoners would be housed in flats, and would be involved in the day-to-day running of the centre. Sharples would like the centre to be in an urban area close to education and employment opportunities for inmates. Currently, 50.78% of New Zealand's prison population is Maori.

Increase in Patient Travel Allowance

The Government has increased the allowances patients can claim under the National Travel Assistance policy—assistance for patients who are referred by one specialist to another resulting in frequent or long-distance travel. The mileage allowance has increased from 20cents/km to 28 cents/km and the maximum accommodation rate has increased to \$100.00/night. When announcing the increases, the Minister acknowledged that the allowances frequently didn't cover actual costs incurred by patients. For more information go to: www.moh.govt.nz

Website for mental health workers

An online networking site for mental health and addiction support workers has been launched by Platform—a grouping of community organisations providing mental health and addiction services. For more information go to: www.supportworkers.ning.com.

New Zealand Federation of Voluntary Welfare Organisations

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