

# **Civil Union Bill**

Government Bill

As reported from the Justice and Electoral Committee

## **Commentary**

### **Recommendation**

The Justice and Electoral Committee has examined the Civil Union Bill and recommends by majority that it be passed with the amendments shown.

### **Introduction**

The purpose of the bill is to establish civil unions for different and same-sex couples. In providing for civil union in the form of a stand-alone Act, the bill is intended to reflect Parliament's intention that marriage in New Zealand should remain available solely to a man and a woman.

This commentary does not cover minor or technical amendments; it focuses on the major amendments to the bill that most of us recommend. Throughout the commentary the phrase "most of us" can be read as referring to those committee members who support the bill (unless specified otherwise in the text). These members are: Tim Barnett, Lianne Dalziel, Russell Fairbrother, Dave Hereora, Moana Mackey, Hon Clem Simich, and Nandor Tanczos. "Some of us" refers to Stephen Franks, Edwin Perry, Murray Smith, and Richard Worth. The bill is a matter for individual members' consciences, so in most cases it is not appropriate to express views along party lines.

## **Commencement date**

Most of us recommend an amendment to clause 2(1) to specify a commencement date of 26 April 2005. A specified commencement date will provide certainty for parties who wish to enter into a civil union, and for the agencies that will need time to put appropriate systems in place. Some of us judge that this bill is proceeding with undue haste, to ensure that it is implemented well before the next general election.

## **Purpose clause**

We considered whether the bill should have a new clause 3(2), to expressly state as the reason for providing for civil unions: “to recognise and support stable, genuine relationships between 2 people who wish to freely and publicly acknowledge their lifelong and exclusive commitment to each other.” After careful consideration the majority concluded that the purpose clause was not necessary in light of clause 4A, which contains all of the essential legal elements of a civil union. Accordingly, we recommend the purpose clause be deleted in its entirety.

The Green and ACT members opposed the purpose clause for differing reasons, a common reason being that it failed to distinguish between a legal and a cultural framework. The ACT member’s primary concern was that the words discussed implied state endorsement of a relationship.

The United Future member contends that it is Parliament’s responsibility to provide what it considers to be minimum standards. He believes that as civil union is simply another form of marriage, it is Parliament’s responsibility to steer the new institution of civil unions towards the values of exclusivity and life-long commitment. By not providing for this intention to be stated the member believes that civil unions could easily develop a culture of being short term and/or non-exclusive relationships.

## **Statistics**

### **Relationships**

Marriage in New Zealand peaked in 1971 with a general marriage rate of 45.5 marriages per 1000 non-married people. Figures since then have steadily dropped but have stabilised over the last 3 years at a rate of around 14.7. The current rate is 14.5. The actual number of marriages has increased over the last 3 years from 19,972 in 2001 to

21,419 in 2003. The decline in formal marriage reflects growth in de facto unions, delayed marriages (the average age of first marriage is 29.5 for men and 27.7 for women), and an increasing proportion of New Zealanders remaining single. Overall divorce rates increased between 1961 and 1998, but have stabilised since the sharp rise in the early 1980s. The current divorce rate is 13.1 per 1000 marriages (10,491 in 2003).<sup>1</sup>

In the 2001 census, a total of 1,643,952 people identified themselves as partnered (married and de facto). Of these, 1,307,358 (79.5 percent) identified themselves as legally married; 300,843 (18.3 percent) as “other partnership” (living as married, that is, in a de facto relationship) and 35,748 (2 percent) as “partnered not further defined”. As far as can be determined from census information, 10,134 partnered couples (0.6 percent) were living in same-sex relationships.<sup>2</sup>

### Submissions

We received 3383 separate submissions, of which 2820 were generally opposed to, and 465 generally in support of, the bill.<sup>3</sup>

There were 46 different kinds of form submission on the bill and the Relationships (Statutory References) Bill. We received 3082 form submissions, of which 3030 were generally opposed to, and 52 generally in support of, the bill.

### Differences between marriage and civil union

The designs of the Marriage Act 1955 and the bill are parallel. Neither defines marriage or civil union. Instead, they both provide for prerequisites and formalities for the registration of relationships.

There are certain differences between civil union, as proposed in the bill, and marriage. Among them are the following:

- Marriage is available solely to a man and a woman. Civil unions will also be available to same-sex couples.
- Unlike the Marriage Act the bill does not contain references to husband and wife in relation to civil union partners.

<sup>1</sup> Figures from the Statistics New Zealand website [<http://www.stats.govt.nz> – last accessed: 15 November 2004].

<sup>2</sup> Ministry of Justice, *Initial Briefing on Civil Union and Relationships (Statutory References) Bill*, p. 2.

<sup>3</sup> Extrapolated from Ministry of Justice *Civil Union Bill and Relationships (Statutory References) Bill Departmental Report*, p. 3.

- The Marriage Act provides for three processes by which different categories of people may become marriage celebrants. The bill proposes one process for all celebrants to be appointed by the Registrar-General. Further, civil union celebrants can be appointed to serve a population group as well as a geographic area.
- The Marriage Act caters differently for a range of situations in which a minor is required to obtain consent to marry from one or both of his or her parents. The bill requires a person who is 16 or 17 to obtain the consent of each of his or her guardians. In addition, civil unions may be declared void if one of the parties is subsequently found to have been under 16 years old.
- The Marriage Act provides for the solemnisation of marriages overseas and service marriages (outside of New Zealand) and proxy marriage (where one party cannot be in New Zealand). The bill does not provide for overseas, service, or proxy civil union. However, our proposed amendments regarding overseas relationship registration schemes will allow the recognition of some overseas forms of civil union.

In terms of non-legal differences, marriage has many varied religious, cultural and societal beliefs associated with it. Civil union does not. Civil unions will develop their own characteristics over time.

A few submissions do not support the bill because they contend that anything other than same-sex marriage does not provide equal rights to same-sex couples.

We note that a key distinction between marriage and civil union (de jure relationships) and other relationships (de facto relationships) is that the former represent a deliberate decision to have the relationship recognised in law.

### **Solemnisation**

Most of us recommend parallel amendments to clauses 14(2) and 15(2), to remove any perceived prescription of the form of words to be used by parties during the solemnisation of a civil union. We did not consider it necessary to prescribe the form of words for the solemnisation of civil unions. Instead, these clauses as amended will require each party to make a clear statement to the other that names both parties and acknowledges that they are freely joining in a civil union with each other.

The ACT and United Future members consider that without stipulation of any content of the vows to be exchanged, the bill raises for consideration the parallel absence from the Marriage Act of any prescribed content for the vows. The bill assumes a solemn exchange of commitments but without the background of religious and cultural custom of marriage. These members consider that this leaves a vacuum of purpose and supports the views of most submitters both for and against the bill that it is essentially a state endorsement of same-sex relationships in the nature of marriage.

### **Bill of rights compliance**

The Crown Law Office considered the bill for consistency with the New Zealand Bill of Rights Act 1990, and concluded that there was no inconsistency between the two. It advised that while the bill does raise issues of prima facie inconsistency with the freedom from discrimination on the basis of age and family status, this is justifiable in terms of section 5 of the New Zealand Bill of Rights Act.

We were concerned that the bill could invite legal challenges on the basis that not allowing same-sex couples to convert civil unions into marriages constitutes unjustifiable discrimination. We invited the Crown Law Office to further examine the bill for consistency with the New Zealand Bill of Rights Act in this regard. The Crown Law Office advised in reply that any differential treatment of same-sex couples arises by virtue of the Marriage Act, and that no prima facie inconsistency with the New Zealand Bill of Rights Act arises in respect of clauses 17 and 18 of the bill.

The United Future member considers that by addressing the issue on the basis of this bill in isolation, the Crown Law Office has taken too narrow a view.

### **Recognition of overseas relationship schemes**

Most of us recommend amendments to clause 5 to allow the recognition of relationships entered into overseas which would be considered civil unions in New Zealand. These members also recommend amendments to clause 34 to provide that the type of relationships recognised for this purpose be specified by regulation, provided they meet the criteria in the bill. Proposed new clause 34(2) sets out the criteria by which the Minister of Justice must be satisfied that an overseas relationship qualifies for recognition in New

Zealand. In considering this issue we adopted the approach taken in the United Kingdom's Civil Partnership Act 2004 as a model.<sup>4</sup>

Most of us recommend the inclusion of proposed new clause 24A, to provide that a person who wishes to enter into a civil union type relationship outside New Zealand may apply to the Registrar-General for a certificate of no impediment. Such a certificate will show that the Registrar-General is satisfied that no lawful impediment under New Zealand law to the person entering a civil union has been shown to exist.

### **International trends in statutory registration arrangements for same-sex relationships and same-sex marriage**

We are advised that in the past 15 years a number of jurisdictions have introduced statutory registration arrangements for same-sex relationships and, in some cases, same-sex marriage.<sup>5</sup>

Table 1 in Appendix B provides a non-exhaustive cross-section of what we understand to be the existing relationship registration arrangements for same-sex relationships and same-sex marriage in other countries.

### **Partners not to be already married or in civil union**

We recommend the inclusion of new clause 8A to clarify that one cannot both be married and in a civil union (with the same person or different persons).

### **Changing the form of a relationship**

Most of us recommend the inclusion of redrafted clauses 17 and 18, under the new cross-heading "Changing form of relationship", to replace clauses 17 and 18 in the bill as drafted. These members considered the prospect of "converting" marriage to civil union and vice versa gave an inappropriate impression that one relationship, rather than the form of that relationship, was ending and another beginning, and might have blurred the distinction between marriage and civil union. It should be noted that changing status from marriage to civil union and vice versa is not a shortcut to the dissolution of a relationship.

<sup>4</sup> The Civil Partnership Act sets out the criteria for assessing new schemes, and includes the ability to add new schemes by way of Order in Council.

<sup>5</sup> Ministry of Justice, *Civil Union Bill and Relationships (Statutory References) Bill Departmental Report*, p. 121.

The United Future member, whilst not objecting to the provision, considers that by allowing easy conversion between marriages and civil unions the distinction between marriage and civil union is further blurred.

### **Administrative matters around civil unions**

Most of us recommend an amendment to clause 34(1)(a)(i) to make it possible to manage some administrative matters in the same way for civil unions as for marriages. These matters include giving notice of an intended civil union, and providing for the setting of civil union fees. The fees for civil union are likely to be higher than those for marriage due to the requirement for fees to be set on a cost recovery basis.

### **Amendments to Family Proceedings Act 1980**

We recommend substituting a new clause 42 which textually amends the Family Proceedings Act 1980 as set out in new Schedule 2A. Equivalent textual amendments to the relevant rules will be made later.

A submission from the Maxim Institute expressed concern that clause 42 as drafted applied new definitions to “husband” (“one of the parties to a civil union”) and “wife” (“the other party to a civil union”). For the sake of clarity, our proposed amendments more clearly reflect the policy intention.

### **Prohibited degrees of civil union**

We do not recommend changes to clause 9, “Partners not to be within prohibited degrees of civil union”. Nonetheless, we are aware of the anomaly of carrying prohibitions over from the Marriage Act (via Schedule 2 of the bill). While the policy rationale is to reinforce the status of civil union as legally equivalent to marriage, many of the prohibited degrees of marriage were introduced for historical reasons that may arguably not apply to civil unions. The appropriateness or otherwise of the existing prohibitions raises a broader policy issue of whether the prohibited degrees of relationship should be reviewed.

### **Celebrants**

The relative proportions of civil celebrants and celebrants appointed by churches or approved organisations have been largely unchanged

in the past 5 years. In 2003/04, 47 percent of marriage ceremonies were conducted by civil celebrants, 35 percent by church celebrants, and 18 percent in a registry office.

### **The civil celebrant system**

The committee heard from representatives of celebrants, and from those involved in training celebrants. We understand that civil celebrancy in New Zealand emerged to cater for the needs of what was initially a small proportion of people who did not want church-based weddings or funerals. It has grown massively since. Given that the celebrant system is rarely touched on in new legislation, and given that the bill will establish a whole new category of celebrants, this is a rare opportunity for the airing of genuine concerns. We note that the role of a celebrant is a professional one, with both ceremonial and administrative aspects. Demand for the services of celebrants is significant, and it is important that numbers are adequate to meet that demand. We also note concerns expressed to our committee about the appointment process for celebrants and such matters, combined with the central issue of the relationship between the Registrar and the network of celebrants, could be addressed in a review of law and policy relating to celebrants which could incorporate the matters addressed above, including training and handling of complaints.

We also note and welcome the provision in the bill allowing for the appointment of civil union celebrants on the basis that they will serve a community of interest, additional to meeting demand in a specific geographic area. We believe that such an approach should be taken in the Marriage Act, and urge that an amendment to the Marriage Act be included in an appropriate legislative vehicle. The committee felt that due to the non-controversial nature of the amendment, it could be dealt with by way of a Statutes Amendment Bill.

### **Referendum**

The New Zealand First and United Future members and Richard Worth (National) recommend a referendum be held to determine whether there is a public mandate for the bill.

One hundred and ninety-one submitters expressed the view that there is no public mandate for the changes proposed in the bill and the accompanying Relationships (Statutory References) Bill. These submissions supported the view that a referendum should be held.



We are advised that civil union or same-sex marriage legislation has been introduced as the result of a referendum on only one occasion: in 2002 in Switzerland, in the canton of Zurich.

### **Petition**

The committee has before it Petition 2002/132 of Vanessa Ralph and 405 others requesting that the House ensure the Civil Union Bill does not proceed. As the petition relates to the bill, the committee resolved to consider and report upon it as part of this commentary.

Most of us are of the view that the bill should proceed. On this basis, most of us have no matters to bring to the attention of the House in relation to this petition.

Some of us are of the view that the bill should not proceed. On this basis, some of us recommend the House comply with the request made in the petition.

### **Majority view of Labour and Green members and Hon Clem Simich on submissions and research**

#### **Submissions**

In our view, the majority of opposing submissions were from people who communicated similar (although sincerely held) views disapproving of the practice of “homosexuality” from a Christian or moral perspective. They drew on biblical references to support their assertion that making legal status available to people in same-sex relationships would have a negative impact on the institution of marriage and society as a whole. This position was strongly disputed by other Christian submitters who cited theological and historical sources that maintain no such denunciation exists in the Bible. Their view was that recognising and supporting loving and committed relationships was consistent with the Bible’s teachings and in no way diminished marriage.

There is a clear distinction between those who took a literalist approach (on certain aspects of the Bible) and others who preferred to identify the message from the context. Thus the people of Sodom, considered in context, were punished for their inhospitality to strangers.

New Zealand is a secular state, however the 2001 Census tells us that although 63 percent of New Zealanders identify with a particular religion, over 1 million New Zealanders do not hold any religious

affiliation. A social survey carried out by Massey University in 1998 identified that only 20 percent attended a place of worship on a regular basis, meaning at least once a month.<sup>6</sup>

Recent polls indicate that the majority of New Zealanders are comfortable with civil union being made available to same-sex couples, the most recent of which indicated 56 percent in favour, 39 percent opposed<sup>7</sup> and 59 percent in favour, 39 percent opposed<sup>8</sup>. Even in a conservative area like the Waikato where opposition was higher than support the difference was only 41 percent to 37 percent with 12 percent neutral, meaning that the majority were not opposed.<sup>9</sup> The irony is that despite the high profile negative campaign opposing civil unions, although the majority of those polled were opposed to gay marriage, 40 percent in the Herald poll were in favour of gay marriage. This is an extraordinary result and serves to highlight just how under-represented mainstream opinion was in the submission process.

On questioning, many of the oral submitters stated that in the 1980s they had opposed homosexual law reform and although some said they no longer opposed it, few supported the Human Rights Amendment Act which followed in 1993 and many remained fundamentally opposed to the decriminalisation of homosexual activity between consenting adults to this day.

The vast majority of these particular submissions provided the same arguments that were posted on the Maxim Institute's website and many cited the same references that are referred to on their site. It is there that homosexuals are accused of having "an agenda". This was also repeated in many submissions. The only evidence of an agenda that we received from gay and lesbian communities was that they wanted to have realised their human rights as legislated by parliament over a decade ago.

It is difficult to interpret these submissions, given what presented as an abiding fear and loathing of homosexual activity, when none of these submitters presented any evidence of how homosexual law reform and the expansion of human rights grounds to include sexual orientation had personally affected them.

<sup>6</sup> Massey University Department of Marketing, *Religion in New Zealand*, Massey University 1999.

<sup>7</sup> *New Zealand Herald*, October 2–3 2004.

<sup>8</sup> TV3 News, July 2004.

<sup>9</sup> *Waikato Times*, 4 October 2004.

This was in direct contrast to those gay men who gave personal evidence of how their own lives had been improved by the removal of the fear of criminal charges for consenting sexual activity in the privacy of their own homes and the wide range of gay men and lesbians and their families and friends, who gave evidence of the benefits which had flowed from recognition of their human rights.

They asked us to give meaning to their human rights by allowing their loving and committed relationships to be recognised by the state. Their argument was that allowing for civil union did not impinge on those who wanted marriage to remain exclusively for a man and a woman. Many felt that because marriage had the history it has, it was appropriate to create a new form of union that was inclusive from the outset.

There were opponents to the “different but equal” argument, and they strongly argued for an amendment to the Marriage Act to allow same-sex couples to marry. Dr Marilyn Waring’s submission was the most extensive in this regard.

Although others did not express strong views as to whether marriage or civil union should be provided for, there was a sense that if there were deeply held objections from certain groups, the preference would be for civil union, as it would not offend those who held to the traditional and religious view of marriage. Unfortunately this respect for diverse views was not matched by the other submitters who opposed civil union for same-sex couples.

The majority of submitters opposed to the bill expressed the concern that it would impact on the number of people choosing to marry. They believed that marriage was systematically being eroded. In fact the number of couples marrying in New Zealand has increased over the last 3 years from 19,972 in 2001 to 21,419 in 2003, and the marriage rate has remained stable. The decline in formal marriage over the last 20 years reflects the growth in de facto unions, delayed marriages (in 1998 the average age of first marriage for men reached 30 and 27 for women) and more New Zealanders remaining single.

Overseas experience does not support the notion that the existence of civil unions will adversely affect marriage. In Denmark, the marriage rate began to increase in the early 1980s and continued to climb despite registration of same-sex relationships being passed in 1989. Danish heterosexual marriage rates are now the highest they have been since the early 1970s. Throughout Scandinavia, trends in

marriage, divorce, cohabitation and single-parent families remain unchanged by the introduction of partnership laws.

### Research

Most submitters who were opposed to the bill claimed the overwhelming body of research favoured the traditional nuclear family as the best place to bring up children. They were concerned about children being raised in de facto or same-sex relationships.

It is important to note the absence of meaningful information about de facto couples in New Zealand. Statistically these relationships do have a shorter average duration than marriages. This is not surprising given that long-term cohabitation is a relatively recent trend. Also, the majority of New Zealand couples now cohabit before marrying. Research in New Zealand for 1990-1995 suggested 65 percent of women were cohabiting before marriage, and recent research in Australia suggests the number of couples choosing to cohabit first is now as high as 85 percent <sup>10</sup>. This means that a large number of de facto relationships in fact “end” not because the couple separate, but because they marry.

Most of the submitters who opposed the bill did so because they were concerned for any children that might be brought up in de facto heterosexual or same-sex environments.

Submitters opposed to this bill quoted research which shows overwhelmingly that children from two-parent families generally have better outcomes than those from single-parent families, due to financial pressures and parenting pressures that are exacerbated when there is only one income and one parent to carry out parenting responsibilities. Unfortunately they assumed that the findings for single-parent families could be applied to any relationship outside of marriage. This is not the case, and not borne out by research.

Where a couple are committed to each other and their children, there is no difference in outcomes for their children regardless of whether they are married or in a de facto relationship. Where this stability does not exist, the outcomes are negative, regardless of the legal status of their parents' relationship. When parents separate, the effect on the child can be just as devastating (or just as positive for

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<sup>10</sup> De Vaus Qu and Weston, “Premarital cohabitation and subsequent marital stability”, *Family Matters* No. 65, Winter 2003, Australian Institute of Family Studies.

that matter) regardless of whether their parents are married or de facto.

The existence of good de facto parents and bad married parents shows that the structure is not the key to a happy or functional family. The key is the parenting skills of the individuals involved and their commitment to each other and their children.

Children from marriages certainly do have better outcomes on average than children from de facto relationships. This is not because marriage makes good parents, but rather because the trend of de facto couples having children without marrying is only relatively recent and the longitudinal studies largely compare married couples with sole parents.

Most submitters who opposed the bill were specifically opposed to same-sex couples raising children, as they did not believe gay parents could have the same outcomes for children as heterosexual married parents. This is not supported by the research specifically comparing the heterosexual and homosexual parents. Because these beliefs about lesbian and gay parents and their children are open to empirical test, their accuracy can be tested. The American Psychological Association, *Lesbian and Gay Parenting: Summary of Research Findings*,<sup>11</sup> found:

there is no evidence to suggest that lesbians and gay men are unfit to be parents or that psychosocial development among children of gay men or lesbians is compromised in any respect relative to that among offspring of heterosexual parents. Not a single study has found children of gay or lesbian parents to be disadvantaged in any significant respect relative to children of heterosexual parents. Indeed, the evidence to date suggests that home environments provided by gay and lesbian parents are as likely as those provided by heterosexual parents to support and enable children's psychosocial growth.

This was supported by the paper "(How) Does the Sexual Orientation of Parents Matter?" published in the *American Sociological Review*.<sup>12</sup> Both these papers identify the most significant difference to be the discrimination their parents face. The research states:

<sup>11</sup> Charlotte J. Patterson, "Lesbian and Gay Parenting" (1995).

<sup>12</sup> Judith Stacey and Timothy Biblarz, "(How) Does the Sexual Orientation of Parents Matter?", *American Sociological Review* 66, no.2, April 2001, pp. 159–183.

we propose that homophobia and discrimination are the chief reasons why parental sexual orientation matters at all. Because lesbian and gay parents do not enjoy the same rights, respect, and recognition as heterosexual parents, their children contend with the burdens of vicarious social stigma.

We recognise the concern that submitters have about the environments in which children are being raised. However, we believe that the biggest unchecked social change New Zealanders have seen in the last 30 years has not been about homosexual rights, the erosion of marriage or no-fault divorce. We believe the shift in work/life balance from favouring the family to favouring the workplace, needs to be urgently addressed. Many submitters agreed that this shift has had significant consequences for New Zealand families. We were reminded that this was important for both parents as their relationship with their children can become strained where workplace pressures mean they do not have much time to engage with their children and play a significant role in their development. The quality of these most significant relationships is pivotal to children's success.

We believe the Families Commission will have an important role in seeking answers to many of the questions that were raised by submitters and the wider issues that those with a narrow focus refused to contemplate.

### **Minority view of Richard Worth (National)**

I am strongly opposed to the passage of the Civil Union Bill without a referendum from New Zealanders as to whether they support this controversial legislation. That referendum should be binding.

A binding referendum would enable the country to express its views and in particular for concerns to be indicated on issues such as:

- The fact that the legislation is Labour Party manifesto policy.
- Marriage is a valuable institution in civil society and it is important that its value is not degraded or diminished by Act of Parliament.
- In the case of heterosexual couples there is no significant difference between civil union and marriage. Both events are registered under the Births, Deaths and Marriages Act. The significant law change proposed by the Civil Union Bill is to enable the legal recognition of same-sex relationships.

### **Minority view of Murray Smith (United Future)**

A key concern for many of the 91 percent of submitters who opposed this bill was a belief that, in effect, this bill legalised same-sex marriage. The member considers that, given that this bill almost exactly copies the Marriage Act, requires a registered “celebrant”, the exchange of vows, and otherwise has identical requirements to marriage, the views of those submitters have considerable merit.

Furthermore, submitters who had been involved in the Government’s drafting of the bill admitted that the decision to create civil unions for same-sex couples rather than simply amend the Marriage Act to allow same-sex marriages was almost solely based on political expediency.

However, even if this bill can be argued not to allow same-sex marriages, the member considers that it goes 95 percent of the way to doing so and that the final small step to same-sex marriage is only a matter of time.

This is because, in the member’s view, the bill contains a provision (clause 18(1)) that is *prima facie* discriminatory under the Human Rights Act insofar as it allows two people to change their relationship from a civil union to a marriage, but only if they are “otherwise eligible to marry each other”.

The only people who would be excluded by this clause are same-sex couples. All other requirements for marriage are also requirements for civil unions.

The member predicts that within a few months of the passing of the bill there will be a complaint lodged with the Human Rights Commission leading to a declaration that this provision is inconsistent with the right to freedom from discrimination affirmed by the New Zealand Bill of Rights Act.

Following that, the member predicts that a Labour Government would, as soon as politically feasible, admit that there is discrimination, determine that the discrimination is not justifiable and, arguing concerns about potential proceedings before international bodies, fear of international criticism and commitment to “a positive human rights culture”, amend the bill by simply removing the words “and who are otherwise eligible to marry each other”.

By that relatively simple action, the member believes, what is in effect same-sex marriage in the member’s view, would become undeniably so.

Accordingly the member believes that this bill is contrary to the best interests of New Zealand society and should not pass.

On the other hand, the member agrees with the many submitters (especially those opposing the bill) who called for legislation to provide for a “next of kin” register to be established. The member believes that this would provide a far better solution (and one that left the institution of marriage intact) to the genuine concerns that people with close relationships (including same-sex couples) have about their ability to grant someone else the right to act on their behalf.

### **Minority view of New Zealand First**

New Zealand First believes that issues such as civil unions and other similar social and moral issues should be dealt with through a referendum. This is New Zealand First policy. The Civil Union Bill is controversial legislation which has evoked wide ranging views and emotions and clearly cannot be trusted to the “consciences” of Members of Parliament.

New Zealand First has received a large amount of communication on this issue, with almost 90 percent opposing it. We believe that this would be the result were a referendum to be held and therefore reject the notion that Parliament should supersede the will of the people without first testing it.

The most common concern of those opposing the bill is that it undermines the institution of marriage and we believe that it is not for Parliament to tamper with its meaning or place in society.

New Zealand First believes this bill is part of a disturbing trend by this current Government to interfere in social and moral issues. Therefore, the majority of New Zealand First strongly oppose the Civil Union Bill, and all support the proposition that such issues must be tested by way of referendum.

### **Minority view of Stephen Franks (ACT)**

The ACT member cannot recommend the passage of this bill before knowing the precise form of the Relationships (Statutory References) Bill. Unless that bill is substantially changed it will complete the process of assimilating married and de facto relationships for almost all legal purposes.



In that case this bill will have no substantive legal effect other than to confer state “blessing” on the relationships of people who have, up until now, been unable to marry. As marriage, civil union, and de facto relationships will attract the same rights and obligations, this bill is not needed to remove the legal disabilities which many submitters advanced as the reason why the bill should create a statutory parallel to the solemnisation of marriage.

Further, as a lawyer, the ACT member is affronted by a bill which establishes a machinery focused around the exchange of solemn vows, mimicking the marriage ceremony, without any defined content to the vows. In theory the parties could exchange vows to join in civil union for one day, without exclusivity.

The Marriage Act is similarly hollow, but it draws on centuries of custom to flesh out the gaps.

With a vacuum at its core, and obvious redundancy, the bill bears out the claims of the majority of submitters, both for and against the bill, that the bill is essentially designed to confer state endorsement of same-sex relationships in the nature of marriage. The ACT member considers that is not a proper purpose of the State. This bill might have been, but is not, simply enabling legislation to facilitate non-discriminatory voluntary entry into a status that attracts legislatively defined rights and benefits. It should not proceed until it is clear that it is necessary and properly confined to that purpose.

Redundancy alone may not be enough reason to oppose a bill. In this case, however, courts and other agencies might draw from the apparent State endorsement of same-sex relationships, encouragement to suppress expression or conduct opposed to same-sex relationships. The committee heard evidence of proceedings in other countries against people and institutions opposed to same-sex relationships.

If the Relationships (Statutory References) Bill negates such inferences there will be less risk in supporting this bill.

## **Appendix A**

### **Committee process**

The Civil Union Bill was referred to the committee on 24 June 2004. The closing date for submissions was 6 August 2004. We received and considered 6419 submissions from interested groups and individuals. We heard 352 submissions, which included holding hearings in Auckland, Christchurch and Wellington. We also heard evidence by video-conference from Christchurch, Dunedin, Gisborne, Hamilton, Invercargill, Napier, Nelson, New Plymouth, Palmerston North, Rotorua, Tauranga, and Whangarei. Hearing of evidence took 57 hours and 42 minutes and consideration took 25 hours and 26 minutes.

We received advice from the Ministry of Justice and the Department of Internal Affairs.

### **Committee membership**

Tim Barnett, Chairperson (Labour)

Stephen Franks, Deputy Chairperson (ACT)

Lianne Dalziel (Labour)

Russell Fairbrother (Labour)

Dave Hereora (Labour)

Dail Jones (New Zealand First)

Moana Mackey (Labour)

Hon Clem Simich (National)

Murray Smith (United Future)

Nandor Tanczos (Green)

Richard Worth (National)

Dail Jones was replaced by Edwin Perry for this item of business.

## Appendix B

**Table 1: Varying approaches taken to same-sex relationship registration arrangements**<sup>13</sup>

Country	Registration arrangements
Australia	Same-sex marriage is prohibited by federal law. Nothing precludes individual states from legally recognising same-sex de facto relationships (several do) or introducing statutory registration schemes for same-sex couples. Tasmania's Relationships Act 2003 instituted Australia's first registry for relationships other than marriage, which can be used to register same-sex unions.
Belgium, The Netherlands	Same-sex marriage. The Netherlands also has a statutory registration scheme open to same and opposite sex couples.
Canada	Varying provincial registration schemes. Court decisions have found prohibitions on same-sex marriage unconstitutional, and same-sex marriages are now legal in some provinces. The Canadian Government is committed to legislating for the introduction of same-sex marriage.
Denmark, Finland, Germany, Iceland, Lichtenstein, Norway, Spain (Catalonia, Balearic Islands, Aragon, and Navarra only), Sweden, Switzerland (Zurich canton only), United Kingdom	No same-sex marriage, but each has a statutory registration scheme open to same-sex couples.
France, Hungary	No same-sex marriage, but each has a statutory registration scheme open to same and opposite sex couples.

<sup>13</sup> Extracted from: Ministry of Justice, *Civil Union Bill and Relationships (Statutory References) Bill Departmental Report*, pp. 122–124.

United States of  
America

Massachusetts has same-sex marriage. Several states and local governments have same-sex partnership registration schemes. Hawaii has a domestic partnership scheme which can be used to register same-sex unions.

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## Key to symbols used in reprinted bill

### As reported from a select committee

#### Struck out (majority)

Subject to this Act,

Text struck out by a majority

#### New (majority)

Subject to this Act,

Text inserted by a majority

<Subject to this Act,>

Words struck out by a majority

<Subject to this Act,>

Words inserted by a majority

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Hon David Benson-Pope

# Civil Union Bill

Government Bill

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	<i>Amendments to other enactments</i>		
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39	Section 205 of Crimes Act 1961 amended		

## The Parliament of New Zealand enacts as follows:

### 1 Title

This Act is the Civil Union Act **2004**.

### 2 Commencement

- (1) This Act, other than the sections referred to in **subsection (2)**, comes into force on *<a date to be appointed by the Governor-General by Order in Council>* **<26 April 2005>**.
- (2) **Sections 34, 35, and 36** come into force on the day after the date on which this Act receives the Royal assent.

5

## Part 1 Preliminary provisions

### Struck out (majority)

- 3 Purpose**  
The purpose of this Act is to provide that 2 people may formalise their relationship by entering into a civil union, which is a union that is recognised in New Zealand and capable of registration under the Births, Deaths, and Marriages Registration Act 1995.
- 4 Interpretation**  
In this Act, unless the context otherwise requires,—
- civil union celebrant** means a person who is appointed under **section 25** as a civil union celebrant
- exempt body** means a body that is exempt from the requirements of this Act relating to the solemnisation of civil unions by virtue of an exemption granted under **Schedule 1**
- guardian** has the meaning given in section 3 of the Guardianship Act 1968
- licence** means a civil union licence issued under **section 12**
- Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act
- New Zealand** includes the Ross Dependency
- prohibited degrees of civil union** means the degrees of relationship set out in **Schedule 2**
- Registrar** and **Registrar-General** have the meanings given in section 2 of the Births, Deaths, and Marriages Registration Act 1995.

Compare: 1955 No 92 s 2



## New (majority)

**4A Overview of civil union**

- (1) Two people, whether they are of different or the same sex, may enter into a civil union under this Act if—
- (a) they are both aged 16 or over (but people aged 16 or 17 must obtain consent—*see section 19*): 5
  - (b) they are not within the prohibited degrees of civil union as set out in **Schedule 2** (but in some cases a court may dispense with this prohibition—*see section 10*):
  - (c) they are not currently married or in a civil union with someone else (but married couples may enter into a civil union with each other—*see section 18*). 10
- (2) A civil union may be solemnised by a Registrar or, if a Registrar has issued a licence, by a civil union celebrant or an exempt body.
- (3) After a civil union is solemnised, it is registered as a civil union under **Part 7A** of the Births, Deaths, and Marriages Registration Act 1995. 15
- (4) The dissolution of a civil union is governed by the Family Proceedings Act 1980.
- (5) This section is by way of explanation only. If a provision of this or any other Act is inconsistent with this section, the other provision prevails. 20

**5 Reference to civil union in any other enactment**

In any other enactment, unless the context otherwise requires, a reference to a civil union refers *<only to a civil union entered into under and in accordance with this Act.>* <to—> 25

## New (majority)

- (a) a civil union entered into under and in accordance with this Act; and
- (b) a relationship that is entered into overseas and—
  - (i) is of a type identified by regulations made under **section 34(1)(aa)** as being a type of relationship that is recognised in New Zealand as a civil union; and 30

**New (majority)**

- (ii) is between 2 people who are at least 18 years old or, if either party is younger than 18, was entered into with the consent of that party's guardians.

**6 Act binds the Crown**

This Act binds the Crown.

5

## Part 2 Civil unions

### Subpart 1—Entering into civil union

**Struck out (majority)***Overview*

- 7 Overview of civil union** 10
- (1) Two people, whether they are of different or the same sex, may enter into a civil union under this Act if—
- (a) they are both aged 16 or over (but people aged 16 or 17 must obtain consent—*see section 19*):
- (b) they are not within the prohibited degrees of civil union as set out in **Schedule 2** (but in some cases a court may dispense with this prohibition—*see section 10*):
- (c) they are not currently married or in a civil union with someone else (but married couples may enter into a civil union with each other—*see section 17*). 20
- (2) A civil union may be solemnised by a Registrar or, if a Registrar has issued a licence, by a civil union celebrant or an exempt body.
- (3) After a civil union is solemnised, it is registered as a civil union under **Part 7A** of the Births, Deaths, and Marriages Registration Act 1995. 25
- (4) The dissolution of a civil union is governed by the Family Proceedings Act 1980.
- (5) This section is by way of explanation only. If a provision of this or any other Act is inconsistent with this section, the other provision prevails. 30

*Capacity***8 Age of eligibility**

A person who has not reached the age of 16 is prohibited from entering into a civil union.

Compare: 1955 No 92 s 17

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**New (majority)****8A Partners not to be already married or in civil union**

A person who is in a civil union is prohibited from entering into a civil union with another person; and a person who is married is prohibited from entering into a civil union with either their spouse (except by changing the form of their relationship in accordance with **section 18**) or any other person.

10

**9 Partners not to be within prohibited degrees of civil union**

Two people who are within the prohibited degrees of civil union, as set out in **Schedule 2**, are prohibited from entering into a civil union with each other <, except as provided in **section 10**>.

15

Compare: 1955 No 92 s 15(1)

**10 Order dispensing with prohibition on civil union within prohibited degrees of affinity**

20

(1) Two people who are within the prohibited degrees of affinity, but who are not within the prohibited degrees of consanguinity, may apply to the Family Court for an order under this section.

(2) On an application under **subsection (1)**, the Court may make an order dispensing with the prohibition in **section 9**.

25

(3) The Registrar of any court where an order under this section is made must send a copy of the order to the Registrar-General.

Compare: 1955 No 92 s 15(2), (3)

*Formalities***11 Notice of civil union, and statutory declaration**

- (1) If 2 people intend to *<solemnise>* *<enter into>* a civil union, one of them must appear personally before the Registrar and give notice in the prescribed form of the intended civil union. 5
- (2) The person giving notice must also make a statutory declaration in the prescribed form before the Registrar declaring that—
- (a) the person believes that the parties are not within the prohibited degrees of civil union or, if they are, an order has been made under **section 10** dispensing with the prohibition; and 10
- (b) there is no other lawful impediment to the intended civil union; and
- (c) the particulars in the notice are true. 15

**New (majority)**

- (3) However, if the 2 parties to an intended civil union are ordinarily resident outside New Zealand, the requirements of this section are satisfied if—
- (a) one of the parties posts the notice in the prescribed form to the Registrar; and 20
- (b) one of the parties, at any time before the licence is issued or (if the Registrar is to solemnise the civil union) the civil union is solemnised, makes a statutory declaration as to the matters in **subsection (2)(a) to (c)**.
- (4) A person giving notice under this section must pay the prescribed notice fee. 25

Compare: 1955 No 92 s 23(1), (2)

**12 Issue of licence and forms where solemnisation by civil union celebrant or exempt body**

- (1) After notice has been given under **section 11**, if the civil union is to be solemnised by a civil union celebrant or an exempt body, the Registrar must issue a licence and information return forms in accordance with this section, and **section 15 or section 16** applies. (If the civil union is to be solemnised by a Registrar, **section 14** applies.) 30  
35

- (2) Despite **section (1)**, a Registrar must not issue a licence and information return forms if—
- (a) he or she has reasonable cause to believe that the civil union is prohibited by this Act, or that any of the requirements of this Act have not been complied with; 5  
or
  - (b) a notice of objection to the civil union of either party has been lodged under **section 21** and the notice has not been withdrawn or discharged; or
  - (c) the prescribed *<licence>* *<notice>* fee has not been paid. 10
- (3) The Registrar may not issue the licence and information return forms sooner than the third day after the notice was given, unless the Registrar is satisfied that parties to the intended civil union would be inconvenienced by the delay.
- (4) The licence must be in the prescribed form, and must authorise the civil union of the 2 people specified in the licence at the place, or at one of the 2 places, in New Zealand, specified in the licence. 15
- (5) A Registrar other than the Registrar to whom the notice was given may issue the licence and information return forms, in which case the Registrar to whom the notice was given does not need to do so. 20

Compare: 1955 No 92 ss 24, 28

### 13 Licence authorises but does not oblige

A licence authorises, but does not oblige, a civil union celebrant or an exempt body to solemnise the civil union to which the licence relates. 25

Compare: 1955 No 92 s 29

### 14 Solemnisation by Registrar

- (1) A Registrar may solemnise a civil union if— 30
- (a) the Registrar is satisfied that the civil union is not prohibited by this Act; and
  - (b) the Registrar is satisfied that the requirements of this Act have been complied with; and
  - (c) the Registrar is satisfied that— 35
    - (i) no notice of objection to the civil union has been lodged under **section 21**; or
    - (ii) if a notice of objection has been lodged, it has been withdrawn or discharged; and

- (d) the solemnisation does not take place—
- (i) before the third day after notice of the intended civil union has been given under **section 11**, unless the Registrar is satisfied that the parties to the intended civil union would be inconvenienced by the delay; or
  - (ii) more than 3 months after the date on which notice of the intended civil union was given (or, where a notice of objection has been lodged, more than 3 months after the date on which the notice of objection was withdrawn or discharged).
- (2) During the solemnisation, *⟨each party must,⟩* in the presence of the Registrar and at least 2 witnesses, *⟨say to the other, “I, AB, take you, CD, to be my partner in our civil union”, or words to that effect.⟩* ⟨each party must make a clear statement to the other that—⟩

**New (majority)**

- |  |
|--|
| <ul style="list-style-type: none"> <li>(a) names both parties; and</li> <li>(b) acknowledges that they are freely joining in a civil union with each other.</li> </ul> |
|--|

- (3) No Registrar is obliged to solemnise a civil union on a day that is not a working day. 20

Compare: 1955 No 92 ss 28, 30, 33

**15 Solemnisation by civil union celebrant**

- (1) A civil union celebrant may solemnise a civil union between 2 parties if— 25
- (a) the civil union celebrant is in possession of a licence in respect of the 2 parties; and
  - (b) the solemnisation takes place at the place (or at one of the 2 places) named in the licence; and
  - (c) the solemnisation does not take place more than 3 months after the date of issue of the licence. 30
- (2) During the solemnisation, *⟨each party must,⟩* in the presence of the civil union celebrant and at least 2 witnesses, *⟨say to the other, “I, AB, take you, CD, to be my partner in our civil union”, or words to that effect.⟩* ⟨each party must make a clear statement to the other that—⟩ 35

**New (majority)**

- |  |
|--|
| <ul style="list-style-type: none"> <li>(a) names both parties; and</li> <li>(b) acknowledges that they are freely joining in a civil union with each other.</li> </ul> |
|--|

- (3) The celebrant must, under **section 62B** of the Births, Deaths, and Marriages Registration Act 1995, take all reasonable steps to ensure that the civil union is registered under that Act. 5

Compare: 1955 No 92 s 31(1), (2), (3)

**16 Solemnisation by exempt body**

- (1) A civil union may be solemnised by an exempt body if it is solemnised in accordance with the rules and procedures of the body as most recently notified to the Registrar-General in accordance with **Schedule 1**. 10

- (2) When a civil union is solemnised by an exempt body, the obligations imposed on civil union celebrants by **section 62B** of the Births, Deaths, and Marriages Registration Act 1995 must be performed by the person or office holder, or in the manner, as set out in the rules and procedures of the exempt body that have been most recently notified to the Registrar-General in accordance with **Schedule 1**. 15

Compare: 1955 No 92 ss 31(4), (5), 32, 32A 20

**Struck out (majority)***Converting between marriage and civil union***17 Converting marriage into civil union**

- (1) Two people who are married to each other may enter into a civil union with each other.
- (2) The solemnisation of a civil union between 2 people who are, at the time of solemnisation, married to each other, converts the marriage into a civil union. 25
- (3) If 2 people who are married to each other wish to convert their marriage into a civil union, the notice required under **section 11** must include a statement to the effect that the parties are married to each other and wish to convert the marriage into a civil union. 30

**Struck out (majority)**

- (4) In any situation where the duration of the resulting civil union is in issue, the duration of the earlier marriage is to be treated as part of the duration of the civil union.

**18 Converting civil union into marriage**

- (1) Two people who are in a civil union with each other and who are otherwise eligible to marry under the Marriage Act 1955 may marry each other. 5
- (2) The solemnisation of a marriage under the Marriage Act 1955 between 2 people who are, at the time of solemnisation, in a civil union with each other, converts the civil union into a marriage. 10
- (3) If 2 people who are in a civil union with each other wish to convert their civil union into a marriage, the notice required under section 23 of the Marriage Act 1955 must include a statement to the effect that the parties are in a civil union with each other and wish to convert their civil union into a marriage. 15
- (4) In any situation where the duration of the resulting marriage is in issue, the duration of the earlier civil union is to be treated as part of the duration of the marriage. 20

**New (majority)***Changing form of relationship***17 Purpose of section 18**

The purpose of **section 18** is to allow couples who are married or in a civil union with each other, and who wish to continue in a relationship with each other, to change the form of that relationship by having the new form of relationship solemnised without having to formally dissolve the first relationship (which normally involves living apart for 2 years). 25

**18 Changing form of relationship**

- (1) A married couple may enter into a civil union with each other; and 2 people in a civil union with each other, and who are otherwise eligible to marry, may marry each other. 30



**New (majority)**

- |     |  |    |
|-----|--|----|
| (2) | Before changing the form of their relationship under this section, the party who gives the notice required by <b>section 11</b> of this Act or section 23 of the Marriage Act 1955 must state on the form that the parties are already in a civil union with each other or are married to each other (as the case requires) and that they wish to change the form of their relationship. | 5  |
| (3) | The solemnisation of the marriage of 2 people who are in a civil union with each other changes the relationship from a civil union into a marriage; but in any situation in which the duration of the resulting marriage is in issue, the duration of the earlier civil union is to be treated as part of the duration of the marriage.  | 10 |
| (4) | The solemnisation of a civil union between 2 people who are married to each other changes the relationship from a marriage into a civil union; but in any situation in which the duration of the resulting civil union is in issue, the duration of the earlier marriage is to be treated as part of the duration of the civil union.  | 15 |

*Consent for persons aged 16 or 17*

- |           |  |    |
|-----------|--|----|
| <b>19</b> | <b>Consent to civil union of persons aged 16 or 17</b>   | 20 |
| (1)       | A Registrar may not issue a licence in respect of a civil union, or solemnise a civil union, in which one of the parties is aged 16 or 17 unless the Registrar is satisfied that the consents required by this section have been obtained. |    |
| (2)       | A person aged 16 or 17 who wishes to enter into a civil union must obtain the consent of each of his or her guardians to the proposed civil union.   | 25 |
| (3)       | However, the consent of a particular guardian is not required if the guardian cannot be found or is unable to give consent as a result of incapacity.  | 30 |
| (4)       | If, because of <b>subsection (3)</b> , there is no guardian from whom consent can be sought, consent must be obtained either from a relative who has been acting in the place of a guardian or from a Family Court Judge.                  |    |
| (5)       | Every consent under this section must—   | 35 |
|           | (a) be in writing; and   |    |

- (b) except in the case of a consent issued by a Family Court Judge, be witnessed by some person who must sign the consent and give his or her full name and address; and
- (c) be delivered to the Registrar to whom notice of the intended civil union is given. 5
- (6) A consent may be withdrawn, in writing, at any time before the Registrar issues the licence or solemnises the civil union, as the case requires.

Compare: 1955 No 92 ss 18, 20

## **20 Application to Family Court Judge if consent refused** 10

- (1) If a person whose consent to a civil union is required <under section 19> refuses to give that consent, a Family Court Judge may, on application, consent to the civil union, and that consent has the same effect as if it had been given by the person who refused to give consent. 15
- (2) When an application is made to a Family Court Judge for consent to a civil union, notice of the application must be served on every person whose consent to the civil union is required under **section 19**.
- (3) Despite **subsection (2)**, a Family Court Judge may, at his or her discretion, dispense with serving notice on a person whose consent to a civil union is required under **section 19**. 20

Compare: 1955 No 92 s 19

### *Notice of objection to civil union*

## **21 Notice of objection to proposed civil union** 25

- (1) A person may lodge with any Registrar a notice of objection to the civil union of any person named in the notice on the grounds that the civil union is one for which a licence should not be issued.
- (2) Every notice of objection must be in writing signed by or on behalf of the person who lodged the notice of objection, and must state the person's full name, residential address, and the particulars of the grounds of objection on which the notice of objection is founded. 30
- (3) A copy of a notice of objection may be given to any Registrar other than the Registrar with whom it was lodged, in which case the copy must also show the date and place of lodgement of the notice of objection. 35

- (4) A notice of objection lapses 1 year from the date on which it was lodged unless, within that time, a notice has been given under **section 11** of the intended civil union of the person to whom the notice of objection relates.

**New (majority)**

- |  |                    |
|--|--------------------|
| <p>(5) A notice of objection lodged under this section is for all purposes to be treated as also being a caveat lodged under section 25 of the Marriage Act 1955; and a caveat lodged under section 25 of the Marriage Act 1955 is for all purposes to be treated as also being a notice of objection lodged under this section.</p> | <p>5</p> <p>10</p> |
|--|--------------------|

Compare: 1955 No 92 ss 25, 26(2)

**22 Judge to deal with notice of objection**

- (1) If a Registrar receives notice under **section 11** of an intended civil union and the Registrar is aware that a notice of objection has been lodged with respect to either party to the intended civil union, the Registrar must immediately submit the notice of objection to a Family Court Judge or, if a Family Court Judge is not available, to a District Court Judge. 15
- (2) The Judge to whom the notice of objection is submitted must immediately inquire into the grounds of objection stated in the notice of objection, and, if the Judge is of the opinion that those grounds should not prevent the solemnisation of the civil union, he or she must discharge the notice of objection. 20
- (3) If a Judge refuses to discharge a notice of objection under this section, any person may make an application to a Family Court Judge for the discharge of the notice of objection, and the Family Court Judge, if he or she is of the opinion that there is no longer any reason why the intended civil union should not be solemnised, must discharge the notice of objection. 25
- (4) A person who lodges a notice of objection is liable for damages if the court considers that the grounds on which the notice of objection was lodged were vexatious and unreasonable. 30

Compare: 1955 No 92 ss 26, 27

*When civil union is or may be declared void***23 When civil union is or may be declared void**

- (1) The grounds on which a civil union is void *ab initio* are set out in section 31 of the Family Proceedings Act 1980.
- (2) A civil union may also be declared to be void *ab initio* on the grounds that, at the time the civil union was solemnised,—
- (a) one of the parties to it was under the age of 16; or
  - (b) one of the parties to it was aged 16 or 17 and the consents required under **section 19** had not been given.
- (3) An application for a declaration under **subsection (2)** may be made under section 29 of the Family Proceedings Act 1980 as if the application were an application for an order declaring that the civil union was void *ab initio* on any of the grounds referred to in section 31 of that Act.

Compare: 1955 No 92 ss 15(4), 17(2), 18(7)

**24 Effect of defects in formalities or procedures**

- (1) A defect in compliance with the formalities or procedures required under this Act does not, in itself, render a civil union void.
- (2) However, nothing in this section exempts a Registrar or civil union celebrant who, or an exempt body that, does anything contrary to the provisions of this Act from any penalty for an offence under this Act.

Compare: 1955 No 92 s 22

**New (majority)***Certificate of no impediment***24A Registrar may issue certificate of no impediment**

- (1) A person who wishes to enter into a civil union outside New Zealand in accordance with the law of another country or jurisdiction may apply to the Registrar-General, in a form that complies with any relevant regulations, for a certificate of no impediment.
- (2) Every application must be accompanied by the prescribed fee.
- (3) On receipt of an application, the Registrar-General must make whatever searches and inquiries he or she considers appropriate.

## New (majority)

- (4) The Registrar-General may issue a certificate of no impediment to the applicant if he or she is satisfied that no lawful impediment to the civil union has been shown to exist.

Compare: 1955 No 92 s 41

## Subpart 2—Civil union celebrants

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**25 Appointment of civil union celebrants**

- (1) Any person may apply to the Registrar-General to be appointed as a civil union celebrant.
- (2) The Registrar-General may appoint a person as a civil union celebrant if the person has paid any prescribed application fee and the Registrar-General is satisfied that—
- (a) the person is of good character; and
- (b) the person will conscientiously perform the duties of a civil union celebrant under this Act and under the Births, Deaths, and Marriages Registration Act 1995; and
- (c) it is in the interests of the public generally, or of a particular community (whether defined by geography, interest, belief, or some other factor) that the person be appointed as a civil union celebrant.
- (3) The Registrar-General must give notice in the *Gazette* of the name of every person who is appointed or reappointed as a civil union celebrant.
- (4) A person named in a notice given under **subsection (3)** is entitled to act as a civil union celebrant on and from the date specified in the notice, and ceases to be entitled to act as a civil union celebrant when his or her appointment ceases under **section 27(1)**.

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**26 Expiry of appointment and reappointment**

- (1) A person who wishes to continue to act as a civil union celebrant after 31 January in the year after the year of his or her appointment or reappointment must apply to the Registrar-General for reappointment during November of the year in which the person was appointed or reappointed.

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- (2) The Registrar-General may reappoint a civil union celebrant only if the civil union celebrant has paid any prescribed reapplication fee and the Registrar-General is satisfied as to the matters set out in **section 25(2)**.
- (3) A reappointment takes effect on 1 February in the year following the application for reappointment. 5
- (4) A person who is appointed as a civil union celebrant in November or December of any year is deemed to be reappointed on the following 1 February and need not apply for reappointment until November of that following year. 10
- (5) If a person does not apply for reappointment as required by **subsection (1)**, or if his or her application is refused, then his or her appointment is cancelled on 31 January following his or her appointment or reappointment (except where **subsection (4)** applies). 15

## 27 Ceasing to be civil union celebrant

- (1) A person ceases to be a civil union celebrant,—
- (a) in the case of a person who fails to be reappointed under **section 26**, on the date specified in **subsection (5)** of that section; or 20
- (b) in the case of a person who resigns in writing, on the date on which the Registrar-General receives the resignation; or
- (c) in the case of a person whose appointment is cancelled by the Registrar-General under this section, on the date referred to in **subsection (5)**. 25
- (2) The Registrar-General may cancel a person's appointment as a civil union celebrant if the Registrar-General is not satisfied, with respect to the person, of the matters set out in **section 25(2)**.
- (3) The Registrar-General may not cancel a person's appointment as a civil union celebrant without first— 30
- (a) giving the person notice that the Registrar-General is considering cancelling the appointment; and
- (b) giving the person a reasonable opportunity to make submissions on the proposal; and 35
- (c) considering any submissions made by the person within that time.

- (4) The Registrar-General must give notice in writing to the person concerned of a decision to cancel the person's appointment as a civil union celebrant, and also of any decision not to proceed with a proposed cancellation.
- (5) If a person's appointment as a civil union celebrant is cancelled, the notice from the Registrar-General must specify the date on which the cancellation takes effect, which must be a date not sooner than 5 days after the date on which the notice is sent. 5
- 28 List of civil union celebrants** 10
- (1) The Registrar-General must, at least once every year, publish a list in the *Gazette* of the names of all current civil union celebrants, and this list may be combined with any notice given under **section 25(3)**.
- (2) The Registrar-General may at any time publish in the *Gazette* a list of the names of civil union celebrants who have ceased to be civil union celebrants since the latest list under this section was published. 15

### Subpart 3—Offences and miscellaneous provisions

#### *Offences*

- 29 Offence to issue licence or solemnise civil union contrary to Act** 20
- (1) A Registrar who knowingly and wilfully issues a licence contrary to this Act commits an offence.
- (2) A Registrar or civil union celebrant who knowingly and wilfully solemnises a civil union contrary to **section 14 or section 15** commits an offence. 25
- (3) A person is liable, on conviction on indictment for an offence against **subsection (1) or subsection (2)**, to imprisonment for a term not exceeding 5 years, or to a fine not exceeding \$10,000, or to both. 30
- (4) An exempt body that knowingly and wilfully solemnises a civil union otherwise than in accordance with its rules and procedures as most recently notified to the Registrar-General commits an offence and is liable on conviction on indictment to a fine not exceeding \$10,000. 35

Compare: 1955 No 92 s 58

- 30 Offence to purport to solemnise civil union**  
 Every person commits an offence, and is liable on conviction on indictment to imprisonment for a term not exceeding 5 years, if he or she purports to solemnise a civil union as a civil union celebrant knowing that he or she is not a civil union celebrant. 5  
 Compare: 1955 No 92 s 59
- 31 Offences in connection with false statements relating to civil union**  
 Every person commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine not exceeding \$5,000, or to both, who knowingly and wilfully— 10  
 (a) makes or causes to be made any false declaration for the purposes of this Act; or 15  
 (b) makes or causes to be made, for the purpose of being inserted in any register, a false statement of any particular required to be known and registered; or  
 (c) gives a Registrar a document that purports to be a copy of a notice of objection when it is not in fact a copy of a notice of objection. 20  
 Compare: 1955 No 92 s 60
- 32 Limitation on prosecutions**  
 A prosecution under this Act may not be commenced more than 3 years from the date on which the offence was committed. 25  
 Compare: 1955 No 92 s 63

*Miscellaneous*

- 33 Registrar-General**  
 The Registrar-General is charged with the general administration of this Act. 30  
 Compare: 1955 No 92 s 4
- 34 Regulations**  
 (1) The Governor-General may from time to time, by Order in Council, make regulations for one or more of the following purposes: 35



**New (majority)**

(aa) prescribing types of overseas relationships that are recognised in New Zealand as civil unions:

(a) prescribing fees for any of the following:

(i) *<the issue of a licence>* <giving notice of an intended civil union; and different fees (and different rules for the refund of any part of such fees) may be prescribed for notices given in different circumstances>:

5

(ii) the solemnisation of civil unions (which may prescribe different fees for solemnisation at different times or in different circumstances):

10

(iii) the lodging of a notice of objection, or a copy of a notice of objection:

**New (majority)**

(iiia) applying for a certificate of no impediment:

(iv) applying to be a civil union celebrant:

15

(v) applying for reappointment as a civil union celebrant:

(vi) applying to be an exempt body:

(b) prescribing forms to be used for the purposes of this Act:

20

(c) prescribing the matters that must be included in forms (other than prescribed forms) used in connection with civil unions:

(d) providing for any other matter contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

25

**New (majority)**

(2) No regulations under **subsection (1)(aa)** that recognise a type of overseas relationship may be made unless the Minister of Justice is satisfied that that type of overseas relationship is established or recognised under the law of another country or jurisdiction, and that the law of that country or jurisdiction—

30

**New (majority)**

- |     |  |    |
|-----|--|----|
| (a) | does not permit or recognise the relationship unless both parties to it are at least 16 years old; and   |    |
| (b) | does not permit or recognise the relationship if the parties are related as—   |    |
|     | (i) parent and child; or   | 5  |
|     | (ii) siblings or half-siblings; or   |    |
|     | (iii) grandparent and grandchild; and  |    |
| (c) | requires that the parties explicitly consent to entering into the relationship; and  |    |
| (d) | provides that the relationship ends only on the death of a party or by a judicial or other process that would be recognised in the courts of New Zealand as a dissolution; and | 10 |
| (e) | requires that, during the relationship, the parties may not enter into that sort of relationship with anyone else, and may not marry anyone else.                              | 15 |

Compare: 1955 No 92 s 64

**35 Rules of procedure**

- |     |   |    |
|-----|---|----|
| (1) | Rules may be made under section 16A of the Family Courts Act 1980 that regulate the practice and procedure of Family Courts in proceedings under <b>sections 10, 20, and 22</b> . | 20 |
| (2) | Rules made under the Family Courts Act 1980—  |    |
|     | (a) are subject to <b>section 20(2) and (3)</b> ; and   |    |
|     | (b) do not affect the practice and procedure of District Courts in proceedings under <b>section 22</b> .  | 25 |

Compare: 1955 No 92 s 64A

**36 Appointment of civil union celebrants before section 25 comes into force**

- |     |   |    |
|-----|---|----|
| (1) | The Registrar-General may, before <b>section 25</b> comes into force, receive applications from persons who wish to be appointed as civil union celebrants, and may appoint suitable persons under <b>section 25(2)</b> . | 30 |
| (2) | The Registrar-General may give the <i>Gazette</i> notice required by <b>section 25(3)</b> at any time, but no person who is named in the notice is entitled to act as a civil union celebrant until the date              | 35 |

on which **section 25** comes into force, or any later date specified in the notice.

#### Subpart 4—Amendments to other enactments

##### *Amendments to Births, Deaths, and Marriages Registration Act 1995*

- 5
- 37 Amendments to section 2 of Births, Deaths, and Marriages Registration Act 1995**
- (1) Section 2 of the Births, Deaths, and Marriages Registration Act 1995 is amended by repealing the definition of **celebrant**, and substituting the following definition: 10
- “**celebrant** means, as the case requires,—
- “**(a)** in relation to a marriage, a person who is a marriage celebrant under the Marriage Act 1955; and, in relation to a marriage solemnised by a celebrant, means the celebrant who solemnised it; and 15
- “**(b)** in relation to a civil union, a person who is a civil union celebrant under the Civil Union Act **2004**; and, in relation to a civil union solemnised by a celebrant, means the celebrant who solemnised it.”
- (2) Section 2 of the Births, Deaths, and Marriages Registration Act 1995 is amended by inserting, in their appropriate alphabetical order, the following definitions: 20
- “**civil union certificate** means—
- “**(a)** a document that is issued by, and signed or sealed by or stamped with the seal of, a Registrar, and that contains registered civil union information; and 25
- “**(b)** in relation to any civil union, means a civil union certificate containing registered civil union information relating to that civil union
- “**civil union information** means information relating to a civil union; and, in relation to any civil union, means information relating to that civil union”. 30
- (3) Section 2 of the Births, Deaths, and Marriages Registration Act 1995 is amended by omitting from paragraph (a) of the definition of **Register** the words “or marriage”, and substituting the words “marriage, or civil union”. 35

**38 New Part 7A inserted in Births, Deaths, and Marriages Registration Act 1995**

The Births, Deaths, and Marriages Registration Act 1995 is amended by inserting, after section 62, the following Part:

- “Part 7A** 5
- “Civil unions**
- “62A Civil unions under Civil Union Act 2004 to be registered**
- “(1) Every civil union entered into under the Civil Union Act **2004** must be registered in accordance with this Part. 10
- “(2) No other type of civil union may be registered under this Act.
- “62B Civil unions solemnised by celebrant**
- A celebrant who solemnises a civil union must,—
- “(a) immediately after solemnising the civil union,—
- “(i) enter on both information return forms provided 15  
under **section 12** of the Civil Union Act **2004** the prescribed information relating to the civil union; and
- “(ii) ensure that both forms are signed by the parties to the civil union, the celebrant, and 2 witnesses to the solemnisation; and 20
- “(iii) give one form to the parties; and
- “(b) within 10 days of solemnising the civil union, forward the other form to a Registrar.
- “62C Registrars to register civil unions** 25
- “(1) A Registrar who is authorised by the Registrar-General to register civil unions must,—
- “(a) if he or she receives a form under **section 62B**, register the information, but only to the extent that the information given is information required by the prescribed form; and 30
- “(b) if he or she solemnises a civil union, register the prescribed information relating to it.
- “(2) A Registrar who is not authorised by the Registrar-General to register civil unions must send to the Registrar-General, or to a Registrar specified by the Registrar-General (as the Registrar-General for the time being directs),— 35

- “(a) any information contained on a form forwarded to the Registrar under **section 62B**, but only to the extent that the information is information required by the prescribed form; and
- “(b) if the Registrar solemnises a civil union, the prescribed information relating to that civil union. 5
- “(3) **Subsections (1) and (2)** may be overridden by section 82.
- “62D **<Conversion> <Change to form of relationship> to be recorded**
- If the Registrar-General or a Registrar receives information that the parties to a marriage or civil union have, under **<section 17 or> section 18** of the **Civil Union Act 2004**, *<converted their marriage into a civil union or their civil union into a marriage>* **<changed the form of their relationship>**, the Registrar-General or Registrar must— 10
- “(a) note on any information relating to the earlier marriage or civil union that is registered under this Act that the marriage or civil union has been *<converted>* **<changed>**, and note when and where the *<conversion>* **<change>** was effected; and 15
- “(b) note on the information relating to the later marriage or civil union that, on the date and at the place in which the solemnisation of the later marriage or civil union took place, the parties *<converted>* **<changed>** their earlier marriage or civil union into a marriage or civil union; 20
- and
- “(c) ensure that a link is created between the registered information relating to the earlier marriage or civil union and the registered information relating to the later marriage or civil union. 25 30
- “62E **Dissolutions to be recorded**
- “(1) The Registrar of a Family Court must immediately send to the Registrar-General a certificate of any of the following orders made in that Court under the Family Proceedings Act 1980: 35
- “(a) an order dissolving a civil union:
- “(b) an order declaring that a party to a civil union is presumed dead and the civil union is dissolved:
- “(c) an order declaring that a civil union is void *ab initio*.

- “(2) The Registrar-General must record the information contained in a certificate received under **subsection (1)** as part of the information recorded under this Act relating to the civil union.
- “62F **Convictions for bigamy to be recorded**
- “(1) When a person who is a party to a civil union is convicted of bigamy, the Registrar of the Court concerned must immediately send to the Registrar-General a certificate of the conviction specifying—
- “(a) the names of the parties to the bigamous marriage or civil union; and
  - “(b) the date and place of the bigamous marriage or civil union; and
  - “(c) the date of the conviction.
- “(2) If the information relating to a bigamous marriage or civil union is recorded under this Act, the Registrar-General must record the information received under **subsection (1)** as part of that information.
- “62G **Recording new names in relation to civil unions**
- “(1) If a person in a civil union changes his or her name and the change is recorded (under section 21(5)) in the person’s birth information, the person may request the Registrar-General to include his or her new name in the information relating to his or her civil union.
- “(2) A request under **subsection (1)** that is made in respect of the recording of new names under section 21 may be made when the statutory declaration is deposited under section 21(3).
- “(3) The Registrar-General must include the new names or change of names as requested, so long as the request was accompanied by the prescribed fee.”

*Amendments to other enactments* 30

**New (majority)**

**38A Sections 16 and 23 of Adoption Act 1955 amended**

- (1) Section 16(2)(b) of the Adoption Act 1955 is amended by inserting in the proviso, after the words “any enactment relating to forbidden marriages”, the words “or civil unions”.

**New (majority)**

- |      |  |    |
|------|--|----|
| (2)  | Section 23 of the Adoption Act 1955 is amended by repealing subsection (2), and substituting the following subsection:   |    |
| “(2) | Adoption records are open to inspection by—  |    |
| “(a) | any Registrar (as defined in section 2 of the Births, Deaths, and Marriages Registration Act 1995) or marriage celebrant under the Marriage Act 1955 for the purpose of investigating forbidden degrees of relationship under the Marriage Act 1955; and | 5  |
| “(b) | any Registrar (as so defined) or civil union celebrant under the Civil Union Act <b>2004</b> for the purpose of investigating prohibited degrees of civil union under the Civil Union Act <b>2004</b> .”   | 10 |

**39 Section 205 of Crimes Act 1961 amended**

- |      |  |    |
|------|--|----|
| (1)  | Section 205(1) of the Crimes Act 1961 is amended by—   |    |
| (a)  | inserting in paragraph (a), after the words “form of marriage”, the words “or civil union”; and  | 15 |
| (b)  | inserting in paragraph (b), after the words “knows to be married”, the words “or in a civil union”; and  |    |
| (c)  | inserting in paragraph (c), after the words “being married”, the words “or in a civil union”; and  | 20 |
| (d)  | omitting from paragraph (d) the words “knows to be married.”, and substituting the words “knows to be married or in a civil union; or”.          |    |
| (2)  | Section 205(1) of the Crimes Act 1961 is amended by adding the following paragraphs:   | 25 |
| “(e) | the act of a person who, being in a civil union, goes through a form of civil union or marriage with a third person; or                          |    |
| “(f) | the act of a person who goes through a form of civil union with a person whom he or she knows to be in a civil union or to be married.”          | 30 |
| (3)  | Section 205(2) of the Crimes Act 1961 is amended by repealing paragraph (b) and substituting the following paragraphs:                           |    |
| “(b) | a form of civil union is any form of civil union recognised under the Civil Union Act <b>2004</b> as a valid form of civil union under that Act: | 35 |

- “(c) no form of marriage or civil union may be held to be an invalid form of marriage or civil union by reason of any act or omission of the person charged with bigamy, if it is otherwise a valid form.”
- (4) Section 205(3) of the Crimes Act 1961 is amended by omitting all the words after the word “unmarried”, and substituting the words “or not in a civil union they would have been incompetent to contract marriage or enter into a civil union”. 5
- (5) Section 205(4) of the Crimes Act 1961 is amended by— 10
- (a) inserting, after the words “form of marriage”, the words, “or entering into a civil union”; and
- (b) inserting in paragraphs (a) and (b), after the word “spouse” in each case, the words “or civil union partner (as the case may be)”.
- 40 Section 206 of Crimes Act 1961 amended** 15
- Section 206 of the Crimes Act 1961 is amended by—
- (a) inserting, after the words “form of marriage”, the words “or with whom the offender entered into a civil union,”; and
- (b) inserting, after the words “that the marriage”, the words “or civil union”. 20
- 41 New section 207 of Crimes Act 1961 substituted**
- The Crimes Act 1961 is amended by repealing section 207 and substituting the following section:
- “207 Feigned marriage or feigned civil union** 25
- “(1) Everyone is liable to imprisonment for a term not exceeding 7 years who goes through a form of marriage or civil union with any other person, knowing that the marriage or civil union will be void for any reason other than that one of the parties is already married or in a civil union. 30
- “(2) Provided that if the Judge is satisfied that the other person knew, at the time when the offence was committed, that the marriage or civil union would be void, the offender is liable to imprisonment for a term not exceeding 2 years.”



**Struck out (majority)****42 New section 2A inserted in Family Proceedings Act 1980**

The Family Proceedings Act 1980 is amended by inserting, after section 2, the following section:

**“2A Application of Act to civil unions**

“(1) This Act applies with respect to a civil union entered into under the **Civil Union Act 2004** in the same way as it applies to a marriage governed by New Zealand law. 5

“(2) For the purposes of giving effect to **subsection (1)**, in this Act the words in the first column of the following table are to be taken to include (with whatever modifications are appropriate in the context) the words in the second column: 10

marriage (other than the definition of <b>marriage</b> in section 2)	civil union	
spouse	party to a civil union	
husband	one of the parties to a civil union	15
wife	the other party to a civil union	
to marry	to enter into a civil union	
married person	party to a civil union	
capacity to marry	capacity to enter into a civil union	

“(3) **Subsection (2)** does not limit any other modifications that may be necessary to give effect to **subsection (1)**.” 20

**43 Amendment to section 31 of Family Proceedings Act 1980**

(1) Section 31(1)(a)(iii) of the Family Proceedings Act 1980 is amended by: 25

(a) inserting, after the words “Marriage Act 1955”, the words “or in **Schedule 2** of the Civil Union Act **2004** (as the case requires)”;

(b) omitting the words “under section 15(2) of that Act”.

(2) Section 31(1) of the Family Proceedings Act 1980 is amended by repealing paragraph (b) and substituting the following paragraph: 30

“(b) in the case of a marriage that is governed by New Zealand law so far as it relates to the formalities of marriage, the parties knowingly and wilfully married without a marriage licence, or in the absence of a celebrant or Registrar in contravention of the Marriage Act 1955 or the Civil Union Act **2004** (as the case requires).” 35

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**New (majority)**

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- 42 Amendments to Family Proceedings Act 1980**
- (1) The provisions of the Family Proceedings Act 1980 specified in **Part 1 of Schedule 2A** are amended by inserting, after the word “marriage” wherever it appears, the words “or civil union”.
- (2) The provisions of the Family Proceedings Act 1980 specified in **Part 2 of Schedule 2A** are amended in the manner set out in that Part. 5
- 43 Amendments to Family Proceedings Act 1980 made by Care of Children Act 2004 amended**
- The Care of Children Act 2004 is amended by repealing Schedule 2 (which amends the Family Proceedings Act 1980) and substituting the schedule set out in **Schedule 2B** of this Act. 10
- 44 Consequential amendments to other enactments**
- The enactments listed in **Schedule 3** are consequentially amended in the manner indicated in that schedule. 15
-

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## Schedule 1 Exempt bodies

### 1 Application to become exempt body

- (1) A body that wishes to become an exempt body must apply to the Registrar-General for exemption in the prescribed form. 5
- (2) The application must set out—
- (a) the name and contact address of the body; and
  - (b) the objects and beliefs of the body; and
  - (c) the approximate number of its members who are of or over the age of 16; and 10
  - (d) an explanation of why the objects and beliefs of the body are inconsistent with the requirements of this Act for the solemnisation of a civil union; and
  - (e) the rules and procedures that the body proposes to apply when solemnising a civil union. 15
- (3) The application must be signed by at least 10 members of the body who are of or over the age of 16, each of whom must give their age and address, and the signatures must be accompanied by a statutory declaration, signed by a person who is not a member, to the effect that the signatories are who they claim to be and are members of the body. 20

### 2 Registrar-General or Minister may grant exemption

- (1) The Registrar-General may agree to grant the exemption applied for if any prescribed application fee is paid and the Registrar-General is satisfied that— 25
- (a) the objects and beliefs of the body are inconsistent with the requirements of this Act for the solemnisation of a civil union; and
  - (b) the rules and procedures that the body proposes to apply when solemnising a civil union are generally consistent with this Act and are otherwise satisfactory. 30
- (2) If the Registrar-General fails or refuses to agree to exempt the body, he or she must refer the matter to the Minister.
- (3) The Minister must agree to grant the exemption sought if he or she is satisfied as to the matters referred to in **subclause (1)**, but, if the Minister is not so satisfied, he or she must refuse the application. 35
- (4) The Registrar-General must advise the applicant of the result of the application.

- (5) When the Registrar-General or the Minister agrees to exempt a body from the requirements of this Act for the solemnisation of a civil union, the Registrar-General must give notice in the *Gazette* of that fact, and the body is exempt from the date specified in the notice. 5
- 3 Exempt body to notify changes**
- (1) An exempt body must notify the Registrar-General if—
- (a) it changes its name; or
  - (b) it changes its objects and beliefs in a way that impacts on why it considers that the requirements of this Act for the solemnisation of a civil union are inconsistent with those objects and beliefs; or 10
  - (c) it changes its rules and procedures for solemnising civil unions.
- (2) If the body notifies the Registrar-General that it has changed its name, the Registrar-General must give notice of that fact in the *Gazette*. 15
- (3) The Registrar-General must ask the Minister to cancel the exemption of an exempt body if the Registrar-General is satisfied that,— 20
- (a) as a result of changes referred to in **subclause (1)(b) or (c)**, the body should no longer be an exempt body; or
  - (b) the body has failed to conduct one or more civil unions in accordance with its rules and procedures as most recently notified to the Registrar-General. 25
- (4) If the Minister decides that the body should no longer be an exempt body, the Registrar-General must give notice in the *Gazette* that the body is no longer an exempt body, and notify the body accordingly.
- (5) A body ceases to be an exempt body on the date on which the notice referred to in **subclause (4)** is published in the *Gazette*. 30
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## Schedule 2

### Prohibited degrees of civil union

- |    |   |    |
|----|---|----|
| 1  | Person A and person B are within the prohibited degrees of civil union if person A is person B's—   |    |
| 1  | grandparent   | 5  |
| 2  | parent  |    |
| 3  | child   |    |
| 4  | grandchild  |    |
| 5  | sibling <i>&lt;(brother or sister)&gt;</i>  |    |
| 6  | parent's sibling <i>&lt;(brother or sister)&gt;</i>   | 10 |
| 7  | sibling's child   |    |
| 8  | grandparent's spouse or civil union partner   |    |
| 9  | parent's spouse or civil union partner  |    |
| 10 | spouse's or civil union partner's parent  |    |
| 11 | spouse's or civil union partner's grandparent   | 15 |
| 12 | spouse's or civil union partner's child   |    |
| 13 | child's spouse or civil union partner   |    |
| 14 | grandchild's spouse or civil union partner  |    |
| 15 | spouse's or civil union partner's grandchild  |    |
| 2  | The prohibited degrees of civil union apply whether the relationships described are by the whole blood or by the half blood.  | 20 |
| 3  | In this schedule, <b>spouse</b> and <b>civil union partner</b> 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 |

## New (majority)

## Schedule 2A

### Amendments to Family Proceedings Act 1980

s 42

## Part 1

## Insertion of “or civil union” after “marriage”

The definitions of <b>approved marriage guidance organisation or counselling organisation, counsellor, and maintenance agreement</b> in section 2.	5
Section 5 and the heading to section 5, and sections 9, 10(5), 11(2)(a), 15(1)(b), 19(2), 19A(1), 20, 22, and 23.	
The heading to Part IV, the heading before section 27, section 27 and the heading to section 27.	10
The heading to section 28, section 29, and the headings to sections 29 and 30.	
Section 31 (except subsection (1)(a)(iii)) and the heading to section 31.	15
Sections 32, 34, 35, 36, the heading before section 37, section 37, and the heading to section 37.	
Sections 38, 39, 40, 41, 42, and the heading to section 42.	
Sections 44, 45, 47(2)(b), 60(3), 63, and the heading to section 63, section 64, and the heading to section 64.	20
Sections 64A, 65, 66, 67, and the heading to section 67.	
Section 70, and the heading to section 70, the heading to section 70A and section 78(5).	
Sections 139, 145B, 145C(3)(d), 145D, 147(3)(b), 166(1), 169(5)(b), 174(3) and (4), 175, and 182.	25

## Part 2

## Other amendments to Family Proceedings Act 1980

**Section 2**

Insert in section 2, after the definition of <b>charging orders</b> :	
“ <b>child of the civil union</b> means, in relation to a civil union (including a void civil union), a child of both civil union partners, and includes, in relation to any proceedings under this Act, a child (whether or not a child of the partners) who was a member of the family of the partners to the civil union or void civil union at the time the partners ceased to live	30
	35

## New (majority)

## Part 2—continued

**Section 2**—continued

together or at the time immediately preceding the institution of proceedings, whichever first occurred”.

Omit from paragraph (a) of the definition of **maintenance agreement** the words “a husband and wife” and substitute the words “spouses or civil union partners”. 5

Insert in paragraph (d) of the definition of **maintenance agreement**, after the words “married to” in each place where they appear, the words “, or in a civil union with,”.

**Section 7A**

Omit from subsection (1) the words “a relationship” and substitute the words “a civil union and a relationship”. 10

**Section 8**

Insert in subsection (1), after the words “a husband or wife”, the words “or civil union partners”.

Insert in subsection (1), after the words “for the husband or wife”, the words “or for either civil union partner”. 15

Insert in subsection (1)(a), after the words “the husband or wife”, the words “or the civil union partner”.

Insert in subsection (2)(a), after the word “wife”, the words “or a civil union partner”. 20

Insert in subsection (2)(b), after the word “wife”, the words “or the civil union partners”.

**Section 11**

Omit from subsection (1)(a) and (b) the words “husband or wife, or both of them,” and substitute in each case the words “either or both of the spouses or civil union partners”. 25

Omit from subsection (2)(a) the words “husband and wife” and substitute the words “spouses or partners”.

**Section 12**

Omit the words “husband and wife” in both places where they appear and substitute in each case the words “spouses or civil union partners”. 30

## New (majority)

## Part 2—continued

**Section 19**

Omit from subsections (1) and (2) the words “a husband and wife” and substitute in each case the words “spouses or civil union partners”.

Omit from subsection (1)(a) the words “husband and wife” and substitute in each case the words “spouses or civil union partners”. 5

Omit from subsection (2) the words “the husband and wife” where it first appears and substitute the words “either or both of the spouses or civil union partners”.

Omit from subsection (2)(a) the words “the husband and wife” and substitute the words “the spouses or civil union partners”. 10

Omit from subsections (3) and (4) the words “the husband or wife” and substitute in each case “either spouse or civil union partner”.

**Section 24**

Insert in subsection (1)(a), after the words “and the wife”, the words “, or the civil union partners,”. 15

Insert in subsection (1)(a), after the words “husband and wife”, the words “or as civil union partners”.

Insert in subsection (2), after the words “husband or wife”, the words “, or either civil union partner,”. 20

**Section 25**

Insert in subsection (2), after the word “marriage”, the words “or dissolution of civil union”.

**Section 26**

Omit from subsection (1) the words “the husband or wife” and substitute the words “spouse or civil union partner”. 25

Omit from subsection (2)(a) the words “husband or wife” and substitute the words “spouse or civil union partner”.

**Heading before section 29**

Insert after the word “*marriages*” the words “*and civil unions*”. 30

**Section 31**

Repeal subsection (1)(a)(i) and substitute:

- “(i) at the time of the solemnisation of the marriage or civil union, either party was already married or in a civil union; or” 35

Add to subsection (1)(a):



## New (majority)

## Part 2—continued

**Section 31**—continued

“(iv) the parties to the civil union are within the prohibited degrees of civil union set out in **Schedule 2** of the Civil Union Act **2004**, and no order is in force under **section 10** of that Act dispensing with the prohibition; or”.

5

Omit from subsection (1)(b) the expression “1955.” and substitute the words “1955; or”.

Add to subsection (1):

“(c) in the case of a civil union that is governed by New Zealand law so far as it relates to the formalities of civil union, the parties knowingly and wilfully entered into a civil union without a licence, or in the absence of a Registrar (as defined in **section 4** of the Civil Union Act **2004**) or civil union celebrant, or otherwise than in accordance with the rules and procedures of an exempt body (as also defined in **section 4** of that Act).”

10

15

**Section 32**

Insert after the words “married person” the words “, or party to a civil union,”.

**Heading to section 38**

20

Omit the words “of marriage”.

**Section 39**

Omit from the heading the words “of marriage”.

**Section 40**

Omit the word “intercourse” and substitute the word “connection”.

25

**Section 41**

Omit the word “intercourse” and substitute the word “connection”.

**Section 43**

Omit the heading and substitute “**Entering new relationship after dissolution**”.

30

Add the words “and may enter into a civil union”.

Add, as subsection (2):

“(2) When an order dissolving a civil union has taken effect as a final order, the parties to the civil union may enter into a civil

## New (majority)

## Part 2—continued

**Section 43**—continued

union again and may, if otherwise eligible, enter into a marriage.”

**Section 44**

Repeal subsection (1)(b)(iii) and (iv) and substitute:

“(iii) in any case, on the basis that the spouse or civil union partner has been deserted by his or her spouse or civil union partner, or that one spouse or civil union partner has been deported and the other spouse or partner was, immediately before the desertion or deportation, domiciled in that country; or

“(iv) in any case, on the basis that the spouses or civil union partners were legally separated, whether by an order of a competent Court or by agreement, and that one of the spouses or partners was, at the date of the order or agreement, domiciled in that country; or”.

**Heading to section 45**

Omit the words “of marriage”.

**Section 47**

Insert after the words “married to”, in each place where they appear, the words “, or in a civil union with,”.

**Section 49**

Insert in subsection (2)(a)(ii), after the word “husband”, the words “or civil union partner”.

**Section 64**

Insert in subsections (1) and (2), after the word “spouse” in each place where it appears, the words “, civil union partner,”.

Insert in subsections (2)(a) and (c), after the word “spouses” in each place where it appears, the words “, civil union partners,”.

Omit from subsection (3) the words “husband and wife” and substitute the words “spouses or civil union partners”.

**Section 64A**

Insert in the heading, after the word “Spouses”, the words “, civil union partners,”.

## New (majority)

## Part 2—continued

**Section 64A**—continued

Insert in subsections (1), (2), and (3), after the word “spouse”, in each place where it appears, the words “, civil union partner,”.

Insert in subsection (3), after the word “spouses” in each place where it appears, the words “, civil union partners,”.

**Section 65**

5

Insert in the heading, after the word “**spouse**”, the words “, **civil union partner**,”.

Insert in subsection (1)(a), after the word “spouse” in both places where it appears, the words “or civil union partner”.

Insert in subsections (2), (3), and (5), after the word “spouse” in each place where it appears, the words “, civil union partner,”. 10

Insert in subsections (3) and (5), after the word “spouses” in both places where it appears, the words “, civil union partners,”.

Omit from subsection (4) the words “husband and wife” and substitute the words “spouses or civil union partners”. 15

**Section 66**

Insert in the heading, after the word “**spouses**”, the words “, **civil union partners**,”.

Insert in subsection (1), after the word “spouse” in both places where it appears, the words “or civil union partner”. 20

Insert in subsection (2), after the word “spouse” in each place where it appears, the words “, civil union partner,”.

**Heading to section 67**

Omit the words “**husband or wife**” from the heading and substitute the words “**either spouse or civil union partner**”. 25

**Heading to section 68**

Omit the words “**husband or wife**” from the heading and substitute the words “**either spouse or civil union partner**”.

**Section 69**

Omit the words “**husband or wife**” from the heading and substitute the words “**either spouse or civil union partner**”. 30

Omit the word “again” and substitute the words “or enters into a civil union”.

## New (majority)

Part 2—*continued***Section 70A**

Insert in subsections (1)(a) and (2)(a), after the word “spouse” in both places where it appears, the words “or civil union partner”.

Insert in subsections (1)(a) and (2)(a), after the words “were married” in both places where they appear, the words “, or with whom they were in a civil union,”. 5

Insert in subsection (1) and (2), after the words “has married” in each place where they occur, the words “or entered into a civil union with”.

**Section 78**

10

Insert in subsection (5), after the words “married to” in each place where they appear, the words “, or in a civil union with,”.

**Section 79**

Insert in paragraph (a), after the words “married to”, the words “, or in a civil union with,”. 15

**Section 81**

Insert in subsection (3), after the words “enters into a”, the words “civil union or a”.

**Section 82**

Omit from subsection (1) the words “wife or husband” and substitute the words “spouse, civil union partner,”. 20

**Section 94**

Omit from the heading the words “**of marriage**”.

Insert after the words “husband or wife” the words “or a civil union partner”. 25

Add the words “or the dissolution of the civil union between the civil union partners”.

**Section 145B**

Omit from paragraph (c) the word “step-parent”, and substitute the words “spouse or civil union partner of a parent”. 30

**Section 145D**

Omit from subsection (1), after the words “married to” in both places where they appear, the words “, or in a civil union with,”.

**New (majority)****Part 2—continued****Section 145G**

Omit from subsection (2) the word “step-parent” where it first appears and substitute the words “spouse or civil union partner of a parent”.

Omit from subsection (2)(b) the words “step-parent as a member of the step-parent’s family” and substitute “spouse or civil union partner of the child’s parent as a member of that person’s family”. 5

Add to subsection (9) the words “or in a civil union”.

Add to subsection (10) the words “or enters into a civil union”.

**Section 165**

Omit from subsection (2) the words “husband or wife” and substitute the words “spouse or civil union partner”. 10

## New (majority)

## Schedule 2B

s 43

**New Schedule 2 inserted in Care of Children  
Act 2004**

## Schedule 2

s 149

**Amendments to Family Proceedings Act 1980  
(extending counselling and conciliation provisions to  
same-sex de facto partners)**

5

**Section 7A**

Repeal this section.

**New section 8A**

10

Insert, immediately before section 8:

**“8A Interpretation**

“(1) In this Part, unless the context otherwise requires, **de facto partner** and **de facto relationship** have the same meanings as in section 8 of the Care of Children Act 2004.

15

“(2) In this Part, unless the context otherwise requires, **child of the de facto relationship**,—

“(a) means a child of both de facto partners; and

“(b) includes, in relation to any proceedings under this Part, a child (whether or not a child of either de facto partner) who was a member of the family of the de facto partners at the time when they ceased to live together or at the time immediately before the institution of the proceedings, whichever occurred first.”

20

**Section 8**

25

Omit from subsection (1) the words “a husband or wife or civil union partners” and substitute the words “spouses, civil union partners, or de facto partners”.

Omit from subsection (1) the words “husband or wife or for either civil union partner” and substitute the words “either spouse, civil union partner, or de facto partner”.

30

Omit from subsection (1)(a) the words “husband or wife or the civil union partners” and substitute the words “spouse, civil union partner, or de facto partner”.

**New (majority)****Schedule 2**—continued**Section 8**—continued

Omit from subsection (2)(a) the words “husband or wife or a civil union partner” and substitute “spouse, civil union partner, or de facto partner”.

Omit from subsection (2)(b) the words “husband and wife or the civil union partners” and substitute the words “spouses, civil union partners, or de facto partners”. 5

**Section 9**

Insert in subsection (1), after the word “marriage” in both places where it appears, the words “, civil union, or de facto relationship”.

**Section 10**

Insert in subsections (4) and (5), after the word “marriage” in every place where it appears, the words “, civil union, or de facto relationship”. 10

**Section 11**

Insert in subsection (1)(a) and (b), after the words “civil union partners” in both places where they appear, the words “or de facto partners”. 15

Repeal subsection (2)(a) and substitute:

“(a) whether or not the parties wish to resume or continue the marriage, civil union, or de facto relationship; and”. 20

**Section 12**

Omit the words “or civil union partners” in both places where they appear and substitute “, civil union partners, or de facto partners”.

**Section 15**

Omit from subsection (1)(b) the words “or civil union” and substitute the words “, civil union, or de facto relationship”. 25

**Section 19**

Omit from subsection (1) the words “or civil union partners” the second and third times they appear and substitute the words “, civil union partners, or de facto partners”. 30

Omit from subsection (2) the words “or civil union partners” in each place where they appear and substitute the words “, civil union partners, or de facto partners”.

**New (majority)**

**Schedule 2**—continued

**Section 19**—continued

Omit from subsections (3) and (4) the words “or civil union partner” in both places where they appear and substitute the words “, civil union partner, or de facto partner”.

**Section 19A**

Omit the words “or civil union” in each place where they appear and substitute the words “, civil union, or de facto relationship”. 5



s 44

## Schedule 3

### Consequential amendments to other enactments

#### Part 1

##### Amendments to Acts

<b>Births, Deaths, and Marriages Registration Act 1995</b> (1995 No 16)	5
Omit from paragraph (a) of the Long Title the words “and marriages”, and substitute the words “marriages, and civil unions”. Omit from paragraph (c) of the Long Title the words “or marriage” and substitute the words “marriage, or civil union”.	10
Insert, after section 70: “70A <b>Civil union certificates</b> Every civil union certificate must contain as much information (being information relating to the civil union to which the certificate relates that is recorded under this Act at the time the certificate is issued) as is then prescribed.”	15
Omit from section 71 the words “or marriage certificate” and substitute the words “marriage certificate, or civil union certificate”. Omit from section 72 the words “or marriage” and substitute the words “marriage, or civil union”.	20
Insert in section 74(1A), after the word “marriages,” the words “civil unions,”.	
Insert in section 74(1A)(a), after the word “marriage,” the words “civil union,”.	
Insert in section 74(1A)(a)(ii), after the word “married,” the words “the names of the people who entered into a civil union,”.	25
Omit from section 75(1)(c) the words “or marriage” and substitute the words “marriage, or civil union”.	
Insert in section 76(3)(b)(i), after the words “the Marriage Act 1955”, the words “or the Civil Union Act 2004”.	30
Insert in section 78(3)(b), after the word “marriage”, the words “or civil union”.	
Omit from the heading to section 78A the words “ <b>and marriage information</b> ” and substitute the words “ <b>marriage information, and civil union information</b> ”.	35
Omit from section 78A(1) the words “and marriage information” and substitute the words “marriage information, and civil union information”.	

Part 1—*continued***Births, Deaths, and Marriages Registration Act 1995**(1995 No 16)—*continued*

Omit from section 78A(4) the words “and marriage information” and substitute the words “marriage information, and civil union information”.

Omit from section 82 the words “or marriage,” and substitute the words “marriage, or civil union”. 5

**New (majority)**

Omit from section 87 the words “or the Marriage Act 1955” and substitute the words “, the Marriage Act 1955, or the Civil Union Act 2004”.

Amend Schedule 1A as follows:

In the entry relating to the *⟨Department for Courts⟩* *⟨Ministry of Justice⟩*, add the words “and civil union information” ⟨after the words “Marriage information”⟩ in the second column. 10

In the entry relating to the Department of Internal Affairs, insert, after the words “marriage information,” in the second column, the words “civil union information,”. 15

In the entry relating to the Department of Inland Revenue, omit the words “and marriage information” from the second column and substitute the words “, marriage information, and civil union information”. 20

In the entry relating to the Land Transport Safety Authority of New Zealand, add the words “and civil union information” in the second column.

In the entry relating to the Department of Labour,—

- (a) insert in the second column, after the item “Marriage information”, the item “Civil union information”; and 25
- (b) opposite that new item in the third column, insert the words “To verify the civil union of a person to a New Zealand citizen”.

In the entry relating to the Department of Work and Income, insert, after the words “marriage information,” in the second column, the words “civil union information,”. 30

Part 1—*continued***New (majority)****Care of Children Act 2004** (2004 No 90)

Insert in Schedule 4, after the last item relating to the Births, Deaths, and Marriages Registration Act 1995, the following:

**“Civil Union Act 2004** (2004 **No 00**)

5

Omit from the definition of **guardian** in **section 4** the words “section 3 of the Guardianship Act 1968” and substitute the words “section 15 of the Care of Children Act 2004”.”

**Electoral Act 1993** (1993 No 87)**New (majority)**

Insert in the heading above section 93, after the word “*Marriage*”, the words “*or civil union*”.

10

Insert in section 93(1), after the expression “Marriage Act 1955”, the words “or a notice of intended civil union under the Civil Union Act **2004**”.

Insert in section 93(2), after the word “marriage”, the words “or civil union”.

15

Insert in section 93(5), after the word “marriage” in each place where it appears, the words, “or civil union”.

**Family Courts Act 1980** (1980 No 61)

Insert in section 16A(4), after paragraph (d), the following paragraph:

20

“(da) the Civil Union Act **2004**.”.

**Privacy Act 1993** (1993 No 28)

In Part 1 of Schedule 2, insert after the item relating to the *Chiropractors Act 1982* Chartered Professional Engineers of New Zealand Act 2002:

25

Civil Union Act **2004**

**section 28**

In the second column of *Part I of the Second Schedule* Part 1 of Schedule 2, add to the list of provisions that are opposite the item for the Births, Deaths, and Marriages Registration Act 1995 the expression “**62D**”.

30

Part 1—*continued***Summary Proceedings Act 1957** (1957 No 87)

In Part II of the First Schedule, insert, in its appropriate alphabetical order:

<b>The Civil Union Act 2004</b>	<b>29</b> Offence to issue licence or solemnise civil union contrary to Act	5
	<b>30</b> Offence to purport to solemnise civil union	
	<b>31</b> Offences in connection with false statements relating to civil unions	

## Part 2

## Amendments to Regulations

**Domestic Violence (Public Registers) Regulations 1998** 10  
(SR 1998/342)

Add to Schedule 1 the following item:

**Civil Union Act 2004** **section 28**

**Family Courts Rules 2002** (SR 2002/261) 15  
Insert in rule 7, after paragraph (a), the following paragraph:

“(ab) Civil Union Act **2004**:”.

Insert, in rule 38, after paragraph (a), the following paragraph:

“(ab) Civil Union Act **2004** (*see*, for example, **section 20(2)** of that Act):”.

Insert, after rule 334: 20

“**334A Application of rules and forms to civil unions**  
Rules 335 to 376 and the forms set out in Schedule 6 apply and must be used, with all necessary modifications, in respect of any proceedings under the Family Proceedings Act 1980 that relate to a civil union.” 25

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### Legislative history

21 June 2004	Introduction (Bill 149–1)
24 June 2004	First reading and referral to the Justice and Electoral Committee

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