



Report of the

ATTORNEY-GENERAL

under the New Zealand Bill of Rights Act 1990
on the Future Directions (Working for
Families) Bill

*Presented to the House of Representatives pursuant to
Section 7 of the New Zealand Bill of Rights Act 1990 and
Standing Order 264 of the Standing Orders of the House
of Representatives*

I have considered the Future Directions (Working for Families) Bill (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 264, I draw this to the attention of the House of Representatives.

The Bill

The Bill amends the Social Security Act 1964 (the "Social Security Act") and the Income Tax Act 1994 (the "Income Tax Act") by making a number of amendments to address the disparities in living standards between persons with dependent children and those without. The Bill is intended to implement the findings of the *New Zealand Living Standards Survey 2000*, a research project undertaken by the Ministry of Social Development. This survey revealed that families with dependent children have a higher likelihood of restricted living standards than single people or couples who do not have children.

The purpose of this Bill then, is to provide for increased financial assistance and support to low and middle income families with dependent children according to their needs. Many of these changes will be phased in over the short to medium term.

The Bill seeks to achieve this aim in several ways. Firstly it provides incentives for people in low and middle income groups to move into and stay in employment, by introducing a new form of financial support for those persons who are employed and who fall within this income group (called the "In-work payment"). In order to assist with the transition into the paid workforce, the Bill also addresses the difficulties faced by working parents in accessing affordable childcare. The unavailability of affordable childcare has been identified as one of the most significant barriers to employment for low and middle income families. The Bill also makes changes to the rates of Family Support and Accommodation Supplement paid to beneficiaries and non-beneficiaries. Finally, the Bill simplifies benefit structures and consolidates the basic rates of benefits that persons who receive social security are eligible to receive.

The Bill of Rights Act issue

The Bill gives rise to discrimination on the ground of sexual orientation. Discrimination on the ground of sexual orientation arises because the Bill does not recognise the status of same-sex relationships. Persons living in such relationships are therefore treated under the Bill as being single or unmarried. This is because section 63 of the Social Security Act defines "married" as a person who is legally married or who is living with an opposite-

sex partner in a relationship in the nature of a marriage, and section OB1 of the Income Tax Act defines “spouse” in terms of a person who is legally married or who is living with an opposite-sex partner in a relationship in the nature of a marriage.

By treating persons in same-sex relationships as single, the Bill draws distinctions between those persons who are married or living in an opposite-sex de facto relationship and those living in same-sex relationships.

On the one hand a number of provisions in the Bill (in particular, proposed new sections 132AB, 132AC in the Social Security Act and KD 2(6B)(b), and KD 2(6)(b) in the Income Tax Act) financially advantage persons living in same-sex relationships because their partners’ incomes are not taken into consideration or are considered in a distinct category when determining eligibility for different types of assistance.

On the other hand, some provisions of the Bill (in particular, proposed new sections 132AB (1)(e)(i) in the Social Security Act and KD 2AAA (1)(d)) give rise to financial disadvantage for same-sex couples through the non-recognition of their relationships.

In summary, in some instances, the Bill results in financial disadvantage to persons in opposite-sex relationships. In other cases, persons in same-sex relationships suffer disadvantage of this nature.

I consider that the failure of the Bill to recognise the status of same-sex relationships and the arbitrary manner in which it treats persons in same-sex relationships appears to be *prima facie* inconsistent with section 19(1) of the Bill of Rights Act on the ground of sexual orientation.

I have therefore gone on to consider whether the *prima facie* inconsistency with section 19(1) can be justified.

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

I understand that the Government is about to introduce legislation into the House that will, amongst other things, rationalise the treatment of same-sex couples in social security and income tax legislation. This legislation will provide that same-sex couples will generally be treated in the same way as opposite-sex couples. I am aware that some provisions of the Bill will not come into effect until 1 April 2006, at which time the remedial legislation is likely to have been enacted and come into force.

However, as I have previously advised this House, I do not consider that the different treatment of same-sex couples can be justified on the basis of proposals for reform that have yet to be realised.

In summary, the differences which result from the Bill's treatment of same-sex couples are not relevant to the objectives of the Bill and are not 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. I also note that the sexual orientation discrimination contained in the Bill could be remedied by a straightforward drafting amendment.

Conclusion

I conclude that the Future Directions (Working for Families) Bill, in discriminating on the ground of sexual orientation, appears to be inconsistent with section 19(1) of the Bill of Rights Act 1990, and does not appear to be justified in terms of section 5 of the Bill of Rights Act. I note that the general issues relating to the legal rights and entitlements of same-sex couples are about to be considered in the context of further legislation, but, as I have previously advised this House in relation to similar discrimination in other bills, proposals for possible future reform do not justify the inconsistencies in this Bill.

Hon Margaret Wilson

Attorney-General