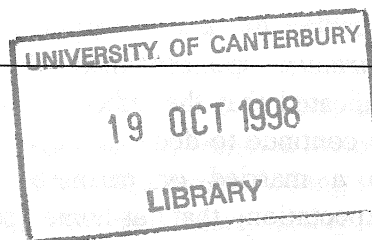


FEMINIST LAW BULLETIN

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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 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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LEGISLATION NOTES

Human Rights Amendment Bill

This Bill, introduced in August makes a number of important changes to the Human Rights Act 1993.

First, the Bill implements the Government's decision to cancel the Human Rights Commission's Consistency 2000 Project. That project was designed to ensure all legislation and administrative policies complied with the Human Rights Act, unless specifically exempted. The Government had been exempted (under section 151 of the Act) from compliance with the Act until the Project was finished.

However, earlier this year the Government changed its mind. Now the Bill will take away the Consistency 2000 Project, remove the Government's temporary exemption from compliance, but introduce a range of specific exemptions that will allow the Government to continue to discriminate in four areas:

- Defence Force
- Health and Disability Services

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- Provision of Income Support and Other Social Welfare Services
- Age-Linked Retirement Benefits.

Concerns have been expressed on the breadth of the exemptions. *Parents as Partners*, spokeswoman Christine Reymer, indicated that the effect of the exemption is to continue to deny the payment of a benefit to a married or partnered person. "The expectation that at-home parents should work for no remuneration, and need to be specifically exempted from the protection by the Human Rights Act, constitutes nothing less than slavery."

The Bill will also amend the Act to allow for the appointment of a Women's Commissioner (clause 3) implementing the 1996 Coalition Agreement. The Bill does not, however, set out the particular functions of the new Women's Commissioner. Some groups have expressed concern that the focus on the Commissioner will move from advocacy to information and education. Not all those appointed as Commissioners have specific functions, however, the Race Relations and Privacy Commissioner do have clear statutory functions. Instead, the Bill will require the activities of the Women's Commissioner to be reported in the Commission's annual report to Parliament.

Accident Insurance Bill

This Bill will repeal and completely replace the current ACC legislation, the Accident (Rehabilitation and Compensation) Insurance Act 1991. The Bill implements Government policy to have more than one organisation delivering ACC schemes to employers. At present the only provider is the Accident Compensation Corporation. This Bill will allow employers to set up their own schemes or companies to offer schemes to employers.

While there have been some amendments to the current Act, the Bill will continue discriminatory provisions in relation to women generally and lesbians in particular. In general women remain disadvantaged in the application of the scheme because generally women have fewer accidents than men, but are more likely to have caring roles in relation to men who have had accidents. In addition, women generally suffer higher rates of medical misadventure (often as a result of medical procedures related to normal healthy life events such as pregnancy and childbirth), but medical misadventure claims are very narrowly defined to exclude many women from coverage.

For lesbians, clause 22 continues the definition of "spouse" as a person of the opposite sex. This definition has resulted in clear cases of injustice for families, including partners, of lesbians killed in accidents who are ineligible to claim compensation when heterosexual partners were able to claim.

Paid Parental Leave Bill

Alliance MP Laile Harre's Private Member's Bill received its second reading on 9 September. There was some uncertainty over whether the vote to send the Bill to a Select Committee would pass (see FLB Issue 3 1998, page 7). However, the vote was overwhelmingly in favour of the Bill (109 votes to 11) and the Bill has been referred to the Social Services Select Committee.

Both ACT and the Christian Heritage political parties have stated their opposition to the Bill on the basis of costs to employers (ACT) and because all mothers should be paid, not just those in paid work (Christian Heritage). The National Party is opposed to the Bill and Labour supports the Bill in principle, but disagrees with some details of the proposed system.

Submissions close on 11 December. The Committee has been asked to report back to the House in March 1999.

SUPERANNUATION

The Government has reduced the floor of the married rate of New Zealand Superannuation from 65 per cent of the average wage to 60 per cent. This measure particularly disadvantages women because:

- women are more likely than men to be solely dependent on New Zealand Superannuation in their older years. Any reduction in their sole source of income - relative or actual - will have a detrimental effect on living standards.
- women live longer than men. The average life expectancy for women is 79.12 years and for men 73.72 years. In addition, our population is ageing. Over the next forty years the number of elderly women is projected to more than double.
- women can not save as much as men for their retirement. Over their lifetimes, women earn less than men, have lower labour force participation rates, spend more time out of the paid workforce meeting family commitments and are more likely to have been in part-time, temporary or casual employment.

The measure was rushed through Parliament under urgency, denying the public any opportunity to make submissions.

SOCIAL WELFARE CHANGES

Asset and income testing

The Government has reversed its Coalition agreement commitment to remove income and asset testing for older people in long stay public hospital care and asset testing for older people in long stay private hospital care. That commitment was embodied in the Social Security (Residential Care) Amendment Bill 1998 and was due to come into effect from 1 October. That Bill has now been deferred.

Women's longer life time expectancy means women will be particularly hit hard by the Government's policy reversal.

Women will, however, benefit from other changes announced on 30 September.

While asset and income testing will stay, as from 1 November, victims of crime will be exempt from income and asset testing if they need long stay residential care due to injuries they suffered.

The asset testing threshold for people in long stay residential care (rest home, public and private hospitals) has been increased:

- for single people from \$6500 to \$15,000;
- for married couples from \$13,000 to \$30,000;
- for married couples where one partner is in care the threshold increases from \$40,000 to \$45,000. In that case, the family home and car are also exempt.

Employment Changes

The Government's employment and social welfare restructuring has taken place in three parts:

1. The Employment Services and Income Support (Integrated Administration Bill)

This Bill, reported back to the House, provides for the merger of the New Zealand Employment Service, the Local Employment Coordination Unit and the Community Employment Group with Income Support.

2. Social Security Amendment Bill No 5.

That bill, already enacted, established the 'community wage'.

3. Social Security (Work Test) Amendment Bill

That bill established a penalty regime.

October 1 saw the new "Work and Income" offices officially open and the community wage scheme start.

Many church and community groups have condemned the community wage scheme (enacted in the Social Security Amendment Bill No 5). In particular the requirement of work testing of those formerly on sickness and invalids benefits and the provision of penalties.

Penalties are listed in the Social Security Regulations 1998 and provide for:

- beneficiaries who are 15 minutes late for "work" or interviews to have their benefit docked by 8% (\$12);
- beneficiaries to lose up to 40 per cent of their benefit if they are more than eight hours late;

- beneficiaries to be docked 10 per cent of their weekly benefit if they fail to complete a task or interview, fail to answer questions or fail to co-operate during a mandatory interview.

DISPUTES TRIBUNALS FEES INCREASES

Proposed increases in the fees for claims in the Disputes Tribunal had been put on hold this month. Up until now, the advantages of the Tribunal for women and others on low incomes, are that a claim can be lodged for a fee from only \$10, there are no lawyers and the Tribunal looks generally to the fairness of a case in making decisions. However, the new Minister for Courts, Wyatt Creech, in one of his first Ministerial actions, announced large increases in fees last month including up to \$50 for claims under \$1,000 and from \$20 to \$100 for claims between \$1,000 and \$2,500.

Fees are set by regulation. Regulations become law after being approved by Cabinet and signed by the Governor-General. However, the Regulations Review Committee (a multi-party Parliamentary Select Committee) conducted an investigation into whether the proposed fees were lawful. A submission from the National Committee of Disputes Tribunals Referees said "this regulation rips the heart out of the [Disputes Tribunals Act] ... [it] fundamentally contradicts the historical vision of those who legislated for Disputes Tribunals."

The Committee ruled that the fees were not in accordance with the general objects and intentions of the Disputes Tribunals Act and also created potential barriers to justice (either for those on low incomes or because

the fees were too high a proportion of the amount in dispute).

The fee increases have now been revised by the next and current Minister of Courts, Georgina Te Heuheu, and from 1 November 1998 filing fees for claims under \$1,500 will go up to \$30, claims for between \$1,000-\$2,500 up from \$20 to \$100, and for claims between \$2,500-\$5,000 the fees are \$120.

LEGAL AID CUTS

The last issue of the Bulletin gave an outline of changes to legal aid rates for certain categories of legal aid work (FLB Issue 3, 1998, page 1). We noted that the Legal Services Act contains a narrow exemption for the \$50 contribution usually required for civil legal aid applications. The precise terms of that exemption can be found in section 49A of that Act which waives the \$50 contribution for an application for a protection order, for proceedings on appeal, and for proceedings arising out of any proceedings for a protection order. The contribution is waived and no charge for the grant of aid can be imposed:

"unless the [District Legal Services Committee] considers that there are exceptional circumstances that justify the making of such a contribution, or the imposition of a charge, or both."

The phrase "exceptional circumstances" is not defined in the Act. Some women's groups expressed concern when the Domestic Violence Act was passed, that this provision might be used to impose charges by Committees which did not have an adequate understanding of the dynamics of domestic violence (for example, why a woman might make repeated applications for orders). Many lawyers concerned about the proposed changes have written to the

Prime Minister, Jenny Shipley, asking for the changes to be reversed. Unfortunately, this is unlikely to be successful, although the new changes are to be reviewed in March 1999.

FROM THE NET

ACTGLOBAL is a new international e-mail discussion list on violence against women. The discussion list has been established by the Women's Rights Network, founded in 1995 by American women's rights activists, with a focus on international work to end domestic violence. The purpose of the new discussion list is to promote international discussion of issues such as:

- Violence against women;
- Media coverage of violence against women;
- Prevention and education;
- Children and family violence;
- Economic analysis of domestic violence;
- Human rights.

You can join the ACTGLOBAL discussion list by e-mailing to: ACTGLOBAL@TIL.ORG

A first posting to secure confidentiality and verify your e-mail site may be required. E-mails can then be sent directly to those with similar interests who wish to discuss various topics. The Women's Rights Network e-mail address is wrn@fhe.com

HEALTH UPDATE

The Ministry of Health has released a consultation paper, "Public Health Legislation Review – A New Public Health Legislative Framework." The objective is to develop a new law to replace the Health Act 1956. The paper deals with broad level structural issues about the way in which public health is regulated and covers the role of Government in providing health services. Issues for Maori and affirmation of basic human rights are covered, but the exact issues for women are not clear.

Meanwhile, the Federation of Women's Health Councils Aotearoa New Zealand is developing a National Women's Health Policy. The policy will be developed by women for women, and aims to canvass the different health needs of women by looking at women's health needs in the context of their life experiences. In particular, the policy aims to take account of the fact that:

- Over time women suffer more ill health than men, women live longer and are more frequent users of the health system for themselves and their children;
- Women make up the majority of unpaid health care providers in the community (caring for the elderly and those with disabilities);
- Women have lower average incomes and can afford to pay less for their health services;
- Many women want more choice in the health services models (such as medical or alternative therapy models).

The Federation has developed a kit which contains more information about why a national women's health policy is important. Copies of the kit can be obtained from the Federation. Requests for the kit or comments on the kit can be sent to the Federation of

Women's Health Councils, PO Box 29011, Wellington. The Federation is seeking comments by the middle of October.

JUDGE FOR YOURSELF: RAPE IN GENOCIDE

In early September the War Crimes Tribunal for Rwanda found Jean-Paul Akayesu guilty of rape and genocide under international law. Akayesu, as Mayor of the city of Taba in 1994 was found to have encouraged and ordered the rape and murder of Tutsi women in a cultural centre he controlled. The court declared that rape may constitute genocide if committed with intent to destroy a particular group. In this case, Tutsi women were raped to increase their suffering before they were killed.

When charges were first brought against Akayesu, rape was not among them. Despite extensive media reports of rapes, the tribunal's investigators, at the time virtually all men, could not find evidence to support an indictment. But during the trial a witness brought up rape in the cultural centre. Questioned by Navanethem Pillay, a South African who is the tribunal's only female judge, the witness gave details. Other witnesses followed. Largely due to pressure from women's groups, the investigators went back to ask about rape, and those charges were added. As noted in the New York Times, "Without female judges and investigators, this cruel aspect of the Rwandan genocide might never have been addressed."