

Chair
Youth Parliament 2010 Cabinet Strategy Committee

Adult Rights and Responsibilities (Age of Majority) Bill 2010

Proposal

- 1 I propose the tabling of the Adult Rights and Responsibilities (Age of Majority) Bill at Youth Parliament 2010. The proposed amendments to existing Acts within this Bill will clarify existing legislation and establish legislative markers to inform future work in reviewing age-based legislation and policy.
- 2 Two Acts are to be amended:
 - a. The Age of Majority Act 1970. The amendment to this Act decreases the age at which, in the absence of specific legislation to the contrary, a person attains their legal majority, from 20 to 18 years.
 - b. The Human Rights Act 1993. The amendment to this Act removes the age specificity of 16 years of age or older attached to the prohibition against age-based discrimination.
- 3 The Adult Rights and Responsibilities (Age of Majority) Bill will also set up a process for biennial age-related legislative, regulatory and policy reviews by the Ministers of Justice and Youth Affairs.

Background

New Zealand situation

- 4 2010 is the fortieth anniversary of the Age of Majority Act 1970, so it is appropriate to revisit this legislation. Since 1970, young people in New Zealand have been subject to an array of mixed messages about their place in society. A trend towards prolonged adolescence sees young people in 2010, as compared to their 1970 equivalents:
 - a. staying at school or education longer
 - b. being financially reliant on their parents much longer
 - c. getting married and having their own children later in life.
- 5 On the other hand, they are expected to behave as adults and are given increased responsibility, such as the lowering of the drinking age to 18 years. This means that, by the age of 18, young people have attained a number of rights and responsibilities that are symbolic of adulthood. Despite this apparent coalition of age entitlements at 18 years of

age, there remains, under current law, a wide array of ages at which a young person can undertake certain activities. This variety of age thresholds is a significant impediment to young people making appropriate transitions into adulthood. They send unclear signals to the young people of New Zealand as to the rites of passage that mark their full adult participation in society.

6 A young person of today, say, one approaching the age of 16 years of age, would be faced with a variety of age thresholds in assessing their individual health, social or employment prospects over the next four years:

- If they were concerned about their teeth, they could take advantage of the fact that free oral health care from a dentist is available for all those aged from school age 9 to 17 years of age.
- If they were contemplating a sexual relationship, they would be aware that at 16 years of age you can consent to have sex with another person, including of the same gender as yourself, and also get married with the consent of your parents (although you can leave home without the permission of your parents).
- If they wanted to donate blood as a social good, they would discover that at 16 years of age (and up to the age of 60), first-time donors are accepted for blood donation by the New Zealand Blood Service.
- If they wanted to enter real estate as a profession, they would have to be aware that they could, at age 18, be licensed as a real estate agent. At age 18 you can also be licensed as a real estate branch manager, as long as you have also obtained 3 years experience in real estate agency work within the 10 years preceding your application to be licensed.
- If they were adopted, they may be thinking of what future options might be available to them. At age 20, one can apply to the Registrar-General of Births and Deaths to obtain a birth certificate showing your birth parents' details (but at age 19 you can place a request with the Registrar-General to not have contact details given out in response to queries from your birth parents).

7 In many instances, there can be a multitude of age thresholds within a single issue, for example, gambling. Young people can buy a lotto ticket at any age, but must be aged 18 or over to buy an Instant Kiwi or to place a bet at the TAB. To enter the gambling area of a casino, people must be 20 years or over (although one could purchase and drink a glass of beer in a casino at age 18 as long as you did not enter the gambling area). There is no age restriction on access to online gambling, nor is there any restriction in legislation of the age at which one can purchase a racehorse.

8 Youth ages tend to be discussed when controversial pieces of legislation are discussed in Parliament, when a sub-set of "youth" issues (such as drinking, driving or voting, some of which are subject to conscience votes) are proposed for piecemeal and consequential amendment. These are often negatively-framed youth-related issues, wherein young people are seen to be, for example:

- a. not voting in sufficient numbers
- b. not drinking responsibly
- c. not driving safely.

- 9 This piecemeal approach does not easily allow for consistency to be developed over time in the setting of appropriate youth-age thresholds. As well as areas in which government may seek to curb and regulate behaviour, such as access to alcohol and gambling, there are other areas where government seeks widespread compliance, such as organ and blood donation and immunisation. Any confusion or complexity in the law relating to ages for the donation of such life-saving items, or compliance with immunisation requirements, will necessarily result in lower uptake of such socially and individually beneficial health interventions.
- 10 However, with legislative principles in place, there can be a balancing of youth rights and responsibilities under law. The purpose of the Adult Rights and Responsibilities (Age of Majority) Bill is to set up such principles to inform work leading to a consolidation, over time, of age thresholds and age(s) of majority.

Alignment with other jurisdictions

- 11 The signals established by the Adult Rights and Responsibilities (Age of Majority) Bill will not only clarify existing legislation but align New Zealand with international frameworks for youth age thresholds. Setting a default age of majority at 18 years of age will align to United Nations Convention on the Rights of the Child (UNCROC) which, in Article 1, refers to a “child” as all those aged 18 or less, unless the age of majority is attained earlier.
- 12 Removal of age specificity will also better align our age-related human rights legislation with other jurisdictions. Neither Canada (Canadian Charter of Rights and Freedoms), Australia (Age Discrimination Act 2004), the United Kingdom (Human Rights Act 1998; Age Discrimination Act 2004) or the European Union (European Convention on Human Rights) contains youth age specificity within their equivalent human rights legislation.

Comment

Youth-age thresholds

- 13 Social knowledge about child development, research into factors informing notions of competence, and the still incomplete research into adolescent neurological development indicate not only the complex nature of maturity but also the practical necessity of youth-age thresholds or age(s) of majority.
- 14 Age(s) thresholds work both to empower and protect young people. They define points in the life cycle at which a young person is considered most likely to be able to properly manage the situations and rights they now have become exposed to or allowed. In some cases, a single age threshold may be required to capture this transition in law, while in other cases a graduated series of thresholds may be required. In other cases, age specificity may not be needed at all.
- 15 There are frameworks in place, such as the work undertaken by the Ministry of Youth Development in 2000 and again in 2004/5, resulting in a publication (*Does Your Policy Need an Age Limit?*) and literature reviews and policy position papers. The third and fourth periodic review (2008; clause 2.15) commenting on New Zealand’s obligations under UNCROC drew on the previous Ministry of Youth Development work in discussing whether such a balancing comprehensive review take place, concluding that a one-off, large-scale review of minimum age inconsistencies in legislation, such as happened with human rights,¹ would be of limited benefit.

¹ This was known as the *Consistency 2000* exercise and was a large-scale review of all legislation.

- 16 The 2008 UNCROC review noted that there was value in a “more cautious approach” to age inconsistencies that would still allow for “all related issues” to be canvassed, which is what this paper proposes. Age-threshold frameworks and signals need amplification, which is what the legislative principles and biennial Ministerial review process in the Adult Rights and Responsibilities (Age of Majority) Bill will establish. This will set a stronger set of markers for the evidence base by which to rationalise the use of youth ages in New Zealand law.

Amendment to the Age of Majority Act 1970

- 17 I propose to amend the Age of Majority Act 1970 by decreasing the age at which a person attains their legal majority from 20 to 18 years of age.² This Act specifies the law relating to the age of majority and to the time when a particular entitlement is attained, where not otherwise specified in legislation, or where Acts are silent as to age. The age specified within this Act becomes, in effect, the default age for assuming the onset of adult rights and responsibilities.
- 18 By making this amendment, we can ensure that the justification that might be given for allowing or refusing an 18 year old young person restriction or entitlement in legislation in differing contexts or areas will have the same resonance and interpretative weight.
- 19 On the other hand, and notwithstanding the default implications of 18 years of age achieved through this amendment, there will be legislative requirements for those aged below this age who commit serious crimes. Equally, there is a persuasive argument that in the areas of drinking and driving, that an age above 18 is required for entitlements due to safety impacts.

Amendment to the Human Rights Act 1993

- 20 I propose that the age specificity of 16 years of age or older attached to the prohibition against age-based discrimination be removed from the Human Rights Act 1993. Under current law, one can discriminate against a child or young person aged 15 or younger on the grounds of age, and this will not be seen as discrimination under the Act, as long as the child or young person is not treated differently on the basis of other prohibited grounds in the Act (e.g. religion, gender, disability). It is unclear why 16 years of age was identified as the threshold age for non-discrimination.³
- 21 This amendment will clarify existing human rights legislation and will not affect compliance costs for government, business or individuals. The Human Rights Commission will continue to assess cases or assign tests based on its existing powers, whereby they can assess if any discrimination or differentiation is based on statistical or other data on which it is reasonable to rely; provides a bona fide benefit to persons of a particular age or is subject to other exemptions allowed for within the Human Rights Act 1993.
- 22 UNCROC reviews tend to prefer more rather than less age specificity for child and youth-related legislation, but the proposed amendment removes a seeming ability to discriminate against young people on the basis of age alone. Removing the age specificity of 16 years

² This amendment was voted on at the 2004 Youth Parliament. See Appendix.

³ While the Act is silent as to the reason for the identification of 16 years of age for non-discrimination, note Andrew Butler and Petra Butler, *The New Zealand Bill of Rights Act: A Commentary* (LexisNexis, Wellington, 2005), para 17.8.16, p.488 who speculate: “It would appear that the age of 16 years was chosen as the floor for age discrimination on the basis that this was the age at which compulsory schooling ended and young people were entitled to be in the labour market on a full-time basis.”

of age will make it easier to reflect UNCROC commitments within domestic legislation due to the removal and/or simplification of conflicting age thresholds. The periodic UNCROC reviews will also be an opportunity to convey to the United Nations the results of the signals generated towards a more holistic approach to age-related legislation allowed by the successful passage of the Adult Rights and Responsibilities (Age of Majority) Bill.

Ministerial Review

- 23 I propose to establish a biennial Ministerial review of age-related legislation and policy directions, the responsibility of the Minister of Justice and the Minister of Youth Affairs. Relevant departments, in consultation with affected departments and agencies, will, within baselines, be responsible for advice on review processes.
- 24 This review would take place no more than two years from the passing of the Adult Rights and Responsibilities (Age of Majority) Bill; then at intervals of not more than two years after the previous review. Each review will provide:
- a. advice on progress towards a gradual alignment of ages of adult rights and responsibilities
 - b. advice on the costs and benefits of recent age threshold alignments within legislation
 - c. reporting on the rationales and evidence being produced within government to justify age thresholds in legislation.

Consultation

- 25 The Ministry of Justice has been consulted on the proposed amendments to the Human Rights Act 1993.

Financial implications

- 26 There are no financial implications from this Bill.

Human rights implications

- 27 As mentioned above, I propose that the Human Rights Act 1993 is amended to remove the age specificity of 16 years of age or older attached to the prohibition against age-based discrimination. This amendment will not impact on compliance costs for government or business, and the Human Rights Commission will continue to assess cases or assign tests based on its existing powers. The broader outcome is to clarify the law regarding age discrimination, which may lead to amplified signals for the simplification of youth-age thresholds within other legislation.

Legislative implications

- 28 The Adult Rights and Responsibilities (Age of Majority) Bill will give effect to these decisions, and will be introduced at Youth Parliament 2010 with a Priority 1.

Regulatory impact and compliance cost statement

- 29 A regulatory impact analysis is not required as the enabling legislation proposed is intended to re-enact existing legislation to improve legislative clarity and navigability, and will have minimal immediate impact on business. Although it may influence future legislation and policy development by government, especially in the justification for age thresholds, these will be addressed on a case-by-case basis.

Gender implications

- 30 While there are no specific gender implications to this proposal, the signals that the Adult Rights and Responsibilities (Age of Majority) Bill sends may, when linked with an evolving research base, raise the prospect of positive discrimination (i.e. evidence-based differential treatment of boys and girls), for instance because girls mature physically and emotionally earlier than boys.

Disability perspective

- 31 While there are no specific disability implications to this proposal, the signals that the Adult Rights and Responsibilities (Age of Majority) Bill sends may, when linked with an evolving research base, raise the prospect of positive discrimination. For instance, it may reinforce the importance of capacity-based tests, rather than of competence, for catch-all age-discriminatory approaches.

Publicity

- 32 The Adult Rights and Responsibilities (Age of Majority) Bill will be introduced at Youth Parliament 2010. Youth MPs will receive copies of any submissions made on the Bill through the youth networks and website of the Ministry of Youth Development as well as on the Youth Parliament 2010 Facebook page.

Recommendations

- 33 It is recommended that the Committee:
1. **note** that having a number of age thresholds for young people acts as an impediment for appropriate rites of passage or acknowledgement of adult rights and responsibilities for young people.
 2. **agree** to the Adult Rights and Responsibilities (Age of Majority) Bill being presented at Youth Parliament 2010.
 3. **note** that the proposed approach is to establish legislative principles in order to inform future work in reviewing age-based legislation and policy.
 4. **agree**, within the Adult Rights and Responsibilities (Age of Majority) Bill, to amend:
 - a. The Age of Majority Act 1970 to decrease the age at which, in the absence of specific legislation to the contrary, a person attains their legal majority from 20 to 18 years

- b. The Human Rights Act 1993 to remove the age specificity of 16 years of age or older attached to the prohibition against age-based discrimination.
- 5. **agree** that the Adult Rights and Responsibilities (Age of Majority) Bill establish biennial age-related legislative, regulatory and policy review by the Minister of Justice and the Minister of Youth Affairs.
- 6. **agree** that review would take place no more than two years from the passing of the Adult Rights and Responsibilities (Age of Majority) Bill; then at intervals of not more than two years after the previous review.
- 7. **agree** that review will provide:
 - a. advice on progress towards a gradual alignment of ages of adult rights and responsibilities
 - b. advice on the costs and benefits of recent age threshold alignments within legislation
 - c. reporting on the rationales and evidence being produced within government to justify age thresholds in legislation.

_____ / _____ / _____

Hon Paula Bennett
Minister of Youth Affairs

_____ / _____ / _____

Hon Simon Power
Minister of Justice

Appendix

Minimum Ages Bill at Youth Parliament 2004

Youth Parliament 2004

In 2004, Youth Parliament discussed a “Minimum Ages Bill”. The 2004 Bill involved three amendments to legislation, to decrease the age at which a person attains full age from 20 to 18 in the Age of Majority Act 1970 (which is being repeated within the Bill for the 2010 Youth Parliament) as well as age-related amendments to transport and alcohol-related legislation. The three Acts and their amendments contained within the Minimum Ages Bill at the 2004 event were:

- The Age of Majority Act 1970. The amendment to this Act decreases the age at which a person attains full age from 20 to 18 years.
- The Land Transport Act 1998. The amendment to this Act increases the minimum age for a person to hold a driver licence from 15 to 16 years.
- The Sale of Liquor Act 1989. The amendments to this Act increase from 18 to 20 years the age at which liquor can be bought by, purchased on behalf of, or supplied to minors. It also raises the age at which a person can be present on or employed in licensed premises.

Analysis of the 2004 Youth Parliament showed that the addition of the transport and alcohol amendments meant that those specific topics were discussed in more detail than the more wide-ranging age of majority amendment. In 2004, the amendment (i.e. lowering the age of majority from 20 to 18 years of age) was voted in favour of by 104 of the 120 Youth MPs, with 14 against and 2 abstaining.

Those who supported the amendment in 2004 noted that there had been considerable changes in New Zealand society since 1970, particularly with young people becoming independent at a younger age, and that setting the age at 18 would bring it into line with responsibilities young people have in other areas, such as drinking, voting and military service. It was also seen as a move that would clarify and move us towards consistency in age restrictions under the law. Those Youth MPs who voted against the decrease in the age of majority in 2004 argued that it protected young people from potentially harmful adult issues, such as financially binding or oppressive contracts.