

Marriage (Definition of Marriage) Amendment Bill

Member's Bill

As reported from the Government
Administration Committee

Commentary

Recommendation

The Government Administration Committee has examined the Marriage (Definition of Marriage) Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction

This bill seeks to amend the Marriage Act 1955 (the Act) to ensure that its provisions are not applied in a discriminatory way. It would insert an interpretation into section 2(1) of the Act to clarify that a marriage is between two people regardless of their sex, sexual orientation, or gender identity. It also seeks to replace schedule 2 of the Act with a new schedule 2, to set out descriptions of prohibited marriages in appropriate terms.

Some of us believe that this bill is unnecessary on the grounds that the union of same-sex couples is already provided for under the existing civil union legislation passed in 2004.

Our consideration and the structure of this commentary

The bill is subject to a conscience vote for members. We begin by setting out the major issues raised during hearings of evidence and our consideration of this bill. Next, we discuss the amendments we have recommended to the bill with a view to making it an effective piece of legislation. Finally, we discuss Petition 2011/35 of Bob McCoskrie on behalf of Protect Marriage.

This commentary addresses the significant changes we recommend to the bill.

Submissions process

We received 21,533 submissions on this bill. We considered that 18,635 of these submissions replicated content in a very similar manner; 10,487 were in favour of the bill and 8,148 were against the bill. The purpose of submissions is to inform the committee of issues it may wish to consider when recommending amendment to the bill. Where a number of submissions raise the same issue in the same way, it is not an effective use of committee time to hear evidence from each of these submitters (particularly where there is such a large number of submissions). However, these submitters can be assured that we received, read, and considered all of the points they raised.

We considered that 2,898 submissions presented unique content. These submissions raised substantive issues, or presented common issues in a distinct manner. We worked very hard to ensure that as many views as was possible were heard in the time available to us. We made a point of trying to hear from every organisation that sought to make an oral submission, and from as many members of the public as we could. We thank everyone who made a submission on the bill. We appreciate the time and effort that submitters have put into the preparation of their submissions.

Human rights and marriage

We acknowledge that whether or not the ability to marry constitutes a human right has been a topic of much debate. Proponents of the bill have expressed the view that the right to marry freely is a human right, which is currently denied to same-sex couples and transgender people. Opponents of the bill argue marriage is not a human right.

The majority of us consider that marriage is a human right, and that it is unacceptable for the state to deny this right to same-sex couples. Others of us believe that marriage is not a right, and should continue to be the sole domain of heterosexual couples.

Religious beliefs

We accept that for many people of religious persuasion marriage is a covenant between one man, one woman, and God, for the purpose of procreation. A large number of people and organisations have expressed their concern that, were this bill to pass, celebrants could not lawfully refuse to solemnise a marriage that would conflict with their religious beliefs. Other people with religious convictions argue that marriage is foremost about celebrating the love shared between two people, and that their inability to marry same-sex couples constitutes a constraint on their freedom to practice their religion. We accept the right of people to hold religious and cultural beliefs, and we make no attempt to dissuade people from holding them.

It is our intention that the passage of this bill should not impact negatively upon people's religious freedoms. The Marriage Act enables people to become legally married; it does not ascribe moral or religious values to marriage. The bill seeks to extend the legal right to marry to same-sex couples; it does not seek to interfere with people's religious freedoms. We recommend an amendment to section 29 of the Marriage Act, which we discuss later in this commentary, to clarify beyond doubt that no celebrant who is a minister of religion recognised by a religious body enumerated in Schedule 1, and no celebrant who is a person nominated to solemnise a marriage by an approved organisation, is obliged to solemnise if solemnising that marriage would contravene the religious beliefs of the religious body or the religious beliefs or philosophical or humanitarian convictions of the approved organisation.

Role of the state in regulating marriage

The role of the state in regulating marriage was an issue we debated at length. We are aware that some people consider that the religious and cultural meanings of marriage should take precedence over the regulatory role of the state, while others consider that New Zealand's

laws should be driven by universal human rights considerations, not by particular religious perspectives.

In New Zealand, couples may fulfil the legal formalities under the Marriage Act as part of their wedding ceremony, whether that ceremony is conducted in a church, some other public or private place, or in a registry office.

We note that religious and non-religious couples already have a range of options available to them for the solemnising of their marriages. Of approximately 22,000 marriages conducted in New Zealand each year, around

- 23 percent are conducted in a registry office by a registrar
- 32 percent are conducted by a church or organisational marriage celebrant
- 45 percent are conducted by an independent marriage celebrant.

We note that in a number of European jurisdictions, there is a complete separation between the state and the particular religious or cultural functions of marriage. In these jurisdictions a marriage is authorised and registered by the state first, often in a registry office, and a couple is then free to choose to have a religious or cultural ceremony appropriate to them. We do not consider this bill to be an appropriate mechanism to consider or address this issue.

Civil unions and marriage

We considered the types of legal recognition the state can bestow on a couple's relationship. Opponents of this bill consider same-sex couples' access to civil unions to be sufficient legal recognition. Therefore, they argue, marriage could be left to heterosexual couples. The bill's proponents argue that being denied the opportunity to marry because of a person's sex, sexual preferences, or gender identity is an example of institutional discrimination.

Most of us consider that marriage should be extended to couples of the same sex, because the law should be applied equally. We recognise that same-sex couples should have access to the same choices of ways to legally recognise their relationship as heterosexual couples.

We note that if the bill were to pass it would enable international recognition of relationship status for married same-sex couples.

Some of us believe that this bill's intention remains unnecessary, on the grounds that the union of same-sex couples is already provided for under the existing civil union legislation passed in 2004.

Transgender issues

We wish to highlight an issue brought to our attention by transgender people. At present, married transgender people wanting their sex changed on their birth record (to enable them to fully adopt the gender of their choice) must either divorce their spouse or change their relationship from a marriage to a civil union. We are aware of how distressing this can be for transgender people in this position, and how disruptive it can be for their families.

We consider that transgender people should be able to change sex without being subject to these constraints. The bill as consequentially amended would enable any transgender people to continue to be married regardless of their gender identity.

Adoption and family matters

We acknowledge that some people feel very strongly about the issue of adoption of children by same-sex couples and transgender people. If the bill were to pass, it would make consequential amendments to the Adoption Act 1955 that would have the effect of enabling married same-sex couples to adopt children lawfully, as any married couple may do.

Many opponents of the bill are not in favour of same-sex couples being allowed to adopt children. Some argue that if changes to adoption laws are to be made this should be done through a bill that specifically amends the Adoption Act 1955. These opponents also consider a family with a mother and a father married to each other to lead to the best outcomes for children.

We note that currently under the law a homosexual or transgender person may legally adopt a child, but same-sex couples may not. Such a position seems absurd. The amendments we recommend will ensure that married couples are eligible to adopt, regardless of the gender of the adoptive parents.

We note that many families already exist which comprise children and same-sex or transgender parents. However, both parents do not have access to the full range of legal rights that married heterosexual

couples have. We consider that allowing same-sex couples to marry would grant an appropriate legal right to those families who are already raising children.

Conclusion

The introduction of the bill has encouraged New Zealanders to engage in a robust debate over the institution of marriage. We acknowledge that people hold sincere and strong beliefs over the importance of this institution. Some New Zealanders are strongly in favour of enabling same-sex couples to marry and others are strongly against such a proposition. The passion with which submitters made their arguments to us was palpable. We commend all those people who took the time to make a submission.

We were impressed by the participation of young people in this debate. We received heartfelt submissions from youth on both sides of the debate. We are heartened that so many of the younger generation, which is so often maligned as uninterested in politics and marriage, chose to involve themselves in this debate.

Clarification of section 29 of the Marriage Act 1955

We recommend inserting new clause 5A, which would add a new subsection to section 29 of the Act.

Section 29 of the Act states: “A marriage licence shall authorize but not oblige any marriage celebrant to solemnise the marriage to which it relates.” We acknowledge that concern has been raised about the clarity of section 29. We received advice from the Crown Law Office and from the Ministry of Justice which suggests that section 29 should be clarified to put beyond doubt that no celebrant who is a minister of religion recognised by a religious body enumerated in schedule 1, and no celebrant who is a person nominated to solemnise a marriage by an approved organisation, is obliged to solemnise if solemnising that marriage would contravene the religious beliefs of the religious body or the religious beliefs or philosophical or humanitarian convictions of the approved organisation. Our recommended amendment provides this clarity.

Repeal of section 56 of the Marriage Act 1955

We recommend that section 56 of the Act be repealed.

Section 56 states that it is an offence to impugn or deny the validity of a lawful marriage. We consider that section 56 is not compatible with the rights and freedoms set out in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

By recommending the repeal of section 56 in the context of this bill, it is not our intention to suggest that it is appropriate to denigrate any kind of marriage.

Commencement date

We recommend amending clause 2 to delay the commencement date of the bill, to allow the Department of Internal Affairs to prepare for its implementation. We consider that a delay of four months would be sufficient. We have provided for earlier commencement by Order in Council should earlier advice be received that this is possible.

Consequential amendments to other Acts

We also recommend a number of consequential amendments to 14 other Acts of Parliament and to a regulation, to ensure that there will be no legal differences between different kinds of marriages. We recommend only changes that are strictly necessary to ensure that the amended provisions would work as intended for all marriages. We note the concerns raised by a number of submitters regarding the potential for New Zealand to follow overseas experiences of removing gender-specific language from statutes. Most of the numerous statutory references to “husbands” and “wives” and other gender-specific terms are therefore not affected by this bill.

Petition 2011/35 of Bob McCoskrie on behalf of Protect Marriage

Petition 2011/35 of Bob McCoskrie on behalf of Protect Marriage requests that the House maintain the definition of marriage in law as between one man and one woman. We considered this petition alongside the Marriage (Definition of Marriage) Amendment Bill.

We heard evidence from Mr McCoskrie in Auckland on his petition. Aside from the matters raised already in this report, we have no other matters to bring to the attention of the House.

Appendix

Committee process

The Marriage (Definition of Marriage) Amendment Bill was referred to the committee on 29 August 2012. The closing date for submissions was 26 October 2012. We received and considered 21,533 submissions from interested groups and individuals. We heard 220 submissions, which included holding hearings in Wellington, Auckland and Christchurch.

We received advice from officials from the Ministry of Justice, the Department of Internal Affairs, and the Crown Law Office.

Committee membership

Hon Ruth Dyson (Chairperson)

Chris Auchinvole

Kanwaljit Singh Bakshi

Hon Trevor Mallard

Eric Roy

Holly Walker

Hon Trevor Mallard was at times replaced by Moana Mackey and on occasion by Charles Chauvel for this item of business.

Holly Walker was replaced by Kevin Hague for this item of business.

Eric Roy was at times replaced by Tim Macindoe for this item of business.

**Marriage (Definition of Marriage)
Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

text inserted unanimously

~~text deleted by a majority~~

~~text deleted unanimously~~

Louisa Wall

Marriage (Definition of Marriage) Amendment Bill

Member's Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Marriage (Definition of Marriage) Amendment Act **2012**.

- 2 Commencement**
This Act comes into force on ~~the day after the date on which it receives the Royal assent.~~ the earlier of—
- (a) a date appointed by the Governor-General by Order in Council; and 5
- (b) the day that is 4 months after the date on which this Act receives the Royal assent.
- 3 Principal Act**
This Act amends the Marriage Act 1955 (the **principal Act**).
- 4 Purpose** 10
The purpose of this Act is to amend the principal Act to clarify that a marriage is between 2 people regardless of their sex, sexual orientation, or gender identity.
- 5 Section 2 amended (Interpretation)** 15
In section 2(1), insert in its appropriate alphabetical order:
“**marriage** means the union of 2 people, regardless of their sex, sexual orientation, or gender identity”.
- 5A Section 29 amended (Licence authorizes but not obliges marriage celebrant to solemnize marriage)** 20
In section 29, insert as subsection (2):
“(2) Without limiting the generality of subsection (1), no celebrant who is a minister of religion recognised by a religious body enumerated in Schedule 1, and no celebrant who is a person nominated to solemnize marriages by an approved organisation, is obliged to solemnize a marriage if solemnizing that marriage would contravene the religious beliefs of the religious body or the religious beliefs or philosophical or humanitarian convictions of the approved organisation.” 25
- 5B Section 56 repealed (Offence to deny or impugn validity of lawful marriage)** 30
Repeal section 56.

6 Schedule 2 replaced

Replace Schedule 2 with the **Schedule 2** set out in the **Schedule 1** of this Act.

7 Consequential amendments

The enactments specified in **Schedule 2** are amended in the manner indicated in that schedule. 5

Schedule 1		s 6
Schedule 2 replaced		
Schedule 2		s 15(1)
Prohibited degrees of marriage		
		5
(1)	A person may not marry their <u>the person's</u> —	
	(a) grandparent:	
	(b) parent:	
	(c) child:	
	(d) grandchild:	
	(e) sibling:	10
	(f) parent's sibling:	
	(g) sibling's child:	
	(h) grandparent's spouse or civil union partner:	
	(i) parent's spouse or civil union partner:	
	(j) spouse's or civil union partner's parent:	15
	(k) spouse's or civil union partner's grandparent:	
	(l) spouse's or civil union partner's child:	
	(m) child's spouse or civil union partner:	
	(n) grandchild's spouse or civil union partner:	
	(o) spouse's or civil union partner's grandchild.	20
(2)	The prohibited degrees of marriage apply whether the relationships described are by the whole blood or by the half blood.	
(3)	In this schedule, spouse and civil union partner includes a former spouse or former civil union partner, whether alive or deceased, and whether the marriage or civil union was terminated by death, dissolution, or otherwise.	25

Schedule 2

s 7

Consequential amendments

Part 1

Consequential amendments to other Acts

<u>Adoption Act 1955 (1955 No 93)</u>	5
<u>In section 2, definition of adoptive parent, replace “a husband and wife” with “a married couple”.</u>	
<u>In section 2, definition of adoptive parent, replace “the husband and wife” with “the spouses”.</u>	
<u>In section 7(2)(b), replace “a husband or a wife” with “spouse”.</u>	10
<u>In section 16(2)(a), replace “husband” with “spouse”.</u>	
<u>In section 16(2)(i), replace “husband” with “spouse”.</u>	
<u>Births, Deaths, Marriages, and Relationships Registration Act 1995 (1995 No 16)</u>	
<u>Repeal section 30(2).</u>	15
<u>In section 55(1)(a)(ii), replace “the husband, the wife” with “each spouse”.</u>	
<u>In section 55(2)(a), replace “the husband and wife” with “each spouse”.</u>	
<u>In section 55(2)(a)(ii), replace “the husband, the wife,” with “each spouse”.</u>	20
<u>In section 55(3)(a)(ii), replace “the husband, the wife” with “each spouse”.</u>	
<u>In section 83(2), delete “30(2).”.</u>	
<u>Child Support Act 1991 (1991 No 142)</u>	25
<u>In section 47(3)(a), replace “husband and wife” with “married couple”.</u>	
<u>Crimes Act 1961 (1961 No 43)</u>	
<u>In section 24(3), replace “husband” with “spouse”.</u>	
<u>In section 366(2), replace “his wife or her husband” with “his or her husband or wife”.</u>	30

Part 1—*continued***Family Proceedings Act 1980 (1980 No 94)**

In section 2, definition of **child of the marriage**, replace paragraph (a) with:

- “(a) in relation to a marriage (other than a void marriage)—
“(i) means a child of both spouses together; and 5
“(ii) includes, in relation to any proceedings under
this Act, a child (whether or not a child of either
spouse) who was a member of the family of the
spouses at the time when they ceased to live to-
gether or at the time immediately preceding the 10
institution of the proceedings, whichever first oc-
curring; and”.

In section 24(1)(a), replace “husband and the wife” with “married couple”.

In section 24(1)(a), replace “husband and wife” with “a married couple”. 15

In section 24(2), replace “the husband or wife” with “either spouse”.

In section 64A(4), replace “the husband and wife” with “the spouses or partners”.

In section 94, replace “husband and the wife” with “married couple”. 20

Joint Family Homes Act 1964 (1964 No 45)

In section 2, definition of **husband and wife**, after “this Act”, insert “; and every reference in this Act to a husband and wife must be taken to include any 2 people (of any sex) who are married”.

Judicature Act 1908 (1908 No 89)

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In Schedule 2, rule 6.4(1)(a), replace “husband and wife” with “a married couple”.

Land Transfer Act 1952 (1952 No 52)

In section 89E(g), after “husband and wife”, insert “(as defined in that Act)”.

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Maori Vested Lands Administration Act 1954 (1954 No 60)

In section 30(2), replace “husband and wife” with “spouses”.

Part 1—*continued*

Property (Relationships) Act 1976 (1976 No 166)

In section 1C(2), replace “marriage between the husband and wife or the civil union between the civil union partners or the de facto relationship between the de facto partners” with “marriage, civil union, or de facto relationship”.

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In section 1G, replace “a husband and wife or civil union partners or de facto partners” with “spouses, civil union partners, and de facto partners”.

In section 1K, replace “a husband and wife” with “spouses”.

In section 1M(b), replace “husband and wife” with “both spouses”.

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In section 2A(2), replace “a husband and wife” with “2 people”.

In section 2A(2)(a), replace “as husband and wife” with “as a married couple”.

In section 2B, replace “the husband (A) and the wife (B)” with “the 2 spouses (A and B)”.

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In section 2BA(a), replace “the husband and the wife” with “the spouses”.

Replace section 2E(1)(a) with:

“(a) in relation to a marriage or civil union, a marriage or civil union in which the spouses or partners have lived together in the marriage or civil union—

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“(i) for a period of less than 3 years; or

“(ii) for a period of 3 years or longer, if the court, having regard to all the circumstances of the marriage or civil union, considers it just to treat the marriage or civil union as a relationship of short duration.”.

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Repeal section 2E(1)(ab).

In section 2E(2), delete “, (ab)(i),”.

In section 2E(2), replace “husband and wife” with “a married couple”.

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In section 4(3)(b), replace “husband and wife” with “spouses”.

In section 8(1)(c), replace “husband and the wife” with “married couple”.

Part 1—continued**Property (Relationships) Act 1976 (1976 No 166)—continued**

In section 9(4)(a), replace “husband and wife” with “a married couple”.

In section 21(1), replace “A husband and wife” with “Spouses”.

In section 21A(1), replace “A husband and wife” with “Spouses”.

In section 25(2)(a)(i), replace “husband and wife” with “spouses”.

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In section 52A(3), replace “husband and wife” with “a married couple”.

Social Security Act 1964 (1964 No 136)

In section 63(b), replace “husband and wife any man and woman” with “married any 2 people”.

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In section 151(1), replace “husband and wife” with “married”.

Status of Children Act 1969 (1969 No 18)

In section 14(1), definition of **partner**, replace “husband” with “spouse” in each place.

Summary Proceedings Act 1957 (1957 No 87)

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In section 67(5), replace “his wife or her husband” with “his or her husband or wife”.

Te Ture Whenua Maori Act 1993 (1993 No 4)

In section 296(3), replace “husband and wife” with “married couple”.

Part 2

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Consequential amendments to regulations**Land Act Regulations 1949 (SR 1949/37)**

In regulation 5, replace “wife or widow” with “spouse or surviving spouse”.

**Marriage (Definition of Marriage)
Amendment Bill**

Legislative history

26 July 2012
29 August 2012

Introduction (Bill 39–1)
First reading and referral to Government
Administration Committee
