



Report of the

ATTORNEY-GENERAL

under the New Zealand Bill of Rights Act
1990 on the War Pensions Amendment Bill
(No.2) 2001

*Presented to the House of Representatives pursuant to
Section 7 of the New Zealand Bill of Rights Act 1990
and Standing Order 260 (as varied by the House of
Representatives on 25 May 2000) of the Standing
Orders of the House of Representatives*

I have considered the War Pensions Amendment Bill (No.2) 2001 (the "Bill") for consistency with the New Zealand Bill of Rights Act 1990 (the "Bill of Rights Act"). I have concluded that the effect of the Bill in treating same-sex couples differently from opposite-sex couples appears to be inconsistent with section 19(1) of the Bill of Rights Act, and does not appear to be justified in terms of section 5 of the Bill of Rights Act. As required by section 7 of the Bill of Rights Act and Standing Order 260 (as varied by the House on 25 May 2000) I draw this to the attention of the House of Representatives.

The Bill

The Bill amends the Social Welfare (Transitional Provisions) Act 1990, (the "Act") by carrying over existing entitlements to the Veterans' Pension currently contained in this Act to the War Pensions Act 1954 with some changes to the existing Veterans' Pension regime, such as the inclusion of an abatement scheme. The objective underlying the Veterans' Pension is the recognition of the special status of veterans and the service they have given to New Zealand. The Veterans' Pension also recognises that veterans have needs, both physical and mental, that are different from the rest of the population as a result of their service.

The Bill of Rights Act issue

The Bill gives rise to discrimination on the ground of sexual orientation. The discrimination on the ground of sexual orientation arises because the provisions set out in the Bill apply only to couples treated as "married" under the Social Security Act 1964. The Social Security Act provides for the recognition of opposite-sex de facto couples as "married" but does not recognise same-sex relationships in the same way.

The exclusion of same-sex couples leads to two areas of different treatment as between same-sex and opposite-sex couples. Firstly, assessment of the eligibility for a Veterans' Pension or a lump sum payment, in situations where the veteran is deceased, is restricted to a "spouse". Therefore, as a same-sex partner is not recognised as a "spouse" and not entitled to receive the Veterans' Pension in these circumstances, that person is financially disadvantaged in comparison to a legally married spouse or opposite-sex partner.

Secondly, the rate of Veterans' Pension to be paid is determined by reference to the veteran's marital status. A veteran with a same-sex partner will not be paid at the "married rate", but will instead be paid at the proportionately higher "single rate". While this results in a financial advantage to a veteran in a same-sex relationship, it may also be seen as perpetrating the historical and ongoing stigmatisation of same-sex relationships by failing to recognise the status and value of such relationships.

In considering this issue I have been influenced by recent international movements in the law relating to sexual orientation discrimination, such as the decision of the Supreme Court of Canada in *M v H* [1999] 2 SCR 3. I have concluded that the Bill gives rise to a *prima facie* issue of discrimination on the ground of sexual orientation by not recognising same-sex relationships.

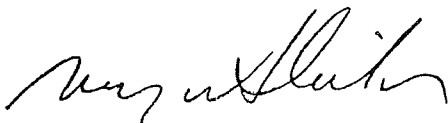
The differences which result from the Bill's treatment of same-sex couples are not relevant to the objectives of the Bill and cannot, in my view, be said to be rationally or proportionately connected to them. There is, therefore, no basis for justifying the Bill's treatment of same-sex couples under section 5 of the Bill of Rights Act

Further work on the treatment of same-sex couples in the social assistance context

The Government recognises that, in delivery of social assistance, the different treatment of same-sex and opposite-sex couples is a significant and outstanding issue. The Government considers that same-sex couples should be treated the same way as married and de facto opposite-sex couples for social assistance purposes and is, therefore, currently examining how to implement reform in a comprehensive manner so that all possible implications of any changes are taken into account.

Conclusion

I conclude that the War Pensions Amendment Bill (No.2) 2001, in discriminating on the ground of sexual orientation, appears to be inconsistent with section 19(1) of the New Zealand Bill of Rights Act 1990, and does not appear to be justified in terms of section 5 of the Bill of Rights Act. While issues relating to the legal rights and entitlements of same-sex couples are under review, proposals for future reform do not justify the particular inconsistencies in this Bill.



Hon Margaret Wilson
Attorney-General