

Marriage (Court Consent to Marriage of Minors) Amendment Bill

Member's Bill

As reported from the Justice Committee

Commentary

Recommendation

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

Introduction

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

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

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

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

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

Civil unions and de facto relationships provide many of the same legal rights, duties, and responsibilities as marriage. Amending the three Acts together would maintain the intent of the bill across these similar relationships, ensure consistency, and avoid potential loopholes.

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

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

De facto relationships

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

Under existing law, a de facto relationship involving a 16 or 17 year old is only legally recognised if that person has obtained the written consent of each of his or her guardians. Legal recognition gives the couple certain rights, duties and responsibilities under the law. For example, if a 16 or 17 year old enters a legally recognised

relationship they are no longer recognised as a child for the purposes of some laws.

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

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

Change of bill title

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

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

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

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

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

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

Making an application to the Family Court

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

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

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

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

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

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

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

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

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

By considering the views held by parents or guardians, the bill recognises the important role parents and guardians play in the life

of young people. The provision would provide for the court to hear these views during proceedings, but would not allow them to carry undue weight in deciding the outcome as they are only one of several considerations the court assesses.

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

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

Obtaining a cultural report to aid consideration

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

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

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

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

Legal representation to assist proceedings

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

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

When a marriage or civil union would be void

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

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

Further, we recommend amending section 31 of the Family Proceedings Act to insert new section 31(1)(a)(ia), (ib), and (ic). This would provide that a marriage or civil union would be void if a party to the marriage or civil union was under the age of 16 or if,

being aged 16 or 17, a party to the marriage or civil union had not obtained the necessary consent of a Family Court Judge.

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

Appendix

Committee process

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

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

We received advice from the Ministry of Justice.

Committee membership

Raymond Huo (Chairperson)

Hon Amy Adams (until 21 March 2018)

Ginny Andersen

Hon Maggie Barry (from 21 March 2018)

Chris Bishop

Andrew Falloon (until 21 March 2018)

Matt King (until 21 March 2018)

Hon Mark Mitchell (from 21 March 2018)

Greg O'Connor

Priyanca Radhakrishnan

Hon Dr Nick Smith (from 21 March 2018)