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FOR SOCIAL LAW AND SOCIAL POLICY

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Michael Fletcher

# **Developments in Social Legislation and Policy in New Zealand: 'Jacindamania' and a New Government**

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Max Planck Institute for Social Law and Social Policy

Amalienstraße 33, D-80799 Munich, Germany

Tel.: +49 (0)89 38602-0

Fax: +49 (0)89 38602-490

E-mail: [info@mpisoc.mpg.de](mailto:info@mpisoc.mpg.de)

<http://www.mpisoc.mpg.de>

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## LIST OF ABBREVIATIONS

ACC	Accident Compensation Corporation
AHC	Accounting for Housing Costs
AS	Accommodation Supplement
AUT	Auckland University of Technology
CA	Court of Appeal
CPI	Consumer Price Index
DHB	District Health Board
GDP	Gross Domestic Product
PM	Prime Minister
MP	Member of Parliament
MBIE	Ministry of Business, Innovation and Employment
NEET	Not in Education, Employment or Training
NZIER	New Zealand Institute of Economic Research
NZSC	New Zealand Supreme Court
NZ\$	New Zealand Dollar
p.a.	per annum
PLT	Permanent and Long Term
PPL	Paid Parental Leave
RBNZ	Reserve Bank of New Zealand
WEP	Winter Energy Payment

## 1. INTRODUCTION

The big event of the 2017 year was the General Election on 23 September, and the eventual formation of a centre-left coalition Government replacing the centre-right National Party-led administration. The new Government is a coalition of the Labour Party and the centrist New Zealand First Party with the support of the Green Party via a Parliamentary 'confidence and supply' agreement. The new Prime Minister (PM) is 37-year-old Labour Party leader Jacinda Ardern, with 73-year-old New Zealand First leader Winston Peters as her Deputy Prime Minister. Section 2.1 below details the series of somewhat surprising twists and turns in the election campaign and government-formation process, and the impact of Ms Ardern's personal popularity – an effect dubbed 'Jacindamania' by the media.

During the election campaign the Labour Party made a commitment to achieving, or commencing, a number of policy changes in its first one hundred days in office, a period which turned out to run from 26 October to 3 February 2018. A number of these 'first 100 days' promises relate to key social policies. For that reason this report covers a slightly extended period up to and including February 2018.

Poverty, and specifically child poverty, loomed large as a social issue during 2017. With 13 percent of children under 18 years below the 50-percent-of-median-income poverty threshold, New Zealand is at best middle-ranking compared to other OECD countries. More importantly, depending on the measure used, there has been relatively little sign of improvement in child poverty rates in recent years. During the election campaign both the Labour and National Party leaders made strong commitments to reducing child poverty (see Section 4.1 below).

Last year's report (Fletcher, 2017) discussed the National Government's 'social investment approach' in detail. At time of writing it is not yet clear what will become of this policy under the new Government. The Minister for Social Development, Carmel Sepuloni, has indicated that she will not be continuing with the actuarial fiscal liability modelling used in social welfare and some other agencies (although, so far, the Ministry of Social Development (MSD) is continuing to calculate fiscal liability estimates in welfare); however she has also indicated that the Government may keep some parts of the social investment strategy. They have also so far retained the Social Investment Agency that was established in 2016. If 'social investment' – and the agency – does survive, it is likely that it will start to take on a meaning rather closer to the European Union definition of the term (European Union, 2013).

Section 2 summarises the political, economic and social conditions prevailing during 2017. Case law and new policy and legislative developments are then discussed in Sections 3 and 4 before the situation regarding international agreements is discussed in Section 5. Section 6 provides a summary of relevant legislative changes during the period.

## 2. CURRENT SITUATION OVERVIEW

### 2.1. The Political Situation

The political year began with the ruling National Party in a strong position. To the surprise of many commentators, the retirement of Prime Minister John Key in December 2016 and his replacement with Deputy PM, Bill English, had not dented the Government's popularity. English, a long-standing Member of Parliament (MP) and Finance Minister under John Key, is a highly competent but less charismatic politician than his predecessor and many people expected the Government would lose public appeal under his leadership. In fact this did not happen and National remained far ahead of Labour in the public opinion polls. For most of the year it looked as though the National Party stood a strong chance of winning an almost unprecedented fourth term in government.

Meanwhile, the Labour Party, led by ex-unionist Andrew Little, was struggling to gain traction with the public and a series of events resulted in a sudden, late change in leadership. Little is an intelligent, committed Labour Party man who is widely respected by politicians, the party, and business leaders. However, he and deputy leader Annette King failed to inspire public enthusiasm or any sense that Labour offered a genuine alternative to the National Party. In February, a Labour MP, David Shearer, resigned his Auckland electorate seat of Mount Albert to take up a senior peacekeeping role for the United Nations. Jacinda Ardern, who was a list member only until then, won the by-election in a landslide and a week later, replaced Annette King as Deputy Leader of the Labour Party.

As the year progressed Labour's poll ratings continued to languish around the 25 percent mark compared to National's high 40s. Andrew Little's personal rating as preferred Prime Minister was typically below ten percent and below Ardern's rating. On 1 August 2017, after three particularly bad opinion poll results, Little announced his resignation as party leader and, just seven weeks out from the election, was replaced by Jacinda Ardern.

Ardern, who grew up in a small-town Mormon family but is part of the liberal left of the party, became, the Labour Party's youngest ever leader and only its second woman leader. She has strong public appeal as someone who listens and cares and is expert in using social media, especially Instagram. Her rise to power was accompanied by an immediate and large jump in the polls and massive public and media reaction – the so-called 'Jacindamania' effect. Her political focus has always been on social issues, particularly children and child poverty.

The twists of the election campaign were still not over. In mid-August, Green Party co-leader Metiria Turei had made the startling admission at the launch of her party's welfare policies that she herself had defrauded the benefit system when she was a young lone mother. As the complexities of Turei's story unfolded (and these included lying about her residential

address for voting purposes in a 1990s election), Ardern let it be known that, despite the Greens being Labour's close allies, she would not accept Turei as a Minister in her government if Labour won the election. On 7 August, Turei resigned from her leadership role and from her party. The Green Party's polling crashed from around 11 percent to dangerously close to the minimum threshold of 5 percent.

Ardern's popularity notwithstanding, the election returned a strong vote for National which held 56 seats compared to Labour's 46 seats in the 120-seat Parliament. New Zealand First won nine seats and the Greens eight. The National Party's support party, ACT, retained its one seat, while their other partner, the Māori Party lost both their seats to Labour. This outcome meant that both major parties needed the support of New Zealand First to be able to form a government. After four weeks of behind-the-scenes negotiating (and many references to the drawn-out German coalition talks), Mr Peters announced on 19 October that he had reached a coalition agreement with the Labour Party. As a result, a minority Labour-New Zealand First Government was formed with the backing of a confidence-and-supply agreement with the Green Party. Mr Peters has the roles of Deputy Prime Minister and Minister of Foreign Affairs, four other New Zealand First MPs have Cabinet positions and two Green party MPs are Ministers Outside Cabinet. This is the first time since Mixed Member Proportional voting was introduced in 1996 that the party with the greatest number of seats in the House has not formed the government. New Zealand also has its youngest Prime Minister since Edward Stafford became Premier in 1856 (also at the age of 37). Ardern is the third woman to become PM, after Jenny Shipley in 1997 and Helen Clark in 1999.

In a further development of the 'Jacindamania' story, the Prime Minister announced on 19 January via Instagram that she and her partner, Clarke Gayford, are expecting their first baby, due in June 2018. She said that she had discovered she was pregnant six days before the coalition negotiations were finalised but had told no-one in either her party or any other until after the talks were concluded. Ardern says she intends to take approximately six weeks' leave of absence when the baby is born during which time Mr Peters will be Acting Prime Minister. Mr Gayford will take time out of his work to be primary caregiver after that. The only other case in recent history of a head of Government giving birth while in office is that of Benazir Bhutto, whose daughter, Bakhtawar was born in 1990 while Bhutto was Prime Minister of Pakistan. The pregnancy announcement attracted world-wide media publicity, including (sometimes derogatory) commentary as to whether the PM would be able to cope with the combined workloads of the Prime Ministerial role and pregnancy and motherhood. At the time of writing however, this appears to have faded as Ardern has continued her focus on establishing the new Government's work programme.

## 2.2. Economic and Fiscal Conditions

Economic conditions were somewhat mixed over 2017. Overall, growth continued at a reasonable pace, albeit driven mostly by population increases rather than productivity improvements. There were also growing skill mismatch problems.

The Reserve Bank of New Zealand (RBNZ) reports that Gross Domestic Product (GDP) grew by 2.7 percent in the year to the September quarter 2017. This is the same growth as for the year to December 2016 and is described by the RBNZ as 'close to its historical average' (Reserve Bank of New Zealand, 2018, p. 24). The Bank comments that consumption growth, at 3.4 percent for the year, has slowed possibly because of declining wealth effects as house price inflation cools. Residential investment was also lower than in the previous year, growing by only 1.4 percent. This is due in part to the post-earthquake rebuilding work in Christchurch getting nearer to completion, but residential investment also grew less strongly in Auckland, despite the severe housing shortage there. The RBNZ expects Auckland building investment to pick up in the coming few years. Treasury is forecasting real GDP growth of 2.9 percent in the 2018 June year and 3.6 percent in 2019, with growth in GDP per capita in those years of 0.9 percent and 1.6 percent respectively.

During the 2017 year, net migration continued yet again to be unusually high. The Ministry of Business, Innovation and Employment's (MBIE) annual *Migration Trends* publication reported that in the year to 30 June 2017, there was an inflow of 131,400 permanent and long term (PLT) arrivals into New Zealand, which included an unprecedented 99,200 non-New Zealand citizens (Ministry of Business Innovation & Employment, 2018). After deducting outward PLT migration, the net inflow of permanent arrivals was 72,300. Historically, net PLT migration averages around 30,000 per annum. Another feature of the migration trends was the continuing growth in temporary work visas issued. MBIE reports that there are now 152,400 temporary workers in New Zealand. This is a 16 percent increase on the previous year and is a figure equivalent to six percent of the total employed population.

The labour market continued its buoyant run during 2017. The number of people employed grew 3.7 percent over the year (93,000 people) and the unemployment rate fell from 5.3 in the December 2016 quarter to 4.9 percent in the December 2017 quarter. The labour force participation rate reached an all-time high of 71.1 percent in the September quarter. At the same time however, the labour under-utilisation rate, which includes discouraged job-seekers and part-timers who want more hours, as well as the unemployed, rose slightly to 12.1 percent of the working age population. The NEET (not in education, employment or training) rate for young people aged 15 – 24 years also increased to 11.9 percent. Skill shortages grew during the year and became more generalised across the labour market. The New Zealand Institute of Economic Research reported findings from its Quarterly Survey of Business Opinion that 'businesses report increased difficulty in finding unskilled workers,



while shortages for skilled labour remain acute.<sup>1</sup> Despite these ongoing tight labour market conditions wage growth has remained relatively weak. Private sector wages grew by an average of 1.9 percent over the year, and public sector wages by 1.5 percent, growth rates that are very similar to the 1.6 percent increase in overall consumer prices.

The Government accounts continued to be reasonably strong and in line with expectations during 2017. In its *Half-year Economic and Fiscal Update* released in December and incorporating the new Government's spending programme, the Treasury forecast a total Crown Operating Balance Before Gains and Losses rising to NZ\$ 8.8 billion or 2.5 percent of GDP and Core Crown expenses at 28 percent of GDP (New Zealand Treasury, 2017). These figures are important for the new Government's social policy programme as, in addition to a wide range of new spending initiatives, Labour has promised to a) not raise income taxes, b) keep Crown expenditure below 30 percent of GDP and c) reduce government debt from 24 percent to 20 percent of GDP by 2022. It remains unclear that all these objectives are simultaneously achievable. These commitments were designed to reassure the business sector and floating voters that Labour intend to be 'fiscally responsible' economic managers but commentators are now pointing out that they are likely to severely hamper the Government's ability to advance their social goals as well as to meet pent-up wage increase expectations in areas sectors as health and education (see, for example, Edwards, 2018).

### 2.3. Social Conditions

Social conditions during 2017 can be readily summarised as showing little change. Homeowners certainly enjoyed the benefits of low real interest rates and rising housing prices. Strong labour demand, even in the absence of significant wage growth, will also have made many households more secure. However, depending on the measure used, there was little evidence of improvement in poverty and child poverty rates, no reduction in income inequality, and the housing crisis continued to worsen especially in Auckland.

As at 31 December 2017, 289,800 people, or 9.8 percent of the population aged 15 – 64 years, were receiving a main welfare benefit. This is a decline of 7,200 or 2.4 percent over the year. Jobseeker Support numbers fell by 1,270 (1.0 percent). Sole Parent Support beneficiary numbers decreased by 4,290 (6.6 percent) and Supported Living Payment recipients fell 396 (0.4 percent). Sole Parent Support beneficiaries are mostly lone parents with a youngest dependent child under 14 years. The Supported Living Payment benefit is paid to those with long-term disability or terminal illness that prevents them working more than 15 hours per week, or people unable to work because they are caring for another person who is unable to care for themselves. Over the last five years, welfare rolls have fallen by 49,000 or 14.5 percent.

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<sup>1</sup> NZIER Press Release, 3 October 2017. Retrieved from: <https://nzier.org.nz/media/nziers-qsbo-shows-pre-election-business-confidence-jitters-quarterly-survey-of-business-opinion-october-2017>

Poverty indicators showed a mixed picture over 2016. Using a 'constant value' threshold (i.e., adjusting the threshold for changes in consumer prices, rather than recalculating it each year as a percentage of median incomes), poverty rates continued to fall. The all-person poverty rate based on 50 percent of the 2007 median income, adjusted to the Consumer Price Index (CPI), fell from 7 percent to 6 percent. After accounting for housing costs (AHC), the equivalent figure was 11 percent. However, using the standard relative poverty measure of 50 percent of the contemporary median the population poverty rate remained at 10 percent. On the higher measure of 60% of the median, 18 percent of the population are below the poverty line. Poverty on these measures have been more-or-less constant since the mid-2000s. The equivalent figures after housing costs were 14 percent (50%) and 20 percent (60%) respectively.

The poverty figures for children under 18 years show similar trends but at higher levels than for the population as a whole. Before housing costs, 13 percent are below the 50 percent of median threshold and 20 percent are below the 60 percent threshold. After housing costs are taken into account these figures rise to 19 percent and 25 percent respectively. Again, the relative poverty measures have shown little upward or downward trend over the last decade, while the lower constant-value measures show declining rates of poverty. We return to the question of child poverty rates in Section 4.1. in the context of the new Government's strong commitments to reducing child poverty.

As discussed in last year's report, housing shortages and housing affordability are major social issues, especially in Auckland. These issues intensified during 2017, and it is now accepted that Auckland has a 'housing crisis'. June 2017 estimates put the city's housing stock shortfall at over 24,000 units.<sup>2</sup> This figure is continuing to grow (as it has done for the last seven years), because the net migration inflow into Auckland each year exceeds the number of new dwellings being built. The new Minister for Housing commissioned a committee to produce a 'stocktake' report which released its findings in February 2018. Findings included that average Auckland rents rose by 25 percent over the five years to 2017, a period in which average earnings rose only 14 percent; that approximately one percent of the New Zealand population is homeless under the Statistics New Zealand definition; and that homeownership rates are falling and are especially low among the Maori and Pacifica populations (Johnson, Howden-Chapman, & Eaqub, 2018).

The Labour Party campaigned on a platform of addressing housing shortages, including a proposal to build 100,000 new homes over ten years. This is discussed in more detail in Section 4.4.

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<sup>2</sup> Statistics New Zealand data reported by Interest.co.nz, retrieved from: <https://www.interest.co.nz/property/90511/migration-accounted-two-thirds-aucklands-population-growth-year-june>

### 3. CASE LAW DEVELOPMENTS

There were two notable developments in case law during 2017, both relating to the health care sector, but with rather different outcomes. The consequences of a third case – the Court of Appeal decision in the Terranova Homecare pay equity claim for rest-home workers – which was discussed in earlier reports (Fletcher, 2016, 2017), played out in political and policy contexts during 2017 and is discussed in Section 6.1.

#### 3.1. Chamberlain v Minister of Health

Shane Chamberlain is a severely disabled 51-year-old man who is cared for at home by his mother, 76-year-old Diane Moody. Chamberlain and Moody appealed to the Court of Appeal over a decision of the Ministry of Health, accepted by the High Court, to pay Mrs Moody 17 hours per week at the minimum wage for her work in caring for Mr Chamberlain.

Mrs Moody argued that she worked many times that number of hours per week as Mr Chamberlain's disabilities are such that she needs to be with him continuously and available to provide intermittent care services at any time. Her case was that Palmer J in the High Court had not been correct in concluding 'that Shane's funding eligibility is limited to his mother's performance of discrete services identifiable within the phrases "personal care" and "household management".'<sup>3</sup>

The Court found in favour of the appellants and directed the Minister of Health to reassess Mr Chamberlain's application for funded care. This has now occurred and the Ministry has offered payment for 37 hours per week, which Mrs Moody has rejected arguing for a minimum of 40 hours.

The Court's judgment included a highly significant 'postscript' making two pointed criticisms of the Ministry of Health. First, it noted that this was the third case to come before it of a dispute between the Ministry and parents caring for adult disabled children, and expressed the hope that 'in future parties to [such] disputes...are able to settle differences without litigation.' Second it described the current statutory instruments governing eligibility for support payments as 'verging on the impenetrable' and hoped that the Ministry will find a way of making them more readily accessible to 'the people who need it most and those who care for them.'<sup>4</sup>

#### 3.2. Janet Lowe v Director-General of Health

This case turned on whether workers providing services under the 'Carer Support' programme are homeworkers (and therefore, employees) within the meaning of Section 5 of

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<sup>3</sup> See summary of the Court of Appeal's judgement at <http://www.scoop.co.nz/stories/GE1802/S00022/judgment-chamberlain-v-minister-of-health.htm>

<sup>4</sup> CA Judgment Chamberlain v Minister of Health, 90.

the Employment Relations Act 2000. It was finally determined by a decision of the Supreme Court released on 7 August 2017.<sup>5</sup>

Carer Support is a scheme to provide primary carers (usually family members) with respite care by funding carers coming into the home. Ms Lowe was one such carer. She argued that she was a) engaged to do work, and b) that work was in a dwelling house and that she was therefore an employee of the Ministry or the District Health Board (DHB) under S6(1)(b) of the Employment Relations Act. As an employee her employer would be obliged to meet other requirements such as holiday and sick pay, minimum wages, etc.

The Employment Tribunal had rejected her case, but this decision was overturned by the Employment Court. The High Court later agreed with the Tribunal and, in this final appeal, the Supreme Court, by a 3:2 majority decision, agreed that she did not meet the definition of a homeworker. The effect of this decision is to further constrain the level of support provided to community-based care workers.

## **4. SOCIAL POLICY AND SOCIAL LAW DEVELOPMENTS DURING 2016**

Because of the change in government part way through 2017, this year's report groups some key social policy areas together to provide a better picture of the change in policy approach by the new Labour-New Zealand First Government. It begins by detailing two important over-arching social policy developments.

### **4.1. Child Poverty Initiatives**

Reducing child poverty was a feature of both Labour's and National's election campaign and both put forward tax-welfare packages designed to lift significant numbers of families with children out of poverty. The details of these packages are set out in Section 4.3. In addition to the policy changes, Labour promised to put child poverty reduction targets into law. Previous Labour and National Governments have refused to establish poverty or child poverty targets.

The Child Poverty Reduction Bill was introduced into Parliament on 31 January by the Prime Minister in her capacity as Minister for Child Poverty Reduction.<sup>6</sup> The Bill, when passed, will require governments to set, publish and periodically review 10-year targets to 'reduce child poverty and socio-economic disadvantage', along with 3-yearly intermediate targets that monitor progress towards the longer-term goals.

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<sup>5</sup> (SC 97/2016) [2017] NZSC 115). For a summary, see Supreme Court release at: <https://www.courtsofnz.govt.nz/cases/janet-elsie-low-e-v-director-general-of-health-ministry-of-health-1/@images/fileMediaNotes>

<sup>6</sup> See <http://www.legislation.govt.nz/bill/government/2018/0014/latest/d56e2.html>

The Bill establishes a suite of poverty and material hardship measures that the Government Statistician will be required to report on. The four 'primary measures' are:

- *A relative poverty measure.* The number of dependent children under 18 whose household's equivalised disposable (i.e. after tax) income, before deducting housing costs, is below 50 percent of the median equivalised disposable income for all households in the same year.
- *A 'constant value' measure adjusted for price changes.* The number of dependent children under 18 whose household's equivalised disposable income, after deducting housing costs, is below 50 percent of the median equivalised disposable income for all households in a specified base year and after that amount is adjusted for price increases.
- *A direct living standards measure.* A material hardship measure based on the household being unable to afford a specified number of items deemed as essential needs.
- *A persistent poverty measure.* A measure of persistent poverty meaning children recorded as in poverty for successive years (to apply from 2025).

The suite of measures also includes six supplementary measures intended to capture indicators of more severe poverty and a less-severe poverty. The Bill will require the Government to set the targets within six months of the passage of the Act and the monitoring and reporting regime is to apply for financial years beginning after 1 July 2019. The Bill contains an amendment to the Public Finance Act 1989 requiring Ministers of Finance to report progress towards the targets at the time of each Budget and to indicate any effects proposed Budget changes are expected to have on child poverty. The approach of incorporating targets across a suite of measures is very similar to that used in the Child Poverty (Scotland) Act passed by the United Kingdom Parliament in December 2017, although that Act also specifies the targets and establishes an independent Poverty and Inequality Commission.<sup>7</sup>

One important point to note about the Bill is that it relates only to poverty among children (or, strictly speaking, among households containing dependent children). It includes no targets for, or monitoring of, poverty among other groups, such as the elderly. It also does not require reporting on *which* children are in poverty, for example the numbers in benefit-dependent households, lone parent households, in 'working-poor' households etc. That said, it is likely that analyses of these issues will accompany the official reports.

#### **4.2. Development of a Budget Wellbeing Reporting Framework**

A potentially significant initiative for future New Zealand social policy is the agreement between the Labour and Green Parties to develop a 'Wellbeing Framework' to be used

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<sup>7</sup> See <http://www.legislation.gov.uk/asp/2017/6/contents/enacted>

across government and in Treasury and Budget reporting that will include wider measures of social and environmental wellbeing in addition to traditional measures such as GDP.

The Minister of Finance, Grant Robertson, has indicated that he expects the new framework to be available and in use in time for the May 2019 Budget (Robertson, 2018). It will draw on the Living Standards Framework initiated by Treasury in 2011. This framework employs the concept of stocks of 'four capitals' – natural, physical/financial, human, and social – and a set of wellbeing domains for measuring current wellbeing against. Current thinking about the framework is set out in a presentation by the Treasury Chief Economist (Ng, 2017).

As part of the further development of the Government's Wellbeing reporting framework it will be co-hosting the Third International Conference on Wellbeing and Public Policy in Wellington in September 2018.

### **4.3. Tax, Family Tax Credits and Welfare Benefits**

As part of its May 2017 Budget the National Government passed legislation, to take effect from 1 April 2018, implementing its 'Families Incomes Package' estimated to cost NZ\$ 8.4 billion over five years. This package would have raised income tax thresholds giving NZ\$ 11 per week more to those earning over NZ\$ 22,000 p.a. and NZ\$ 20 per week more to earners above NZ\$ 48,000 p.a.. In addition the package raised some Family Tax Credit rates, while lowering the abatement threshold and increasing the abatement rate (that is, effectively increasing the maximum payment rate but also targeting the assistance more tightly). They also proposed raising the maximum amount of Accommodation Supplement available to assist low- and middle-income families with rent or mortgage costs.

The Labour Party campaigned on a commitment to repeal these planned changes and to instead implement their own 'Families Package'. These changes were passed into law on 14 December 2017 and come into force on 1 July 2018 (except for the Accommodation Supplement changes which begin on 1 April 2018). The main elements of the package are:

*Changes to the Family Tax Credit* as set out in Table 1 on the next page. The Family Tax Credit is a per-child means-tested payment for dependent children.

*Table 1: Changes to the Family Tax Credit in Labour's 'Families Package' (New Zealand dollars per annum)*

	Current	From 1 July 2018
Eldest child aged 16 – 18	\$5,303	\$5,878
Eldest child aged 0 – 15	\$4,822	
Each subsequent child aged 16 - 18	\$4,745	
Each subsequent child aged 13 – 15	\$3,822	\$4,745
Each subsequent child aged 0 – 12	\$3,351	
Abatement rate	22.5%	25%
Abatement threshold (combined family income, before tax)	\$36,350	\$42,700

Source: <http://www.treasury.govt.nz/budget/2018/families-package/families-package-dec17.pdf>

*'Best Start'*: A universal payment for all children in the first 12 months of life. Paid at a rate of \$60 per week (NZ\$ 3,120 pa), Best Start cannot be claimed if a person or couple are receiving Paid Parental Leave (PPL) payments. The payments continue for one- and two-year old children but with a (relatively generous) means test: abatement is at 21 percent on family income in excess of NZ\$ 79,000 pa. Best Start replaces the previous Parental Tax Credit, a smaller payment available to some low-income parents who did not qualify for PPL and who were not on benefit.

*Winter Energy Payment (WEP)*: From 1 July 2018, all beneficiaries, New Zealand Superannuation recipients and Veteran's Pension recipients will be entitled to receive a Winter Energy Payment paid over the months May to September and equivalent to an annual amount of NZ\$ 450 for a single person and NZ\$ 700 for a couple.

*Paid Parental Leave*: Extensions to the maximum period of PPL are included as part of the 'Families Package'. These changes are detailed in Section 4.5.

*Increases in Accommodation Supplement (AS) and Accommodation Benefit maxima*: Labour opted to retain these increases brought in as part of the previous National Government's May 2017 Budget. See Section 4.4 for details.

Labour estimated the cost of the Families Package at NZ\$ 5.53 billion over four years. This is to be funded by reversing NZ\$ 8.36 billion of the previous Government's tax cuts/'Family Incomes Package', with NZ\$ 2.84 billion extra available over five years for other spending priorities (Robertson, 2017).

#### 4.4. Social Housing and Accommodation Benefits

In May 2017 the National Government announced increases in the Accommodation Supplement payable to beneficiaries and low-income earners. The Labour Government has retained these changes. The effect is to raise maximum rates by between NZ\$ 20 and NZ\$ 80 per week. AS rates are not indexed, so these are the first increases since 2005. Entitlements under the AS are a complicated (and not always logical) combination of tenure-type, family-type, region and income. Table 2 summarises the maximum amounts payable. The maximum rate of Accommodation Benefit, which is payable to tertiary students, was also increased by NZ\$ 20 per week.

*Table 2: New maximum Accommodation Supplement rates passed as part of the May 2017 Budget and due to come into effect from 1 April 2018 (New Zealand dollars per week)*

	Maximum amount (per week)			
	Area 1*	Area 2*	Area 3*	Area 4*
Single person	\$165	\$105	\$80	\$70
Two-person family (couple, no children or lone parent, one child)	\$235	\$155	\$105	\$80
Three person family or larger (couple with 1 or more children; lone parent with 2 or more children)	\$305	\$220	\$160	\$120

\* Accommodation Supplement Areas are based on rental cost variations in different locations. Area 1 covers the high-rent areas mostly around Auckland, Queenstown and Tauranga; Area 2 is the other main cities; Area 3 is smaller centres and cities and Area 4 is rural and other areas. Some changes were made to the Area boundaries in the 2017 Budget and these will come into effect on 1 April 2018.

The change of government marks a significant shift in social housing policy. One of Labour's 'first 100 days' promises was to halt sales of the government-owned Housing New Zealand dwellings and their transfer to registered Community Housing Providers as occurred under National's policy (see Fletcher, 2017, p13).

It also promised to begin its 'KiwiBuild' programme. Kiwibuild is a commitment to build (in partnership with the private sector) 100,000 homes over 10 years. Half of these homes are to be built in Auckland and the commitment is to 'affordable' houses, meaning under NZ\$ 600,000 in Auckland and between NZ\$ 300,000 and NZ\$ 500,000 in other parts of the country. Kiwibuild houses and apartments will be sold to first-home buyers and, in an effort to constrain windfall gains, are to be sold on condition that if they are re-sold within five years any capital gain must be returned to the government. Oversight of this building programme is to be the responsibility of a new agency, the Affordable Housing Authority. This programme is ambitious compared with the previous Government's approach –



although some commentators have suggested the target should be far higher than 100,000. At the same time it represents a significant political risk for the new Government as building programmes take time and it will need to be able to demonstrate good progress well ahead of the next election in 2020.

#### **4.5. Parental Leave**

Paid parental leave was another area of competing political promises during the election campaign. Labour's position was to extend paid parental leave from 18 to 22 weeks in 2018 and to 26 weeks from 2020. A Bill effecting this (and other employment relations changes) was introduced into Parliament in November 2017. The National Party opposition sought to amend the Bill so that couples could choose to both take leave simultaneously (if they both qualified for it). Labour rejected that amendment on the grounds that it would shorten the total period of time a baby could have a parent at home full-time with him or her, and therefore have potentially negative effects on the mother-child bonding and on the child's development. They did however offer to 'work with National' to extend partner-leave in the future.

The Parental Leave and Employment Protection Amendment Act was passed under urgency and became law on 1 December 2017.

#### **4.6. Child Protection, Child Wellbeing, and an Inquiry into Historic Abuse Cases**

The extensive reforms to the Child Youth and Family Service and New Zealand's child protection and welfare services were discussed in last year's report (Fletcher, 2017). The formal part of these reforms reached a major milestone with the passing into law of the Children, Young Persons and Their Families (Oranga Tamariki) Act on 13 July 2017.

As established under the previous Government the new stand-alone agency was called the Ministry for Vulnerable Children/Oranga Tamariki. The reo Māori (Māori language) name Oranga Tamariki roughly translates as 'the wellbeing of children'. The use of the word 'vulnerable' in the English language name attracted considerable controversy because of its perceived connotations of stigmatising or targeting sub-groups of children. The new Government has dropped the word from the Ministry's name.

The Child Poverty Reduction Bill discussed in section 4.1 also includes amendments to the Vulnerable Children Act 2014 to put in place a 'Government strategy for improving children's well-being and [an] oranga tamariki action plan'. These provisions require (among other things) that future governments adopt, publish and review a Government strategy for improving the well-being of children. A key feature of the action plans are that they are cross-agency, involving Health, Justice, Police, Education, and Social Development as well as Oranga Tamariki.

The other significant development relating to child wellbeing is the establishment of a Royal Commission of Inquiry into Historical Abuse in State Care. This too, was a Labour Party pre-election commitment and was established on 1 February 2018. The Chair of the Royal Commission is former High Court Judge and past Governor-General, Sir Anand Satyanand. Other members of the Commission are yet to be announced.

The Commission comes in response to evidence of widespread emotional, physical and sexual abuse and neglect of children who were in State care over the period from the 1950s to the 1990s. Abuse occurred in both State institutions and in private foster home situations. Some of this was documented in the 2015 final report of the Confidential Listening and Assistance Service, chaired by Judge Carolyn Henwood,<sup>8</sup> which did not have the formal powers of a Royal Commission.

While the announcement of the Royal Commission has been widely welcomed, controversy has arisen over the fact that its scope is restricted to those children who were directly or indirectly in the care of the State. Others who suffered abuse while in the care of other organisations (most notably church-run organisations) are not included, unless they were also wards of the State at the time. Victims have pointed out that this leaves a whole area of abuse and neglect unresolved and that there will be situations where one person is included and another is excluded because of their differing legal status, despite them being in the same institution at the same time. The Catholic and Anglican Churches have both now asked the Government that they be included within the inquiry's scope but the Government's response so far has been to say that they want the Commission to focus on those situations where the State had a more direct and immediate duty of care.

The Commission and the Government have taken the unusual step of allowing a brief period of consultation on the draft Terms of Reference for the Inquiry and it is possible that the issue of scope will be revisited in the course of that.

The Commission has three years to report back.<sup>9</sup>

#### **4.7. Child Support**

There were no significant changes to child support law or administration during 2017. Some rates were adjusted as is usual on 1 April 2017. For the year to 31 March 2018, the individual living allowance used in the liability calculation formula increased 8.9 percent to NZ\$ 19,359 per annum (NZ\$ 22,135pa for people, mostly long-term invalids, receiving the Support Living Payment benefit). The minimum child support rate rose 1.6 percent to NZ\$ 905 per annum.

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<sup>8</sup> That report is available at <http://www.dia.govt.nz/Final-Report-of-the-Confidential-Listening-and-Assistance-Service>

<sup>9</sup> The Royal Commission's website is <http://www.abuseinstatementcare.royalcommission.govt.nz/>

## 4.8. Minimum Wages

The National Government raised the statutory Minimum Wage by 50 cents as of 1 April 2017 to NZ\$ 15.75 per hour, or NZ\$ 630 for a 40 hour week. The training and 'starting out' minimum rates were increased 40c to NZ\$ 12.60 per hour, maintaining the relativity of 80 percent of the adult rate.

The starting out minimum wage applies to:

- 16- and 17-year-old employees in their first six months with that employer. After six months with the same employer they must be paid at least the adult minimum rate.
- 16- to 19-year-olds who were previously on a welfare benefit for six months or more (and up until they have completed six months continuous employment) or whose employment agreement includes a requirement for a specified minimum amount (40 credits) of industry training.

The training minimum wage applies to employees aged 20 and over who are engaged in at least 60 credits per year of industry training. This group is mostly apprentices.

All the major parties committed to progressive increases in the Minimum Wage as part of their election campaign. The new Labour-New Zealand First Government has committed to raising the minimum to NZ\$ 20 per hour by 2021. On 22 December, the Minister for Workplace Relations and Safety, Iain Lees-Galloway, announced that the Minimum wage would increase to NZ\$ 16.50 from 1 April 2018 as part of the Government's 'commitment to a high-performing economy that delivers good jobs, decent work conditions, and fair wages.'<sup>10</sup>

## 4.9. Kiwi Saver

There were no changes to the Kiwi Saver contributions-based superannuation scheme during 2017. As at 30 June 2017, 2.76 million New Zealanders were members of the scheme, up from 2.64 million in June the previous year.

Prior to the 2014 election, the Labour Party had indicated that it intended to make Kiwi Saver compulsory but backed off this position during the 2017 campaign. Finance spokesperson (and now Minister) Grant Robertson has said that they would still like to make the scheme universal but recognise that it is mostly low-paid workers who have not yet joined. It now intends to consult with unions and employers before making any changes in this direction.

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<sup>10</sup> Ministerial press release, 22 December, <https://www.beehive.govt.nz/release/minimum-wage-increase-1650-hour>

#### 4.10. Public Health

Aside from the two health-related case law developments discussed in Section 3 above, two other developments are of particular note.

The first is the emerging concern at budgetary pressures facing most of the 20 District Health Boards. Government funding increases have not kept pace with rising demand and the need for capital expenditure to renew ageing buildings. This has especially affected areas with strong population growth such as the Auckland and Waikato DHBs. It is likely that health funding will become a major issue for the new Government over coming years.

The second is the new Government's announcement as part of its 'first 100 days' commitments of an inquiry into the quality of mental health and addiction services. Mental health has long been seen as the 'poor cousin' in the health system with regular tragic reports of service failings. Suicide numbers have been rising since 2014 and the provisional figure for 2016-17 is 606 up from 579 the previous year. Māori and men have disproportionately high rates of suicide.

The Inquiry, which is to be led by law professor and former Health and Disability Commissioner, Ron Paterson, is required to report back by October 2018. The Minister of Health, David Clark, said that the Cabinet considered establishing a Royal Commission but opted for an Inquiry Committee with no power of subpoena because it wanted a faster report-back timetable so that it can implement new policy in 2019.

#### 4.11. Accident Compensation (ACC)

2017 marked the 50<sup>th</sup> anniversary of the 'Woodhouse report' that led to the establishment of New Zealand's Accident Compensation system and the Accident Compensation Corporation.<sup>11</sup> The report, officially titled *Compensation for personal injury in New Zealand: report of the Royal Commission of Inquiry*, reflected the views of the Commission's visionary Chair, Justice (later Sir Owen) Woodhouse, and extended beyond the original remit of inquiring into workers' compensation. The scheme was established according to the five 'Woodhouse principles' of community responsibility, comprehensive entitlement, complete rehabilitation, real compensation, and administrative efficiency.

Although at various times in the past, governments have made moves to water down the scheme's provisions and/or to privatise parts of it, ACC now seems firmly entrenched as a state-provided social insurance scheme. None of the major parties campaigned in the 2017 election on policies to alter ACC in any significant way.

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<sup>11</sup> Presentations from a seminar hosted by AUT's Policy Observatory to mark the 50<sup>th</sup> anniversary can be viewed at <https://thepolicyobservatory.aut.ac.nz/publications/fifty-years-from-the-woodhouse-report-a-celebration-and-assessment-of-acc>.

There were no significant changes to the scheme during 2017 other than the coming into force of the 10 percent average reduction in levy rates that were announced in 2016 and which were reported on in last year's report.

## **5. DEVELOPMENTS RELATING TO INTERNATIONAL SOCIAL SECURITY AGREEMENTS**

### **5.1. International Covenant on Economic, Social and Cultural Rights (ICESCR)**

On 17 August 2017 the Government submitted its report to the UN Committee on Economic, Social and Cultural Rights for the period January 2011 to May 2017.<sup>12</sup> The Committee holds interactive dialogues with government representatives in March and will issue its monitoring report after that.

### **5.2. UN Convention on the Rights of People with Disabilities (CRPD)**

The process has begun for New Zealand's second review against the CRPD which is being conducted by the United Nations Committee on the Rights of People with Disabilities. The review will be conducted during 2018, with the Government's response to the review report scheduled for March 2019.

On 30 November 2017, New Zealand's Independent Monitoring Mechanism provided its submission to the Committee to inform the Committee's development of what is called the List of Issues Prior to Reporting. The Independent Monitoring Mechanism comprises representatives from the Human Rights Commission, the Office of the Ombudsman and the NGO umbrella group, the Disabled People's Organisations Coalition.

### **5.3. New Zealanders Living in Australia**

Last year's report (Fletcher, 2017) outlined the situation affecting access to welfare benefits for many New Zealanders living in Australia. New Zealanders and Australians have reciprocal rights to live and work in each other's country under what is called in Australia a Special Category Visa but Australia has now restricted access to welfare to people holding permanent residence permits. Many Australian resident New Zealanders do not meet the criteria for permanent residence and are therefore not entitled to welfare assistance. As reported last year, Australia relaxed the rules slightly but this has not changed the situation for many New Zealanders.

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<sup>12</sup> The report is available at [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=NZL&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=NZL&Lang=EN)

Two new issues came to the fore during 2017. First the Australian Government has proposed treating New Zealanders who want to attend tertiary education in Australia as international students and to charge them full international student fees. Prime Minister Ardern has stated that, if Australia does that, New Zealand would follow suit and treat Australians here as international fee-paying students. The problem with this response is, of course, that there are a great many more New Zealanders wishing to study in Australia than vice versa.

The second issue has been developing for several years but gathered more attention during 2017. The Australian Government made the decision in 2015 to deport non-citizens who had gang affiliations or who had been convicted of a crime with a maximum sentence of a year or more in prison. So far over 1,000 New Zealanders have been deported under the policy, including some who have lived nearly all their lives in Australia and who have Australian children. Those who challenge their deportation are held in detention in the remote Australian territory of Christmas Island. Christmas Island is a remote Indian Ocean island over 2,000 kilometres from Perth and just south of the Indonesian island of Java. These people, known as '501s' after the section of the Australian Migration Act under which they are detained can be held indefinitely without charge, unless or until they agree to their deportation. Conditions in the privately run detention camp are said to be bad and have resulted in riots following a death in the camp. While some of the New Zealand citizens in detention have been convicted of serious offences, others are more minor such as repeat driving convictions.

The deputy leader of the Labour Party and Minister for Corrections, Kelvin Davis, has visited the island and has campaigned for a change in the Australian policy but without any success so far.

## **6. RELEVANT ACTS OF PARLIAMENT PASSED AND BILLS**

### **6.1. Care and Support Workers (Pay Equity) Settlement Act**

This Act came into force on 14 June 2017. Its purpose is to implement an earlier agreement between the Government, the 20 District Health Boards, the New Zealand Council of Trade Unions and three other unions, the Nurses Organisation, the Public Service Association and E tū, a large private sector trade union.<sup>13</sup> It also applies that agreement to relevant employers and workers who were not party to it at the time. The agreement covers wages and other matters for care and support workers following the Court of Appeal's decision in the Terranova Homecare pay equity case (see Fletcher, 2016; 2017).

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<sup>13</sup> E tū is a reo Māori phrase meaning 'Stand tall'.

The effect of the Act is to implement a series of substantial pay increases for care workers to be progressively introduced from 1 July 2017 through to 1 July 2021 by which date experienced or qualified care workers will be paid a minimum of \$27.00 per hour. Previously many of these workers earned little more than the statutory minimum wage. About 55,000 workers, nearly all of whom are women, will receive wage increases. The cost to Government is estimated to be \$2 billion.

In February 2018, Kristine Bartlett, the care worker who took the case through the courts with the support of E tū, received the 'New Zealander of the Year' award.

A subsequent Bill, the Employment (Pay Equity and Equal Pay) Bill, designed to reduce the potential for workers in other low-paid, female-dominated occupations to take similar action has lapsed with the change of government.

## **6.2. Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017**

This Act received Royal assent on 13 July 2017. It is a long Act of 150 sections which, among other things amends the principal child protection and social work legislation, the Children, Young Persons, and Their Families Act 1989.

The Act implements the changes discussed in previous reports (Fletcher 2016; 2017) and in Section X above. This includes the duties and obligations of the Chief Executive of the new agency, the Ministry for Children, Oranga Tamariki which replaced the previous Child, Youth and Family Service division of the Ministry of Social Development.

## **6.3. Parental Leave and Employment Protection Amendment Act 2017**

This Act was passed on 4 December and extends the period of time for which paid parental leave can be received. Details are set out in Section 4.5 above.

## **6.4. Healthy Homes Guarantee Act**

This Act, passed on 4 December, amends the Residential Tenancies Act 1986 so as to allow for regulations providing for Healthy Homes Standards to be imposed on all landlords. The standards may include regulations relating to indoor temperatures, dampness, heating, insulation, ventilation, draughts and drainage.

## **6.5. Families Package (Income Tax and Benefits) Act 2017**

This Act, passed on 20 December, amends the Income Tax, Tax Administration and Social Security Acts to give effect to the Labour-New Zealand First Governments Families Package described in section 4.3 above. It also repealed the previous Government's 'Family Incomes Package' tax changes that had been introduced in the May 2017 Budget.

Two Bills not yet passed into law are worth noting. These are:

### **6.6. Criminal Records (Expungement of Convictions for Historical Homosexual Offences) Bill**

This Bill, in the name of Minister for Justice, Andrew Little, will establish an expungement scheme for convictions for homosexual acts that, if they had taken place now, would not be an offence. Homosexual acts were illegal in New Zealand until 1986. The Bill was introduced by the previous Government in June 2017. Any person, or a family member if the convicted person has died, may apply for their conviction to be expunged.

### **6.7. End of Life Choice Bill (David Seymour)**

This private members Bill introduced by ACT Party MP, David Seymour, in June 2017 makes provision for medically assisted death under certain circumstances. The Bill has triggered considerable controversy over the whole topic of euthanasia, with strong views expressed on both sides. The Seymour Bill provides for a wide range of circumstances under which medically assisted death could be legal. In addition to people assessed as having a terminal illness that will lead to their death within six months, it also allows euthanasia for those with a 'grievous and irremediable medical condition' where they are in 'an advanced state of irreversible decline in capability'.

The Bill is currently before Parliament's Justice Select Committee for the hearing of public submissions.

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Michael Fletcher, PhD  
Senior Researcher  
Victoria University of Wellington  
School of Government  
Wellington, New Zealand  
[michael.fletcher@vuw.ac.nz](mailto:michael.fletcher@vuw.ac.nz)