

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



**WOMEN'S REFUGE**

NATIONAL COLLECTIVE OF INDEPENDENT WOMEN'S REFUGES INC.  
Ngā Whare Whakaruruhau o Aotearoa

## Introduction

1. The National Collective of Independent Women's Refuges (NCIWR) is a non-governmental organisation delivering services to women and children affected by domestic violence in New Zealand. NCIWR provides support, advocacy, legal, and health services to 16,507 clients annually. 52 percent of these are women, and 48 percent are children. Last year, 2,852 women and children needed to be admitted into our safe houses to protect them from ongoing violence.
2. Please note we wish to appear before the Select Committee for this Bill.

## Comments on the Intention of the Bill

3. We strongly support the intention of the Bill; that is, addressing the problem of coercion into marriage. However, our concerns about the marriage of minors exceed the provisions set out in this Bill, and instead concern the marriage of minors in any circumstance. As set out below, we argue that the marriage of young people who lack the developmental and social capacity to consent to life partnership, often at the expense of an otherwise supportive and secure family climate from which to develop personal identity and social power, is in direct contravention of the human rights instruments to which New Zealand is a signatory. However, if the State is unwilling to disallow the marriage of minors, we contend that all possible safeguards must be enacted to protect against the possibility for coercion or disempowerment, including accessing support prior to a hearing, requesting that parents be excluded from parts of the proceedings, and accessing a lay advocate to guide young people through the bureaucratic processes inherent in a Family Court hearing.
4. We reference here the comments of human rights instruments New Zealand is a State Party to, including the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the International Covenant on Civil and Political Rights. Each of these instruments explicitly or implicitly advocate for a marriage age to be aligned with United Nations definitions of adulthood; that is, 18 years old age, and do not endorse exceptions to this based on parental or other consent.

## Recommendation 1: Removing Provisions Allowing 16 and 17 year olds to Marry

5. The Convention on the Elimination of All Forms of Discrimination against Women (the Convention) argues for only adults to be eligible to marry and recommends that this be codified by State Parties,

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stating that “the betrothal and marriage of a child have no legal effect”. While the Convention on the Rights of the Child (CRC) does not explicitly address marriageable age within a Article, it does require that State Parties “abolish traditional practices prejudicial to the health of children”, which can be interpreted as a young person under the age of 18 as aligned with both New Zealand legislation and with international conventions. Finally, Article 23 of the International Covenant on Civil and Political Rights (ICCPR) specifies the “right to marry with free and full consent”, which is arguably inhibited by enabling one of the parties of marriage to consent to marrying when they are insufficiently mature to make an informed decision about a permanent partner and the corresponding social and legal ramifications of marriage. Accordingly, in its most recent evaluation of New Zealand’s performance (2012), the Convention recommended that New Zealand “*Revise the legal minimum age of marriage to 18 years without any exceptions for parental consent*”.<sup>1</sup>

6. We would like the Committee to consider the transitory demands of adolescence, and the paramountcy that all young people are afforded the opportunity to develop social and relational world from a secure base that promotes the security and consistency necessary to facilitate adolescent development. We anticipate the argument that 16 is the legal age to consent to sex, and that the concept of consent is consequently transferable to marriage. However, we contest that there are integral differences between a young person exercising their evolving autonomy to give consent in a sexual relationship that they can withdraw from at any time whilst simultaneously free of the socially embedded expectations of marriage, and a young person attempting to exercise autonomy in a marriage partnership where those safeguards may not be present.
7. Adolescents’ agency progressively develops as they begin to diversify their peer networks and develop their identity and self-concept. We submit that entering into a marriage while this identity and self-concept is still being developed heightens the chances of adolescents being unwittingly pressured into adhering to partners’ expectations of marriage, without the level of social power typically accompanying adulthood. It is this social power that enables adults to feel comfortable in asserting their right not to consent to sexual activity, to recognise and set limits about partnered behaviour, and to seek alternatives if the marriage becomes unsafe or unwanted. We contend that 16 and 17 year olds

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<sup>1</sup> Committee on the Elimination of Discrimination against Women (2012) *Concluding observations of the Committee on the Elimination of Discrimination against Women: New Zealand*. Retrieved from:  
[http://women.govt.nz/sites/public\\_files/CEDAW%20concluding%20observations%202012.pdf](http://women.govt.nz/sites/public_files/CEDAW%20concluding%20observations%202012.pdf)

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do not have this social power, and it is unlikely to be conferred on them by way of marriage. We therefore ask that the Committee consider whether marriage of 16 and 17 year olds in any circumstance is allowing them to actualise their agency as supposed, or whether it is suppressing it through a false legitimising of partial consent.

8. In the last several years, NCIWR has seen a dramatic increase in the number of adolescent girls accessing our services after being physically, sexually, and emotionally abused by their partners, who can be either adolescents or adults. The lack of social power available to them makes it significantly more difficult for them to access safety, as avenues for interpersonal support, validating responses by peer groups, and the freedom to engage in services is often precluded by their age and comparative cognitive immaturity. If we consider the additional implications of girls in similar situations who have entered into the legal, cultural, and social contract of marriage, we then see them face additional barriers as familial expectations often supersede personal desires for safety or freedom from partnership.
9. Marriage of minors may present significant disadvantages to their health, wellbeing, safety, and economic prospects.<sup>2</sup> The Convention recommends that when developing marriage law, attention must be given to the attainment of substantive as well as formal equality. Accordingly, under Articles 2(f) and 5(a), the Convention states that State Parties must attend to cultural and social customs and normative practices that promote or perpetuate any form of discrimination or gendered expectations for men and women. In practice, this means considering the ways in which allowing marriage of 16 and 17 year olds to be perpetuated as a legal practice disproportionately disadvantages women and girls. In our experience, young women in this position are often partnered with men whose economic and social status is substantially higher than their own, and are rarely able to exercise equal decision-making power within the partnership. Often, they are compelled to submit to their partners' wishes, and face social exclusion if they do not. Too frequently, this means the young woman's partner dictating whether they do or do not work outside the home, whether they do or do not enter and complete higher education programmes, and whether, and when, they have children. This is not equal. We consequently

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<sup>2</sup> De Silva-de-Alwis, R. (2008). *Child Marriage and the Law*. Unicef. Retrieved from [https://www.unicef.org/policyanalysis/files/Child\\_Marriage\\_and\\_the\\_Law\(1\).pdf](https://www.unicef.org/policyanalysis/files/Child_Marriage_and_the_Law(1).pdf)

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submit that to protect young people's freedom to develop their personal identity and potential, marriage should be disallowed for all people under 18.

## **Recommendation 2: Minimising Potential for Coercion**

10. Removing the potential for 16 and 17 year olds to marry is our preferred option for the safeguarding of young women and the attainment of substantive equality for women. However, if provisions are made to continue to enable the marriage of young people, we argue that these provisions must ensure that potential for coercion of applicants to marry is minimised. Accordingly, we argue for young people to be accorded opportunities to speak to decision-makers without influence or interference from family.
11. In order to fairly consider young people's preferences and motivations for marriage above those of other invested parties such as parents, we propose the following: that the young person is entitled to support through the Family Court, such as counselling, prior to the date of the hearing; and that the young person may request that the hearing is partially or wholly held without the parents being present.

## **Recommendation 3: Providing for Young People to Access Advocacy and Guidance**

12. As with Recommendation 2, we submit that all possible provisions to safeguard young people's decision-making and freedom from coercion should be developed and implemented. Further to our argument that applicants to marry should be given opportunity to speak without the influence of others, we contend that they should also be provided with a lay advocate.
13. It is presently unclear how the young person applying to marry will have access to legal representation. If this is intended to be through legal aid processes, it raises questions about young people's capacity to traverse bureaucratic barriers in order to ensure that their voices are heard the loudest, especially in situations where parents may have a desired outcome in mind and attach their personal resources to the attainment of that outcome. If the young person's legal representation is provided by their family, this too appears to negate the intended separation of parents' voices from the young person's voice within the hearing.

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14. We submit that a lay advocate assigned by the Court would allay these potential risks and enable the young person to communicate confidently in matters relating to the hearing.

## Concluding Comments

15. In conclusion, NCIWR applauds the intention behind this Bill. It is our experience that parents hold substantial decision-making power regarding young people's relationships and the formalisation of these, and that the potential for coercion into marriage is currently at an unacceptable level. We agree that this Bill is likely to diminish this potential.

16. We contend that this Bill is insufficient to truly safeguard the security, autonomy, and freedom for future decisions of young people, and that this can only be achieved by disallowing the marriage of minors.

17. Finally, we argue that if the marriage of young people under 18 is to be allowed, it must be with caution and pathways to safety. Access to personal support, the option to exclude parents from aspects of the hearing process, and the introduction of a lay advocate may go some way toward providing for this.