

July 2010

## Maybe a different interpretation is required?

The National Council of Women of New Zealand is currently feeling the cold hand of, not charity, but the Charities Commission. Despite actions to try and prevent this, the National Council of Women is about to be deregistered by the Charities Commission and lose its charitable status. The National Council is not alone—the Sensible Sentencing Trust lost its charitable status in March, as did Greenpeace in April.

The National Council of Women was formed in 1896 by suffragists, who having won the vote wanted to create a forum for women. Today the National Council “serves women, the family and the community through research, study, discussion and action”. Currently, the Council receives some funding from the Government to advocate on issues affecting women. And it is this advocacy function that appears to be the sticking point for the Commission.

To be eligible to register as a charity, an organisation must have a charitable purpose. This is defined in section 5 of the Charities Act 2005, which provides that “charitable purpose includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community.” Section 5 goes on to say that a non-charitable purpose, such as advocacy, will not prevent an organisation qualifying for registration as a charity, but that non-charitable purpose must be ancillary or secondary to the charitable purposes of the organisation and not an independent purpose. Section 13 of the Act requires that to qualify for registration, organisations must be established and maintained for “exclusively charitable purposes”.

Several organisations, including the National Council, made submissions at the time the Act was drafted that this definition of charity could prevent many organisations from qualifying. Charitable status is important. Only charities registered with the Charities Commission are eligible for income tax exemptions, and many funding bodies, such as community trusts and the Lotteries Commission, will give money only to registered charities.

Where to now? When in opposition National had a lot to say about this issue.

In February 2008, Judith Collins, then National’s Family spokesperson, expressed concern that charitable organisations for which advocacy played an important role would be “muzzled” by the Charities Act, and that charities would be “penalised for disagreeing with the Government”. This concern was echoed by John Key, again while in opposition, when he said that the tax-free status of charities should be decided on what they do and not on what they say. Now in Government, National have been strangely quiet on this issue, as has the responsible Minister, Tariana Turia.

Chief Executive of the Charities Commission, Trevor Garrett, has advised organisations with both charitable and non-charitable functions to “split” into two, allowing the charitable arm to retain its tax-exempt status. The Sensible Sentencing Trust has already announced that it will reform into a registered charity providing victim support and a non-registered entity that will lobby and advocate for law change. The National Council could do this too by, for example, separating its advocacy work from its educational functions, but has said it would prefer to continue its appeal against deregistration, and have its advocacy role accepted as charitable.

Trevor Garrett has said that he is comfortable with the current definition of charity, but if it, and the way charitable purpose is interpreted by the Commission, continues to lead to the deregistration of organisations such as the National Council of Women, maybe a different interpretation is required—one that recognises the contemporary reality that advocacy is a “matter beneficial to the community”.

*Nicola Shirlaw*

# Parliament

## Announced

### Employment law reforms

The Government has announced a number of changes to current employment law. Announcing the reforms at the National Party conference last weekend, Prime Minister John Key called the changes “fair and balanced” and aimed at helping improve productivity and employment, however the announcement was made against a background of strong union protest outside the conference venue. The reforms include:

#### Extension of the 90-day trial period

The 90-day trial period, allowing employers to employ new workers on a 90-day trial, will be extended to all employers. In December 2008 National amended the Employment Relations Act to allow workplaces employing less than 20 employees to employ new workers on a 90-day trial period, during which an employee can be dismissed and not be able bring a personal grievance for unjustifiable dismissal.

At the time the trial period was widely opposed by opposition parties and by unions, but has been popular with employers. A recent survey by the Department of Labour found that 40% of employers surveyed would not have taken on a new employee without the trial period (See: [www.dol.govt.nz/publications/research/trial-periods/](http://www.dol.govt.nz/publications/research/trial-periods/))

The extension of the trial period to all employers is opposed by unions and by other political parties. Labour have said they will repeal the extension of the 90-day period if re-elected (and see Labour MP Carmel Sepuloni Members’ Bill Employment Relations (Probationary Period Repeal) Amendment Bill below), and the Greens have said the extension of the trial period is a breach of National’s pre-election policy.

#### Changes to “test of justification”

Section 103A of the Employment Relations Act sets the test for whether the dismissal of an employee (or another action) is justified. The Government believes the current law is focussed “too much on process” and proposes instead to amend the Employment Relations Act to specify minimum requirements employers must follow to ensure a fair and reasonable process. In addition, a Code of Employment Practice for discipline and dismissal will also be developed.

#### Restricting right of unions to enter workplaces

Although it appears to acknowledge that most union officials give advance notice of workplace visits, the Government is giving employers the right to turn down union visits that could interrupt business or cause health and safety concerns. Employers will not be able to withhold consent unreasonably, or to refuse unions access altogether.

#### Employment Relations Authority

Proposed changes to the Employment Relations Authority include allowing the Authority to dismiss “frivolous or vexatious” claims at an early stage of proceedings and to award penalties against parties to a dispute who fail to attend meetings. The Authority will also be required to promote mediation by giving priority to mediated cases.

A Bill to amend the Employment Relations Act to introduce all the above changes will be introduced later this year, and will be referred to select committee to give the public the opportunity to make submissions.

### Changes to the Holidays Act 2003

The announcements also included a number of changes to the Holidays Act 2003. These changes came out of the working party set up by the Government last year to review the Act, and include:

- Allowing employees to trade-in their fourth week of annual leave for a cash payment. The Government has said that this new law will be strictly regulated and that employers will not be able to force employees to do so.
- Allowing employers to ask for proof of sickness or injury if an employee is on sick leave. Currently, employers are allowed to request proof only if an employee is on sick leave for three consecutive days. Under the proposed changes, employers can request proof at any time, but will have to cover the employee’s reasonable costs of obtaining proof.
- Changing the way leave entitlements are calculated for workers with irregular hours. Sick leave, bereavement leave and public and alternative holidays will be calculated on the basis of the employee’s average gross earnings for the previous 52 week period (or less if the employee has worked for less than a year).
- Allowing employees, with the agreement of their employer, to transfer a public holiday to another day.
- Increasing the penalties for employers who breach the Act.

A Bill to implement the changes to the Holidays Act will be introduced later this year, with the changes taking effect from July 2011.

## Introduced

### Employment Relations (Probationary Period Repeal) Amendment Bill

This Members’ Bill, drafted by Labour MP Carmel Sepuloni, was drawn from the ballot last month and is awaiting its first reading. The Bill seeks to repeal the Employment Relations Amendment Act 2008 which introduced a 90-day trial period for new employees in workplaces employing less than 20 people. Sepuloni believes the trial period is both unfair and unnecessary and that a key issue facing businesses is how to attract new workers, not dismiss them.

With the announcement that the Government is to extend the 90-day trial period to all employers (see above) this Bill, however, may have been overtaken by events.

### Goods and Services Tax (Exemption of Healthy Food) Amendment Bill

Another Members’ Bill (Rahui Katene, Māori Party) this is likely to have its first reading in Parliament this month. The Bill seeks to remove GST from “healthy food” as defined by the Ministry of Health, but including fruit and vegetables, cereals, milk and meat. Katene has said the Bill is particularly important for people on low incomes as they spend a greater proportion of their income on food.

Australia and Britain both exempt certain foods from GST (or VAT) and despite infamous court cases (such as the recent case in Britain to determine whether a Pringle was a biscuit or a potato chip) have effective systems for managing this.

The Bill is not supported by the Revenue Minister (United MP Peter Dunne). He believes the issue is too complicated and will cost too much to administer, nor by National who do not want any goods or services to be GST exempt. The Bill does have the support of the Green Party and Labour (at least in relation to GST on fruit and vegetables), but this would not be enough for the Bill to pass its first reading.

# Legislation Update

Legislation	Stage and Progress	Impact
Child and Family Protection Bill	Government Bill. Introduced August 2009. Submissions close 1 April. Report due 11 August 2010.	Provides greater protections to children affected by domestic violence.
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.
Electoral (Financial Reform and Advance Voting) Amendment Bill	Government Bill. Introduced 29 April. Submissions close 17 June 2010. Report due 6 November 2010.	
Electoral Referendum Bill	Government Bill. Submissions close 10 June. Report due 22 October 2010.	Provides framework for 2011 MMP referendum, including spending limits for those campaigning for and against electoral options.
Employment Relations (Probationary Period Repeal) Amendment Bill	Members’ Bill (Carmel Sepuloni, Labour) (see page 2)	Repeals Employment Relations Amendment Act 2008 allowing workplaces employing less than 20 employees to use 90-day trial period.
Employment Relations (Rest and Meal Breaks) Amendment Bill	Government Bill. Submissions close 11 June. Report due 29 October 2010.	Maintains employees’ rights to reasonable breaks but within more flexible framework.
Fair Trading (Soliciting on Behalf of Charities) Bill	Members’ Bill (Amy Adams, National). Report was due 9 June, but now due 9 December 2010.	To provide transparency and public accountability to professional fundraisers.
Gambling Amendment Bill (No.2)	Labour Government Bill. Reported back. Second Reading 12 May 2009.	Contains technical amendments to allow original Act (2003) to operate as intended.
Local Government Act 2002 Amendment Bill	Government Bill. Submissions closed 18 June. Report due 4 November.	Bill will require local authorities to focus on “core” activities, and have transparent and accountable decision-making processes
Patents Bill	Government Bill. Submissions closed. Reported back. Divided into two Bills at committee stages.	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. Moving through committee stages. Amended to remove provisions relating to boarding houses.	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 1 October 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 was due 30 June, now due 30 September 2010.	Restricts the number of liquor outlets and makes wider provisions for objections to licenses.
Search and Surveillance Bill	Government Bill. Has been before Justice and Electoral committee since August 2009 - committee sent Bill back for redrafting May 2010 (see page 2).	Widens ranges of offences for which communications can be intercepted.
Social Assistance (Future Focus) Bill	Government Bill. Submissions closed 14 May. Report due 30 July 2010.	Introduces the government’s welfare reforms, with focus on breaking welfare dependency and on moving people from welfare benefits to paid work. Introduces work-testing for some DPB and sickness beneficiaries.

## Submissions requested

### Credit Reporting Privacy Code

The Privacy Commissioner is considering changing the Credit Reporting Privacy Code to allow the reporting of “positive credit information”. Currently, the Code only allows credit reporting agencies to collect negative credit information—like the default of a loan or hire purchase agreement—and does not allow the reporting of positive credit information, such as a loan or a debt paid on time and in full. This may sound odd—or even round the wrong way!—but the rules were based on the premise that people who met their credit obligations should be entitled to have that information kept private.

Under the proposed changes to the Code, every person seeking credit could have their credit account information reported, whether they have a good or a bad credit record. The information that could be reported includes the types of credit cards a person has and the credit limit on each account. As a balance to the increased information that may be available it is proposed that credit account information will only be available to credit providers, e.g. banks and finance companies and will not be given to employers, landlords, insurance companies or debt collectors.

For more information about the proposed changes to the Code, or to make a submission go to: [www.privacy.org.nz](http://www.privacy.org.nz) The closing date for submissions is 13 August 2010.

## News

### Alternative Welfare Working Group

Earlier this year the Government established a Welfare Working Group. Issues the Group was to consider included reducing benefit dependence, how welfare should be funded and how to promote independence from benefits for people with disabilities.

Concern that there was a need for a broader welfare debate involving community-wide input and consultation has led to the formation of the Alternative Welfare Working Group.

The group has been established by the Caritas Aotearoa New Zealand, the Social Justice Commission of the Anglican Church and the Beneficiary Advocacy Federation of New Zealand. Members of the Alternative Group include Sue Bradford, Paul Dalziel and Māmari Stephens. The Group wants a “respectful debate” about welfare reform and will hold public meetings in August and September, invite submissions from the community and aims to present an Alternative Report in December. Visit: [www.alternativewelfareworkinggroup.org.nz](http://www.alternativewelfareworkinggroup.org.nz) for more information.

### “On the spot” safety orders in force

Last year the Domestic Violence (Enhancing Safety) Act was passed allowing Police to issue instant or “on the spot” protection orders to protect victims of domestic violence. Under the new law Police can issue safety orders to immediately remove a person if it is believed they could be a danger to others (even if there is no evidence of a crime), and to bar a person from entering a property for up to five days.

The introduction of the new orders was delayed until 1 July 2010 to give Police and the Courts time to develop new operating procedures.

In the first week of the new power being in force Police, nationally, issued at least 74 safety orders.

### Update : enquiry into aged care

In April we wrote about the inquiry by the Green Party and Labour Party into the state of care for the aged in New Zealand. Both parties had called for an official cross-party inquiry, but this was not supported by the Government. Sue Kedgley (Green Party) and Winnie Laban (Labour) have, together with Grey Power, run a series of 20 public meetings around the country. A report from the inquiry will be tabled in Parliament in September.

Stories emerging from the public meetings, from both the relatives of elderly people in care and from rest home workers, paint a grim picture. A recurring theme from the meetings is that people in care become dehydrated and malnourished as staff were often too busy to ensure food and drink were taken. People unable to attend meetings, but who would like to contribute to the inquiry can contact Sue Kedgley at [www.greens.org.nz/agedcare](http://www.greens.org.nz/agedcare)

### New Zealand a good place to die

Usually in reports comparing New Zealand to other OECD countries we do not do very well. For example, the gap between rich and poor in New Zealand is one of the highest in OECD countries and last month we wrote of the generational difference between poverty rates for the elderly and for children.

It appears however that New Zealand is a good place to die. A recent report by The Economist in Britain measured end-of-life or palliative health-care in 30 OECD and 10 developing countries and ranked New Zealand third behind England and Australia.

This is an important area to be doing well in, but it may be a shame if the same cannot be said for our care of the elderly.

### Enrolment for local body elections

Local elections to elect regional councils, local or district councils, community boards and District Health Boards will be in October this year. (Unless you live in Canterbury that is. Earlier this year the Government, concerned at the performance of Environment Canterbury, removed the elected members and appointed commissioners. Astonishingly, despite there being an opportunity to elect a new regional council in October, Canterbury voters will not be given the opportunity to do so until 2013.)

If you haven't received an enrolment pack by now you are not enrolled to vote in the local elections. To get enrolled you can get a form from any PostShop, council office or library, by free-texting your name and address to 3676, or by ringing 0800 36 76 56. The electoral roll closes 20 August.

Traditionally, voting numbers for local elections is woeful, with participation rates significantly lower than voting for national elections. This may be different this year in Auckland at least, with the election of the Mayor and council to run the new SuperCity structure.

For more information about local elections and how to enrol go to: [www.elections.org.nz](http://www.elections.org.nz)

## New Zealand Federation of Voluntary Welfare Organisations

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

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