

February 2010

Standards for what?

My youngest child has just left school, ending a 21 year run as a parent of school-age children. One of the most important things I learned over all those years is that it is teachers we should be listening to about education. However, if the last weeks are anything to go by, clearly neither the Minister of Education nor the Prime Minister agree.

National Standards were introduced into all primary and intermediate schools last week. The standards, developed last year, set out what a child should be achieving in reading, writing and mathematics at each year level. All children aged 5-12 will be assessed as being above, at, below or well below the national standard for each subject at their year level, and schools will be required to report to parents (in “plain English”) at least twice a year on their child’s progress in all three areas. The new standards, which National campaigned on at the last election, are part of the Government’s plan to lift educational standards in New Zealand. National believe that the standards will help the 1 in 5 students currently leaving school with little or no qualifications and have promised \$36 million over the next four years for students needing extra support.

The introduction of the standards has been strongly opposed by the NZEI, teachers, principals and by education academics. Despite what the Prime Minister has been saying, teachers don’t appear to be opposed to the idea of national standards *per se*, but believe the standards have been developed too quickly and should at least be trialled first. Details of the standards were not released to schools until the end of October, and although the standards will be monitored and evaluated over the next three years, there has been no opportunity to test the new system before implementation.

There is also concern that the promised \$36 million is simply not enough to help those children not achieving against the standards. If the Government is really committed to making a difference significantly more resources would be required.

Perhaps the greatest area of concern though is with public reporting of standards, and the creation of “league tables”. Schools will be required to report to the Ministry of Education on the numbers of pupils above and below the standards and most people believe this makes the creation and publication of league tables rating the performances of schools as inevitable. League tables published each year ranking secondary schools on the basis of NCEA results tend to tell us more about the socio-economic make-up of a school than about the success of a school or its teachers, but they are widely-read (and not just in New Zealand—a new federal school rating website in Australia designed to take 2350 hits/second crashed recently unable to cope with the number of people trying to access it)¹. And yet what so they really tell us? If a school is perceived to be “failing” will the Government consider this to be the fault of teachers?

Not all children in New Zealand start school on an equal footing. And national standards are not going to remedy this.

Nicola Shirlaw

¹ *The Australian teachers union representing state school teachers has said it will refuse to do the next round of national testing that the school rating system is based on unless the Government ensures this will not lead to further league tables.*

Parliament

This is the first Law Scene for 2010. It is written on the day that John Key made his Statement to Parliament on the first sitting day of the House. Although much was signalled in that speech, in particular changes to GST, personal tax rates and the way property is taxed, there is insufficient detail to include is this issue.

Announced

Changes to Legal Aid

Following the release of Dame Margaret Bazley's highly critical report of the current legal aid system last November, Cabinet announced a number of recommendations to be introduced through legislation this year. These include disestablishing the Legal Services Agency shifting the administration of legal aid to the Ministry of Justice and expanding the Public Defence Service into Auckland, Hamilton, Wellington and Christchurch.

Law change to protect vulnerable children

Following on from a Law Commission report that current laws do not adequately protect young people, the Justice Minister announced changes to the Crimes Act to be introduced early this year. Proposed changes include making adults living with children under 18 years legally liable for those children's wellbeing if they know the children are at risk of serious injury, sexual assault or death, and do not take adequate steps to protect them. This liability will attach whether or not the adult is party to the crime.

"Three-strikes" policy

The Government announced last month that ACT's "three-strikes" policy will be incorporated into the Sentencing and Parole Reform Bill (currently before the Law and Order Committee). Under the proposed new law, on conviction of a third serious offence an offender will receive the maximum penalty for that offence with no parole. Submissions on the Bill as it was closed in April 2009, and the select committee's report was due at the end of March but the Government will ask the Committee to allow further submissions. The "three-strikes" policy has been widely criticised, with even the Attorney-General warning that it could breach the Bill of Rights.

Introduced

Mental Health (Compulsory Assessment and Treatment) Amendment Bill

Introduced by Labour MP Winnie Laban, this Members' Bill considers the rights of families when a family member is being treated under the Mental Health Act. First, the Bill clarifies the rights of families when a practitioner decides to consult with them about a family member and secondly sets out some minimum entitlements for family when a decision is made not to consult them about the care and treatment of a family member.

Submissions requested

Fair Trading (Soliciting on Behalf of Charities) Bill

A Members' Bill introduced by National MP Amy Adams, this survived its first reading in the house and has been referred to the Commerce Committee. The Bill is aimed at professional fundraisers - people in the business of collecting funds on behalf of registered charities. Under the Bill fundraisers must

make sure donors know a portion of their donation will be kept by the fundraiser to cover fees. If more than half of a donation is to be kept by the fundraiser, they must ensure the donor knows how much of the donation the fundraiser will keep.

Submissions to the Commerce Committee close 19 March

Local Government (Auckland Law Reform) Bill

This is the last of the three Bills to implement the new local body structure for Auckland. As with the other Bills the timing has been tight, and by the time you read this the closing date for submissions will have passed. And this has been the nub of much of this process. The Bill was introduced to the House 10 December 2009 and then referred to select committee with a closing date for submissions 12 February 2010. Eight weeks at any other time of the year may not seem unreasonable but over the Christmas and summer break?

Labour and the Greens, concerned at the deadlines ran a series of public meetings in January to encourage people to make submissions to the Auckland Governance Legislation Committee. Perhaps unsurprisingly, in a recent poll, 56.9% of Auckland residents said they would choose to remain with the existing eight council structure and 71% thought that the changes had been rushed.

In the end though democracy may still be the winner with 72% of those surveyed saying they planned to vote in the 2010 local body elections. This is much, much higher than usual voter turnout.

Consultation document on victims' rights

The Ministry of Justice is seeking public consultation on a discussion document looking at the rights of victims in the criminal justice system. Proposals in the document include allowing victims the right to say more in their Victim Impact Statement and to read their statement in Court, and setting up a Victims' Services Centre to provide a central coordination and information point of all the services available to victims of crime. The document can be read at www.justice.govt.nz/policy-and-consultation/victims Submissions close 31 March

Reported back

Children, Young Persons and Their Families (Youth Court Jurisdiction & Orders) Amendment Bill

The Social Services Committee have reported back on this Bill and recommended it be passed with amendments. The Bill is targeted at serious and persistent young offenders, it allows a wider range of sentencing orders and allows the transfer of some child offenders (12 and 13 years) to the jurisdiction of the Youth Court. Both Labour and the Greens delivered minority reports, the Greens believing that the age of criminal responsibility should not be less than 14 years, and that the Bill as it stands is contrary to the Convention on the Rights of the Child.

Holidays Act review

The working party set up by the Government earlier in the year to review the Holidays Act, reported back just before Christmas. The review group made up of representatives nominated by unions and business groups considered a number of issues including allowing employees to "trade in" annual leave for a cash payment and how to calculate leave and sick leave entitlements. There were a number of split recommendations from the group, changes to the Act including allowing trading a week's leave for cash will be introduced to a select committee for consultation this year. The report can be read at www.dol.govt.nz

Legislation Update

Legislation	Stage and Progress	Impact
Child and Family Protection Bill	Government Bill. Introduced August 2009. Submissions not yet called for.	Provides greater protections to children affected by domestic violence.
Children, Young Persons & Their Families (Youth Court Jurisdiction & Orders) Amendment Bill	Government Bill. Submissions closed. Reported back.	Introduces measures aimed at reducing violent and repeat offending by children and young people.
Corrections (Contract Management of Prisons) Amendment Bill	Government Bill. Reported back. Passed (see page 4).	Allows for competitive tendering for the management of prisons.
Crimes (Provocation Repeal) Amendment Bill	Government Bill. Reported back. Passed (see page 4).	Amends Crimes Act to remove partial defence of provocation.
Crimes (Reasonable Parental Control and Correction) Amendment Bill	Members Bill (John Boscawen–ACT). Introduced 26 August.	Amends section 59 Crimes Act to allow parents to use a “light smack” to correct their children
Education Amendment Bill	Government Bill. Reported back.	Bill to help identify unregistered teachers and reduce compliance costs of Police vetting.
Electoral (Administration) Amendment Bill	Government Bill. Submissions close 10 December. Report due 27 April 2010.	Establishes new Electoral Commissions responsible for electoral administration.
Fair Trading (Soliciting on Behalf of Charities) Bill	Members’ Bill (Amy Adam, National). Submissions close 19 March (see page 2).	To provide transparency and public accountability to professional fundraisers.
Gambling Amendment Bill (No.2)	Labour 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. Bill divided in final stages. Passed.	Increased penalties for participation in organised criminal groups.
Injury Prevention, Rehabilitation and Compensation Amendment Bill	Government Bill. Submissions close 26 November. Report due 12 February 2010.	Reduces some ACC entitlements, makes some increases to ACC levies, and delays the requirement for ACC to be fully-funded from 2014 to 2019.
Judicial Matters Bill	Labour Government Bill. Reported back.	Establishes Office of Judicial Conduct Commissioner to receive complaints about conduct of Judges.
Legal Services Amendment Bill	Labour Bill. Picked up by National. Reported back. Passed (see page 4).	Simplifies legal aid process for victims of crime at Parole Board hearings and coronial inquests.
Local Government (Auckland Law Reform) Bill	Government Bill. Submissions closed 12 February (see page 2).	Last of three Bills implementing new local body structure for Auckland.
Patents Bill	Government Bill. Submissions closed. Report now due 30 March 2010.	Updates New Zealand’s patents regime.
Public Health Bill	Labour Government Bill. Reported back from select committee. Reinstated.	Revises public health legislation including border protection and quarantine provisions.
Remuneration Authority Amendment Bill	Government Bill. Introduced 14 September. Reported back (see page 4).	Will require Remuneration Authority to consider economic conditions when determining salaries and allowances.
Residential Tenancies Amendment Bill	Government Bill. Submissions closed. Reported back.	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 was due 10 September, now due 30 June 2010.	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. Report now due 30 June 2010.	Restricts the number of liquor outlets and makes wider provisions for objections to licenses.
Search and Surveillance Bill	Government Bill. Submissions close 18 September. Report due 1 May 2010.	Widens ranges of offences for which communications can be intercepted.
Sentencing and Parole Reform Bill	Government Bill. Submissions closed but may be reopened (see page 2). Report now due 30 November.	Introduces tougher parole laws. Bill also introduces “three strikes” policy for serious offences.
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

Parliament went into urgency before Christmas to pass a number of Bills. The most controversial of these was probably the Emissions Trading Act—not a Bill that Law Scene had been following but whose passing is worth noting.

Corrections (Contract Management of Prisons) Amendment Bill

This Government Bill, allowing competitive tendering for the management of prisons, was passed under urgency in late November. New Zealand has had just one example of private prison management—under legislation passed by the previous National government, Auckland Central Remand Prison was managed under contract from 2000-2005, but this was repealed by Labour in 2004. The Minister of Corrections has said that she is considering putting two new prisons under contract management.

The Bill was strongly opposed by Labour and the Greens—Labour maintaining that the prison system is a core function of the state. The new Act came into effect immediately.

Although not part of this Bill, the Corrections Association (representing prison staff) brought a case in the Employment Court challenging the Department of Corrections plans to increase the number of double-bunked cells in some prisons. The Employment Court recently ruled in favour of the Department finding that the proposal was not in breach of the union's collective agreement.

Crimes (Provocation Repeal) Amendment Bill

This Bill—a Government Bill, has moved quickly through all its stages to be passed before Christmas. The Bill amends the Crimes Act to abolish the partial defence of provocation. The Bill could be considered a knee-jerk response to the Clayton Weatherston trial earlier last year, there had been two recommendations from the Law Commission that this law be amended. It was not supported by ACT at its final reading.

Legal Services Amendment Bill

First introduced by Labour in 2008, this Bill was carried over into this Parliament and finally passed before Christmas. The Bill provides assistance to victims of crime attending parole board or coronial hearings by removing financial eligibility tests and repayment conditions for legal aid. The Act takes effect from end of February.

Remuneration Authority Amendment Bill

Only introduced in September this Government Bill moved quickly through all stages to be passed with the unanimous support of all parties. The Bill requires the Remuneration Authority to take into account “adverse economic conditions” when setting the salaries of Members of Parliament and other people covered by the Authority.

News

Payments for family carers

In a decision released last month, the Human Rights Review Tribunal ruled that family members who care for severely disabled adult children should be eligible for government payments. Currently the Ministry of Health pays carers but not if they are family members.

The Government has indicated that it is likely to appeal the Tribunal's decision and is developing other ways to help severely disabled adults and their families.

Law Scene will update this issue in more detail next month.

Minimum wage increase

The Government has announced an increase in the minimum wage from \$12.50 to \$12.75/hour. Defending the size of the increase, the Minister of Labour said the decision was based on finding a balance between protecting jobs and ensuring a

fair wage.

The increase has, however, been widely criticised. The CTU described it as “mean” and believes that it is barely enough to compensate for inflation. Labour MP, Trevor Mallard, plans to introduce a Members' Bill raising the minimum wage to \$15.00/hour (over two years), and Maori Party Co-Leader Pita Sharples has said that lifting the minimum wage is a “defining issue” for his party, describing \$15.00/hour as an “absolute minimum”.

The increase in the minimum wage takes effect from 1 April.

Simultaneous interpretation in Parliament

From 9 February simultaneous interpretation of Te Reo Maori into English will be available to MPs and to people sitting in the galleries. Each chair in the chamber will have an earpiece with two audio streams—one stream to hear everything as it is spoken (in English or in Maori), the second stream providing an English interpretation whenever Maori is spoken.

Update: support workers on sleepover shifts

An Employment Court decision last year found that disability support workers on “sleep-over” shifts were working and should be paid at least the minimum wage for every hour they are required to be at work. IHC appealed the ruling, estimating that it would cost their organisation an additional \$20million/year in wages, but the Employment Court rejected the appeal. IHC are now seeking leave to appeal the decision to the Court of Appeal.

Currently workers on sleepover shifts in IHC homes are paid \$34.00/night for an 8–10 hour shift. The Employment Court decision means not only that workers would be paid at least \$12.50/hour, but could also be entitled to claim backpay.

IHC and other residential care providers say that under their current funding arrangements with the Government they simply cannot afford to pay the increased amount. The Minister of Health has said it could cost the Government up to an additional \$40million/year and is seeking advice from the Crown Law Office.

The Service and Food Workers Union who brought the original case sympathise with residential care providers but say it is for the Government to fund services properly.

Update: Unemployment figures

There had been a general expectation that unemployment had peaked but figures just released show that unemployment is at 7.3%—the highest level since June 1999. The figures become much worse when broken down—the unemployment rate for young people aged 15-24 years is 18.4%, and for Maori is 15.4% (Pakeha 4.67%).

The large increase is in part due to the number of people entering the labour force (school leavers and graduates) who are unable to find work.

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 NZFWO. 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