

June 2009

The \$9 million dollar question?

If it wasn't that I so profoundly disagree with them, I could almost feel sorry for the organisers of next month's referendum that asks the now notorious question "Should a smack as part of good parental correction be a criminal offence in New Zealand?".

Organising a petition to force a Citizens Initiated Referendum is not easy. The signatures of 10% of enrolled voters (currently 290,000) must be obtained—which in practice means many long and cold weekends out on the street collecting many more signatures than this, as petitions are frequently signed by people who are not on the electoral roll, or (and sometimes and) enthusiastically signed by the same people more than once. A petition of over 390,000 signatures was eventually presented to Parliament last June, and found to contain sufficient valid signatures to hold a referendum.

The referendum faced a second hurdle last year when then Prime Minister Helen Clark, acting on the advice of the Chief Electoral Office, said there was insufficient planning time to hold the referendum at the same time as the 2008 General Election. This is significant when you consider voter turnout in the three referenda held to date. Just 27% of registered voters bothered to vote in the 1995 referendum on the number of professional firefighters. Compare this to the 84.8% voting rate in the two referenda (on the rights of victims, and the number of MPs) held with the 1999 General Election. Although legislation was passed in 2000 allowing for referenda to be by postal vote, it is still likely that voter turnout will be low.

The third hurdle came from John Key last week when he said that while it was important for governments to listen to the public, he was yet to see any evidence that the current law is not working as intended, and that he has no intention of changing the law whatever the outcome of the referendum. Referenda are non-binding, but this is an interesting pre-emptive strike.

Since then, debate around the referendum has ceased to be about child discipline, and instead thrown referenda themselves into the spotlight. Green MP Sue Bradford has drafted a Members' Bill (see page 2) that would require referendum questions to be clearer and neutral. The Government has indicated they will take up Bradford's Bill if it is not drawn out of the ballot. Public opinion appears to be that next month's referendum is a pointless waste of time and money.

Both John Key and Phil Goff have said they are unlikely to vote in the upcoming referendum. Personally, I don't think that not voting is the solution. Yes the referendum is non-binding, and yes, whatever the outcome, section 59 of the Crimes Act is likely to stay in its current form, but this is the best opportunity to show support for the law as it stands. To quote the Yes Vote website (www.yesvote.org.nz) "The issue is too important to ignore or abstain or spoil your vote. A yes vote is a vote to retain a law that is working well."

Your ballot papers will arrive in your letterbox soon.

Nicola Shirlaw

Parliament

Announced

Applications to Community Response Fund open

Applications to the recently established Community Response Fund opened 8 June. Applications are open to

- Organisations providing community based critical social services directly supporting families, children, young people and the elderly,
- In key areas including family violence, child abuse and neglect, and budget and financial advice.

Organisations unsure if they are eligible for funding can ring the Community Response Helpline 0800 777 100 or email communityresponse@msd.govt.nz

The maximum amount of funding that can be awarded at any one time is \$50,000 (excl. GST), although grants of up to \$100,000 may be made in very exceptional circumstances. Grants will usually be for a 12 month period. Funding will not be available for, for example, ongoing operational costs, capital items, advocacy, general education and publicity.

Applications for this first round of funding close 3 July and successful applicants will be notified mid-September. There will be three rounds of funding each year. Note that the criteria and eligibility for future funding rounds may change as the Fund is intended to be responsive to “emerging community needs and the changing impact of the recession”. For more information see www.familyservices.govt.nz

Review of Holidays Act

The Government has announced the membership of the working party to review the Holidays Act 2003. The five member group includes two nominations from the CTU and two from Business New Zealand. The terms of reference for the review of the Act include:

- The calculation of how much an employee is paid while on leave;
- Whether employees should be able to trade annual leave for cash, and how this would work;
- Transferring the observance of public holidays.

The establishment of the working party follows the Government’s election promise to amend the provisions of the Holidays Act preventing employees from selling or trading their leave entitlements. Unions remain concerned that the current entitlement to four weeks annual leave could be eroded.

The working party will report to the Government by December 2009.

Members’ Bill to amend Referenda Questions

Green MP Sue Bradford has drafted the Citizens Initiated Referenda (Wording of Question) Amendment Bill—a Members’ Bill that would allow the Clerk of the House (who has the responsibility for overseeing the wording of referendums) to refuse to allow questions that were ambiguous, leading, misleading or complex. This includes questions that invite a voter to answer in a certain way, that group together several propositions or that are misleading in fact or law. For example, Bradford has said that the current referendum question presupposes that a single smack is a criminal act and will lead to prosecution, when this is not in fact likely. Currently, the Clerk can only object to the wording of a referendum question if it is not clear, or does not have a yes/no answer.

National have said that they are likely to support the Bill, and if it is not drawn from the ballot may pick it up as a Government Bill.

Members’ Bill to amend section 59 Crimes Act

Act MP, John Boscawen, has drafted a Bill that would amend the Crimes Act to bring back the defence of reasonable force for parents who physically discipline their children. Boscawen’s Bill, called the Crimes (Reasonable Parental Control and Protection) Amendment Bill, has yet to be drawn from the ballot. However even if it is introduced, it is unlikely to gain wide political support as National, Labour, the Greens and the Maori Party are all committed to the current law.

Note: Most Bills introduced and passed by Parliament are Government Bills and are introduced by Ministers. However, MPs from any party can introduce their own Bill, and these are what are known as Members’ Bills. (Prior to 1996 Members’ Bills were called Private Members’ Bills.) A new Members’ Bill can be introduced when there are less than four Members’ Bills on the Order Paper waiting for their first reading, and they are literally drawn from a ballot. Most Members’ Bills do not pass, but may, for example, be picked up by the Government.

Submissions requested

Local Government (Auckland Council) Bill

Blink and you would have missed the opportunity to make a submission on this Bill. One of three Bills providing for the proposed new local government structure for Auckland, it was introduced under urgency last month. Outlining a broad structure for the new council, and how it will be elected, the Bill was referred to the Auckland Governance Legislation Committee. In the last issue, we wrote that submissions had yet to be called for, but have just now closed (Friday 26 June). The committee’s report is due 4 September—the speedy progress of this legislation in line with the Minister’s intention to allow for the new structure to be in place for local body elections in October 2010.

Residential Tenancies Amendment Bill

This Bill extends the provisions of the existing Residential Tenancies Act to apply to people living in boarding houses, it clarifies the responsibility for payment of outgoings, provides for faster tenancy dispute resolution and improves the enforceability of Tribunal orders. It also introduces new processes for ending and renewing tenancies. *Submissions to the Social Services committee close 3 July.*

Patents Bill

A Government Bill, this Bill is intended to replace the 1953 Act and update New Zealand’s patent regime. A patent is an intellectual property right granted for inventions providing the owner of the patent with the sole right to capitalise commercially on their invention. Currently, the standards for granting patents here are less strict than in other countries. The Bill will improve the procedures for granting patents and will introduce a tougher “novelty test”. A Maori advisory committee will also be established to advise on applications for inventions involving traditional knowledge or indigenous plants and animals.

Submissions to the Commerce committee close 2 July.

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 closed. Report due 18 August.	Introduces measures aimed at reducing violent and repeat offending by children and young people.
Corrections (Contract Management of Prisons) Amendment Bill	Government Bill. Report due 26 September.	Allows for competitive tendering for the management of prisons.
Criminal Investigations (Bodily Samples) Amendment Bill	Government Bill. Submissions closed. Report due 12 August.	Gives Police wide powers to collect DNA samples from people before they are charged or convicted.
Disputes Tribunal Amendment Bill	Government Bill. Submissions closed. Reported back (see page 4).	Expands jurisdiction of Disputes Tribunal.
Domestic Violence (Enhancing Safety) Bill	Government Bill. Submissions closed. Report due 29 June.	Introduces “on the spot” orders issued by Police to protect victims of domestic violence.
Education Amendment Bill	Government Bill. Report due 28 August.	Bill to help identify unregistered teachers and reduce compliance costs of Police vetting.
Gambling Amendment Bill (No.2)	Labour Government Bill. Reported back. Second Reading 12 May.	Contains technical amendments to allow original Act (2003) to operate as intended.
Gangs and Organised Crime Bill	Government Bill. Submissions closed. Report due 10 August.	Increased penalties for participation in organised criminal groups.
Immigration Bill	Labour Government Bill. Reinstated.	Rewrites and consolidates immigration legislation, introduces new visas.
Judicial Matters Bill	Labour Government Bill. Reported back (see page 4).	Establishes Office of Judicial Conduct Commissioner to receive complaints about conduct of Judges.
Land Transport Amendment Bill (No.4)	Labour Government Bill. Reinstated. Second reading 16 June.	Increases powers of police to deal with drug-impaired drivers.
Legal Services Amendment Bill	Labour Government Bill. Picked up by National. Select Committee report due 2 October.	Simplifies legal aid process for victims of crime at Parole Board hearings and coronial inquests.
Local Government (Auckland Council) Bill	Submissions closed 26 June (see page 2).	One of three Bills provide for the proposed new local government structure for Auckland.
Patents Bill	Government Bill. Submissions to Commerce committee close 2 July.	Updates New Zealand’s patents regime (see page 2).
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	Government Bill. Submissions close 3 July (see page 2).	Reflects significant changes in the rental market since the 1986 Act.
Sale and Supply of Liquor and Liquor Enforcement Bill	Labour Government Bill. Reinstated. Submissions closed. Report due 10 September.	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 closed. Report due 12 August.	Imposes a \$50 levy on offenders at a time of sentencing.
Sentencing and Parole Reform Bill	Government Bill. Submissions closed. Report due 18 August.	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. Report due 30 June.	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.

Reported back

Disputes Tribunal Amendment Bill

The Justice and Electoral committee have finished hearing submissions on the Disputes Tribunal Amendment Bill, and have recommended the Bill be passed. The Bill increases the maximum claim level that a Disputes Tribunal may hear, from \$7500 to \$15,000, or from \$12,000 to \$20,000 if both parties agree to have the claim heard in the Tribunal. This is the first time jurisdiction levels have increased since 1998, and it is hoped that the increased jurisdiction will reduce pressure on the lower courts and allow cheaper dispute resolution for individuals and small businesses.

Judicial Matters Bill

Also reported back from select committee was the Judicial Matters Bill, with the recommendation that it be passed with amendments. The committee's report can be read at: www.parliament.govt.nz

News

Cuts to Adult Education Programmes

A reprioritising of the Government's education spending has seen significant cuts to the funding of Adult and Community Education programmes run in the evening through secondary schools. National have said they were forced by economic circumstances to prioritise spending into other areas.

It is estimated that over 400,000 people take part in adult community learning programmes every year, with at least half accessing learning through night classes run through schools. Dismissed by Education Minister Anne Tolley as "hobby classes", a 2007 report by PriceWaterhouse Coopers (commissioned by the Adult Community Education organisation) estimated that the national economic gain of this type of education is \$4.8-\$6.3 billion. And these programmes are relatively cheap to run. With buildings and equipment already in place, and not used at night by secondary students, costs are limited to course materials, tutors and administrative staff. If the cuts to funding go ahead as planned it is likely that 212 Adult Education Co-ordinators, their support staff and at least 1500 tutors will lose their jobs by the end of the year.

Community Learning Association through Schools (CLASS) are running a petition against the funding cuts. For more information see www.stopnightclasscuts.org.nz

Swine Flu and the rights of employers and employees

Despite a move this week from "containment" to "management" of the swine flu virus, people are still being advised to stay at home if they are sick. Sensible advice, both for the person who is unwell, and to help prevent the further spread of the virus. But when a Christchurch mussel processing plant in Christchurch closed last week and sent all its employees home, both employers and employees started looking at just what were their rights and obligations here.

As with any illness, employees unable to work because they are unwell can use their sick leave. Employees who have worked for more than six months are entitled to five days sick leave/year. Sick leave can also be taken to care for a sick partner, child or dependent. Employees who have no sick leave left may be able to take annual leave, or even unpaid leave, but should talk to their employer.

And, as usual, employers have a general obligation to take all reasonable steps to provide a healthy and safe workplace.

Currently, this means employers should be carrying out a workplace risk assessment identifying the level of risk in their workplace and developing a plan for avoiding or managing an outbreak.

This much at least is clear, but not clear is what happens if a workplace is shut down, or an employee who is not sick is required to stay at home. As a general rule employers are not obliged to pay their staff when they are not at work and not ill, but shouldn't employees who are willing and able to work, but required to stay at home, be paid? Unions certainly think so.

The words "grey area" have been over-used in the last week but indicate that the situation some employers are now facing has not been tested in law. The Employers and Manufacturers Association called on the Government for advice about whether businesses ordered to close should have to pay healthy workers. The Government also used the words "grey area" and is seeking legal advice.

As with other aspects of swine flu, information and advice in this area changes rapidly. For up-to-date information about the legal rights of employers and employees, go to: www.dol.govt.nz

Parental leave payment to increase

From 1 July the maximum weekly parental leave payment will increase from \$407.36 to \$429.76. The minimum payment for self-employed parents increases from \$120 to \$125/week. Over 23,000 families receive parental leave payments in any given year. The rate is calculated on average weekly earnings before the leave is taken.

See also the Members' Bill drafted by Labour MP Sue Moroney, proposing increasing paid parental leave from 14 to 26 weeks. The Bill would increase leave in three stages: to 18 weeks in 2011, to 22 weeks in 2012 and to 26 weeks in 2013. Australia will move to 18 weeks paid parental leave in 2011. The Bill has yet to be drawn from the ballot.

New MPs

Two new MPs have been sworn into Parliament. Cam Calder has come in as a National List MP following the resignation of Richard Worth, and Labour's David Shearer was elected as the new electorate MP for Mt Albert, in the by-election caused by the retirement of Helen Clark.

While the media and the main political parties were keenly interested in the Mt Albert by-election, this enthusiasm was not shared by Mt Albert voters. Just 47.57% of registered voters voted.

New Zealand Federation of Voluntary Welfare Organisations

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