

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, 24 November 1998

HUMAN RIGHTS AMENDMENT BILL

Proposed Amendments

Rt Hon D A M GRAHAM, in Committee, to move the following amendments:

Clause 9: New section 72A: To insert in line 37 on page 4, after the expression “1975,”, the expression “Part XXV of the Education Act 1989,”.

Clause 9: New section 72D (3): To insert in line 5 on page 7, after the expression “1964”, the words “or section 307B of the Education Act 1989”.

Clause 12: To omit this clause (which appears on page 8), and substitute the following clause:

12. New sections substituted for section 151—(1) The principal Act is amended by repealing section 151, and substituting the following sections:

“151. This Act doesn’t affect other Acts or existing regulations—(1) Nothing in this Act limits or affects the provisions of any other Act of Parliament.

“(2) Nothing in this Act limits or affects the provisions of any regulations made before 1 January 2000.

“(3) This section does not apply if this Act or another Act of Parliament provides otherwise.

“(4) For the purposes of subsection (2), the term ‘regulations’ has the same meaning as it has in section 2 of the Regulations (Disallowance) Act 1989.

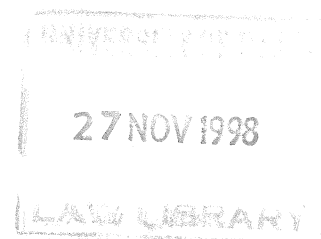
“151A. This Act prevails over inconsistent regulations made after 1 January 2000—(1) If any regulations made on or after 1 January 2000 are inconsistent with this Act because they authorise or permit discrimination that is unlawful by virtue of Part II, then, to the extent of the inconsistency, this Act prevails.

“(2) Subsection (1) does not apply if this Act or another Act of Parliament provides otherwise.

“(3) For the purposes of subsection (1), the term ‘regulations’ has the meaning given to it by section 151 (4).

“(4) This section is subject to section 153 (3).”

(2) This section comes into force on 1 January 2000.



EXPLANATORY NOTE

This Supplementary Order Paper proposes to amend the Human Rights Amendment Bill in 2 respects. The primary amendment is to omit *clause 12*, and substitute a *new clause 12*. *Clause 12* relates to section 151 of the Human Rights Act 1993 (“the principal Act”). That section deals with the relationship between the principal Act and other enactments, and the effect of the principal Act on actions of the Government. As a consequence of that amendment, it is also necessary to amend *clause 9* (which inserts new sections into the principal Act relating, among other things, to the provision of income support).

Amendment to Clause 12

The existing *clause 12* repeals section 151 (2) of the principal Act. Section 151 (2) contains an exemption from the principal Act for the New Zealand Government. The repeal of subsection (2) would mean that all Government policies and practices would have to comply with the principal Act unless authorised by Act or regulation.

The existing *clause 12* would not repeal section 151 (1) of the principal Act. That subsection provides that, except as expressly provided in the principal Act, the principal Act does not limit or affect the provisions of any other Act or regulation which is in force in New Zealand.

The *new clause 12* proposed to be substituted by this SOP would repeal section 151 of the principal Act entirely, and substitute *new sections 151 and 151A*.

The effect of the new sections is as follows:

- The existing section 151 (2) would still be repealed without replacement. As under the existing *clause 12*, this would mean that all Government policies and practices would have to comply with the principal Act unless authorised by Act:
- The *new sections 151 and 151A* set out the interrelationship between the principal Act and other Acts of Parliament, and between the principal Act and regulations. The difference between existing section 151 (1) and the new sections is in how the principal Act interrelates with regulations. The new sections provide as follows:
 - (a) As under the existing section 151 (1), the principal Act would not limit or affect the provisions of any other Act of Parliament, unless the principal Act or another Act provides otherwise (*new section 151 (1)*):
 - (b) The principal Act would not limit or affect the provisions of any regulations made before 1 January 2000 (*new section 151 (2)*):
 - (c) The principal Act would prevail over any regulations made on or after 1 January 2000 (*new section 151A (1)*), unless the principal Act or another Act provides otherwise. To the extent that any such regulations were inconsistent with the principal Act because they authorised or permitted discrimination that is unlawful by virtue Part II of the principal Act, the principal Act would prevail.

Amendment to Clause 9

Clause 9 of the Bill inserts into the principal Act new sections relating, among other things, to the provision of income support. The purpose of the new provisions is to permit different treatment consistent with people’s differing needs and circumstances, based on grounds that include marital status, disability, age, employment status, and family status.

For the purposes of these new provisions, the term “income support” is defined as allowances, benefits, pensions, superannuation, supplements, and other kinds of financial assistance under certain specified enactments (referred to as the Welfare Acts). These enactments are the War Pensions Act 1954, the Social Security Act 1964, the Disabled Persons Community Welfare Act 1975, and the Social Welfare (Transitional Provisions) Act 1990.

The new provisions do not currently apply in relation to the provision of student allowances, which are payable in accordance with regulations made under Part XXV of the Education Act 1989. The regulations currently set out different rates and conditions for the payment of student allowances, based on grounds that include marital status, family status, and age.

As explained above in relation to *clause 12*, under the Bill as introduced, the principal Act would continue to be subject to the provisions of any regulations in force in New Zealand. This would have permitted the regulations relating to student allowances to continue to differentiate between people on grounds that would otherwise constitute discrimination under the principal Act.

As set out above, the effect of the *new clause 12* proposed to be substituted by this SOP is that the principal Act will prevail over any regulations made on or after 1 January 2000, in the absence of statutory provision to the contrary. This would mean that any amendments made, after that date, to the regulations relating to student allowances could not differentiate between people in ways that would constitute unlawful discrimination. This is because the Education Act 1989 does not expressly

authorise the inclusion in the student allowances regulations of provisions contrary to the principal Act.

In order to preserve the ability to differentiate in this way in the provision of student allowances, this SOP proposes to amend *clause 9* so that the definition of "income support" in the new sections inserted by that clause is extended to include student allowances granted under Part XXV of the Education Act 1989. This is achieved by including a reference to that Part of that Act in the definition of "Welfare Acts" in *new section 72A*.

In order to permit similar differentiation in relation to the recovery of debts or penalties incurred in connection with the provision of student allowances, an amendment is also made to the definition of "debt" in *new section 72D (3)*. The amendment inserts a reference to section 307B of the Education Act 1989.