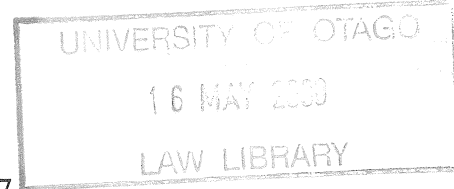


# FEMINIST LAW BULLETIN

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The Feminist Law Bulletin is written and produced by Joy Liddicoat of Strategic Legal Services, PO Box 5071, Lambton Quay, Wellington, New Zealand, e-mail: [strategic@xtra.co.nz](mailto:strategic@xtra.co.nz)

## Why a Feminist Law Bulletin?

The Feminist Law Bulletin:  
Identifies when feminist issues arise in policy, legislative proposals, and the practice of law:  
Provides an opportunity for limited exploration and discussion of some of these issues:  
Enables a general readership to gain an introduction to feminist analysis of the law.

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## Superannuation Referendum

This referendum is arguably the most important decision New Zealanders will face over the next few weeks. FLB asked the Women Vote No Campaign to outline the reasons for their opposition to the Scheme.

### Women Vote NO by Danna Glendining

With women making up by far the majority of the elderly it seems ridiculous that in 1997 we are voting on a compulsory superannuation scheme which has clearly been designed by men for men.

We have public provision of retirement income which has served New Zealand well for 100 years. Our present scheme is the envy of the world and has one of the lowest costs in the OECD.

In their July 1997 Interim Report the Todd Taskforce said it "had not found it necessary to recommend fundamental change to the existing retirement income framework which combines taxpayer funded New Zealand Superannuation with voluntary private savings."

The multi-party accord signed in 1993 by the Alliance, Labour, National and United provided for six yearly reviews of superannuation trends and the future looked set to cope with our ageing population in a reasonable and cross party way.

So who wants change ?

New Zealand First negotiated into the Coalition agreement a referendum on compulsory super-

## Women in Hong Kong 1997

annuation. This referendum will be conducted by postal ballot between 5 and 26 September. You will be asked to vote "Yes, I support the proposed compulsory retirement savings scheme" or "No, I do not support ...."

The proposed retirement savings scheme (RSS) is complicated, administratively complex and expensive. It is riddled with anomalies and inequities. Many details of it are still not clear.

The RSS provides for a massive redistribution in favour of the wealthy, who will quickly meet the target savings and then get tax cuts. 90% of women and 60% of men will never meet the targets. The target itself is estimated to rise from \$120,000 to \$400,000 by 2037.

The RSS will limit your right as an individual. It will force you to save for your old age as a first priority - ahead of paying off your mortgage, your student loan or investing in a business. Even ACC payments, benefits and student allowances will be subject to superannuation deductions. But with the Government guaranteed top up there is no incentive to save, and those who can will divert earnings into assets and avoid the compulsory saving.

Women are likely to be charged higher prices in the annuity market due to their greater average longevity, and few have the background or experience to feel confident about making an informed choice at 65.

The RSS will provide an income lower than present superannuation, and as it is adjusted only by movement in the Consumers' Price Index, will decline in relative terms. Thus any increase in prosperity will not be shared by the elderly, and on past performances who would trust any government to maintain the top ups, the living alone and accommodation allowances for the poor which might have provided some equity.

Forget the scaremongering. Our present scheme is clearly sustainable until 2015, and in the middle of next century the total dependency ratio will be no greater than it was in the 1960s.

*continued on page 6*

During June and the early part of July there was a great deal of media hype about Hong Kong and the return of that territory to mainland China. But what did the occasion mean for women in Hong Kong?

The western media was filled with messages of the sad and gloomy end of a glorious reign by the British; of the reluctant "hand over" of the people to the rule of China; of 4000 Chinese troops that would march into the peaceful streets of Hong Kong; and ominous rumblings of human rights abuses at the hands of the new Chinese rulers. This last point was a real concern for women given China's record in treatment of women and control of women's bodies (from foot-binding to the one child per family policy) and especially after the Fourth World Conference on Women held in Beijing in 1994.

However, the atmosphere in Hong Kong itself was very positive and even festival like. There were flags and posters everywhere celebrating the upcoming reunification. Flags of Hong Kong and China flew side by side in almost shop and at each street corner. The buildings and streets were decorated with signs that lit up the city at night. Women and children were everywhere and opinion polls reflected confidence.

Perhaps, then, as the Chinese media had been saying, the Hong Kong people had never been happier; the stain of colonial occupation of China was to be removed forever; there was to be a "reunification" of Hong Kong and China; Hong Kong was being demilitarised as 10,000 British troops left; that discrimination at the hands of a foreign power would end; and that this was a brave new world of "one country, two systems."

The truth, as it usually does, lies somewhere in between.

Only 4% of Hong Kong's population is British. Once a series of fishing villages along the coast of Southern China, Hong Kong was taken by the British in 3 stages between 1842 (after the first

opium trade war) and 1898. The agreement was a lease of Hong Kong for 150 years until 30 June 1997. During the British colonial rule, Hong Kong was ruled from Britain via a governor stationed in Hong Kong.

Until the 1980s most top civil servants were British, the legislature was strictly controlled, the right of assembly was limited by law and there was widespread corruption in many areas of government service. Many recalled the systemic and sometimes brutal racial and sexual abuses against Hong Kong citizens by the British during the 150 years of British rule. With the British rule came western views and structural discrimination against many groups, including women. Only since the signing of the Sino-British Joint Declaration on the future of Hong Kong in 1984, had Britain introduced some small democratic reforms. Many considered these reforms were political only and were not motivated from any real sense of duty to the people of Hong Kong but, rather, were designed to make the British look good.

However, the Joint Declaration states that Hong Kong's capitalist lifestyle shall remain unchanged for 50 years after 1997; it will be free to enjoy its own political, social and economic systems; and will enjoy a high degree of autonomy except in foreign and defence affairs. Hong Kong becomes a Special Administrative Region of China and existing legal and judicial systems under English common law will remain. China called this a process of "one country, two systems."

On the reunification, however, just as beforehand, women's day to day work in Hong Kong continued largely unchanged. Many of Hong Kong's people are very poor and, it has been argued, have paid the price of Hong Kong's capitalist successes. Old ladies search the streets and rubbish bins for cans to sell for 1 New Zealand cent each. This money might be able to buy a small amount of rice and hot tea. Many women sleep on the streets and half the population live in government-subsidised housing because house prices and rents are so exorbitant in the tiny territory.

Non-governmental organisations have been arguing that poverty is increasing in Hong Kong where 810,000 of the 6.4 million people live below the official poverty line (12.5% of the population). The poverty line is half the average monthly wage of \$9600 (\$NZ 1829) and an average family income a month of \$HK17,500 for the statistical average 3.3 person household. As in other countries in the world, poverty has specific and more significant effects on women who on average earn less than men and who move in and out of the paid workforce over their lives because of care and other responsibilities.

While there are some welfare provisions in Hong Kong, it is unclear what, if any, changes might be made to these in the next few years. The Chinese traditions of looking after the elderly and sick family members are likely to be relevant on decisions in this area.

There were genuine concerns about the new Chinese administrative regime including whether the "one country, two systems" idea would work and worries about censorship. There were some protests, including a silent vigil by women and others who had placed white tape over their mouths in the form of an "X" as a sign of the silencing of 'the people's voice.' Some groups gathered to hold a small but very vocal protest near the Convention centre where the official formalities took place on 30 June. The Chinese record of human rights abuses was of real concern, especially for women.

However, there also seemed to be some optimism with the changes. People in Hong Kong seemed happy to see an end to white colonial rule and the racism that came with it. The suggestion was that however bad the Chinese might be, it was better to be ruled by one's own people.

It was in this vein that there were many celebrations in Hong Kong itself. The Hong Kong Women's Federation held a Carnival of Unity for two days. Women from all over Hong Kong gathered at Victoria Park to celebrate with music and dance performances and to watch the handover ceremony on live video link.

There were also many women from Asian countries participating in the Asian Extravaganza in Kowloon Park. Here people and organisations from the Philippines, Malaysia, Japan, Thailand, India and other Asian countries celebrated the reunification of Hong Kong with local Hong Kong sister organisations. For two days there was music, dancing, and concerts. Only time will tell whether the mood of cautious optimism was justified.

Sources: *F Zhang of AFP Hong Kong 'Hong Kong's poor pay price for success' and Hong Kong Federation of Women*

## Rape and Sexual Abuse in New Zealand

A report based on the largest ever statistical base of information on rape and sexual abuse in New Zealand was recently released by Whanau Ahuru Mowai Rape Crisis. Statistics were collected from Rape Crisis local groups across New Zealand with the support of funding from the J R McKenzie Trust. The information base consists of more than 6000 clients gathered from 1992 to 1996.

**Some of the key statistics from the report are:**  
6013 identifiable clients contacted Rape Crisis between 1992 and 1996  
92.6% of survivors knew the sexual offender when the rape or sexual abuse began  
46.6% of offenders disclosed were blood relatives of survivors  
70% of survivors were raped or sexual abused in their own homes  
Offenders were predominantly adult New Zealand Pakeha/European males  
53% of survivors were raped or sexually abused as children  
1 in 14 survivors reported ongoing rape or sexual abuse  
On average 13 years elapsed between the time of the abuse and contact with Rape Crisis  
67.7% of survivors did not report the rape or sexual abuse to the police  
56.5% of survivors did not intend to claim accident compensation

For more info contact Rape Crisis National Office, PO Box 6181, Te Aro, Wellington, ph (04) 384 7028

## Legislation Update

Not much seems to be happening by way of new legislation in the MMP Parliamentary environment.

**Up and Coming Bills** - The Minister of Women's Affairs has indicated that two new bills relating to matrimonial property will be placed on the Government's Legislative Agenda. One bill will address some of the concerns with current matrimonial legislation and the other bill will govern the division of property held by de facto couples. The Government has yet to indicate whether lesbian and gay couples will be covered. The Government's "Legislative Agenda" is the list of various bills that the Government decides to enact in any one year. Each bill is assigned a priority for introduction and a likely date for introduction. However, Ministers have indicated at least three times in the past that matrimonial property legislation has been on this Legislative Agenda and no such legislation has been introduced

**Bills Before Parliament** - Submissions have just closed on the Human Assisted Reproductive Technology Bill (being considered by the Justice and Law Reform Select Committee) and the Mental Health Commission Bill. The Social Security Amendment Bill (which amends the law about the amount of notice a job seeker must be given before having benefits reduced and to give some warning of benefit cuts) has proceeded.

**Petitions** - Parliament currently has 56 petitions before various select committees mainly in the education area relating to early childhood and kindergartens. The petitions largely relate to the State Sector Amendment Act which removed kindergarten associations and their employees from the coverage of the State Sector Act. The effect is that the Government is no longer involved in negotiating employment conditions for kindergarten workers.

**New Provisions** - The budget provided for a Social Responsibility Code. Watch this space for details as they come to hand.

## **Pornography on the Internet**

The Technology and Crimes Reform Bill has been reported back from the Commerce Select Committee with a recommendation that the Bill not be passed. Originally introduced by Trevor Rodgers in 1994, the Bill proposed a series of criminal offences for the transmission of objectionable images or sounds in a non-physical form.

The Commerce Committee shared the concerns which prompted the Bill, namely concerns about transmission of objectionable material by various media and the problems of potential access, especially by children.

However, the Committee did not agree that the Bill would achieve the desired objectives and noted that since the Bill's introduction:

- n The Films, Videos and Publications Classification Act 1993 had proved wider than first thought and covered a variety of electronic transmissions

- n There had been increased enforcement of that Act by the Censorship Compliance Unit of the Department of Internal Affairs

- n Internet service providers have formulated a voluntary code of conduct about objectionable material.

The Committee thought there should be an international code of conduct and industry self-regulation, rather than legislative intervention.

Meanwhile, in the United States, the Supreme Court has ruled that the Communications Decency Act 1996, which sought to regulate pornography on the internet, is unconstitutional.

In *Reno v American Civil Liberties Union* (No 96-511; 26 June 1997), the Supreme Court (the highest court in America) refused to enforce some parts of the Act relied on for criminal prosecutions. The Act imposed criminal sanctions against those "promulgating or permitting access" to persons under 18, through telecommunications devices or facilities, to "indecent" and "patently offensive" sexually explicit images or other communications.

The Court said that the Act was too vague to be properly enforced and that, as drafted, the Act would infringe the rights of adults in the name of protecting children. The Court seemed to be concerned that the communications of adults should not be limited to communications that were only suitable for children to receive. By a 9:2 majority the Court said the criminal sanctions were too severe given how vague the wording of the Act was - it appeared to relate to both obscene material (which is not protected by free speech) and indecent material (which is protected within limits such as age or circulation).

The case has been hailed as victory by both sides of the arguments including by American civil libertarians, Internet surfers, businesses, and paedophiles, but the results are still being analysed. For example, if the wording of the Act had been sufficiently precise, would the court have upheld the Act and criminal prosecutions? FLB will keep a close watch on developments in this area in future issues.

## **Human Rights Act - Consistency 2000 Project**

Concerns have been expressed at signs the Government will review the Consistency 2000 Project being run by the Human Rights Commission.

The Acting Minister of Justice Paul East said Cabinet Ministers, on reviewing progress to date, thought there were advantages in adopting a different approach to the one prescribed in the Act and which the Project has been working on for two years. Papers obtained under the Official Information Act show that Cabinet has already ruled out continuing with the Project in its current form.

Mr East said "The alternative would involve Government departments being subject to the Human Rights Act where policies and practices, such as employment and access to buildings, are essentially the same as those undertaken in the

private sector. Alongside there would be a permanent exemption for the Government in respect of legislation and the development and implementation of Government policy." This approach seems the next step towards treating the Crown as no different from any other private sector agency.

This alternative would allow existing policies which contravene the Act to continue whether they are justifiable or not and could mean that the Government would not have to comply with some parts of the old 1977 Human Rights Commission Act. Paul East indicated "The Government would need to look at a mechanism to ensure all new legislation and policy complies with the Human Rights Act or that any discrimination is reasonable. Existing legislation which comes up for review should also be scrutinised in a similar manner or amended."

Support for this seems to be based on the view that much Government discrimination is justified, such as special protections under the Children, Young Persons, and Their Families Act 1989. However, one of the main reasons for the current Act is that the private sector "market place" did not provide equality or equity for certain groups and legislation was needed to try and ensure this happened. In the "market place" of social policy it is important that the Act apply unless exclusion can be clearly justified.

Cabinet is expected to make a decision in September regarding any amendment to the Human Rights Act.

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### **Women Vote NO continued from page 1**

The cost of supporting the elderly at any given time depends on the health of the economy at the time, not on whether it is funded from public taxation or from private savings.

Don't be complacent about the referendum. No minimum threshold has been set. Only 27% of eligible voters participated in the firefighters' referendum. At this level a 14% YES vote could bind us to compulsory super.

Ensure you are correctly enrolled to vote, and lay your part over the next few weeks to educate your family, friends and neighbours about the real issues at stake.

## **Lesbians' Access to Justice**

The Law Commission recently completed a consultation with lesbians about access to justice as part of the Commission's Women's Access to Justice Project. The consultation consisted of meetings held with over 100 lesbians in five centres to discuss lesbians' issues.

Key points arising from the consultation are:

■ Generally lesbians do not see the current legal framework, especially the content of the law, as working for them: "*...we shouldn't always have to try and fit ourselves into their laws - the laws should fit us and work for us too.*"

■ Lesbians experience discrimination when seeking access to justice: "*Even when the law is on your side in theory, in practice the players can do you over, especially if you are living in a small town where everyone knows everyone.*"

■ Lesbians define their families and communities differently from heterosexuals: "*Some of us are forced to create our own families because our biological ones chuck us out. They are chosen relationships rather than biological ones - but they are not included in any definition of the family that's legal.*"

■ Lesbians experience particular problems with their credibility in the justice system: "*What they think about homosexual relationships is that you are going around looking for sex and sex is the main thing on your brain - it really says more about them than me.*"

■ Lesbians have specific communication problems with lawyers: "*[T]here's so much homophobia*"

■ Lesbians experience difficulties with the cost of legal services: "*Lawyers cost what, \$150 per hour? Even if I can find a job that pays \$15 dollars an hour it would take me ten hours to earn what I pay for one hour from a lawyer. That's ridiculous.*"

■ Lesbians' cultural priorities impact on their access to justice: "*Being Maori is probably the first and foremost issue - you're a Maori first, then you're a woman and then you're a lesbian ... there are other things which have different priorities for Maori women*"

■ Lesbians experience problems having their caring roles (particularly for their children) accepted: "*I ended up making heaps of compromises because I felt lucky to have access to the kids because I was a lesbian. I'd never do that again.*"

■ Lesbians have distinct experiences of the justice system which are based in their sexual orientation: "*A lot of it boils down to not being recognised as a lesbian ... but who decides if [the custody and access arrangements are] in the best interests of the child, and what happens if the people making those decisions have got prejudices about gay people and their right to be parents?*"

During the consultation Lesbians also identified a number of solutions to these problems.

The material from the consultation process will be used in the final report to the Minister of Justice, due in early 1998.