

March 2010

Who cares?

The government's longstanding policy of not paying parents, spouses or other family members for providing disability support services has been found to unlawfully discriminate on the grounds of family status under the Human Rights Act. This was the decision of the Human Rights Review Tribunal back in January this year. It also found that the policy also discriminates against those who are eligible to receive disability support services, but are denied the opportunity to choose to have their parent, spouse or other family member provide this support for them.

The Carer movement in New Zealand welcomed this decision, but the government didn't and quickly decided to appeal the case to the High Court.

The government argued in its case that family carers do not provide the same disability support services which other providers are paid for, because any support family carers provide is "natural family support". The government said (and is repeating in the appeal) that it does not pay families for providing natural family support because there is a "social contract" that the state does not pay families to look after their own. There was no evidence to substantiate whether that social contract exists, or where it might have come from.

The Tribunal discussed the nature of the natural support families might be expected to provide without receiving any payment. It is accepted that families provide a fairly high level of care for young children, for example. The issue is whether it is reasonable to expect parents and other family members to continue to provide that high level of care (and more) into the adulthood of disabled persons. The Tribunal held that this is not a reasonable expectation, and that the "natural support" which can be expected to be provided by families without any payment has reasonable limits.

One of the problems assessing the impact of the government being required to pay family carers is that there is not sufficient research to determine the scope of the issue. Some things are clear. For example, disabled persons who receive support services from external paid carers may wish to switch to paid family member carers. This would be cost neutral because the state is paying for the care already. No one knows how many disabled people have a mixture of paid care and unpaid family care, and how many family carers might be entitled to be paid in those cases.

The Tribunal made the point that a claim for funded carer support when none has previously been provided is actually a claim on an existing entitlement, and it is irrelevant from a funding point of view whether the support is provided by external carers or family carers. The Tribunal said the cost of meeting this currently unfulfilled entitlement should not be attributed as a cost of ending discrimination against family carers when the disabled persons have the entitlement anyway.

The government was attributing this amount to the potential cost of paying for family carers, and this is the most material fiscal issue as far as the government is concerned. The concern is not so much that unpaid carers will add to the cost of disability support services if they are paid, but that the system will not cope at all if everyone claimed the disability supports they are entitled to, irrespective of who provides the support. What this shows is systemic free-riding on family carers by the government-funded disability system.

The carer movement is alarmed at the government's arguments claiming its policy was not discriminatory, and that such discrimination was legally justified.

Carers can take heart though from the fact that the Tribunal did not accept any of the points made on behalf of the government, and it is hard to imagine the High Court being any more receptive to these arguments.

from Roger Palairot, Carers New Zealand

Parliament

Announced

Parliament has been in recess for two weeks—which may help explain the plethora of policy announcements from the Government. Detail of most of the following has yet to be announced but here is a snapshot:

- **State sector reforms** The Government has announced it intends to merge some state agencies (e.g. merging the Food Safety Authority into the Ministry of Agriculture and Fisheries). Final decisions have not yet been released but are part of the Government's focus on savings and efficiencies from larger departments. Safe for now but "on notice" are Women's Affairs and Pacific Island Affairs, and the Families Commission (although this last is safe under United Futures support agreement with National). These changes are in addition to the cutting of 130 jobs in the Ministry of Health, likely job losses at ACC and a \$25million cut to the Ministry of Education, which will inevitably lead to job losses. In total almost 1,500 public service jobs have been cut in the last 12 months, although there has been a 540 increase in frontline positions in agencies such as Child, Youth and Family, and Work and Income. State Services Minister, Tony Ryall, has said that this is in line with the Government's policy of capping core government administration and increasing frontline staff.
- **Welfare reforms** Against the good news of a drop in the number of people receiving the unemployment benefit, Social Development Minister Paula Bennett confirmed the Government will introduce a Bill providing for welfare reforms. These are likely to include tougher work-test plans, requirements to reapply for unemployment benefits each year and training expectations for people on sickness benefits.
- **SuperGold card** Never mind a week, sometimes a day is a long time in politics. Last week Transport Minister, Steven Joyce, announced the Government was reviewing the free off-peak transport scheme, entitling people over 65 to transport concessions on urban bus, rail and some ferry services. Apparently, usage of the scheme is increasing and the budget is likely to be exceeded. In a very quick about-face, after highly critical public reaction, the Minister has promised there will be no changes.
- **Student Loans** Tertiary Education Minister, Steven Joyce, has signalled there will be changes to interest-free student loans. This is likely to include linking access to academic progress meaning that failing students may no longer qualify.
- **Changes to immigration laws** Immigration Minister, Jonathan Coleman, has announced a new Immigration Retirement package. Aimed at people over 65, who can invest \$750,000 in New Zealand and who have comprehensive health insurance, applicants will receive a two-year residency permit which can be renewed indefinitely providing all criteria are met. A similar scheme will apply to retirees who already have family in New Zealand and who can invest \$1million over 4 years. Labour gave claimed that a similar plan was rejected by the Immigration Service in 1999.

Electoral Finance Reform

Last year the Government repealed the much-maligned Electoral Finance Act 2007 and began a consultation process with all political parties and the public on new electoral finance laws to be in place for the 2011 election. The reforms

have been announced and include requirements that political parties disclose total amount they receive in donations, link increases in the amount of money parties can spend on campaigning to inflation, require people or groups spending more than \$12,000 on "parallel campaigning" to register with the Electoral Commission and to clarify the rules around election advertising.

So-called "parallel campaigning" (campaigns by lobby groups supporting a particular party or issue) has been a contentious issue in recent elections. Under these reforms Justice Minister, Simon Power, has not limited the amount parallel campaigners can spend. This has angered both Labour and the Greens, and Power has said he may reconsider this at the select committee stage. A Bill containing the reforms has been drafted but at the time of writing not yet introduced to the House.

MMP reforms

If in the first MMP referendum in 2011 (when voters are asked if they want to change the voting system and which alternative system they would prefer) voters choose to retain MMP, the Government has announced that some aspects of MMP will be reviewed. These include the current 5% threshold (the 1986 Royal Commission report recommended 4%) and the ratio of electorate to list seats. Currently this is 70:50 (70 electorate seats and 50 list seats) but it has been said that the Prime Minister favours 90:30.

Introduced

Members' Bills

A number of Members' Bills have been introduced which Law Scene will not be following but some of them are worth mentioning as they give a snapshot of what else is happening in Parliament. ACT MP, Roger Douglas, has introduced a Bill allowing the introduction of different levels of minimum wages for young workers, and National MP, Tau Henare, has a Bill requiring unions to hold a secret ballot of members before undertaking strike action.

Submissions requested

Child and Family Protection Bill

This Government Bill was introduced last year and is intended to provide greater protections to children affected by domestic violence. The Bill will allow the Family Court to review custody and access arrangements within a few weeks of a temporary protection order being made, strengthens Family Court procedures to ensure there are no gaps between temporary and final protection orders and clarifies that when a protected person dies their children will still be protected by whatever order was in place.

The Bill also increases protections for children at risk of unlawful removal from New Zealand by removing the need to prove the risk of removal is "imminent", but also allows orders to be more flexible so that children could, for example, be able to travel overseas to attend family events.

Lastly, the Bill contains the final legislative amendment needed for New Zealand to ratify the Optional Protocol to the UN Convention on the Rights of the Child that deals with the sale of children, child prostitution and child pornography.

Submissions to the Justice and Electoral Committee close 1 April.

Legislation Update

| Legislation | Stage and Progress | Impact |
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| Child and Family Protection Bill | Government Bill. Introduced August 2009. Submissions close 1 April (see page 2). | 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. Passed (see page 4). | Introduces measures aimed at reducing violent and repeat offending by children and young people. |
| 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 Adams, National). Submissions closed 19 March. | To provide transparency and public accountability to professional fundraisers. |
| 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. |
| 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. Passed 18 March. Divided into three Bills in Committee stages. Will cover in next month’s Law Scene. | Establishes Office of Judicial Conduct Commissioner to receive complaints about conduct of Judges. |
| Local Government (Auckland Law Reform) Bill | Government Bill. Submissions closed 12 February. Report due 4 May. | Last of three Bills implementing new local body structure for Auckland. |
| Mental Health (Compulsory Assessment and Treatment) Amendment Bill | Members’ Bill (Winnie Laban, Labour). | Clarifies the rights of families when a family member is being treated under the Mental Health Act. |
| 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. |
| 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. Interim report released (see page 4). | 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. |

Submissions requested

Review of personal grievance laws

The Government has released a consultation paper on reforming aspects of the current law around personal grievances. Some of the options included in the document include

- Extending the 90-day trial period for new employees (during which workers cannot take a personal grievance).
- Extending the 90-day period to a wider range of employers. Currently, the trial period only applies to workplaces employing less than 20 people. This could be extended to larger workplaces.
- Enhancing mediation services.
- Changing the definition of justified dismissal to what a reasonable employer "might" have done (currently the law considers what a reasonable employer "would" have done).
- Reducing the period in which personal grievance claims can be made. Currently, an employee with a personal grievance must raise it within 90 days and file proceedings within three years.
- Removing reinstatement as the primary remedy.

Labour Minister, Kate Wilkinson, has said that she has an "open mind" on what if any changes were needed, but the Government seems to believe that the current system is biased in favour of employees. And yet in 2009, 47% of personal grievance decisions were in favour of employees and 45% in favour of employers.

A copy of the discussion paper can be read at www.dol.govt.nz/consultation. The period for making submissions is short and closes 31 March 2010. Submissions can be emailed to ERconsultation@dol.govt.nz or posted to Review of Personal Grievances Workplace Policy Group, PO Box 3705, Wellington.

Reported Back

Sentencing and Parole Reform Bill

Following on from the Government announcement in January that Cabinet had agreed to ACT's "three-strikes" policy being incorporated into the Sentencing and Parole Reform Bill, the Law and Order Committee has issued an interim report agreeing to consider the proposed amendments. These include that the threshold for each of the stages of the three-stage regime will be on conviction of a qualifying offence and not on receiving a sentence of 5 years or more, and that the sentence for conviction of a qualifying offence at stage three will be the maximum sentence for that offence to be served without parole.

The Committee will seek further written submissions from those people who made submissions last year on those parts of the Bill affected by the proposed changes.

This Bill has been before the Law and Order Committee for nearly a year, submissions closed in April and the committee had been due to report back to Parliament at the end of this month. The Committee received 1075 submissions, with just 32 opposing the Bill (of the remainder 729 submissions supported the Bill and 308 supported the Bill in principle). And yet, this Bill continues to be heavily criticised with officials from the Ministry of Justice warning the new law could be unfair, breach human rights and the policy's deterrent effect was uncertain.

Passed

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

This Government Bill, targeted at serious and persistent young offenders, has been passed. It gives greater powers to the Youth Court including allowing the transfer of some child offenders (12 and 13 years) to the jurisdiction of the Youth Court (previously 12

and 13 year olds charged with serious offences were dealt with in the Family Court). The Bill also introduces the Government's "Fresh Start" programme for persistent young offenders including military style activity camps.

The Bill was opposed by both Labour and the Greens, and has been criticised by the UN Children's Fund for being inconsistent with our obligations to the UN Convention on the Rights of the Child. But perhaps more significantly, the new Bill has received indirect criticism from Principal Youth Court Judge, Andrew Becroft. In a speech made shortly after the Bill was passed, Judge Becroft said that the New Zealand justice system was out of step with international research that showed youth offending must be seen differently from adult offending. He also said that the Youth Court could deal with even serious 17 year old offenders and they should not be treated as adult offenders.

Injury Prevention, Rehabilitation and Compensation Amendment Bill

This Bill, making what ACC Minister, Nick Smith, believed to be law changes necessary to ensure ACC is "affordable, sustainable and fair to claimants and levy payers", passed late last month with the support of ACT. Changes include extending the date requiring ACC to be fully-funded from 2014 to 2019 and introduces a 6% threshold for hearing loss.

News

NZCCSS Vulnerability Report

The New Zealand Council of Christian Social Services released its fourth Vulnerability Report earlier this month. The report found that New Zealanders are significantly worse off than they were a year ago. Unsurprisingly perhaps, but the report shows that the recession has affected youth, Māori and Pacific, and benefit dependent households the hardest. The number of benefit dependent children increased from 199,108 in June 2008 to 230,642 in December 2009.

The Report also expressed concern at the effect the proposed increase in GST (to 15%) would have on low income households, and that proposed changes to the tax system would be insufficient to offset the increase.

The findings of the Vulnerability Report were echoed by the Salvation Army's "State of the Nation" report. This report showed that almost half of single-parent households were living in relative poverty, and that unless the increase in child poverty was checked one in four children could soon be living on a benefit.

New Zealand Federation of Voluntary Welfare Organisations

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