



Disabled Persons Employment Promotion (Repeal and Related Matters) Bill

Report of the Social Services Committee

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Recommendation

The Social Services Committee has examined the Disabled Persons Employment Promotion (Repeal and Related Matters) Bill and is unable to reach agreement on whether the bill should be passed. The bill is being reported back to the House with no amendments.

Introduction

This bill repeals the Disabled Persons Employment Promotion Act 1960, provides for the transition to the new regime, and amends related legislation such as the Minimum Wage Act 1983. This repeal is a result of the findings of the 2001 Vocational Services Review which are highlighted in the publication *Pathways to Inclusion*¹, and is consistent with the New Zealand Disability Strategy. The overall objectives of these policy changes are to increase the participation of people with disabilities in paid employment, and in their communities. Along with the repeal of the Act, additional funding has been put in place to achieve these objectives. We received 18 submissions on this bill and all submitters either support the bill, or support the intent of the repeal.

Concerns raised

Concerns were raised that the financial implications of the repeal of the Disabled Persons Employment Promotion Act will force sheltered workshops to close or move to providing other vocational services. The requirement to pay minimum wages will put too large a financial burden on sheltered workshops forcing them to close.

We have been told that it is not an intention of this bill to close workshops, and measures have been put in place to minimise the risk of closures. These measures consist of a funding strategy to assist workshops make the transition to the non-Disabled Persons Employment Promotion Act environment, the gradual introduction of change over six years; and support to make business adjustments. An additional \$44 million was budgeted over 4 years for the vocational services sector from July 2002 and includes the costs to providers of implementing the repeal.

In 2001 the possible costs to sheltered work providers of repealing the Disabled Persons Employment Promotion Act were estimated at up to \$0.70 million for 2002/03, increasing up to \$5.58 million for 2006/07, with up \$6.98 million in outyears, if employment in sheltered workplaces increases to the level of 2,000 people employed full-time. The costs come from increased service provision costs as providers develop employment relationships and pay wages and ACC levies.

¹ *Pathways to Inclusion*, 12 September 2001, this is the Government's strategy for Ministry of Social Development funded vocational services incorporating the Government's decisions from a review conducted in 2001.

Currently it is estimated that approximately 800 -1000 people may be in employment relationships with providers. To date, approximately 100 exemptions from the minimum wage have been granted in sheltered workshops. The rate at which providers incur costs will depend on the speed at which employment relationships develop over the transitional period. Providers will not be legally liable to pay increased employment costs until their current exemptions end on 30 June 2007.

However it is also true that, in addition to receiving government funding, it is expected that workshops will be expected to offer real work and generate sufficient income to contribute to the costs of paying wages. Concern was raised that this new requirement to be commercial will overtake the need to be community minded and to employ disabled people with high needs who need long-term stable employment options.

New Zealand National minority view

New Zealand National supports the aim of having any disabled person who can work in supported employment in the community being able to do so. We do however have grave concerns that this bill will have unintended consequences that will do more harm than good if implemented in its current form.

Sheltered workshops provide more than just work. They focus on providing individuals with a range of activities in a caring environment, while at the same time providing social, creative and educational opportunities, personal planning, advocacy and support, much of which is not funded. Sheltered workshops are not employers and businesses designed to pay all participating individuals the minimum wage.

Recouping funds through some working initiatives to raise capital allows for the provision of services at least cost to government and the individual, and builds a sense of belonging and self worth for many participants. After law reform, overseas experience saw many sheltered workshops close and while some participants enter day service programmes, many remained at home. There is no clear outcome for the majority of the 3,500 people who will not meet the required level to achieve full employment on the minimum wage with the repeal of the Disabled Persons Employment Promotion Bill.

Not enough consideration has been given to the effect on providers and the very real possibility of closures. No consideration has been given to costs associated with "community participation" if that means individuals want an individual programme as opposed to a group one and require a caregiver, or put extra demand on family support. The impact of the reform on the lives of people currently active within sheltered workshops or supported employment has not been fully assessed. For a number of people currently in a sheltered workshop or supported employment, being told they no longer have a "job" would be devastating.

It is doubtful that the number of existing Labour Inspectors will be enough to do the work of assessing the employment relationship of the 3,700 people in sheltered workshops. Disputes resolution is expected to be in accordance with employment law.

With the total emphasis on a pure employer/employee business model, the holistic care for the individual becomes improbable to achieve. There has been:

- No impact study on the effects of those who will no longer be “employed” and how and where they are likely to be accommodated if a sheltered workshop closes.
- No calculation of the additional costs associated in the event of closures.
- No assessment of the effects on caregivers and families, if there is no other option and the individual cannot remain with their current provider.
- Assumption that there will be no increase in the number of Labour Inspectors.
- Providers of “community participation” having no long-term certainty.
- No calculation of the additional costs if “community participation” further increases the demand on caregivers.

New Zealand National supports delaying the process, until there has been better understanding and planning to ensure a successful outcome, rather than mirror the negative overseas experience of moving too quickly.

New Zealand First minority view

New Zealand First supports the view that disabled people who can participate in supported employment within the community should have every opportunity to do so. Indeed, we believe they have a valuable contribution to make.

We believe that the financial implications of this legislation will impact significantly on sheltered workshops and, by implication, the disabled people who work within them. Attendance at sheltered workshops gives disabled individuals a sense of self-esteem and achievement, while at the same time providing opportunities for social interaction within a very supportive environment. These opportunities are difficult, if not impossible, to replicate in a commercial environment.

Based on the above, New Zealand First has major concerns with the repercussions and unintended consequences of this legislation. The issues have not been addressed sufficiently to enable New Zealand First to support this bill.

ACT New Zealand minority view

ACT New Zealand totally opposes this Disabled Persons Employment Promotion (Repeal and Related Matters) Bill on the basis that those families who will be directly affected by this legislation have not been properly consulted. The fact that the Social Services Committee received only 18 submissions when the changes in the bill will impact on dozens of providers and thousands of families, demonstrates the woeful attempt to involve them in the process and hear their point of view.

It has been estimated that there are some 3,700 disabled New Zealanders who presently work in sheltered workshops who will be affected by this legislation. That means that any changes to their daily lives will impact on an estimated 10,000 family members. ACT New Zealand believes the fact that neither these workers nor their families have been consulted over the impact on them of the bill is an absolute disgrace.

Section 15.6 of the New Zealand Disability Strategy states: “*Work actively to ensure that families, whanau and those who support disabled people can be involved in policy and service development and delivery, and in monitoring and evaluation processes where appropriate*”. This means that the Minister has a duty to consult with families, disabled people, their caregivers and whanau over any key changes that could impact on them.

ACT New Zealand believes that the Minister has failed to meet her obligations under Section 15.6 of the strategy in spite of being given a three month extension of time by the Select Committee, which demonstrates gross incompetence.

As a result, the bill signals the fundamental breakdown of the democratic process whereby the voice of the extremely vulnerable people who are at the heart of the legislative change has been silenced.

In Australia, when the Government finally realised that consultation with workers and families was essential, they were surprised to learn that the key motivator for the majority of workers was not wages and financial remuneration, as they had thought, but the support and social participation that their workshop provided. Further, the dignity and pride that came from being engaged in work – even though their productivity levels may have been extremely limited – was vital to their sense of self-worth and wellbeing.

ACT New Zealand not only opposes this bill but requests that the bill be withdrawn until a proper consultation process, as required under Section 15.6 of the New Zealand Disability Strategy, has been undertaken.

United Future minority view

United Future agrees with the principle of this legislation, but has major concerns with its implication, as did the majority of the submitters.

People with disabilities should have every opportunity to lead full and productive lives if at all possible. United Future totally supports the principle that for equal work, equal money should be paid.

However, United Future considers that there are limits to normalisation and for many disabled people, those limits are sheltered workshops. “At present sheltered workshops provide a service that can focus on an individual’s needs and aspirations. A person’s productivity, or lack of productivity, is not an issue.”²

The Government is not in a position where it has addressed major issues sufficiently to allow United Future to support this bill. Paramount among these issues is the compliance costs surrounding its implementation. These costs will be far greater than in “normal” workplaces, because of the “special needs” of many of the workforce. They include developing systems to evaluate skills and additional staff to process applications. As part of the assessment of employment relationships the officials have advised us that the Department of Labour is to assess compliance costs. However the bill could repeal the current system before the full nature of the assessment is known. United Future believes

² VASS Presentation

that, due to the specialised nature of these work centres it may well be better for the Government's to pick up responsibility for the cost of the compliance.

At present, the Government's intention is that Labour Inspectors from the Department of Labour will conduct assessment of the competency of people with disabilities. United Future believes these inspectors may become too focused on the monetary differences, rather than the special needs of the disabled workforce and not take the necessary regard to the additional efforts and costs that form part of the process to enable these people to be employed.

Sheltered workshops are more than a place of business. They are a service to the nation, offering a work environment for a small group of people (perhaps 3700) who might not otherwise have work. Other, more integrated work options do exist. If sheltered workshops were forced out of existence, as is highly likely, then the desire to pay the minimum wage becomes irrelevant. The reality of transition is such that people with disabilities who work in sheltered workshops are unlikely to find employment outside the workshop.

Appendix

Committee procedure

The Disabled Persons Employment Promotion (Repeal and Related Matters) Bill was referred to the committee on 26 May 2004. The closing date for submissions was 28 June 2004. We received and considered 18 submissions from interested groups and individuals. We heard 15 submissions. Hearing of evidence took 3 hours and 11 minutes and consideration took 8 hours and 31 minutes.

We received advice from Department of Labour, the Ministry of Social Development and the Parliamentary Council Office.

Committee members

Georgina Beyer (Chairperson)

Dr Muriel Newman (Deputy Chairperson)

Paul Adams

Sue Bradford

Judith Collins (from 1 February 2005 – replaced by Sandra Goudie)

Hon Taito Phillip Field

Bill Gudgeon

Moana Mackey

Katherine Rich (until 1 February 2005)

Linda Scott

Hon Judith Tizard