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New Zealand: Progressing the Social Policy Agenda During a Pandemic

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CONTENT OVERVIEW

LIST OF ABBREVIATIONS

ACC -- Accident Compensation Corporation

CIRP-- Covid Income Relief Payment

DHB-- District Health Board

EMTR--Effective Marginal Tax Rate

FTC--- Family Tax Credit

GDP--Gross Domestic Product

IWTC ---In-Work Tax Credit

MFTC-- Minimum Family Tax Credit

RBNZ --Managed Isolation and Quarantine

MMP ---Mixed-Member Proportional

MP --Member of Parliament

MPISOC---------------------------------------Max Planck Institute for Social Law and Social Policy

NZ$ --New Zealand Dollar

PM -- Prime Minister

PPL---Paid Parental Leave

StatsNZ -- Statistics New Zealand

WEAG --Welfare Expert Advisory Group

WFF-- Working for Families (Tax Credits)

1. INTRODUCTION

During 2021 the Labour Government in New Zealand continued, as it had in 2020, to be focused on managing the impacts of the COVID-19 pandemic. However, political considerations plus the sheer ongoing duration of the pandemic, led the Government to put more attention back onto its wider social policy agenda which had taken something of a back-seat in the previous year. Labour needed to be seen to be progressing its agenda, and it also wanted to make good use of the unusual outcome of the 2020 election which gave it an absolute majority in the Parliament.

As a result, 2021 was a year in which a number of key policy changes were introduced or foreshadowed for progress in 2022 ahead of the next election which is due in September 2023. Major policy and legislative reform has, or will, cover many areas, including climate change (focusing on emissions reduction), wage bargaining legislation, pay equity in health and education, immigration settings and health sector restructuring. In social welfare legislation and social policy, core benefit rates were increased during 2021 (see Section 4.1), and Government has signalled a review of the Working for Families tax credits in 2022, as well as the intention to develop proposals for an unemployment insurance scheme for implementation 2023. While impressive in breadth, the reform proposals that have emerged so far highlight that Labour in government is pragmatic and cautious, advancing its agenda incrementally and rarely willing to push through policies that would alienate powerful business and welfare interests or middle-income voters.

With this context in mind, the focus of this report concentrates on the more permanent law and policy changes and does seek to fully cover the various temporary measures put in place purely as responses to the impact of the pandemic. These latter have been described in detail in a separate report for the Institute's *Protecting Livelihoods* project (see Fletcher, 2022). The main pandemic response measures are discussed, but the goal of the report is to set out something of the evolving policy and law occurring alongside the immediate short-term pandemic measures. A further rationale for taking this approach is that in my view the crisis caused by the pandemic has not in itself exposed any new long-term inadequacies in the New Zealand social welfare system requiring significant change in the structure of the system. Rather, what it has demonstrated is that, with some hasty adjustments (and, of course, a very large increase in expenditure), existing policies and legal instruments proved capable of responding to the additional income support and employment needs generated by the pandemic and the lockdowns.[1]

[1] I should note that this conclusion is not universally agreed in New Zealand. There are some analysts and commentators who argue that the COVID-19 experience has highlighted gaps in our income support provisions, most specifically that New Zealand needs to shift to a mixed social insurance/social assistance model, rather than the existing single tax-funded, flat rate structure.

It is nonetheless important to preface the report by briefly describing the situation regarding the pandemic for context. Throughout 2021, New Zealand continued to pursue an elimination strategy with respect to COVID-19. The border was closed to most non-citizen entrants all year, and those arrivals that were permitted, including citizens and New Zealand permanent residents, were required to undergo 14 days managed isolation and quarantine (MIQ) in hotels that had been re-purposed for this function. When the Delta variant entered the community, lockdowns were reintroduced. The strictest level, known then as Alert Level 4, was introduced nation-wide for two weeks in August, and it, or the slightly less restrictive Level 3 rules, were applied to the Auckland area right through until mid-November. Other regions, notably in Northland and Waikato, both adjacent to Auckland, also experienced outbreaks and were put into longer periods of lockdown. The lockdowns meant that most firms were closed, as were all schools and tertiary institutions in the affected regions. Government re-introduced or extended key income support measures such as the wage subsidy programme and business continuity supports for affected firms and workers.

At the same time, a vaccination programme was being rolled out nationwide using two doses of the Pfizer vaccine. New Zealand was comparatively slow with its vaccination programme and it was not until the end of the year that most Health Board areas reached the 90 percent vaccinated target.

Throughout 2021 the strategy was successful in terms of minimising COVID-related deaths; by the end of year the death toll stood at 51, one of the lowest national rates globally. However, in mid-December 2021, the first case of the Omicron variant was detected in New Zealand. Since the end of 2021, Omicron has spread rapidly throughout the community and the Government was forced to abandon the elimination strategy. It replaced the Alert Level regulations with a 'traffic lights' COVID-19 Protection Framework, which sets gathering size-limits and mandates mask use in some circumstances but does not include lockdowns. The spread of the Omicron variant has resulted in a sharp increase in deaths, mostly among the elderly.[2]

2. CURRENT POLITICAL, ECONOMIC AND SOCIAL SITUATION

2.1. The Political Situation

As a result of the big swing to Labour in the September 2020 election, the party has been in the position of holding an absolute majority of seats in the Parliament, a situation no party has enjoyed since the introduction of mixed-member proportional (MMP) voting 25 years ago. As well as the big popularity head-start this gave Labour in 2021, it has also meant that they are freer to pursue their own policy agenda than if they had to gain the support of a coalition

[2] By time of writing (in late April) over 700 people with COVID-19 had died.

partner, as was the case between 2017 and 2020. While Labour's popularity did wane somewhat in the opinion polls during 2021, it maintained a sizeable lead over the Opposition National Party, in part because of support for its handling of the pandemic, and partly because of the weakness of the National Party.

National, for its part, had a terrible year politically. Discontent with the performance of leader Simon Bridges led to his overthrow in a Caucus vote in May and his replacement by Todd Muller. However, Muller's mental health declined after he took on the role and he experienced debilitatingly severe panic attacks. He resigned suddenly after just seven weeks as leader. His replacement was Judith Collins, an experienced MP and ex-Minister, but one who is not widely popular with the public or among many in her own caucus. With opinion polls still languishing, she too was rolled, being replaced in November by Christopher Luxon. Luxon is a businessman and ex-CEO of Air New Zealand but is new to politics, having only entered Parliament in 2020. Despite this leadership turbulence, early indications in 2022 are that the transition to Luxon (and deputy leader Nicola Willis), has proven successful for National.

The likely future political and policy impacts of the switch to Luxon are ambiguous at this stage. On the one hand, a newly revitalised Opposition can be expected to make the Labour Government more cautious and focused on maintaining the support of the middle-New Zealand voter base. On the other, Luxon's clear economic and social conservatism may potentially open up more ideological space between the two main parties.

Among the minor parties, the libertarian ACT party experienced a considerable surge in popularity during the year. Its leader, David Seymour, is well-liked and an effective communicator, who has positioned the party as a market-oriented but sensible alternative to National, rather than as either an ideological libertarian party or a nationalistic *Rassemblement National*-type party. ACT and Seymour's rise during 2021 was also aided considerably by growing support from disaffected National Party supporters, and as such is likely to decline somewhat as National recovers from its leadership woes.

2.2. Economic and Fiscal Conditions

The economy bounced back strongly in 2021, despite ongoing supply chain problems and the absence of international tourism. Statistics New Zealand (StatsNZ) reported that nominal GDP grew 5.6 percent in the year to December 2021, compared to a fall of 2.1 percent the previous year (StatsNZ, 2022). The Treasury reported that real GDP per capita also grew strongly, rising 3.8 percent in the year to June 2021, almost fully offsetting the fall of 4.0 percent over the previous 12 months (New Zealand Treasury, 2021, p8). However, Treasury is forecasting weaker growth in 2022 before a stronger recovery in 2023.

Employment also recovered strongly during the year, rising by 3.7 percent, compared to 0.6 percent for the previous year. Employment growth was significantly stronger among women (5.1 percent) than among men (2.4 percent). The unemployment rate continued to fall throughout the year, ending at 3.2 percent in both the September and December quarters of 2021. This is the lowest unemployment rate recorded since the Household Labour Force Survey began in 1986. Importantly, unemployment in New Zealand is now very heavily skewed towards young people: 40 percent of all those recorded as unemployed in the Household Labour Force Survey (HLFS) are under 25 years of age, and one quarter are under 20.[3] Large disparities in unemployment rates remain between the Pākehā/European ethnic group (2.6 percent), Māori (7.0 percent) and Pacific peoples (5.4 percent).

The labour market out-turn is considerably different from what the Treasury and others were forecasting a year ago. At that point Treasury was forecasting 6.9 percent unemployment at the end of 2021 and still over 4 percent until 2025. Stronger than expected economic activity is part of the explanation for the low unemployment rate, but a big part is the effect of the border closures causing record low net migration. In the two years since the first quarter of 2020 when COVID-19 began, the working age population has only grown by an average of 0.8 percent per annum, less than half the annual average of 1.9 percent in the previous decade.

As discussed in last year's report (Fletcher, 2021), responses to the pandemic have involved a massive increase in Government spending. Treasury reported in December 2021 that it expects core Crown expenses to rise a further $20 billion in the year to June 2022 to reach $128 billion. However, they forecast that COVID-related expenditure will ease back after that and growth in Government spending will revert to an increase of around $4.5 billion in 2022/23 attributable to the normal expansion in Budget spending allowances. This spending track, like all their main forecasts, are based on the assumption that no new variant of COVID-19 emerges that puts us (and the world) back to 'square one' in terms of emergency responses.

While Government expenditure is still rising, stronger-than-expected economic activity resulted in tax revenue rising even faster. As a result, Government's budget balance is now forecast by Treasury to recover more quickly than previously predicted, returning to surplus in the 2023/24 year. Forecasts of the level of Government debt as a percentage of GDP have also been revised downward significantly. Whereas, at the time of last year's report, Treasury were forecasting debt to peak at 53 percent of GDP in 2023, by December 2021, they had revised this to 40.1 percent.

This relatively rosy fiscal situation is leading to expectations that Government will announce some significant new expenditure in both the 2022 and 2023 Budgets. Minister of Finance, Grant Robertson, signalled in December that there will be a focus on Health infrastructure and

[3] The HLFS data differs from the unemployment benefit recipient numbers, but the same age pattern is evident there too.

greenhouse gas emissions reductions initiatives in Budget 2022 (Robertson, 2021). As mentioned above, these are both examples of policy areas where Labour is seeking to progress its agenda on top of managing the immediate COVID crisis. Despite the Minister of Finance's statements to the contrary, it is reasonable to assume the 2023 Budget, being the last before the next election, is likely to see other big increases in areas where the newly funded initiatives align well with their election campaign strategy.

2.3. Social Conditions

Trends in social conditions were mixed in 2021. On the positive side, the strong labour market has led to some reduction in beneficiary numbers, plus the Government's sizeable increases in welfare rates began to take effect from July (see Section 4.1 for detail). Less positively, housing costs have continued to rise, both in terms of rental costs and housing affordability for first-home buyers. Also of concern is that demand for help via charities and foodbanks continued to be high, even if somewhat lower than the lockdown peaks in 2020.

Total working age beneficiary numbers fell by 5.5 percent in the year to December 2021, to 368,200 recipients but are still 17.1 percent higher than in December 2019 before the pandemic began. The number on the main unemployment benefit, Jobseeker Support, fell by 11.5 percent, while the number receiving Sole Parent Support, the benefit paid to lone parents with a youngest child under 14 years rose by 8.4 percent. This disparity in trends is, however, largely due to a reclassification of around 8,000 beneficiaries from Jobseeker Support to Sole Parent Support as a result of a policy change (see discussion of the 'subsequent child policy' in Section 6.1).

Rent rises showed signs of slowing towards the end of 2021, but the rate of growth remained substantial with rents averaging 5.8 percent higher in December 2021 than 12 months earlier.[4] At the same time, house price affordability, measured as the ratio of average house prices to average household incomes, continued to deteriorate. In the December quarter 2021 the ratio stood at 8.8; that is, the average house price was 8.8 times the average annual household income. This is the highest figure since the measure was instituted 18 years ago (CoreLogic, 2021). Average house prices grew 15 percent in the six months to June 2021 and New Zealand has now had the steepest increases in house prices globally in the five years to 2021.[5]

In February 2022, StatsNZ released data on indicators of child poverty as it is required to do under the Child Poverty Reduction Act 2018. This release had particular significance because it covered the period June 2018 to June 2021 which is the first of the three-year short-term targets that the Government had set itself for child poverty reduction. The figures showed

[4] This is the increase for newly signed tenancies, not for the total of all tenancies, new and existing. See: https://www.stats.govt.nz/tereo/information-releases/rental-price-indexes-january-2022

[5] Knight Frank Ltd index of 56 countries. Reported in Stuff, 10 December 2021 https://www.stuff.co.nz/life-style/homed/real-estate/127247196/nz-slips-to-third-in-global-house-price-rise-index. New Zealand house price growth was third highest of the 56 countries for the 12 months to June 2021.

that two of the three targets had been achieved. The measure that is based on families' incomes after housing costs and which is only adjusted from year to year for changes in consumer prices was clearly achieved at 16.3 percent of all children, well below the target of 18.8 percent.[6] The second target is a material hardship measure which is deprivation score based on what survey respondents say they can, or can't, afford. The StatsNZ central estimate for this measure in the period to June 2021 was 11.0 percent of children, slightly higher than the target of 10.3 percent. However, because the lower bound estimate after allowing for sample error was 10.0 percent, they assessed this target as having been met. The relative income measure of 50 percent of contemporary median household income before housing costs was not met. StatsNZ reported a central estimate of 13.6 percent of children below this poverty line, with a lower bound estimate of 12.4 percent; a figure still well above the 10.5 percent target.

Overall, poverty rates remain higher for Māori and Pacific children and their families compared to the population of all children. Hardship rates in particular were higher; one in five Māori children and almost one in four Pacific children were recorded as living in hardship, compared to 11 percent of all children.

3. SOCIAL POLICY AND SOCIAL LAW DEVELOPMENTS

During 2021, programmes to support incomes and employment from the impacts of the pandemic continued to play a large part in social and economic policy. In particular, the Government continued its policy of paralleling lockdowns and closure requirements for some schools and businesses with the provision of the temporary wage subsidy payment for affected workers, COVID leave schemes, and a number of business support programmes. The details of these programmes are described in Fletcher (2022).

As discussed in the introduction though, Government also sought to progress its wider, non-COVID social policy agenda through a number of other legal or policy changes. These are discussed below along with other social law and policy developments.

3.1. Social Welfare Benefits

The most significant social policy change during 2021 was the increase in core benefit rates announced in the May Budget. The 2019 Welfare Expert Advisory Group (WEAG) had reported that benefit rates were far below a decent minimum living standard and had recommended that they be immediately raised by amounts varying between 12 and 47 percent depending

[6] This measure was set in 2018 at 50 percent of the household median income and is a fixed or 'constant-value' measure in that it is adjusted over time only for price changes not changes in median incomes. It is measured after taking off families' housing costs and housing subsidies.

on the benefit type and family structure (Welfare Expert Advisory Group, 2019). The Budget 2021 increases were a response to this recommendation. Although arguably slow in coming, the 2021 welfare increases were substantial with an immediate $20 per week boost followed by further increases scheduled for 1 April 2022. Once fully implemented the increases will range from $32 per week to $55 per week depending on the benefit type and whether the beneficiary has dependent children. The effect is that in the four and half years since Labour came to office in late-2017 benefit rates will have risen by between 20 and 40 percent. The larger increases are for those on Jobseeker Support (both with and without dependent children), and the smaller increases are for Sole Parent Support and the Supported Living Payment for people with long-term illness or disability.[7] Government estimated the cost of the increases to be $3.3 billion over four years. While large, this amount is considerably less than WEAG's estimate of approximately $5 billion required each year to implement their recommendations.

Although Government claimed that it had equalled or exceeded the benefit rates recommended by WEAG in 2019, this claim was disputed by some as a sleight of hand. In its December report the Child Poverty Action Group concluded that 'our analysis shows that, for families, overall total core income support (benefits plus Family Tax Credit) will not match the wage-adjusted rates recommended by WEAG for any benefit recipients' (Child Poverty Action Group, 2021 p13).

The benefit increases are expected to have only a modest impact on child poverty in the 2022/23 year. Government's Budget papers put the estimated impact on the before-housing costs relative poverty target at a reduction of between 12,000 and 28,000 children (out of a 2021 total of 157,000). The impact on the after-housing costs fixed-line measure is expected to be a reduction of between 19,000 and 33,000 children (out of a total of 187,000). The relatively small effect despite the size of the increases in core benefit rates is an indication of the fact that the package of minimum-income assistance remains low in New Zealand, and for many families it is insufficient to lift them out of poverty.

Alongside the core benefit increases, Government also increased the Student Allowance rate by $25 per week to take effect from 1 April 2022. Student Allowance is the targeted assistance payable to tertiary students whose parents have low incomes.[8]

Two of the temporary COVID-related payments for people without work were discontinued in 2021. The 2020 doubling of the Winter Energy Payment was not repeated in 2021 and went back to its old rates of $20.45 for a single person and 31.82 for a couple payable for five months during winter. The COVID Income Relief Payment (CIRP), which paid more than

[7] These latter benefits were already relatively higher than Jobseeker Support before the changes.
[8] If the student is over the age of 25, the income test is based on the student's own income or, if partnered, on the couple's joint income.

Jobseeker Support for the first 12 weeks for people who lost their job due to COVID effects, also ended shortly before the beginning of the 2021 year.

3.2. Working for Families Family Tax Credits

Changes to the Working for Families tax credits is another example of how the Government is turning its attention back to its pre-COVID agenda. The suite of four targeted tax credits involves transfers of close to $3 billion per annum and are paid to just under two-thirds of all families with dependent children.[9] The four tax credits are:

- *Family tax credit (FTC)* which is payable in respect of each child to all families although on a means-tested basis. The rate of payment begins to abate from a threshold of $42,700 per annum family income.
- *In-Work tax credit (IWTC)* which is an additional $72.50 per week payable on the same means-tested basis as the FTC but only to families in work and not on a welfare benefit. An additional $15 per week is paid for the fourth and each subsequent child.
- *Minimum family tax credit (MFTC),* which is a small programme designed to ensure that any family moving off benefit into work is no worse off by doing so.
- *Best Start,* which was introduced in 2018 paying $60 per week to all families with a child under 12 months old with no means test. It is also paid to families with a child aged 1 or 2 years with a means test set at a relatively high level of $93,858 per annum.

In November, Government announced increases to the Family Tax Credit rates of $15 per week for the first child and $13 dollars per week for each subsequent child. This brings the maximum rates to $127 per week for the first child and $104 per week for each other child. In addition, Government also raised the Best Start payment for all under 1-year olds by $5 to $65 per week. The cost of these increases was partially offset by raising the abatement rate for FTC (and IWTC) from 25 percent to 27 percent on family incomes over $42,700 per annum.[10]

These changes exemplify Labour's view that Working for Families should be generous at lower family incomes but relatively more tightly targeted. Preliminary papers for a review of the Working for Families tax credits to take place in 2022 also point to a desire on the Government's part to use the tax credits to support low-income households and, in particular to tilt it further towards assisting low- to middle-income households with at least one paid worker. There are a number of problems with the design of the tax credits but there are two major difficulties with the approach the Government appears to be adopting to them.

The first is their determination to retain the IWTC which pays extra to families in work. WEAG recommended changes to this, and others, especially the Child Poverty Action Group, have long argued for abolishing it by extending the payment to all low-income families irrespective

[9] That is children aged under 18 years, or under 19 if still at school.
[10] https://www.beehive.govt.nz/release/incomes-lifted-346000-families

of benefit status (see, for example, St John, 2020). Studies suggest the IWTC is of minimal effectiveness as a work incentive programme (Fitzgerald, Maloney & Pacheco 2008, Mok & Mercante 2014), but it creates significant horizontal equity issues, meaning the least well off receive less assistance, as well as constraining design options for reforming the package of family financial assistance measures. Children in beneficiary families make up around half of all children in poverty or material hardship. Extending the IWTC to all families, rather than only those not on benefit would have a strong poverty-reduction impact.

The second issue is the high effective marginal tax rates (EMTRs) affecting a large number of families. The main Working for Families tax credits are reduced by 27 cents for each dollar of family earnings over $42,750 per annum. Combined with the effect of income tax on earnings, it means a significant number of families will gain only about 40 cents or less for each extra dollar they earn (that is, an EMTR of around 60 percent or more), which acts as a disincentive to increase family incomes. Moreover, many lower-paid families, although they do benefit from receiving some family tax credits, will be subject to these high EMTRs for the entire time they have dependent children. The alternative approach to this problem, which was recommended by WEAG, is to abate the tax credits gently up until a moderately high family income level and then cut them off sharply. In effect, this amounts to making the child-related tax credits less tightly targeted and closer to universal. Arguably, doing so better reflects the wider public benefit to society as a whole from the costs families incur in raising children.

The only other change to Working for Families during 2021 was the annual amendment to the MFTC threshold which increased $22 per week to $30,576 per annum, after tax. The setting of the MFTC threshold has to be adjusted whenever benefit rates or thresholds change so that it still ensures a non-beneficiary single parent family working 20 hours per week at the minimum wage would be better off than if they remained on benefit.

3.3. Child Support

Since 1991 New Zealand has operated an administratively based child support (child maintenance) regime for separated and divorced parents. The 1991 Act replaced the need for parents with care of children to seek a court order for the children's maintenance. Parents can reach voluntary agreements about financial payments or one parent can apply to Inland Revenue's child support division for a formula-based assessment which Inland Revenue then enforces. The formula is based on the parents' incomes, the number of children, and the extent of shared care. The formula was revised in 2015. Overall, the scheme works reasonably well (although, as with all child maintenance schemes, there are both paying and receiving parents who feel unfairly treated) and one of its strengths is that it avoids the costs and complications of court proceedings. There have however been problems with unpaid child support liabilities and a large build-up of unpaid debts and penalty payments. The formula has also been undermined to some extent by the narrow definition of income in the legislation.

The Child Support Amendment Act 2021 which came into law on 24 March 2021 sought to address these issues as well as giving Inland Revenue greater freedom to waive penalties (see Section 6.1 for details). The two most significant changes both moved in the direction of increasing the payments actually made by liable parents. The first was to reintroduce deduction of child support liabilities direct from wages for newly liable payees who are employees. That is, for this group, Inland Revenue tells the employer how much child support to deduct from the employees' wages (along with income tax which is also deducted by employers). The child support money is then remitted directly to Inland Revenue which transfers it to the receiving parent. As well as increasing the effectiveness of the scheme, it is intended that this will reduce debts among paying parents who would otherwise fall behind in their payments. The second change is to widen the definition of income for the purposes of calculating child support so that it includes all interest and dividends subject to New Zealand withholding tax, rather than just employment (and self-employment) income.

The minimum child support payment was inflation adjusted from 1 April 2021, rising from $954 to $967 annually. The maximum cap on liable annual income increased from $153,376 to $173,472.

3.4. Social Housing and Accommodation Benefits

Despite the continued increase in the number of people on the social housing register or waiting list and the growth in market rents, there were no increases in the maximum payment rates for the Accommodation Supplement. Numbers on the register grew 13.3 percent over the year to 25,524 and have risen over 313 percent in the last four years.[11] Families or individuals can only be included on the register if their housing need has been assessed as serious enough to qualify them for social housing if a suitable home become available. Just over half of all applicants on the register are Maori. Around 4,900 households whose circumstances are particularly serious were in funded emergency housing.[12]

Government investment in public housing has continued to grow, even if it is only slowly catching up with demand. The State housing agency, Kāinga Ora,[13] built 2,400 new homes in the 2020/21 year and is scheduled to build a total of 6,400 by the end of 2022. In the 2021 Budget Government also provided Kāinga Ora with $3.8 billion in capital infrastructure funding for land purchase and development for house construction purposes (Kāinga Ora, 2021, p5).

Housing assistance for those in the private market is delivered through the Accommodation Supplement. It is available to both beneficiaries and non-beneficiaries who meet the income and assets tests and have qualifying housing costs. It is also available in respect of mortgage

[11] https://kaingaora.govt.nz/publications/housing-statistics/. These figures do not include approximately 5,000 families who are in social housing but are seeking a transfer to more appropriate housing.
[12] https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/statistics/housing/housing-monthly-archive/index.html
[13] Kāinga is the reo Māori word for house and ora means health or wellbeing.

interest repayments as well as rent or board. In practice however, take-up by non-beneficiaries is very low[14] and the Ministry of Social Development does little to rectify that.

Landlords have argued that the Residential Tenancies (Healthy Home Standards) Regulations 2019 have contributed to increases in rents and a decrease in supply of affordable rental properties by raising the costs they face. The 2019 regulations set heating, insulation, ventilation and dampness minimum standards. Prior to the regulations coming into force, there were only very limited minimum standards applying to private rentals. The new standards began for new or renewed private tenancies from 1 July 2021. State and social housing tenancies have until 1 July 2023 to comply.[15] At this stage it is too early to tell what effect the regulations will have on the rental market (and may always be difficult to disentangle from rising costs of borrowing and changes in the tax treatment of gains from the sale of rental properties).

3.5. Paid Parental Leave

Up to 26 weeks of paid parental leave (PPL) is available to expectant or new mothers who are employed in New Zealand. It is also available to people who have newly taken on the primary caregiver role for a child under 6 years old. PPL pays 100 percent of earnings up to a maximum. The maximum rate of PPL was inflation adjusted from 1 July 2021 and is currently $621.76 before tax weekly.

The payment is made to the mother who can opt to transfer part of her period of entitlement to her partner if he or she also qualifies. It cannot be transferred back however and there is no provision for both partners to receive PPL at the same time (e.g., 13 weeks each but both at the same time).[16]

Government also made a special amendment to the Parental Leave and Employment Protection Act 1987 which was backdated to the beginning of the COVID-19 pandemic to ensure that workers who temporarily went back to work during the pandemic period would not lose any PPL entitlement they would otherwise have had. The change was to recognise that some workers whose skills were in unusually high demand for COVID-related reasons, had foregone part of their PPL entitlement.

[14] Earlier estimates in a background paper provided to the Welfare Expert Advisory Group by the Ministry of Social Development suggested only around 10 percent of eligible non-beneficiaries were receiving the Accommodation Supplement.

[15] https://www.tenancy.govt.nz/mi/healthy-homes/about-the-healthy-homes-standards/

[16] This has been advocated for by some, see for example, https://www.rnz.co.nz/national/programmes/afternoons/audio/2018833551/call-for-action-around-parental-leave.

3.6. Minimum Wages

Government completed its 2017 election promise of progressively raising the minimum wage to reach $20 per hour by 1 April 2021. This means that the minimum wage has risen 27 percent from the $15.75 rate that applied in April 2017. The minimum wage is now approximately 72 percent of the median wage, up from 66 percent in 2017. The youth, or 'starting out', minimum wage, and the training minimum rate were also adjusted to $16.00 per hour keeping their relativity to the adult minimum at 80 percent.

Partly because it was expected and possibly also because of the tightening labour market situation, there was not the same employer criticism of the increase as there had been in 2020.

3.7. Kiwisaver

Kiwisaver is the government-managed private retirement savings scheme. Membership is voluntary but if workers join and contribute the minimum of 3 percent of their wages, their employer is required to contribute 3 percent. Workers can opt to contribute a higher percentage but the employer contribution is fixed at 3 percent. Government also provides an incentive of up to $521 per year. More than $3.1 million people have Kiwisaver accounts, and the total value of funds is currently in excess of $81 billion.

In December 2021 changes to the nominated default providers came into effect. Default providers are a specified short-list of Kiwisaver providers from which employers must choose as the initial provider to enrol new employees with. Employees can subsequently choose to opt out or change provider but being a default provider gives those firms a 'first start' advantage over competitors. In 2020 the Government had changed the list of default providers in favour of those charging lower administration fees. The result was that five default providers were dropped and two new ones added so that there is now a total of six. It also changed the rules requiring default portfolios to be in the 'balanced' moderate risk category rather than the 'conservative' low risk category. The changes meant that approximately $2.4 billion in funds was switched between providers on 1 December 2021.

3.8. Public Health

Another policy area where the Government sought to advance its programme during 2021 was its planned large-scale restructuring of the health sector. This is a bold, some would argue, risky, move given how stretched the health sector is because of the pandemic. However, at this stage, the changes don't impact on the day-to-day operations of the public health system and the 20 District Health Boards (DHBs).

In September, the Minister of Health announced the interim board members for Health New Zealand and Te Mana Hauora Māori, the Māori Health Authority, the two agencies which will replace all district health boards and also take over some of the Ministry of Health's functions. The announced proposals were somewhat unusual in that they went further than was recommended by the review Government had itself set up. The report of the Health and Disability System Review Committee had recommended halving the number of DHBs, whereas Government decided to abolish them entirely (Health and Disability System Review, 2020). The Pae Ora (Healthy Futures) Bill, introduced in October, provides for the establishment of both agencies, and sets up the framework for the new health system. The Bill is currently before the House and the intended transition to the new agencies is 1 July 2022, although this may be delayed if the legislation is not passed in time.

Central to the new structure is the intention that Health New Zealand and Te Mana Hauora Māori work in partnership with both being tasked with ensuring that health systems result in better outcomes for Māori. On most indicators, and in respect of most diseases, there is a considerable gap between the Māori and non-Māori populations.[17] It remains to be seen how well this partnership model, which is relatively rare in mainstream government agencies, will work in practice.

The End of Life Choice Act 2019 came into force in November 2021, following the referendum at the same time as the 2020 general election in which the Act received a 65 percent yes vote. The Act included a 12-month delay before coming into effect to allow for administrative processes to be established and the training of those clinicians who are willing to carry out assisted dying procedures. In the first 10 days after the Act came into effect two people had made formal applications for assisted dying and an unspecified number of others had asked to be put in touch with an approved 'attending medical practitioner' (Martin, 2021). Approximately 100 doctors had indicated an interest in being attending medical practitioners.

3.9. Accident Compensation

One significant change to the Accident Compensation Corporation (ACC) is working its way through Parliament at present. In December 2021, the Minister for ACC, Carmel Sepuloni, introduced the Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Bill. The Bill is expected to become law later in 2022. The principal effect of the draft Bill is to extend ACC coverage to maternal birth injuries not previously covered by ACC. The coverage problem arose because legally a foetus is considered to be part of the mother until it is born, and the relevant ACC legislation only covers injury from force external to the person's body. Most obstetric injuries during labour, such as perineal tears, were therefore not covered. The Green Party, which had campaigned for the amendment, welcomed the change but believes the proposed prescribed list of injuries to be covered does not go far enough (Logie, 2021).

[17] Factors in these gaps commonly include aspects which are not directly related to health or health service delivery, such as poverty, housing quality, unemployment, etc.

ACC earners levies are set to rise after Government agreed in September to the increases to meet the rising costs of new accident claims. The increases will be phased in over three years so that by 2024 the levy will have risen from $1.21 to $1.39 for each $100 dollars of earnings. There is a separate levy on motor vehicle registrations which covers the costs of injuries from vehicle accidents but Government rejected ACC's request to also increase this.

4. CASE LAW DEVELOPMENTS

In previous reports I have discussed the Ministry of Health's policy, as part of its individualised funder system, of deeming people with severe disabilities to be the employer of their parent caregiver. In the past, the Employment Court has rejected this construction.[18] In December 2021, the Chief Judge of the Employment Court again found in favour of a parent appealing against this policy. This case concerned a father who has full time care of his 33-year-old daughter, who is severely disabled with Angelman Syndrome. The funding provided to the family by the Ministry of Health was to the daughter who was to be her father's 'employer'. A 'host' was contracted by the Ministry to assist the disabled person to manage the process. However, the Court determined that the Ministry's relationship as funder was not sufficiently hands-off or distanced from the care process to be able to be described simply as a funding arrangement. In court, the father gave the example of a letter arriving at the house addressed to the daughter advising her that her tax was overdue. Far from being able to read and understand it, the father said, his daughter was physically unable to open envelopes. Despite the seeming absurdity of the policy, and the repeated legal setbacks, the Ministry has indicated it intends to appeal the court's judgement, presumably as it wishes to avoid any employment obligations towards parents who are carers of adult disabled children.

Two other significant case law developments were related to challenges to aspects of the Governments COVID-19 mandates which required that only fully vaccinated staff could work in certain occupations, including the health and disability, midwifery and education sectors, and the police and defense forces. In the first case an application for a Judicial Review taken by three Police and Defence workers was successful on the grounds that the High Court was not satisfied that the Order advanced the stated purpose of ensuring continuity of public services and maintaining public trust in those particular services. As a result, the order relating to Police and Defence staff was set aside.[19] In the second, broader, case 2021 two anti-vaccine groups, New Zealand Doctors Speaking Out with Science and New Zealand Teachers Speaking Out with Science and four midwives sought to challenge the vaccination order relating to

[18] Ministry of Health v Atkinson [2012] NZCA 184, [2012] 3 NZLR 456; Fleming v Attorney-General [2021] NZEmpC EMPC 340/2019.

[19] CIV-2022-485-000001 [2022] NZHC 291.

health and education workers. In contrast to the first case, the High Court's judgement, released in March 2022, rejected their claim and declined the application for a review.[20]

COVID-19 restrictions also gave rise to a development in case law relating to the Minimum Wages Act 1983. The case concerned five employees of a firm, Gate Gourmet, that provides catering for airlines. A dispute arose as to whether or not Gate Gourmet, which had applied for and received the government wage subsidy, and their workers had reached an agreement for reduced wages when there was reduced work due to a lack of flights. The Employment Relations Authority took the view that the workers were entitled to the minimum wage for each hour that they were employed to work and were willing to work even if the firm had no work for them to do. However, in a split decision the Employment Court reversed this finding.[21] The workers and their union took the case to the Court of Appeal which in a judgement in November set aside the Employment Court's ruling, effectively overturning the Employment Court's 'no work, no pay' ruling. The Court of Appeal has referred the case back to the Employment Relations Authority where it will be up to the firm to demonstrate exactly what was agreed with the workers or, alternatively, to pay the minimum wage for all employment hours whether there was work available or not.[22] Although some employers were concerned that the ruling could set a precedent opening the way for back-pay claims associated with COVID-19 work restrictions, employment law specialists believe it is a narrow decision, specific to the particulars of the case and will not have wide precedent-setting effect (McManus, 2021).

5. INTERNATIONAL SOCIAL SECURITY ARRANGEMENTS

There were no changes to New Zealand's reciprocal social security agreements, other than the coming into force of the agreement with South Korea which had been negotiated in 2019. This allows eligible Koreans living in New Zealand to receive the Korean old age benefit and New Zealanders living in Korea to receive either New Zealand Superannuation or Veterans Pension, if they are eligible for either payment.[23] New Zealand now has eleven reciprocal social welfare agreements. These are with Australia, Canada, Denmark, the Republic of Korea, the Republic of Ireland, Jersey, Guernsey, Greece, Malta, the Netherlands, and the United Kingdom.

[20] CIV-2021-485-595 [2022] NZHC 716.
[21] Interestingly, it was the Chief Judge of the Employment Court, Christina Inglis, who dissented from the majority.
[22] CA8/2021 [2021] NZCA 591.
[23] Social Welfare (Reciprocity with Republic of Korea) Order 2021: https://www.legislation.govt.nz/regulation/public/2021/0351/latest/whole.html#LMS577059

6. RELEVANT ACTS OF PARLIAMENT PASSED DURING 2021

6.1. Child Support Amendment Act 2021

This amendment Act, which took effect on 1 April 2021 contained four main changes. It introduced automatic deduction from employees' wages of child support liabilities in respect of all new child support cases. Previously automatic deductions only applied where a child support debt existed or if the liable parent was on a welfare benefit. The Act also widened the definition of income for child support purposes to include interest and dividends, bringing the definition more closely into line with that used for calculating Working for Families entitlements. The third change was to simplify penalty rules and make them less onerous. It also gives Inland Revenue greater leeway to write off outstanding penalties. Lastly the Act introduces a four-year time bar for retrospective reassessments of child support liabilities. Previously, reassessments could go back to 1992 when the primary Act was introduced.

6.2. Social Security (Subsequent Child Policy Removal) Amendment Bill

This Amendment Bill revoked a policy the previous National Government had put in place in 2013. That policy stipulated that if a beneficiary had another child while on benefit (defined in the Act as an additional dependent child) then that child must not be considered for the purposes of eligibility for the Sole Parent Support benefit, or for work-test obligations once the child has reached the age of 12 months. Rather, the parent's benefit eligibility and obligations would be determined on the basis of their next youngest child (unless that child also counted as an 'additional dependent child'). The policy had its origins in the 2011 Welfare Working Group report and was based on a belief that the benefit created 'incentives for parents to have additional children while on welfare' (Welfare Working Group, 2011 p23).[24] Removal of the policy had been an election commitment of both the Labour and Green Parties and was also recommended by WEAG. According to the Minister for Social Development, approximately 11,400 people were affected by the removal of the subsequent child policy (Sepuloni, 2021). For some of these people the effect was a change in work obligations while for others it meant a change from Jobseeker Support benefit, with a full-time work-test, to the Sole Parent Support benefit, with either a part-time work test or only work-preparation obligations.

6.3. Births, Deaths, Marriages, and Relationships Registration Act, 2021

This Act, which received royal assent on 15 December 2021, began life in 2017 as a relatively straightforward Bill designed to improve notification of and digital access to demographic information relating to births, deaths, marriages and name changes. However, it changed dramatically after public submissions persuaded the Select Committee reviewing the Bill to

[24] In a majority recommendation the Welfare Working Group recommended that work expectations for mothers who have a child while in receipt of a benefit should resume once that child is 14 weeks old.

pick up on a 2016/17 petition by 54 people "to enable adults with intersex conditions and trans and other gender diverse adults to change the sex details on any official documentation to male, female or indeterminate based solely on the individual's self-identification, without any requirement for medical treatment and without the need to resort to a court process."[25] Thus, the Act introduced sex self-identification into New Zealand law, requiring only that a person make a statutory declaration that they 'identif[y] as a person of the nominated sex' and that they understand the consequences of the application.[26] The previous legislation required an application to the Family Court and presentation of medical information to a Family Court judge. Under the new Act a parent or guardian can also apply on behalf of a child.

The Act is controversial and is expected by many to raise further issues in areas such as sex-segregated prisons, women-only spaces including toilets and women's refuges, and in sports. At the same time it is seen as important progress for trans-rights activists, and is also in line with law changes that have occurred in a number of other countries. As elsewhere, debates between gender critical feminists and trans rights activists have been heated in New Zealand and, at times, some within the trans rights groups have been vitriolic and have used 'de-platforming' arguments on the grounds that the views a person or group are expressing are personally harmful and/or contrary to trans people's human rights. Controversies notwithstanding however, the Act received unanimous support in its final Parliamentary vote.

6.4. Rights for Victims of Insane Offenders Act 2021

This Act, passed in December, amended several Acts relating to the treatment of people acquitted of criminal changes on the grounds of insanity. A major change was to replace the previous finding of 'not guilty by reason of insanity' with a finding of 'act proven but not criminally responsible on account of insanity'. For victims, this change is recognition of the harm they experienced, and the Act also gives victims additional rights such as the ability to make a victim impact statement to the court and to make submissions before the Minister grants the compulsorily detained special patient leave under the Mental Health (Compulsory Assessment and Treatment) Act 1992. The amendments were strongly backed by Victim Support.[27]

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[25] https://www.parliament.nz/en/pb/petitions/document/51DBHOH_PET71439_1/petition-of-allyson-hamblett-that-the-house-note-that

[26] Births, Deaths, Marriages, and Relationships Registration Act 2021, s 24 (1)(b).

[27] https://victimsupport.org.nz/law-change-huge-step-forward-victims

7. CONCLUSION

The Labour Government has managed the public health and social and economic impacts of the COVID-19 pandemic reasonably well to date. During 2020 doing so occupied most of their time and resources. In 2021, while continuing to deal with the ongoing effects of the pandemic, Government turned more of its attention back to its broader policy agenda. In the area of social law and policy this agenda can perhaps best be characterised as 'mildly centre-left'. Prime Minister Jacinda Ardern and her senior Ministers talk at times of radical change and being 'transformational' but in reality, most changes have been within quite narrow constraints of maintaining median voter support politically and managing relatively conservatively in fiscal terms. There have for example been only small changes to the tax system with Government showing no desire to significantly increase the revenue available to it for long-term social expenditure, beyond the increases coming from economic growth.

Thus, after four years in power, we have seen some unwinding of the previous Government's focus on benefit conditionality, and some improvements in welfare benefit rates. These latter are unquestionably significant but at the same time they still leave the level of support provided to beneficiaries in New Zealand at meagre levels and below most poverty thresholds.

Looking ahead, Labour's social assistance focus leading up to the 2023 election appears to be turning to reforming the Working for Families tax credits and developing an unemployment insurance scheme to operate in parallel to the country's single-tier, tax-funded welfare system. Both these policy developments will tend to favour middle- and high-earning households more than those in the greatest need.

8. REFERENCES

CoreLogic. (2022). *Housing affordability report: New Zealand Quarter 4, 2021.* Wellington: CoreLogic.

Fletcher, M. (2022). *Government's social and economic protection responses to COVID-19 in the context of an elimination strategy: The New Zealand example*. In: Protecting Livelihoods – A Global Comparison of Social Law Responses to the COVID-19 Crisis, Baden-Baden: Nomos, pp. 361-376.

Fletcher, M. (2021). *Developments in social legislation and policy in New Zealand: Reported period: 2020.* Social Law Report 3/2021. Munich: Max Planck Institute for Social Law and Social Policy.

Fitzgerald, J., Maloney, T. & Pacheco, G. (2008). "The impact of recent changes in family assistance on partnering and women's employment in New Zealand." *New Zealand Economic Papers 42*(1): 17-57.

Health and Disability System Review. (2020). Health and Disability System Review – Final Report – Pūrongo Whakamutunga. Wellington: HDSR.

Kāinga Ora. (2021). *Annual report: 2020/21.* Wellington: Kāinga Ora.

Logie, J. (2021) *Green Party celebrates better support for birth injuries*, Wellington: Green Party of Aotearoa New Zealand, https://www.greens.org.nz/green_party_celebrates_better_support_for_birth_injuries

McManus, J. (2021). *Court of Appeal rules on key covid dispute*. Auckland: Auckland District Law Society, https://adls.org.nz/Story?Action=View&Story_id=456

Martin, H. (2021). "Two formal applications made for assisted dying in 10 days it has been legal", *Stuff.* Retrieved from Wellington: https://www.stuff.co.nz/national/health/300456482/two-formal-applications-made-for-assisted-dying-in-10-days-it-has-been-legal

Mok, P. & Mercante, J. (2014). *Working for Families changes: The effect on labour supply in New Zealand.* Treasury Working Paper 14/18, Wellington: New Zealand Treasury.

Neuwelt-Kearns, C., Asher, I. & Johnson, A. (2021). *Children can't live on promises: A 2021 stocktake of implementation of the Welfare Expert Advisory Group's 2019 recommendations.* Auckland: Child Poverty Action Group.

New Zealand Treasury. (2021). *Half year economic and fiscal update.* Wellington: New Zealand Treasury.

Robertson, G. (2021). *Budget Policy Statement 2022.* Retrieved from Wellington: https://www.treasury.govt.nz/publications/budget-policy-statement/budget-policy-statement-2022-html

Sepuloni, C. (2021). *Ineffective subsequent child policy sanction removed.* Retrieved from Wellington: https://www.beehive.govt.nz/release/ineffective-subsequent-child-policy-sanction-removed

St John, S. (2020). *Briefing on reform of the In-Work Tax Credit.* Auckland: Child Poverty Action Group.

Welfare Expert Advisory Group. (2019). *Whakamana Tāngata: Restoring dignity to social security in New Zealand.* Wellington: Welfare Expert Advisory Group.

Welfare Working Group. (2011). *Reducing long-term benefit dependency: Recommendations.* Wellington: Welfare Working Group.

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