

February 2009

## What was the rush?

The 49th New Zealand Parliament was sworn in on 8 December 2008. After the usual formalities it was straight into business as the National led Government moved the House into urgency to pass a number of Government bills. This meant that instead of normal sitting hours, the House sat from 9.00am until midnight—even included a rare Saturday sitting—which must have had some new MPs wondering if it was too late to change their minds.

One of the new laws passed under urgency was the Employment Relations Amendment Bill 2008. This allows workplaces employing less than 20 employees to use a 90 day trial period for new employees. The trial period is voluntary, and the employer and the employee must agree to a “trial” at the time of hiring. The agreement must specify the length of the trial (up to 90 days), that during that period the employee can be dismissed, and that the employee will not be able to bring a personal grievance for unjustifiable dismissal. The trial period will be covered by good faith provisions, and all other rights including sick leave and holidays will apply. Beneficiaries starting a job with a trial period will not have a stand-down if the job doesn’t work out, unless they are dismissed for misconduct or choose to end the trial themselves without reason.

The Bill was widely opposed, and not just by opposition parties. The Maori Party— which has a support agreement with the new Government—opposed the Bill believing it would hurt Maori and Pacific workers. Unions were outraged, dubbing it the “fire at will Bill” and estimated that at any one time 100,000 workers would have no rights if dismissed. The Engineering, Manufacturing and Printers Union (EPMU) presented an urgent petition to Governor-General Anand Satyanand asking him to delay or refuse the Royal assent to the Bill until it had been through the select committee process and people had had an opportunity to be heard.

National believes the 90 day trial period is an “integral part of the Government’s response to the global recession” and that it was need to help restore business confidence. Other than Denmark, New Zealand was also the only OECD country not to have such trial periods.

But was it urgent? Up until the time the Bill was introduced under urgency it was hard to know that the Government thought so. Although part of their pre-election policies, it was not signalled as one of the priorities in their First 100 Days programme. Nor was it mentioned earlier in that week at the post-Cabinet press conference when John Key listed the legislation to be tabled in the House that week.

Indications were that National was caught on the hop in that first sitting week. At the time that the Government put Parliament into urgency, not all the bills to be debated that week had finished being drafted. MPs only had final copies of the bill they were currently debating.

The Employment Relations Amendment Act is a significant piece of legislation affecting a large number of people. It is hard to see that it was so urgent that it couldn’t go through the select committee process. Although this Government would not be the first to do so, urgency should not be used to pass the legislation it wants as quickly and easily as possible.

Just because you can is not a good enough reason.

*Nicola Shirlaw*

# Parliament

## Announced

### Increase in minimum wage

The Government has increased the minimum wage from \$12.00 to \$12.50 an hour. The training and new entrants minimum wage will increase from \$9.60 to \$10.00 per hour. The increase will take effect from 1 April.

The move has been criticised from all quarters; by the business sector for being too generous (McDonalds who pay minimum wages to between one half and two thirds of their workforce claim their labour costs will increase by \$4 million annually) and by unions and opposition parties for being too low. As an early example of how confidence and supply agreements will work for National, the Maori Party co-leaders criticised the increase for being too small, saying that vulnerable workers need \$15.00/hour to adequately feed, house and clothe their families.

Tactfully, given the current economic climate and only minor increase to the minimum wage, MPs have also this week unanimously passed a motion in the House calling on the Remuneration Authority to freeze MPs salaries at their current level when they come up for review later this year. The Remuneration Authority is independent from Parliament and so is not bound by the resolution, but it nevertheless is a strong signal.

### Increase in Disputes Tribunal Jurisdiction

The jurisdiction of the Disputes Tribunal will be expanded this year. Currently, the maximum claim level of the Disputes Tribunal is \$7500 or \$12000 (if both parties consent to have the claim heard in the Tribunal). The levels will be raised to allow the tribunal to hear claims of up to \$15,000 or \$20,000 respectively.

Announced as part of the government's small business relief package (allowing small businesses to avoid the cost of having a dispute heard in the District Court), this announcement also helps fulfil National's election promise to reduce pressure on the District Court system.

### ReStart assistance package for redundant workers

A pre-election promise, the Government released the details of its ReStart package in December. Intended to provide short-term support for people losing their jobs through redundancy, ReStart applies to people who have been in work for at least 6 months (including self-employed people) and is aimed at low and middle income families with children, and at people with high housing costs.

There are three parts to the ReStart package:

- *ReCover*—a payment for families with children who are no longer eligible for the in-work tax credit. The payment is \$60 per week for families up to three children, and \$15 per week for each additional child.
- *RePlace*—for people who qualify for the maximum Accommodation Supplement after they lose their job. RePlace increases the amount of the Supplement by up to \$100 per week.
- *ReConnect*—employment service.

People made redundant may be eligible for all or part of *ReStart*. For example, people without children will not be able to apply for *ReCover* but may qualify for *RePlace assistance*. The *ReStart* package can be paid for a maximum of 16 weeks. For more information see [www.workandincome.govt.nz](http://www.workandincome.govt.nz) or call the *ReStart Line* 0800 559 000 Monday - Friday 7:00am–6:00pm.

## Introduced

### Domestic Violence (Enhancing Safety) Bill

A Government Bill, this introduces an “on the spot” order, aimed at protecting victims of domestic violence. The order can be made by Police where there is insufficient evidence to arrest an alleged violent person, but the Police believe there is a likelihood of violence occurring and that the order is necessary to protect the victim.

The order removes the alleged violent person from the home for up to 5 days. The Bill also amends the Sentencing Act 2002, allowing the Court, when sentencing a person convicted of a domestic violence offence, to consider making a protection order on the victim's behalf. Submissions to the Justice and Electoral committee close 27 February 2009.

### Also introduced

- **Gangs and Organised Crime Bill** increasing penalties for participation in organised criminal groups. Submissions to Law and Order committee close 27 March 2009.
- **Criminal Investigations (Bodily Samples) Amendment Bill** allows Police wide powers to collect DNA from people before they are charged or convicted.
- **Electoral Amendment Bill**—an interim Bill repealing parts of the Electoral Finance Act but leaving some parts intact should there be a by-election before new electoral laws are developed.

## Passed

### Taxation (Urgent Measures & Annual Rates) Bill

A Government Bill, this also passed through all stages under urgency. The Bill implements National's three year programme of personal tax cuts. Under the Bill a worker on the average wage will receive an additional \$18 per week from 1 April.

In addition, the Bill also makes significant changes to KiwiSaver. These include capping the compulsory employer contribution at 2%, reducing the minimum employee contribution from 4% to 2%, and discontinuing the employer tax credit from the same date. These changes all take effect from 1 April.

### Employment Relations Amendment Bill

In addition to the introduction of the 90 day trial period this Bill also “undoes” legislation passed in September 2008—Employment Relations (Breaks, Infant Feeding and Other Matters) Act (see Law Scene, September 2008, page 4)—allowing employees to bring a personal grievance if treated differently on the basis of KiwiSaver membership.

This latest change means that employers can again offer salary packages which include the employer's KiwiSaver contribution—the effect being that an employee who is a member of KiwiSaver will earn less than a non-member.

# Legislation Update

Legislation	Stage and Progress	Impact
Bail Amendment Bill	Government Bill. Passed through all stages under urgency December 2008.	Lowers threshold for courts to order remand in custody (see page 4).
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.
Corrections Amendment Bill (No.2)	Government Bill. Reported back with recommendation to be passed with amendments. Reinstated.	Improves operation of corrections system, including ability to manage advances in electronic communication.
Domestic Violence (Enhancing Safety) Bill	Government Bill. Submissions close 27 February (see page 2).	Introduces “on the spot” orders issued by Police to protect victims of domestic violence.
Education Amendment Bill (No.3)	Labour Government Bill. Reinstated.	Police vetting for school volunteers, removes early leaving provisions, introduces School Plus.
Education (National Standards) Amendment Bill	Government Bill. Passed through all stages under urgency December 08 (see page 4).	Enabling Bill to allow Ministry of Education to set national standards for literacy and numeracy.
Employment Relations Amendment Bill	Government Bill. Passed through all stages under urgency December 08.	Introduces 90 day trial period for new employees (see page 1).
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.
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	Labour Government Bill. Accompanied by Law Commission review of liquor laws. Reinstated.	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 make wider provisions for objections to licenses.
Sentencing (Offences Against Children) Amendment Bill	Government Bill. Passed through all stages under urgency December 08.	Makes offending against a child specific aggravating factor at sentencing (see page 4).
Taxation (International Taxation, Life Insurance and Remedial Matters) Bill	Labour Government Bill. Reinstated Submissions closed 15 January 2009.	Introduces business tax reforms and payroll giving system for charitable donations.
Taxation (Urgent Measures and Annual Rates) Bill	Government Bill. Passed through all stages under urgency December 08.	Implements Government’s 3 year programme of personal tax cuts (see page 2).
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 (continued)

### Bail Amendment Bill

A Government Bill, this was one of five introduced under urgency in the first sitting week of the new Parliament. In essence the Bill reverses changes to bail laws introduced by Labour in the Bail Amendment Act 2007. The 2007 Act required that the threshold for deciding whether to remand a defendant in custody was that there was a “real and significant risk” that the defendant would fail to reappear, interfere with witnesses or evidence or reoffend. The new Bill reverts to the pre-2007 position that there must be “a risk” of reoffending, failing to appear or interfering with a witness. The Bill passed through all stages.

### Sentencing (Offences Against Children) Amendment Bill

A Government Bill, also passed through all stages under urgency, this makes offending against a child a specific aggravating factor when sentencing. The Bill requires the court to take into account the defencelessness of the victim, any serious or long-term physical or psychological effects on the victim, the magnitude of the breach of any relationship with the victim, and any threats made to the victim to prevent him or her reporting the offending. The Bill passed with the unanimous support of the House.

### Education (National Standards) Amendment Bill

Again a Government Bill, and again passed through all stages under urgency, this Bill is divided into two parts. The Bill raises the maximum level of fine that can be imposed on parents failing to enrol their child at school, or failing to ensure their child attends school. Fines for failing to enrol a child increase from \$1000 to \$3000, while fines for parents of truants increase from \$150 to \$300 for the first offence, and from \$400 to \$3000 for subsequent offences.

The second part of the Bill begins to fulfil another of National’s pre-election pledges to introduce national standards for numeracy and literacy. This Bill empowers the Ministry of Education to set the standards and to require schools to report to parents against the national standards. In 2009 the Ministry will lead consultation about the design of the standards to be implemented for 2010. Expect some fiery debate on this one.

### Reinstatement Motion

Also passed before Christmas was a “reinstatement motion”—a formal motion to reinstate Bills from the previous Parliament.

*Law Scene* has been following many of these Bills, some have yet to get past their first reading, while others have already been through the select committee process and been reported back. With the make-up of Parliament significantly changed, and with National already setting a clear policy agenda, it is possible that not all will proceed as originally intended.

## News

### Cuts in funding to Community Law Centres

Community Law Centres are facing funding cuts of up to 44% later this year. Community Law Centres are funded from the interest on solicitors’ trust accounts, administered through a “special fund” by the Legal Services Agency. Falling real estate sales and large decreases in interest rates have drastically reduced the amount of money in the fund, and while the Legal Services Agency has promised additional funding for 2009-2010, it cannot sustain this in the long term. Members of the Coalition of Community Law Centres Aotearoa will meet with Justice Minister Simon Power to lobby for continued funding. There are 27 Community Law Centres in New Zealand providing free legal advice and assistance, as well as legal information and education.

### Update: Child Poverty Action Group

The Child Poverty Action Group took a claim to the Human Rights Review Tribunal last year alleging that the In-Work Tax Credit, part of the Working for Families package, was discriminatory. The In-Work Tax Credit provides support to low and middle-income families with children but children whose parents do not work the required number of hours or who are on a benefit are not eligible for the credit. CPAG alleged that this was discrimination on the basis of parental work status.

The Tribunal released its decision in December, and while it found that the In-Work Tax Credit discriminates against the children of beneficiaries, and that the discrimination causes “real and substantive disadvantage”, they ruled that the discrimination was justified on the grounds that a Government must be allowed to target its policies. The Tribunal’s decision was welcomed by Social Development Minister Paula Bennett, but it is hard to see who was the winner here. Certainly not the 200,000 plus New Zealand children living in poverty. For more information on the Tribunal’s decision go to: [www.cpag.org.nz](http://www.cpag.org.nz)

### Celebrating 60 years of NZ citizenship

On 1 January 1949 the British Nationality and New Zealand Citizenship Act 1948 came into force. On this day most people living in New Zealand became New Zealand citizens, and all children born on or after that day automatically became new Zealand citizens. Prior to this we were all just British subjects. The department of Internal Affairs has several events planned to mark this milestone. See their website [www.dia.govt.nz](http://www.dia.govt.nz).

### New Zealand Federation of Voluntary Welfare Organisations

Law Scene is edited by Nicola Shirlaw  
ISSN-1172-2584 - 10 issues per year

You cannot copy this newsletter in full. However, you can reproduce individual items, provided you acknowledge its source. The views expressed in this newsletter are those of the author’s and not necessarily those of the NZFVWO. An annual subscription to Law Scene for voluntary organisations is \$27, and \$30 for other organisations.

Working jointly with the Office for the Community & Voluntary Sector, we have also produced **Keeping it Legal E Ai Ki Te Ture**—a resource designed to meet a continuing need for all not-for-profit organisations to have simple and accurate information about their legal obligations. You can find it now online at: [www.keepingitlegal.net.nz](http://www.keepingitlegal.net.nz)