

Marriage (Court Consent to Marriage of Minors) Amendment Bill

Member's Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Marriage (Court Consent to Marriage of Minors) Amendment Bill and recommends unanimously that it be passed with the amendments shown.

Introduction

This Member's bill is in the name of Joanne Hayes MP. It seeks to amend the Marriage Act 1955 to require the consent of a Family Court Judge for the marriage of a 16 or 17 year old.

At present, 16 and 17 year olds who wish to marry can do so with parental consent. This is done about 30 times a year, and mostly involves 16 or 17 year old females. The bill aims to prevent possible forced marriages by changing the requirement for consent from parents to a judge.

A forced marriage is one in which pressure or abuse is used to coerce someone against their will to enter a marriage.

Requiring court consent for 16 and 17 year olds wanting to enter a legally recognised relationship

We recommend that the bill be amended so that it applies to civil unions and de facto relationships, as well as to marriages. This would entail amending the Civil Union Act 2004 and the Care of Children Act 2004, as well as the Marriage Act, to replace parental and guardian consent requirements with that of a Family Court Judge.

Civil unions and de facto relationships provide many of the same legal rights, duties, and responsibilities as marriage. Amending the three Acts together would maintain

the intent of the bill across these similar relationships, ensure consistency, and avoid potential loopholes.

We also recommend ancillary amendments to several other Acts, including the Family Court Act 1980 and the Family Proceedings Act 1980.

Our amendments would entail changing the bill's structure from an amendment bill to an omnibus bill. Standing Orders permit this change, after the bill's introduction, if the House gives leave. Joanne Hayes MP sought and received leave of the House on 9 May 2018.

De facto relationships

We note that while marriages and civil unions are straightforward examples of legally recognised relationships, de facto relationships are less clear. Unlike marriages or civil unions, legal recognition of a de facto relationship does not often involve the state.

Under existing law, a de facto relationship involving a 16 or 17 year old is only legally recognised if that person has obtained the written consent of each of his or her guardians. Legal recognition gives the couple certain rights, duties and responsibilities under the law. For example, if a 16 or 17 year old enters a legally recognised relationship they are no longer recognised as a child for the purposes of some laws.

Some of us expressed concern that requiring a judge to consent to a de facto relationship would make legal recognition of such a relationship less accessible. Balanced against this, however, we recognise that requiring court consent for de facto relationships would help to protect 16 and 17 year olds from being forced into any legally recognised relationship. Because the law generally treats legal relationships the same, a de facto relationship could be exploited in ways this bill aims to prevent if it were excluded from the requirement for court consent.

Excluding one legally recognised relationship could also be contrary to the Human Rights Act 1993, which prohibits discrimination on the basis of marital status.

Change of bill title

In light of our proposal above, we recommend amending clause 1 to change the proposed title of this legislation to the Minors (Court Consent to Relationships) Legislation Act. The title of the bill would need to reflect its omnibus nature if it was to amend more than just the Marriage Act.

Requiring court consent for 16 or 17 year olds wanting to enter a legally recognised relationship

As introduced, clause 5 of the bill provides for parental consent to be replaced with the consent of a Family Court Judge in the Marriage Act. It would mean that a Registrar must not, without the consent of a Family Court Judge, issue a licence authorising a marriage if a party to the intended marriage is aged 16 or 17.

To obtain consent, a party aged 16 or 17 seeking to enter a marriage would need to make an application to a Family Court Judge.

Proposed section 18(3) prescribes court procedural requirements when dealing with an application. However, it does not specify what matters a Family Court Judge must be satisfied about when considering an application.

We recommend replacing clause 5 with new clause 8, which would replace sections 18 to 21 of the Marriage Act. We also recommend inserting new clause 14 to replace sections 19 and 20 of the Civil Union Act, which would apply the intent of clause 5 to civil unions. We further recommend inserting new clause 20 to replace section 46A of the Care of Children Act, which would apply the intent of clause 5 to legally recognised de facto relationships.

Making an application to the Family Court

Clauses 8 and 14 insert provisions into sections 18 and 19 of the Marriage Act and Civil Union Act respectively. These would set out that a Registrar must not issue a license authorising a marriage or civil union involving a 16 or 17 year old if consent has not first been granted by a judge.

To obtain consent, the person must make an application to the Family Court. An application could be made if one person, or both people, intending to enter the marriage or civil union were 16 or 17 years old.

For a 16 or 17 year old to enter a legally recognised de facto relationship they must also make an application to the Family Court.

Matters to be considered by the court on receipt of an application

New clauses 8, 14, and 20 would insert new provisions into the three Acts the bill proposes to amend. These new provisions would specify the matters on which a judge must be satisfied before granting applications and consenting to a marriage or civil union or de facto relationship involving a 16 or 17 year old.

When considering the application, a judge must first be satisfied that the applicant has made the application voluntarily, free of undue influence or coercion, and that the applicant understands the consequences of the application and wants the judge to consent to the intended relationship.

If satisfied of the above, the judge would then need to undertake an objective assessment to determine whether the relationship would serve the interests of the 16 or 17 year old. The assessment must take into account:

- the person's age and maturity
- the person's views
- any views held by the person's parents or guardians that can reasonably be ascertained
- any other information available to the court relevant to the application.

By assessing the age and maturity of the person, the court would be able to consider the person's legal competency to make important decisions. If the person's legal competency was not sufficient, a legally recognised relationship would be unlikely to

serve their interests, and they would be unlikely to be able to provide their free and full consent.

By considering the views held by parents or guardians, the bill recognises the important role parents and guardians play in the life of young people. The provision would provide for the court to hear these views during proceedings, but would not allow them to carry undue weight in deciding the outcome as they are only one of several considerations the court assesses.

The last of the above matters is sufficiently broad to ensure that the court would be able to investigate any other information relevant to the application. It specifically requires the court to look at evidence that suggests the relationship may not be in the 16 or 17 year old's best interests.

To assist the court in determining proceedings, we recommend inserting clause 31 to amend section 12A of the Family Court Act. Our change would add the Marriage Act and the Civil Union Act to the list of specified Acts where the court may receive any evidence it thinks fit, whether admissible or not under the Evidence Act 2006. The Care of Children Act is already specified in section 12A.

Obtaining a cultural report to aid consideration

We recommend amending the bill to provide that the judge could obtain a cultural report to assist with the consideration of an application. We recommend inserting new section 20 into the Marriage Act and new section 20A into the Civil Union Act to provide for this.

Section 133 in the Care of Children Act currently provides that a number of reports may be obtained for court proceedings. We recommend for the purpose of applications under section 46A that only a cultural report may be obtained.

A cultural report could be obtained if the court was satisfied that the report's information was essential for determining the application and that the report is the best source of that information. The court must also be satisfied that obtaining the report would not have an unacceptable effect on the applicant, or unduly delay proceedings.

The report would cover aspects of the applicant's cultural background, including their religious denomination and practice.

Legal representation to assist proceedings

We recommend providing the court with the ability to appoint legal representation to assist the applicant, and the ability to appoint a lawyer to assist the court. Proposed section 19 of the Marriage Act and proposed section 20 of the Civil Union Act would provide the judge the ability to do so where necessary or desirable. Sections 7 and 130 of the Care of Children Act already provide the court with the ability to appoint a lawyer to represent a child or to assist the court.

We believe that the inclusion of lawyers would be beneficial to ensure that the court is provided with the information it needs, and to provide support while case law in this area is developing.

When a marriage or civil union would be void

We recommend introducing new provisions to void a marriage or civil union in all cases if a person to the marriage or civil union is under 16 years old or if, being aged 16 or 17, they had not obtained a judge's consent.

We recommend repealing existing sections 17(2) and 18(7) of the Marriage Act and inserting new section 21 in that Act, with a cross-reference to section 31 of the Family Proceedings Act. Similarly, we recommend repealing existing section 23(2) and (3) of the Civil Union Act, but retaining the cross-reference in existing section 23(1) to section 31 of the Family Proceedings Act.

Further, we recommend amending section 31 of the Family Proceedings Act to insert new section 31(1)(a)(ia), (ib), and (ic). This would provide that a marriage or civil union would be void if a party to the marriage or civil union was under the age of 16 or if, being aged 16 or 17, a party to the marriage or civil union had not obtained the necessary consent of a Family Court Judge.

These amendments would mean that section 31 of the Family Proceedings Act would set out all of the grounds on which marriages and civil unions could be declared void.

Appendix

Committee process

The Marriage (Court Consent to Marriage of Minors) Amendment Bill was referred to the Justice and Electoral Committee of the 51st Parliament on 7 June 2017. The bill was reinstated in the 52nd Parliament and referred to the Justice Committee on 8 November 2017.

The closing date for submissions was 21 July 2017. We received and considered 29 submissions from interested groups and individuals. We heard oral evidence from 9 submitters at hearings in Wellington.

We received advice from the Ministry of Justice.

Committee membership

Raymond Huo (Chairperson)

Hon Amy Adams (until 21 March 2018)

Ginny Andersen

Hon Maggie Barry (from 21 March 2018)

Chris Bishop

Andrew Falloon (until 21 March 2018)

Matt King (until 21 March 2018)

Hon Mark Mitchell (from 21 March 2018)

Greg O'Connor

Priyanca Radhakrishnan

Hon Dr Nick Smith (from 21 March 2018)

**Marriage (Court Consent to Marriage of Minors)
Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Joanne Hayes

Marriage (Court Consent to Marriage of Minors) Amendment Bill

Member's Bill

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	<u>5A</u> <u>Transitional, savings, and related provisions</u>	<u>8</u>
<u>14</u>	<u>Sections 19 and 20 replaced</u>	<u>9</u>
	<u>19</u> <u>Consent to civil union of persons aged 16 or 17</u>	<u>9</u>
	<u>20</u> <u>Court may appoint lawyers in proceedings under section 19</u>	<u>9</u>
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<u>15</u>	<u>Section 23 amended (When civil union is or may be declared void)</u>	<u>11</u>
<u>16</u>	<u>Section 36 amended (Rules of procedure)</u>	<u>11</u>
<u>17</u>	<u>New Schedule 1AA inserted</u>	<u>11</u>
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<u>19</u>	<u>New section 11A inserted (Transitional, savings, and related provisions)</u>	<u>11</u>
	<u>11A</u> <u>Transitional, savings, and related provisions</u>	<u>11</u>
<u>20</u>	<u>Section 46A replaced (Consent for de facto relationship)</u>	<u>11</u>
	<u>46A</u> <u>Consent for de facto relationship</u>	<u>11</u>
<u>21</u>	<u>Section 46C amended (Certain children may seek review of parent's or guardian's decision or refusal to give consent)</u>	<u>12</u>
<u>22</u>	<u>Section 131 amended (Fees and expenses of lawyer appointed under section 7 or 130)</u>	<u>12</u>
<u>23</u>	<u>Section 133 amended (Reports from other persons)</u>	<u>12</u>
<u>24</u>	<u>Section 135 amended (Costs of reports requested under section 133)</u>	<u>13</u>
<u>25</u>	<u>New Schedule 1AA inserted</u>	<u>13</u>

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**Part 4
Consequential amendments to other enactments**

Citizenship Act 1977

<u>26</u>	<u>Amendments to Citizenship Act 1977</u>	<u>13</u>
<u>27</u>	<u>Section 3 amended (Special provisions relating to parentage)</u>	<u>13</u>
<u>28</u>	<u>New section 4B inserted (Transitional, savings, and related provisions)</u>	<u>13</u>
	4B <u>Transitional, savings, and related provisions</u>	<u>13</u>
<u>29</u>	<u>New Schedule 1AA inserted</u>	<u>13</u>

Family Court Act 1980

<u>30</u>	<u>Amendments to Family Court Act 1980</u>	<u>13</u>
<u>31</u>	<u>Section 12A amended (Evidence)</u>	<u>13</u>
<u>32</u>	<u>Section 16D amended (Regulations relating to payments to professionals)</u>	<u>14</u>

Family Proceedings Act 1980

<u>33</u>	<u>Amendments to Family Proceedings Act 1980</u>	<u>14</u>
<u>34</u>	<u>Section 31 amended (Grounds on which marriage or civil union void)</u>	<u>14</u>

Oranga Tamariki Act 1989

<u>35</u>	<u>Amendment to Oranga Tamariki Act 1989</u>	<u>15</u>
<u>36</u>	<u>Section 116 amended (Review of guardian's decision or refusal to give consent)</u>	<u>15</u>

District Court Rules 2014

<u>37</u>	<u>Amendment to District Court Rules 2014</u>	<u>15</u>
<u>38</u>	<u>Rule 20.13 amended (Application of this subpart)</u>	<u>15</u>

Family Court Rules 2002

<u>39</u>	<u>Amendment to Family Court Rules 2002</u>	<u>15</u>
<u>40</u>	<u>Rule 38 amended (Service of applications under certain Acts)</u>	<u>15</u>

Schedule 1

New Schedule 1AA inserted in Marriage Act 1955

Schedule 2

New Schedule 1AA inserted in Civil Union Act 2004

Schedule 3

New Schedule 1AA inserted in Care of Children Act 2004

Schedule 4

New Schedule 1AA inserted in Citizenship Act 1977

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the ~~Marriage Minors (Court Consent to Marriage of Minors Relationships) Amendment Legislation Act 2017~~.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

3 Principal Act

This Act amends the Marriage Act 1955 (the **principal Act**).

Part 1**Amendments to principal Act**

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4 Section 3 amended (Application of Act)

In section 3(2), replace “provisions relating to consents” with “provision relating to consent”.

5 Sections 18 to 20 replaced

Replace sections 18 to 20 with:

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18 Consent of court required for marriage of minors

(1) A party to an intended marriage who is a minor must, on his or her application, obtain consent to the marriage from a Family Court Judge.

(2) If both parties to the intended marriage are minors, the application may be made by them jointly. 20

(3) The application must be dealt with by way of a hearing in accordance with the following:

(a) the applicant is given an opportunity to be heard:

(b) so far as is reasonably practicable, the parents of the applicant are given an opportunity to be heard: 25

(c) the applicant and any other witnesses may be represented by a lawyer:

(d) no members of the public or media representatives are permitted to be present:

(e) the court may hear any evidence that it thinks fit, whether or not the evidence would be otherwise admissible in a court of law. 30

(4) The Registrar must not issue a licence authorising a marriage or solemnise a marriage if a party to an intended marriage is a minor, unless consent is obtained in accordance with this section.

6 ~~Section 42 amended (Notice of intended marriage outside New Zealand)~~

In section 42(3), replace “consents” with “consent”.

7 ~~Section 64A amended (Rules of procedure)~~

(1) In section 64A(1), replace “sections 19 and” with “section”.

(2) In section 64A(2), repeal paragraph (a).

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Part 2

~~Consequential amendment to Care of Children Act 2004~~

8 ~~Amendment to Care of Children Act 2004~~

This Part amends the Care of Children Act 2004.

9 ~~Section 46 amended (Certain children may seek review of parent’s or guardian’s decision or refusal to give consent)~~

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In section 46, replace subsection (3) with:

(3) This section does not apply where a parent or guardian refuses to give consent to a child’s civil union or entry into a de facto relationship. In those cases, sections 19 and 20 of the Civil Union Act 2004 and section 46A of this Act, respectively, apply instead.

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Part 1

Amendments to Marriage Act 1955

3 Amendments to Marriage Act 1955

This Part amends the Marriage Act 1955.

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4 Section 2 amended (Interpretation)

In section 2(1), repeal the definition of **minor**.

5 New section 2A inserted (Transitional, savings, and related provisions)

After section 2, insert:

2A Transitional, savings, and related provisions

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The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

6 Section 3 amended (Application of Act)

In section 3(2), replace “the provisions relating to consents to the marriage of minors, shall” with “**section 18** (marriage of persons 16 and 17 years of age).”

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7 Section 17 amended (Marriage of persons under 16 years of age)

Repeal section 17(2).

8 Sections 18 to 21 replaced

Replace sections 18 to 21 with:

18 Marriage of persons 16 and 17 years of age

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(1) This section applies if, on the date on which notice of an intended marriage is given under section 23,—

- (a) either party to the intended marriage is aged 16 or 17 years; or
- (b) both parties to the intended marriage are aged 16 or 17 years.

(2) If this section applies, a Registrar must not issue a marriage licence authorising the intended marriage, or solemnise the marriage, unless a Family Court Judge has, under this section, consented to the intended marriage.

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(3) A party to an intended marriage who is aged 16 or 17 years must apply to the Family Court for a Family Court Judge’s consent to the intended marriage, and a joint application may be made if both parties to the intended marriage are aged 16 or 17 years.

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(4) A Family Court Judge may, on receipt of an application made under **subsection (3)**, consent to the intended marriage only if the Judge is satisfied that, for each party to the intended marriage aged 16 or 17 years,—

- (a) the party has made the application voluntarily, free of undue influence or coercion; and
- (b) the party understands the consequences of the application and wants the Judge to consent to the intended marriage; and
- (c) the intended marriage is in the party’s interests.

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(5) In determining whether the intended marriage is in a party’s interests, the matters the Judge must take into account include, without limitation,—

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- (a) the age and maturity of the party; and
- (b) the party’s views; and
- (c) any views of the party’s parents and guardians that can reasonably be ascertained; and
- (d) any other information available to the court relevant to the party’s application.

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19 Court may appoint lawyers in proceedings under section 18

(1) In any proceedings under **section 18**, the Family Court Judge may appoint a lawyer to represent the applicant if the Judge is satisfied that the appointment is necessary or desirable.

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- (2) In any proceedings under **section 18**, the Family Court Judge may (whether or not an appointment is made under **subsection (1)**)—
- (a) appoint a lawyer to assist the court; or
 - (b) direct a Registrar of the court to appoint a lawyer to assist the court.
- (3) The fees and expenses of a lawyer appointed under **subsection (1) or (2)** must— 5
- (a) be determined in accordance with regulations made under section 16D of the Family Court Act 1980 or, if no such regulations are made, by a Registrar of the Family Court; and
 - (b) be paid in accordance with that determination out of public money appropriated by Parliament for the purpose. 10
- (4) An invoice for fees and expenses rendered by a lawyer appointed under this section must be given to the Registrar of the court in which the proceedings were heard, and the Registrar may decide to adjust the amount of the invoice.
- (5) If the lawyer is dissatisfied with the decision of the Registrar as to the amount of the invoice, the lawyer may, within 14 days after the date of the decision, apply to a Judge of the court to review the decision, and the Judge may make any order varying or confirming the decision that the Judge considers fair and reasonable. 15
- 20** **Judge may obtain cultural report** 20
- (1) In any proceedings under **section 18**, the Family Court Judge may obtain a written cultural report by—
- (a) requesting a person whom the Judge considers qualified for the purpose to prepare one; or
 - (b) directing the Registrar to request a person whom the Registrar considers qualified for the purpose to prepare one. 25
- (2) The court may act under **subsection (1)** only if satisfied that—
- (a) the information that the report will provide is essential for determining the application; and
 - (b) the report is the best source of the information, having regard to the quality, timeliness, and cost of other sources; and 30
 - (c) the proceedings will not be unduly delayed by the time taken to prepare the report; and
 - (d) any delay in the proceedings will not have an unacceptable effect on the applicant. 35
- (3) If the court is entitled by **subsection (2)** to act under **subsection (1)** and if the court knows the applicant's wishes about the obtaining of a report or can speedily ascertain them, the court must have regard to the applicant's wishes before deciding whether or not to act under **subsection (1)**.

- (4) Fees for the preparation of reports obtained under this section, and reasonable expenses incurred, must—
- (a) be determined in accordance with regulations made under section 16D of the Family Court Act 1980 or, if no such regulations are made, by a Registrar of the court; and
 - (b) be paid in accordance with that determination out of public money appropriated by Parliament for the purpose.
- (5) In this section, **cultural report** means a report that is about the applicant and that covers an aspect or aspects of the applicant’s cultural background, including the applicant’s religious denomination and practice.
- 21** **When marriage is or may be declared void**
The grounds on which a marriage is void *ab initio* are set out in section 31 of the Family Proceedings Act 1980.
- 9** **Section 42 amended (Notice of intended marriage outside New Zealand)**
In section 42(3), replace “consents” with “consent”.
- 10** **Section 64A amended (Rules of procedure)**
- (1) In section 64A(1), replace “sections 19” with “**sections 18**”.
 - (2) Replace section 64A(2) with:
 - (2) The rules do not affect the practice and procedure of the District Court in proceedings under section 26.
- 11** **New Schedule 1AA inserted**
Insert the **Schedule 1AA** set out in **Schedule 1** of this Act as the first schedule to appear after the last section of the Marriage Act 1955.

Part 2

Amendments to Civil Union Act 2004

- 12** **Amendments to Civil Union Act 2004**
This Part amends the Civil Union Act 2004.
- 13** **New section 5A inserted (Transitional, savings, and related provisions)**
After section 5, insert:
- 5A** **Transitional, savings, and related provisions**
The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

14 Sections 19 and 20 replaced

Replace sections 19 and 20 with:

19 Consent to civil union of persons aged 16 or 17

- (1) This section applies if, on the date on which notice of the intended union is given under section 11,— 5
- (a) either party to the intended civil union is aged 16 or 17 years; or
 - (b) both parties to the intended civil union are aged 16 or 17 years.
- (2) If this section applies, a Registrar must not issue a licence authorising the intended civil union, or solemnise the civil union, unless a Family Court Judge has, under this section, consented to the intended civil union. 10
- (3) A party to an intended civil union who is aged 16 or 17 years must apply to the Family Court for a Family Court Judge’s consent to the intended civil union, and a joint application may be made if both parties to the intended civil union are aged 16 or 17 years.
- (4) A Family Court Judge may, on receipt of an application made under **subsection (3)**, consent to the intended civil union only if the Judge is satisfied that, for each party to the intended civil union aged 16 or 17 years,— 15
- (a) the party has made the application voluntarily, free of undue influence or coercion; and
 - (b) the party understands the consequences of the application and wants the Judge to consent to the intended civil union; and 20
 - (c) the intended civil union is in the party’s interests.
- (5) In determining whether the intended civil union is in a party’s interests, the matters the Judge must take into account include, without limitation,— 25
- (a) the age and maturity of the party; and
 - (b) the party’s views; and
 - (c) any views of the party’s parents and guardians that can reasonably be ascertained; and
 - (d) any other information available to the court relevant to the party’s application. 30

20 Court may appoint lawyers in proceedings under section 19

- (1) In any proceedings under **section 19**, the Family Court Judge may appoint a lawyer to represent the applicant if the Judge is satisfied that the appointment is necessary or desirable.
- (2) In any proceedings under **section 19**, the Family Court Judge may (whether or not an appointment is made under **subsection (1)**)— 35
- (a) appoint a lawyer to assist the court; or
 - (b) direct a Registrar of the court to appoint a lawyer to assist the court.

- (3) The fees and expenses of a lawyer appointed under **subsection (1) or (2)** must—
- (a) be determined in accordance with regulations made under section 16D of the Family Court Act 1980 or, if no such regulations are made, by a Registrar of the Family Court; and 5
 - (b) be paid in accordance with that determination out of public money appropriated by Parliament for the purpose.
- (4) An invoice for fees and expenses rendered by a lawyer appointed under this section must be given to the Registrar of the court in which the proceedings were heard, and the Registrar may decide to adjust the amount of the invoice. 10
- (5) If the lawyer is dissatisfied with the decision of the Registrar as to the amount of the invoice, the lawyer may, within 14 days after the date of the decision, apply to a Judge of the court to review the decision, and the Judge may make any order varying or confirming the decision that the Judge considers fair and reasonable. 15
- 20A Judge may obtain cultural report**
- (1) In any proceedings under **section 19**, the Family Court Judge may obtain a written cultural report by—
- (a) requesting a person whom the Judge considers qualified for the purpose to prepare one; or 20
 - (b) directing the Registrar to request a person whom the Registrar considers qualified for the purpose to prepare one.
- (2) The court may act under **subsection (1)** only if satisfied that—
- (a) the information that the report will provide is essential for determining the application; and 25
 - (b) the report is the best source of the information, having regard to the quality, timeliness, and cost of other sources; and
 - (c) the proceedings will not be unduly delayed by the time taken to prepare the report; and
 - (d) any delay in the proceedings will not have an unacceptable effect on the applicant. 30
- (3) If the court is entitled by **subsection (2)** to act under **subsection (1)** and if the court knows the applicant's wishes about the obtaining of a report or can speedily ascertain them, the court must have regard to the applicant's wishes before deciding whether or not to act under **subsection (1)**. 35
- (4) Fees for the preparation of reports obtained under this section, and reasonable expenses incurred, must—

- (a) be determined in accordance with regulations made under section 16D of the Family Court Act 1980 or, if no such regulations are made, by a Registrar of the court; and
- (b) be paid in accordance with that determination out of public money appropriated by Parliament for the purpose. 5
- (5) In this section, **cultural report** means a report that is about the applicant and that covers an aspect or aspects of the applicant’s cultural background, including the applicant’s religious denomination and practice.
- 15 Section 23 amended (When civil union is or may be declared void)**
Repeal section 23(2) and (3). 10
- 16 Section 36 amended (Rules of procedure)**
- (1) In section 36(1), replace “20” with “19”.
- (2) Replace section 36(2) with:
- (2) Rules made under the Family Court Act 1980 do not affect the practice and procedure of the District Court in proceedings under section 22. 15
- 17 New Schedule 1AA inserted**
Insert the **Schedule 1AA** set out in **Schedule 2** of this Act as the first schedule to appear after the last section of the Civil Union Act 2004.
- Part 3**
- Amendments to Care of Children Act 2004** 20
- 18 Amendments to Care of Children Act 2004**
This Part amends the Care of Children Act 2004.
- 19 New section 11A inserted (Transitional, savings, and related provisions)**
After section 11, insert:
- 11A Transitional, savings, and related provisions** 25
The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.
- 20 Section 46A replaced (Consent for de facto relationship)**
Replace section 46A with:
- 46A Consent for de facto relationship** 30
- (1) A child aged 16 or 17 who wishes to obtain consent for his or her de facto relationship must make an application to the Family Court for the consent of a Family Court Judge.

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- (2) A Family Court Judge may, on an application of a child made under **subsection (1)**, consent to the de facto relationship only if the Judge is satisfied that—
- (a) the child has made the application voluntarily, free of undue influence or coercion; and 5
 - (b) the child understands the consequences of the application and wants the Judge to consent to the de facto relationship; and
 - (c) the de facto relationship is in the child’s interests.
- (3) In determining whether the de facto relationship is in the child’s interests, the matters that the Judge must take into account include, without limitation,— 10
- (a) the age and maturity of the child; and
 - (b) the child’s views; and
 - (c) any views of the child’s parents and guardians that can reasonably be ascertained; and
 - (d) any other information available to the court relevant to the child’s application. 15

21 Section 46C amended (Certain children may seek review of parent’s or guardian’s decision or refusal to give consent)

Repeal section 46C(3).

22 Section 131 amended (Fees and expenses of lawyer appointed under section 7 or 130) 20

In section 131(5)(a), replace “section 105” with “section **46A** or 105”.

23 Section 133 amended (Reports from other persons)

- (1) In section 133(1), definition of **application**, after paragraph (a)(ii), insert:
- (ia) an application under **section 46A**; or 25
- (2) Immediately before section 133(2), insert:
- (1A) In proceedings relating to an application under **section 46A**, the court may obtain only a cultural report.
- (1B) In proceedings relating to any other application, the court may obtain any 1 or more of the following: 30
- (a) a cultural report;
 - (b) a medical report;
 - (c) a psychiatric report.
- (3) Immediately before section 133(5), insert:
- (4A) In proceedings relating to an application, other than an application under **section 46A**, the court may obtain a psychological report. 35

- 24** **Section 135 amended (Costs of reports requested under section 133)**
After section 135(2), insert:
- (3) However, no order under section 135A may be made in any proceedings commenced by an application under **section 46A**.
- 25** **New Schedule 1AA inserted** 5
Insert the **Schedule 1AA** set out in **Schedule 3** of this Act as the first schedule to appear after the last section of the Care of Children Act 2004.

Part 4
Consequential amendments to other enactments

Citizenship Act 1977 10

- 26** **Amendments to Citizenship Act 1977**
Sections 27 to 29 amend the Citizenship Act 1977.
- 27** **Section 3 amended (Special provisions relating to parentage)**
- (1) In section 3(5A), replace “subsection 3(1)(a)” with “subsection (1)(a)”.
- (2) Replace section 3(5A)(b) with: 15
- (b) a person who has attained the age of 16 years but who is younger than 18 years may be treated as having a de facto relationship with another person only if the person has obtained consent for the relationship in accordance with **section 46A** of the Care of Children Act 2004.
- 28** **New section 4B inserted (Transitional, savings, and related provisions)** 20
After section 4A, insert:
- 4B** **Transitional, savings, and related provisions**
The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.
- 29** **New Schedule 1AA inserted** 25
Insert the **Schedule 1AA** set out in **Schedule 4** of this Act as the first schedule to appear after the last section of the Citizenship Act 1977.

Family Court Act 1980

- 30** **Amendments to Family Court Act 1980**
Sections 31 and 32 amend the Family Court Act 1980. 30
- 31** **Section 12A amended (Evidence)**
After section 12A(2)(h), insert:

- (i) Civil Union Act 2004:
- (j) Marriage Act 1955.
- 32 Section 16D amended (Regulations relating to payments to professionals)**
- (1) In section 16D(1)(a)(vi), replace “; or” with “:”.
- (2) After section 16D(1)(a)(vi), insert: 5
- (vii) **section 20(1)** of the Civil Union Act 2004;
- (viii) **section 19(1)** of the Marriage Act 1955; or
- (3) After section 16D(1)(b)(vi), insert:
- (vii) **section 20(2)** of the Civil Union Act 2004;
- (viii) **section 19(2)** of the Marriage Act 1955. 10
- (4) Replace the heading above section 16D(6) with:
- Fees and expenses for report writers*
- (5) Replace section 16D(6)(a) with:
- (a) a person who prepares a cultural report when requested to do so under—
- (i) section 133(2) of the Care of Children Act 2004; 15
- (ii) **section 20A** of the Civil Union Act 2004;
- (iii) **section 20** of the Marriage Act 1955;
- Family Proceedings Act 1980*
- 33 Amendments to Family Proceedings Act 1980**
- Section 34** amends the Family Proceedings Act 1980. 20
- 34 Section 31 amended (Grounds on which marriage or civil union void)**
- (1) After section 31(1)(a)(i), insert:
- (ia) at the time of the solemnisation of the marriage or civil union, 1 of the parties to the marriage or civil union was under the age of 16 years; or 25
- (ib) at the time of the solemnisation of the marriage, 1 of the parties to the marriage was aged 16 or 17 years and the consent of a Family Court Judge required under **section 18** of the Marriage Act 1955 had not been obtained; or
- (ic) at the time of the solemnisation of the civil union, 1 of the parties to the civil union was aged 16 or 17 years and the consent of a Family Court Judge required under **section 19** of the Civil Union Act 2004 had not been obtained; or 30
- (2) In section 31(1)(b), delete “, in contravention of the Marriage Act 1955”.

Oranga Tamariki Act 1989

35 **Amendment to Oranga Tamariki Act 1989**

Section 36 amends the Oranga Tamariki Act 1989.

36 **Section 116 amended (Review of guardian’s decision or refusal to give consent)**

5

Repeal section 116(5).

District Court Rules 2014

37 **Amendment to District Court Rules 2014**

Section 38 amends the District Court Rules 2014.

38 **Rule 20.13 amended (Application of this subpart)**

10

Revoke rule 20.13(1)(r).

Family Court Rules 2002

39 **Amendment to Family Court Rules 2002**

Section 40 amends the Family Court Rules 2002.

40 **Rule 38 amended (Service of applications under certain Acts)**

15

Revoke rule 38(ab) and (c).

Schedule 1
New Schedule 1AA inserted in Marriage Act 1955

s 11

Schedule 1AA
Transitional, savings, and related provisions

5

s 2A

Part 1
Provisions relating to Minors (Court Consent to Relationships)
Legislation Act 2017

1 Interpretation

10

In this Part,—

2017 Act means the Minors (Court Consent to Relationships) Legislation Act 2017

commencement date means the day on which the **2017 Act** comes into force.

2 Consents given under section 18 or 19 before commencement date

15

Consents given under section 18 or 19 before the commencement date continue to have effect as if the **2017 Act** had not been enacted.

Schedule 2
New Schedule 1AA inserted in Civil Union Act 2004

s 17

Schedule 1AA
Transitional, savings, and related provisions

5

s 5A

Part 1
Provisions relating to Minors (Court Consent to Relationships)
Legislation Act 2017

1 Interpretation

10

In this Part,—

2017 Act means the Minors (Court Consent to Relationships) Legislation Act 2017

commencement date means the day on which the **2017 Act** comes into force.

2 Consents given under section 19 or 20 before commencement date

15

Consents given under section 19 or 20 before the commencement date continue to have effect as if the **2017 Act** had not been enacted.

Schedule 3

New Schedule 1AA inserted in Care of Children Act 2004

s 25

Schedule 1AA

Transitional, savings, and related provisions

5

s 11A

Part 1

**Provisions relating to Minors (Court Consent to Relationships)
Legislation Act 2017**

1 Interpretation

10

In this Part,—

2017 Act means the Minors (Court Consent to Relationships) Legislation Act 2017

commencement date means the day on which the **2017 Act** comes into force.

2 Consents given under section 46A before commencement date

15

Consents given under section 46A before the commencement date continue to have effect as if the **2017 Act** had not been enacted.

Schedule 4
New Schedule 1AA inserted in Citizenship Act 1977

s 29

Schedule 1AA
Transitional, savings, and related provisions

5

s 4B

Part 1
Provisions relating to Minors (Court Consent to Relationships)
Legislation Act 2017

1 **Interpretation**

10

In this Part,—

2017 Act means the Minors (Court Consent to Relationships) Legislation Act 2017

commencement date means the day on which the **2017 Act** comes into force.

2 **Consents given under section 3(5A)(b) before commencement date**

15

Consents given under section 3(5A)(b)(i) or (ii) before the commencement date continue to have effect as if the **2017 Act** had not been enacted.

Legislative history

13 April 2017
7 June 2017
8 November 2017

Introduction (Bill 256–1)
First reading and referral to Justice and Electoral Committee
Reinstated before Justice Committee