



Submission on The Matrimonial Property Amendment Bill 1998 and The De facto Property Amendment Bill 1998

1.0 - Introducing Men's Centre North Shore Inc

We are a volunteer organisation of men and women working to support men. Although we are based in North Shore City, almost half of our members live elsewhere, and they include almost a dozen men's groups throughout New Zealand. Our core function is our telephone advice / support / referral service; we also run a monthly show on Access Radio, publish the newsletter MENZ Issues (July circulation: 700 copies), and take an active part in networking with other organisations that work towards improving the welfare of men and their families. We do not support any particular political or religious philosophy.

This submission is in support of an oral submission to the Administration Select Committee. We understand from a communication to our treasurer Chuck Bird from Chairman Clem Simich that the lateness of our submission may be overlooked because of the difficulty we had in finding the necessary information.

2.0 Areas of Concern

2.1 Undermining of Marriage

We believe that married couples should enjoy special status in law. The effect of these amendments would be to remove the last few remnants of the legal privilege and protection traditionally associated with the marriage contract. The rapid rise of fatherless families over the last three decades, and the resulting social breakdown and increase in crime and dysfunction, has become a problem too big to ignore. We agree with the radical feminists in that they believe that the nuclear family is the foundation of our patriarchal society. We believe that their efforts to destroy the family as a strategy for overthrowing the prevailing power structure have already been devastatingly effective, and that to a large extent these amendments are just tidying up a few loose ends. If these bills are passed, there will be little legal reason left to marry, and what has traditionally been one of the central, sacred rituals of almost all human cultures will in New Zealand be relegated to the status of a quaint (and no doubt commercialised) folk custom.

2.2 Contractual Injustice

When a couple take their marriage vows, they make a commitment, a contract, with each other *and* their community. The tradition that a marriage must be open to the public and usually involves parades and public displays reinforces this participation by the wider society beyond immediate friends and family. Society has a legitimate interest in promoting marriage because it socialises young adult males and leads to the best outcomes when bringing up children.

The contractual situation is not the same with de facto couples, who have by definition chosen to avoid making an explicit contract. The amended bill would cause a contract to come into effect by default simply because of the passage of time. The parties to this contract never formed an intent to make one, and many will consider themselves to be contracted under duress.

2.3 Gender Equality Issues

We strongly endorse the stated principle 'Equal Status For Women in Society' and submit that this is not consistent with the vastly unequal treatment women and men currently receive at the hands of the Family Court in regard to final custody orders. The current system produces a 'custodial parent', with a guaranteed income for a decade or more, and a 'liable parent' who will lose a large proportion of whatever they earn for the same period. We submit that this anomaly be corrected by the Matrimonial Property Amendment Bill being extended to remove gender-bias regarding the custody of children. Joint or shared custody is now the norm in many Western jurisdictions, and results in:

- Improved welfare of children,
- Dramatic lowering of the number of absent fathers,
- Greater compliance in payments of child support,
- Less workload for Family Courts because less incentive to argue,
- Fewer sole parent families that need government support.

2.4 Pressure on De-facto families

If the De facto Property Amendment Bill is passed, some people who wish to avoid long-term commitment and financial liabilities will decide to leave their partner before the three year time limit expires. In many cases these will be re-constituted families with children which might otherwise have remained stable. The implications for children's safety if the legislation encourages a series of stepfathers or boyfriends who regularly need to be replaced should be considered carefully.

2.5 Unjust Outcomes

There are many cases where one partner is relatively wealthy but the other has no assets at all. Many such couples live together for limited periods with no intention whatsoever of making a permanent commitment. Over a lifetime, some people these days may have a dozen or more live-in partners. Why should they give up half their assets every time a relationship lasts more than 3 years? For a person who owns a \$250,000 house, it would probably be cheaper to hire a series of prostitutes for the 1095 nights this legislation specifies, than to pay over half their assets for the privilege of sleeping with someone. It should be noted that this potential financial inequality will not only affect men. There are increasing numbers of relatively wealthy single women who could be adversely affected by this proposal. The trend towards shorter and less committed relationships is likely to accelerate if this 3 year time limit is imposed.

2.6 Impracticality of Definitions

When exactly does a de-facto relationship start - when the couple first meet? The first time they sleep together? The moment they spend more than a certain number of nights together in any one week? What if the relationship remained unconsummated? This would be vitally important to establish with precision with so much potentially riding on whether the elapsed period was more or less than 1095 days. Is it workable?

How would the Court establish that a de-facto relationship has continued - are a couple who spend 2-3 nights a week together living in a "relationship in the nature of marriage"? What about four or five nights a week? What if a person spends 3-4 nights with one partner and 3-4 nights with another? Who would keep the records, which may well be required as evidence in court?

What if a couple live together for a while, separate for two years, then get back together again - would the clock keep ticking? What if they part regularly every few days because of employment conditions and spend much of their time apart? We can only conclude that these difficulties have not been fully appreciated.

2.7 Insufficient Public Notice

We are deeply concerned that detailed notifications about these amendments, and invitations for submissions to your committee, were sent only to selected lobby groups representing a minority viewpoint within our society. This seems to us unlikely to result in balanced, fair legislation. We believe that all sectors of New Zealand society should discuss the social policy issues that arise out of changing laws applying to families. The general public should be given the opportunity to participate fully in debating changes that have such wide-reaching implications.

3.0 Recommendations

3.1 Marriage

Urgent consideration should be given to the establishment of a Ministry of Family Affairs, which should have as its primary goal the scrutiny of all legislation which might impact adversely on family stability. The Ministry should also facilitate full public discussion about the directions of future social policy.

3.2 Contracts

A contract involving the disposal of 50% of a person's assets should be enforceable only if it was made explicitly and in the absence of duress, in line with normal contract law. Contracts should not in principle evolve by default, and their enforcement is likely further to undermine public confidence in the ability of the New Zealand justice system to deliver fair outcomes.

3.3 Custody

- separating parents should automatically have equal custody (by time) of their children. The primary goal of the Family Court should be to facilitate children having ongoing contact with both parents.
- parents should have the right to decide about the care of their children if they both agree to alternative arrangements.
- separated parents should be required to live within a reasonable distance to retain their custody entitlement.
- a parent should be denied access only if proven in a Criminal Court to be a danger to their child.

3.5 and 3.6 Defacto Property

This amendment should be rejected in its entirety.

3.6 Consultation

All work with these Bills should be suspended until proper and informed public debate on the social policy issues has taken place. This discussion should involve all differing viewpoints and perspectives.

We would welcome an opportunity to make an oral submission to the select committee.

Yours faithfully,

Mark Rowley, Chairman

p.p. John Potter, Secretary