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Developments in Social Legislation and Policy in New Zealand

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CONTENT OVERVIEW

- INTRODUCTION 1
- 1. CURRENT SITUATION OVERVIEW 2
 - 1.1. The Political Situation 2
 - 1.2. Economic and Fiscal Conditions 3
 - 1.3. Social Conditions..... 4
 - 1.4. Relevant Case-Law Developments 5
- 2. SOCIAL POLICY AND SOCIAL LAW DEVELOPMENTS DURING 2015 6
 - 2.1. Welfare Benefits 6
 - 2.2. Working for Families (WFF) Family Tax Credits 9
 - 2.3. Child Support (Child Maintenance) 9
 - 2.4. Social Housing..... 11
 - 2.5. Family Court Reforms 11
 - 2.6. The Children’s Action Plan and the Vulnerable Children Act 2014 12
 - 2.7. Parental Leave 12
 - 2.8. Minimum Wages..... 13
 - 2.9. KiwiSaver 13
 - 2.10. Public Health..... 13
 - 2.11. Accident Compensation and Workplace Injuries 14
- 3. DEVELOPMENTS RELATING TO INTERNATIONAL SOCIAL SECURITY AGREEMENTS..... 14
- 4. IMPORTANT ACTS OF PARLIAMENT PASSED IN 2015 15
- 5. REFERENCES 16

LIST OF ABBREVIATIONS

| | |
|---------|--|
| ACC | Accident Compensation Corporation |
| CRC | Committee on the Rights of the Child |
| CPI | Consumer Price Index |
| GDP | Gross Domestic Product |
| GFC | Global Financial Crisis |
| HLFS | Household Labour Force Survey |
| HSE | Household Economic Survey |
| HSE Act | Health and Safety in Employment Act |
| HSWA | Health and Safety at Work Act |
| ISDS | Investor-State Dispute Settlement |
| IWTC | In-work Tax Credit |
| MFTC | Minimum Family Tax Credit |
| MP | Member of Parliament |
| NZCA | New Zealand Court of Appeal |
| NZ\$ | New Zealand Dollar |
| OECD | Organisation for Economic Co-operation and Development |
| pa | per annum |
| PCBU | Persons Conducting a Business or Undertaking |
| pw | per week |
| TPPA | Trans Pacific Partnership Agreement |
| WFF | Working for Families |

INTRODUCTION

2015, the first year of Prime Minister John Key's third term of office, was relatively quiet in terms of new social legislation. However, the Government did make progress on a number of long-running wider elements of its programme. Perhaps the most significant new piece of legislation was the Health and Safety at Work Act (HSWA) 2015. This Act, which had its origins in the 2010 Pike River Mine disaster, replaces the Health and Safety in Employment Act (1983) and introduces a new system for managing workplace health and safety risks. Key features of the new regime are summarised in Section 4.

In terms of social assistance the most important development during the year was the announcement in the Budget in May of a 'Child Hardship Package' of additional targeted support for low-income and beneficiary families with dependent children. The package, which I describe in Section 2.1, follows from the National Party's 2014 election promise to address child poverty.

Another big issue, which although primarily 'economic' in focus may have significant social implications, was the completion of negotiations for a Trans Pacific Partnership Agreement (TPPA). The agreement, which aims to liberalise trade and investment, involves 12 Pacific-rim countries: New Zealand, Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, the United States and Viet Nam. Negotiations on the text were completed in October 2015 after more than seven years of discussions and all 12 countries signed the agreement on 4 February 2016 in Auckland. The agreement has yet to be ratified according to each country's procedures and, in New Zealand, this will involve the approval of Parliament and amendments to a number of Acts. Aside from the secrecy surrounding the negotiations, three issues have caused particular concern in New Zealand. These are the potential constraints on the sovereignty of Parliament and the implications this may have for Treaty of Waitangi obligations and Maori (as well as other policy issues), the Investor-State Dispute Settlement (ISDS) provisions under which set out the process by which private investors' proceedings against a government are to be determined, and the impact on the costs of medicines via the implications for New Zealand's government-owned pharmaceutical purchasing agency, Pharmac. On the positive side, the TPPA is expected to reduce or remove tariffs on many of New Zealand's exports.¹

In September, following public pressure to raise the refugee quota in response to the war in Syria, Government agreed to take 750 Syrian refugees, 600 as a one-off additional intake and 150 as part of the usual annual quota of 750 refugees. New Zealand's refugee quota is small and has not been increased for many years and there has been a strong campaign to 'double the quota' so, although the increase was widely welcomed, it was seen by some as too small. Government's position is that this is an interim contribution ahead of a scheduled review of the quota next year. It estimates the emergency package will cost an additional \$50 million. There have been some expressions of concern about taking Syrian (and Iraqi) refugees, but the majority response has been very positive. The refugees are selected from refugee camps in Lebanon, with the first group arriving in January 2016. Most are expected to be settled in Wellington, which already has a small Syrian community.

¹ The agreement is an extremely wide-ranging and complex document and there are many other issues not covered here. These include questions over the likely size of the benefits to New Zealand and the distribution of costs and benefits.

Another international issue that arose was Australia's introduction of a policy to deport criminals who are not Australian citizens. The policy relates to those convicted of sex crimes or to a sentence of 12 months or more in jail, but with discretion to apply it to others. The decision has direct implications for Australian-resident New Zealanders, who often do not have citizenship even though they may have lived there since childhood. The change has also re-focused attention on New Zealanders' lack of access to social assistance in Australia. The issue is discussed in more depth in Section 3 below.

Finally, on a lighter note, an issue that has occupied many New Zealanders' minds during 2015 is the referendum on whether to change the national flag. The New Zealand Flag Referendums Act 2015 was passed in August and provided for a two-stage referendum process to determine whether the country should have a new flag. Public submissions for designs (some of which were delightfully bizarre) were whittled down to a long-list of 40 by a Flag Consideration Panel and then to four designs, with the first referendum being to choose which of those four should 'face off' against the current flag in a second vote. The process has become increasingly politicised with many seeing the Prime Minister's preference to change the flag – and to have one that included the silver fern used by the All Black rugby team – as something of a personal legacy project. Support for an alternative coalesced around a fifth design known as 'Red Peak' which was eventually added to the first ballot. Ultimately a blue and black design featuring the silver fern won the first ballot and in March 2016 the second referendum will determine whether the country switches to that design. Current polling suggests majority support for retaining the existing flag, with its Southern Cross stars and the Union Jack in one corner. Whatever the public's views on the flag are, the Prime Minister's own personal popularity remains undented as I discuss in the next section.

1. CURRENT SITUATION OVERVIEW

This section summarises the political, economic and social situation prevailing in 2015. New social policy and legislative initiatives are discussed in Section 2.

1.1. The Political Situation

The first year of the three-year election cycle following a general election is typically a busy period politically as the government of the day sets its policy programme in action. This was somewhat less so in 2015 as the National-led Government was entering its third term in office (following the September 2014 election) and has therefore been more focused on continuing its pre-existing policy agenda. That said, there have been a number of important new initiatives, which are discussed below.

A notable feature of the political environment in 2015 is the continuing strong polling of the Government and Prime Minister John Key. Despite some highly controversial policies, such as the TPPA, nearly all opinion polls throughout the year showed the National Party and its supporting parties ahead of the combined support for Labour, the Greens and New Zealand First. 'Preferred Prime Minister' polls also continued to give Mr Key in excess of 40 percent support, compared with Labour leader, Andrew Little, at around 8 – 12 percent, and New Zealand first leader, Winston Peters with around seven percent support.

In March, Mr Peters (who had been a list MP) raised his – and his party’s – profile by convincingly winning a by-election for the Northland electorate left vacant by the resignation of the sitting National Party MP. A consequential effect of the win was that New Zealand First gained an additional list MP, bringing their total number of MPs to 12.

Another significant Parliamentary change was the resignation of Green Party co-leader Russel Norman. Mr Norman stepped down as co-leader in May and was replaced by young, first-term MP James Shaw. Mr Norman – a highly respected Member of Parliament and a popular leader – cited family reasons for his decision, although it is safe to assume a contributing reason was disappointment at still being in Opposition following the collapse of the Labour vote in the 2014 election. In October, Mr Norman also resigned from Parliament to take up the role of Executive Director of Greenpeace New Zealand. His list seat was taken by Māori activist Marama Davidson.

Late in the year Trade Negotiations Minister, Tim Groser, also resigned from Parliament to become New Zealand’s Ambassador to the United Nations in New York. This prompted a minor Cabinet re-shuffle and allowed the Prime Minister to reinstate Judith Collins to Cabinet and to her previous roles of Minister of Police and Minister of Corrections. Ms Collins had stepped down in August 2014 as a consequence of issues following the publication of investigative journalist Nicky Hager’s book *Dirty Politics* (see Fletcher 2014). A subsequent inquiry had exonerated her of wrong-doing. The only other change in social-policy-related portfolios was the transfer of the Revenue portfolio (which includes responsibility for Child Support) to the relatively junior Michael Woodhouse.

In last year’s report I noted the role of German-born Kim Dotcom and the Internet Party in the 2014 election. The Internet Party is now effectively defunct and Mr Dotcom is still engaged in a legal battle to resist extradition to the United States to face copyright-related charges.

1.2. Economic and Fiscal Conditions

Economic activity was slower in 2015 than in the previous two years with Gross Domestic Product (GDP) increasing by slightly under two percent, compared with over three percent in 2015. The main reason for lower growth was lower export prices, especially dairy, forestry and meat. Strong net immigration has led to above-average population growth and GDP per head of population grew very little during 2015.

Consumer price inflation remains low at under 1 percent per annum. Although the Reserve Bank argues that ‘core inflation’ is within its 1 to 3 percent pa range (Reserve Bank of New Zealand, 2015), it reduced the Overnight Cash Rate (OCR) twice during 2015. The OCR currently stands at 2.5 percent.

Employment growth slowed somewhat during the year. Coupled with a strong increase in the supply of labour the overall effect was little change in statistics between December 2014 and December 2015. The employment rate fell by 0.6 percent, the unemployment rate by 0.5 percent, and labour force participation fell by 1.0 percent. Underlying these rate changes was a 1.3 percent growth in the number of people in employment and a 6.7 percent decrease in the number classified as unemployed.

The Treasury’s most recent Half-Yearly Economic and Fiscal Update reported that the ‘operating balance before gains and losses’ (OBEGAL) reached surplus during the 2014/15 fiscal year and

forecasts it to be 'broadly balanced' in 2015/16 and 2016/17 with growing surpluses beyond that (New Zealand Treasury, 2015). Treasury notes several risks (or 'judgements') to these forecasts, including the future track of dairy and oil prices, the impact of the El Nino weather pattern on agricultural production and the extent and duration of the migration boom. (Net migration continued at record rates – a net increase of approximately 65,000 in the year to December – with India and China being the two largest sources of net gain.)

1.3. Social Conditions

Although mixed, more social indicators improved during 2015 than worsened.

The number of working-age welfare recipients declined over the year, although only by 2.5 percent rather than the 4.0 percent fall during 2014. As at 31 December 2015, 301,349 people aged 18 – 64 were receiving a benefit, or 10.7 percent of the population in that age group. The main driver of the decrease was a reduction in the number of people receiving Sole Parent Support² which fell in all regions of the country. Numbers on Jobseeker Support (the main unemployment benefit) fell overall, but increased in five regions, including in Canterbury, which in the last few years has had a very strong labour market owing to the earthquake-rebuild work. There has been no decrease in the overall number of people defined in the Household Labour Force Survey as jobless (i.e., not employed but wanting work, whether or not engaged in active job-search), which remains at 259,000.³

I reported last year on poverty and in particular child poverty, which was a significant election issue. Estimates released in August 2015 show that on most measures, child poverty rates have fallen slightly since the post-Global Financial Crisis peak. In 2013/14, 250,000 or 22 percent of children were below the 60-percent-of-median relative poverty line and 145,000 (15 percent) were below the EU standard measure of material hardship (Ministry of Social Development, n.d., p. 7).

There was a small reduction in the number of people on the Ministry of Social Development's waiting list for social housing from 4,964 in December 2014 to 4,619 in December 2015.⁴ The waiting list declined in most regions although there was a notable increase in the Whāngārei District. The Whāngārei District covers the northernmost part of the North Island, a particularly scenic part of New Zealand, but one which also includes a high percentage of low-income, mostly Māori, families. Māori applicants comprise nearly 40 percent of the waiting list. The other big housing issue during the year was the continuing rapid rise in house prices in Auckland, which was driven primarily by high levels of net migration into the city. 8,700 new residential building consents were issued in Auckland – but the population increased by 43,000. While there are some signs that Auckland house price inflation may be slowing, housing affordability measures have reached record levels. This issue is covered well in the Salvation Army Policy Unit's annual 'State of the Nation' report (Johnston, 2016). (This report provides a useful overview across a range of social indicators.)

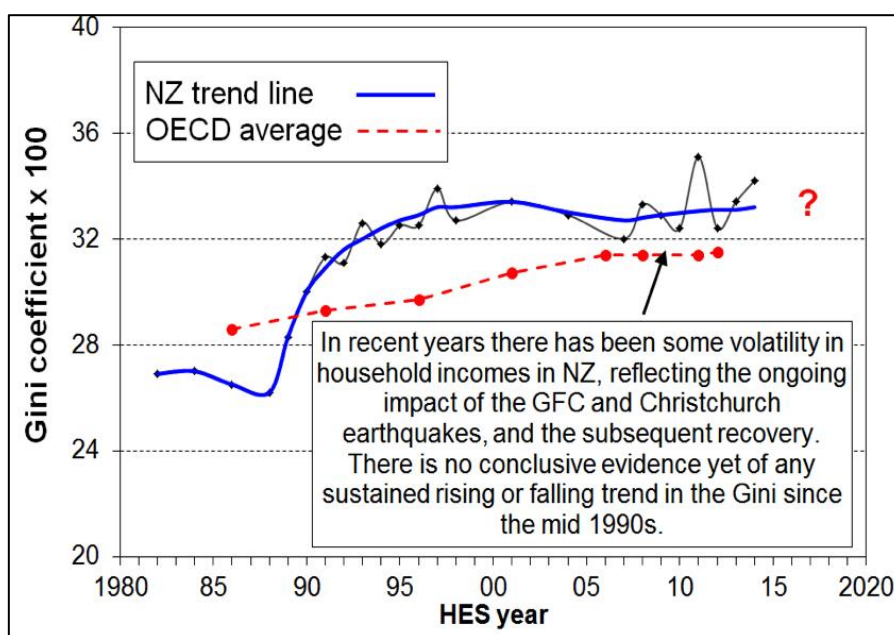
² Sole Parent Support aims at helping single parents and caregivers of dependent children to get ready for future work and provides financial help through a weekly payment.

³ The 'jobless' measure is broader than the Household Labour Force Survey (HLFS) measure of 'unemployed' which requires the person to be not employed, available for work and actively seeking it.

⁴ Only those assessed as having a sufficient level of need are included on the waiting list.

As in many other countries, income and wealth inequality continues to be a public issue. In New Zealand, income inequality as measured by the Gini coefficient rose very sharply between 1988 and 1994 from being well below the OECD average to being significantly above it. Since then, there has been some volatility from year to year but the trend has remained relatively stable and above the OECD average. The Ministry of Social Development’s 2015 Household Incomes report showed this continued to be the case in 2013/14 (see Figure 1).

Figure 1: Household income inequality



Source: Perry (2015)

1.4. Relevant Case-Law Developments

The TerraNova Homecare Pay Equity Case

Last year’s report discussed the pay equity case in which the Court of Appeal upheld an Employment Court decision in favour of a rest-home worker employed by Terranova Homes and Care Ltd and her union, the Service and Food Workers Union.⁵ The effect of the decision was to make clear that the provisions of the Equal Pay Act 1972 extend to a requirement to consider equal pay for work of equal value and that workers in female-dominated occupations can look to comparable male-dominated occupations when arguing equal pay claims. The decision had widespread implications, in the first instance for the aged-care industry which is female-dominated and lowly paid, and for government because of the large element of state subsidies involved in the funding of aged-care. Because of this, Government stepped in and in October 2015 announced the establishment of a tripartite working group tasked with giving Ministers recommendations on ‘how to achieve pay equity consistent with New Zealand’s employment relations framework and a well-functioning labour market’. As part of

⁵ TERRANOVA HOMES & CARE LTD v SERVICE AND FOOD WORKERS UNION NGA RINGA TOTA INC CA631/2013 [2014] NZCA 516 [28 October 2014].

the arrangement, unions have agreed to defer legal action until after the working group has reported in March 2016. The Workplace Relations and Safety Minister, Michael Woodhouse, has indicated that the outcome of the working group process may involve amendments to the Equal Pay Act.

Concurrently, government has also commenced negotiations with unions over pay rates for state-employed residential care and support workers, many of whom are currently paid at or very near the statutory minimum wage of NZ\$ 14.75 per hour.

Ministry of Health v Mrs Spencer

The human rights case known as *Atkinson and others v Ministry of Health* has been covered in earlier reports and in our 2014 report (Social Law Report 2/2015) we reported on the New Zealand Public Health and Disability Amendment Act 2013 and the Government's family-care policy that arose from it. The case relates to the right to payment for care provided to family members with disabilities. The Ministry's original position was that it was a 'natural obligation' of family members to provide care and so no payment was permitted even though disability support would have been payable if the care was provided by a non-family member. In 2013 the Court of Appeal found in favour of the plaintiffs and the government responded by introducing the family-care policy which permits payment in respect of family members, other than a spouse or partner, whose needs are assessed as high or very high. It also passed the Public Health and Disability Amendment Act which was widely criticised by law experts because, among other things, it bars Courts from hearing discrimination claims regarding any policy issued under the Act's powers (see Fletcher 2015 for detailed discussion).

The issue is still before the Courts in relation to a Mrs Spencer who cares for her 47 year old son who is severely disabled due to Down syndrome. Mrs Spencer had applied for disability support but had been denied it and had also applied to be joined to the *Atkinson* case. After the passing of the amendment act, Mrs Spencer reapplied but the Ministry argued that the law now made their earlier policy lawful and that the amendment act barred Mrs Spencer from issuing her own proceedings. In May 2015 the Court of Appeal dismissed this argument, finding in favour of Mrs Spencer.⁶ Mrs Spencer has sought back pay and compensation from the Ministry of Health in a case heard in the High Court. The Court has reserved its decision, which is expected to be made in the next few months.

2. SOCIAL POLICY AND SOCIAL LAW DEVELOPMENTS DURING 2015

2.1. Welfare Benefits

New Zealand has a system of flat-rate, tax-funded welfare benefits, with no social insurance (except for Accident Compensation). As at 31 December 2015, 301,349 people or 10.7 percent of the working age population were receiving a welfare benefit, a reduction of 7,796, or 2.5 percent compared to 12 months earlier. This was a smaller decrease than the 4 percent decline during 2014. Numbers on each of the main benefits are given in Table 1, which is taken from the Ministry of Social Developments Benefit Factsheets (available at <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/statistics/benefit/index.html>).

⁶ See decision at <http://www.nzlii.org/nz/cases/NZCA/2015/143.html>.

Table 1: Numbers of Working-Age Benefit Recipients

| Benefit | Dec-2010 | Dec-2014 | Dec-2015 | Annual change | |
|---|----------------|----------------|----------------|---------------|--------------|
| Jobseeker Support (JS) | 149,569 | 124,631 | 122,927 | -1,704 | -1.4% |
| Sole Parent Support (SPS) | 89,432 | 72,534 | 68,380 | -4,154 | -5.7% |
| Supported Living Payment (SLP) | 92,024 | 93,867 | 93,848 | -19 | 0.0% |
| Youth Payment/Young Parent Payment (YP/YPP) <small>See Note 1</small> | 1,289 | 889 | 821 | -68 | -7.6% |
| Other <small>See Note 2</small> | 20,393 | 17,224 | 15,373 | -1,851 | -10.7% |
| Total working-age recipients | 352,707 | 309,145 | 301,349 | -7,796 | -2.5% |
| Percentage of working-age population on main benefits | 13.1% | 11.2% | 10.7% | | |

Note 1: YP/YPP recipients shown are 18+ years. There were 1,932 YP/YPP recipients aged 16-17 years at the end of December 2015. YP/YPP was introduced in August 2012; figures prior to this are estimates.

Note 2: Other includes Emergency Maintenance Allowance (EMA), Emergency Benefit (EB), Jobseeker Student Hardship (JSSH) and Widow's Benefit Overseas (WBO).

Source: Ministry of Social Development

The main policy change in the welfare policy domain during 2015 was the announcement in the Budget in May of the Government's "Child Hardship Package". The National Party had signalled during the election campaign an intention to address child poverty if re-elected and the child hardship package represents its response.

The main components of the package are⁷:

- an increase of NZ\$ 25 per week (after tax) in benefit rates for families with children;
- a NZ\$ 12.50 per week increase (to a maximum rate of NZ\$ 72.50pw) in the In-work Tax Credit (IWTC), which is available to low- to middle-income non-beneficiary families that meet the work-hours requirements and who have dependent children;
- an increase in the abatement rate for Working for Families tax credits of 1.25 percentage points, to 22.5 percent;
- increases to childcare assistance for low-income working families, by introducing a new lower income threshold combined with a higher assistance rate;
- an expansion of work availability obligations for beneficiary parents, by:

⁷ These details are adapted from the Regulatory Impact Statement that accompanied the introduction of the policy. The RIS – which provides a useful detailed analysis of the package – is available at: <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/child-material-hardship.html>.

- lowering the age of the youngest child at which beneficiaries' part-time work search obligations begin from five to three years;
- extending the hours of the part-time work test obligation from 15 to 20 hours a week;
- introducing a requirement for Sole Parent Support recipients to reapply for the benefit and reconfirm eligibility on an annual basis.

There are also a range of consequential changes as a result of these new policy settings, including:

- an increase of around NZ\$ 12pw to the Minimum Family Tax Credit to retain the margin between benefit and work;
- changes to the Accommodation Supplement entitlement and an increase in the rent that social housing tenants receiving a benefit will pay;
- an increase to Student Allowances of NZ\$ 25 for those with children, to match the benefit increase;
- small increases in child support payments for some working parents that are liable;
- a number of other smaller flow-on changes, most of which reduce the value of the package for those affected.

All changes come into effect on 1 April 2016. The total cost of the package is approximately NZ\$ 240 million pa, which makes it a sizeable but not huge initiative. (For comparison, the previous Government's 'Working for Families' package cost in excess of NZ\$ 1 billion pa. Total spending on financial assistance measures is around NZ\$ 10 billion.)

Treasury modelling suggests around 108,000 beneficiary families will gain an average of NZ\$ 23.00pw and a further 26,000 non-beneficiary families will gain an average of around NZ\$ 7.75pw. In addition, the tax credit changes are estimated to benefit 208,000 families an average of NZ\$ 8.00pw.

The package has symbolic significance in that it is the first time since benefit rates were cut in 1991 that there have been increases in the core rate of assistance for beneficiaries with children, other than annual inflation-adjustments. On the other hand, the package has attracted criticism from some quarters (the Child Poverty Action Group for example) for being too small and for extending the In-Work Tax Credit which some regard as discriminatory and/or poorly-designed.

It is unlikely that the package will be big enough to have much effect on the poverty rate, although obviously it will have an impact on the depth of poverty for those who benefit. The provisional estimate of the Ministry of Social Development is that it will reduce material hardship by around one percentage point, from 10 percent to nine percent (which is equivalent to around 10,000 children).

Alongside the increase in benefit rates, the package tightens work-test obligations by requiring sole parent beneficiaries to look for part-time work once their youngest child reaches three years of age, rather than the current five years. It also increases the definition of 'part-time' work from 15 to 20 hours per week (with provision for some flexibility on a case-by-case basis). These changes were introduced through the Social Security Amendment Act (No. 2) 2015.

Finally it is worth noting that a side-effect of the package is to further complicate the welfare system by re-introducing differential benefit rates between couples with and without child.

2.2. Working for Families (WFF) Family Tax Credits

The four non-refundable, targeted 'Working for Families' tax credits that are payable to parents with dependent children were described in detail in last year's report. The main changes to WFF that occurred during 2015 are those announced in the Child Hardship package described in the previous section. The four tax credits are:

- The Family Tax Credit, a per-child payment payable to all parents of dependent-aged children, subject to an income-test. There are five rates depending on the age of child and whether he/she is the first child in the family.
- The In-Work Tax Credit (IWTC), an additional payment available only to families not on benefit and meeting the work-hours requirement. The current rate of NZ\$ 60pw will rise to NZ\$ 72.50pw on 1 April as part of the Child Hardship package described above.
- The Minimum Family Tax Credit (MFTC), a top-up, abated dollar-for-dollar, designed to ensure low-paid workers meeting the IWTC work-hours tests will not be worse off in work than on benefit. As a flow-on effect of the Child Hardship package the MFTC will rise by about NZ\$ 12pw to around NZ\$ 455 gross pw (plus an additional small rise due to the inflation-adjustment of benefit rates).
- The Parental Tax Credit, a payment for new-borns which is available to those not receiving Paid Parental Leave and who are not on benefit and which, as described in last year's report, has been increased so that parents of babies born after 1 April 2015 were entitled to a maximum of NZ\$ 220pw for 10 weeks.

WFF tax credits are administered by Inland Revenue. Payments can be received on a regular basis through either employer wage payments or Work and Income benefit payments or in a lump-sum at the end of the year. Details about WFF can be found at <http://www.ird.govt.nz/wff-tax-credits/>.

2.3. Child Support (Child Maintenance)

April 1 2015 marked the commencement of most of the provisions of the Child Support Amendment Act 2013. The Act was the culmination of a reform process intended to "update" the scheme to reflect parental employment and care arrangements. The most significant aspect of the amendment Act is the introduction of an entirely different formula for calculating child support liabilities. The formula is used for 'standard' cases – there are provisions for departures from it under specific circumstances via administrative or Family Court decisions.

The old formula used the 'percent of income' model, that is, liability was based on a percentage of the liable parent's (gross) income after deduction of a living allowance, and where the percentage depended on the number of qualifying children. The new formula, which is modelled closely on that introduced in Australia in 2008, takes both parents' income into account, lowers the threshold for recognition of the costs of shared-care and is based on empirical estimates of the amount two-parent families spend on raising children. The formula is summarised in Fletcher (forthcoming)⁸:

⁸ This description relates to the 'single-group' case and ignores the more complex multi-group situation.

A person's liability is defined in section 30 of the Act as:

$$(i\% - c\%) \times p$$

Where:

i% is the person's percentage share of both parents' combined 'child support income';

c% is the person's percentage share of care costs;

p is the child-expenditure amount as determined by Schedule 3 of the Act.

A person's child support income is (usually) taxable income minus a living allowance. The standard living allowance has been set equal to the gross rate of sole parent benefit (NZ\$ 17,687pa in 2015/16).⁹

Care costs percentages depend on the amount of time each parent has care of the child (usually determined as overnight care). Below the minimum threshold of 28 percent (less than an average of 2 nights per week) a person's care cost percentage is deemed to be zero (and therefore the other parent's is 100 percent). Between 28 and 34 percent of care-time the care-cost percentage is set at 24 percent with the amount rising incrementally above that to 50 percent once care of the child is approximately equal (i.e., between 48 and 52 percent of time each).

The child expenditure amount, p, is based on the total of the parents' combined child support incomes and rises as that income rises, but at a diminishing rate. The schedule sets out different percentages for one, two and three or more children and has lower rates for under-13 year old children than for teenagers.

The minimum payment and the maximum cap on assessable earnings have both been kept unchanged. The minimum (adjusted annually to the consumer price index, CPI) is NZ\$ 892pa for the 2015/16 year. The cap is set at 2.5 time average weekly earnings. The policy of government retention of all child support payments up to the amount of core benefit in cases where the parent with care is on a sole parent benefit has also been retained. (Except in special circumstances, sole parent beneficiaries are required to apply for child support as a condition of benefit.)

It is too soon to know what the actual impacts of the amendment Act will be, but modelling by Inland Revenue of the immediate short-term effects suggests 42 percent of paying parents and 60 percent of receiving parents will experience no immediate change in their child support liabilities or receipts. This is because they are either paying or receiving the minimum amount and will continue to do so, or are 'receiving' parents on benefit and no child support payments are passed on to them. 34 percent of paying parents are expected to gain in the sense of their liability being reduced and 18 percent of receiving parents are expected to receive more. Numbers of losers – paying parents who will be required to pay more and receiving parents who will receive less – are more even at 24 percent and 22 percent respectively. In terms of gender, one-third of men are expected to gain,

⁹ For people receiving the Supported Living Payment, the living allowance is set equal to that higher rate of benefit (NZ\$ 20,449pa in 2015/16). The Supported Living Payment is payable primarily to people unable to work due to long-term disability or illness.

compared to one in five women. Just over one fifth of men and a similar proportion of women are expected to lose.

While the new formula does 'modernise' the scheme in the sense of taking both parents' income into account and lowering the shared-care threshold, the New Zealand scheme remains out of step with most other modern child maintenance legislation in that it still has 100 percent retention of payments where the parent with care is on benefit.¹⁰ It is unfortunate, too, that plans to broaden the definition of income and to make direct deduction from wages the default were dropped at the last minute. Both policies would have reduced reluctant payers' ability to avoid child support payments.

2.4. Social Housing

In December the Government introduced the Residential Tenancies Amendment Bill. The main purpose of which is to amend the Residential Tenancies Act 1986 (the Act) to require smoke alarms and insulation in residential rental properties. It also provides greater enforcement powers in relation to unsafe or unhealthy rental properties and reforms the law concerning abandoned rental premises. The Bill would require smoke alarms in all rental housing from 1 July 2016 and insulation in social housing (that is, State and other housing to which government income-related rent subsidies apply) from that same date. Other rental housing would be subject to the insulation requirements from 1 July 2019. The Bill is currently before a Select Committee.

The Government also continued its social housing reform programme by introducing the Social Housing Reform (Transactions Mandate) Bill, which was subsequently renamed the Housing Corporation (Social Housing Reform) Amendment Bill (No 2). The purpose of the Bill is to authorise the Minister of Finance to enter into transactions over assets of the Housing Corporation and its subsidiaries (and thereby authorise the sale of State Housing to third parties). The Bill received Royal Assent early in 2016.

As part of the same reform process, the Government has begun the process of offering State housing in two provincial cities for transfer to agencies or companies wishing to provide social housing. The offer of 1,124 properties in Tauranga in the North Island and 348 in Invercargill in the south of the South Island represents the first stage of the planned programme of transferring some State housing to non-government organisations and private providers. Expressions of interest were called for in November and the process will run through 2016.

2.5. Family Court Reforms

There were no significant policy or legislative changes in respect of the Family Court system in 2015. It is however worth noting one point regarding the reforms that came into effect in 2014 (see Social Law Report 2/2015). In part, the reforms were intended to reduce the role of lawyers in the Family Court process, by only allowing them to be included in proceedings in 'without notice' cases. Without notice cases (where the other party does not get advance notice) usually relate to situations of family violence and were less than half of all cases prior to the reforms. Since the reforms this figure has risen to almost 90 percent and it appears the procedure is being used (by those who can afford it) to

¹⁰ Except for the small number of cases where the child support exceeds the total benefit, in which case the excess is passed on.

involve lawyers. There has also been some expert comment that the new policy is resulting in a two-tier system with the less well-off missing out.

The intended evaluation of the reforms has not yet been completed (other than an initial process evaluation).

2.6. The Children's Action Plan and the Vulnerable Children Act 2014

Budget 2015 provided NZ\$ 38.1 million, spread over four years, for the implementation of the Children's Action Plan under the Vulnerable Children Act 2014 (see Fletcher 2015). NZ\$ 35.8 million of this is for the roll out of six more regional Children's Teams and ongoing support for the existing four. Children's Teams comprise a Director, administrative staff and local senior specialists, such as paediatricians, social workers and teachers. A core role of the teams is to assign a single Lead Professional to assess a child referred to the team and to draw up a plan of action for that child. The Lead Professional is then responsible for reporting back to the Children's Team on progress against that plan. He or she is to be chosen on the basis of their ability to best support the child and the child's family.

A timetable for ensuring the appropriate police and safety checks are completed in respect of all Children's Team members was also implemented during 2015.

The remain NZ\$ 2.5 million Budget allocation was for the piloting a 'triage point of contact' for notifications about vulnerable children (called 'The Hub') and of a new integrated information-sharing IT system (known as ViKI) that is designed to ensure all professionals involved in working with a child have access to all the relevant information, whichever agency it originated from. Agencies not sharing important information was identified as a common problem in the earlier policy development work. The Hub and the IT system are being trialled in Hamilton in the Waikato region.

2.7. Parental Leave

As I reported last year, the Government has introduced extensions to paid parental leave entitlements. As well as broadening eligibility, it decided to extend the duration of payments in two stages: from a maximum of 14 weeks to 16 on 1 April 2015 and from 16 to 18 weeks commencing on 1 April 2016.

A private member's Bill – not supported by Government – to further extend the leave period to 22 weeks in 2016 and 26 weeks in 2018, is still before the House but would require further support from National's minor support parties to succeed.

Eligibility for parental leave entitlements (and 12 months' job protection) and paid parental leave are unchanged. A mother must have worked a minimum of 10 hours per week over at least the last six months to qualify at all, and over at least the last 12 months to qualify for the full 12 months' job protection. Where both parents qualify the leave can be transferred to the father but the father cannot claim paid parental leave if the mother does not qualify.

The maximum rate is inflation-adjusted and from 1 April 2015 was NZ\$ 516.85pw. There is a minimum rate for qualifying self-employed people of NZ\$ 147.50.

2.8. Minimum Wages

A statutory minimum wage applies to all workers aged 16 years or older except for those granted an exemption on the grounds of disability (who are granted a specified lower rate for a specified job). A 'Starting Out' minimum wage applies to some groups of 16-19 year olds who have less than 6 months' continuous work experience or who have been on benefit for more than six months or are doing some industry training. A training minimum wage applies to employees aged 20 years or over who are engaged in a sufficient level of recognised industry training as part of their employment agreement. The adult minimum wage applies to all other workers. The Minimum Wages Act 1983 requires the relevant Minister to review the minimum wage each December and any increase usually applies from 1 April the following year. The adult minimum wage increased by 50 cents per hour to NZ\$ 14.75 (NZ\$ 590 gross pw) on 1 April 2015. This is the same size increase as occurred in 2014. The training and starting out rates will retain their 80 percent relativity and rise by 40 cents per hour to NZ\$ 11.80 per hour.¹¹

The Living Wage Aotearoa campaign, which aims to encourage some employers to agree to pay all staff above the living wage, has raised its 'living wage' measure to NZ\$ 19.25 per hour.

Aside from the rate increases, there were no changes in minimum wage policy or law in 2015.

2.9. KiwiSaver

KiwiSaver is a workplace savings scheme established in 2008, with a minimum employee contribution rate and a compulsory employer contribution of 3 percent each. The scheme operates on an 'opt-out' basis: new employees are automatically enrolled but may choose to opt out. Savings are normally locked in until age 65 but can be drawn down for buying a new home or in cases of hardship or permanent emigration.

Government announced one significant change to KiwiSaver in the May 2015 Budget: removal of the 'kickstart' incentive payment of NZ\$ 1,000 when a person first enrolls in the scheme. It retained the 50 cents-in-the-dollar tax credit which has a maximum value of NZ\$ 521 pa. The Government argued that with high rates of enrolment, the incentive payment was no longer needed. It estimates the removal of the kickstart will save it NZ\$ 125 million each year. It forecasts the tax credit will cost NZ\$ 705 million in the 2015/16 financial year.

2.10. Public Health

The Public Health and Disability Act 2000 established District Health Boards responsible for administering the provision of publicly-funded health and disability services in their region. The Act also provides for subsidies for primary health care, delivered through Primary Health Organisations (PHOs).

The ongoing legal battles which involved the Public Health and Disability Amendment Act 2012 are discussed in Section 1.4 above.

¹¹ At time of writing, Government has just announced that there will be a further 50 cents-per-hour increase as from 1 April 2016. This will take the adult rate to \$15.25 per hour.

There were no significant changes in public health policy or law during 2015, although the extension of free primary care to children under the age of 13, discussed in last year's report (see Fletcher 2015), came into force on 1 July.

2.11. Accident Compensation and Workplace Injuries

The Accident Compensation Corporation (ACC) covers all personal injury caused by accident on a universal, no-fault basis. This includes workers' compensation, motor vehicle accidents and non-work-related accidents, as well as medical misadventure and mental injury arising from sexual crimes. Except in a few exceptional circumstances, there is no separate right to sue for damages relating to personal injury. Entitlements under ACC include medical treatment, vocational and social rehabilitation, attendant care and compensation for lost earnings (usually at 80 percent of previous earnings).

There were no substantial changes to ACC law or policy during 2015, although an amendment Act was passed allowing for workplace safety incentive programmes to be put in place.

3. DEVELOPMENTS RELATING TO INTERNATIONAL SOCIAL SECURITY AGREEMENTS

New Zealand has reciprocal social-security agreements with Australia, the United Kingdom, Canada, Denmark, Greece, Ireland, Jersey and Guernsey, the Netherlands and Malta. Work on negotiating agreements with Cyprus, Hungary and Croatia has yet to be completed. Superannuation can be remitted to pensioners who move back to one of 22 Pacific Islands nations for retirement.

As reported previously (Fletcher/Duncan 2014; Fletcher 2015) New Zealanders resident in Australia are complaining about discriminatory treatment in regard to their lack of entitlements to social protection in that country. As mentioned in the Introduction above, the Australian government's decision to introduce stricter deportation laws for criminals who are not citizens re-ignited New Zealanders' concerns over this issue. The initial position of both governments was that it was unlikely that there would be any change in policy regarding New Zealanders' lack of access to welfare and other social protection. However, at the time of writing (Feb 2016), Australian Prime Minister Malcolm Turnbull has just announced a limited scheme to make obtaining citizenship easier for some New Zealanders who arrived between 2001, when the policy changed, and 2015 if they meet certain (quite stringent) employment and earnings criteria. This change in policy will be discussed in more detail in next year's report.

At the United Nations level, in May the New Zealand Government submitted its fifth Periodic Report to the Committee on the Rights of the Child (CRC) under the requirements of the United Nations Convention on the Rights of the Child. The report retained the same three Reservations as previously. These relate to services available to children unlawfully in New Zealand (New Zealand still has some restrictions on these), the minimum age of employment (there is no legal minimum age in New Zealand although attendance at school is compulsory until age 16), and age-mixing in detention (there are still some facilities where young people and adults are not separated). The CRC has not formally responded to the Report yet.

4. IMPORTANT ACTS OF PARLIAMENT PASSED IN 2015

Aside from the legislation referred to in earlier sections, the most significant relevant Act passed during the year was the Health and Safety at Work Act 2015.

This Act was passed in September and came into force on 4 April 2016. It replaces the Health and Safety in Employment Act 1992. The new Act follows on from the report of a Royal Commission into the Pike River Mine disaster which killed 29 workers (but resulted in no-one being charged under the HSE Act or any other Act) and the subsequent Independent Workplace Health and Safety Taskforce.

A key feature of the new regime is the creation of new duty-holders with responsibility for health and safety called Persons Conducting a Business or Undertaking (PCBU). PCBUs can be an individual but will often be an organisation, such as a firm. An 'officer' under the Act is any person who has a leadership or decision-making role in the PCBU, such as directors, partners and chief executives. Officers have an individual (not joint) legal responsibility to exercise 'due diligence' to ensure the PCBU complies with its health and safety obligations. Penalties for offences under the Act range up to 5 years' imprisonment or NZ\$ 3 million for the most serious offence of reckless conduct in respect of a duty.

The Act also makes provision requiring some firms to have worker representation through a Health and Safety Representative (HSR) or a Health and Safety Committee (HSC). Only firms with 20 or more staff or those categorised as 'high risk' are required to have an HSR or HSC. This aspect of the legislation has caused some controversy as the industry data groupings used to decide 'high risk' resulted in inappropriate distinctions. For example pine-cone collecting and worm-farming are included while activities such as quarrying, sheep and cattle farming and explosives handling are excluded. Government's refusal to change the definitions, coupled with the significant number of injuries and deaths in farming, led to accusations of bias.

Details of the new regime are available at <http://www.business.govt.nz/worksafe/hswa>.

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