

# House of Representatives

# Supplementary Order Paper

Wednesday, 9 March 2005

## Relationships (Statutory References) Bill

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### *Proposed amendments*

Stephen Franks, in Committee, to move the following amendments:

#### *Schedule 13*

To omit the items relating to section 21 (line 25 on page 182 to line 11 on page 183), and substitute the following items:

Repeal section 21(1)(b).

Repeal section 21 (1) (m).

Repeal section 21(1)(l)(iii).

To insert, after the item relating to section 32(a) and (b) (after line 15 on page 182), the following item:

Insert after section 32:

**“32A Protection of freedom of expression, of association, and of religious expression in relation to family matters**

“(1) Nothing in section 21 or elsewhere in this Act may be taken for any purpose in law or in relation to the exercise of the powers of government as favour for specified conduct by the Government or the people of New Zealand.

“(2) Notwithstanding section 21(1)(b) (marital status) and (m) (sexual orientation), nothing in this Act restrains, or justifies legal restraint on, any person other than the Crown, in relation to any otherwise lawful act or exercise of rights or powers to avoid connection with, or to express disfavour for, any specified conduct.

“(3) The protection of **subsection (2)** extends, without limitation, to—

“(a) free expression about specified conduct, and in particular, to

“(i) advocate against it, or against the normalisation if it:

- “(ii) criticise or stigmatise any person for engaging in or advocating it:
  - “(iii) discourage or dissuade any person from engaging in or advocating it:
  - “(b) any provider of employment, goods or services (including marriage or civil union celebrancy services, or tenancies or other uses of real property) who discriminates to discourage or to avoid being connected with specified conduct or with the promotion or normalisation of it.
  - “(c) parents or guardians who seek to prevent their children from engaging in specified conduct.
- “(4) For the purposes of this section,—
- “(a) **specified conduct** is extra-marital sex, extra-marital child bearing, the breach of promises exchanged in marriage, desertion, same sex relationships in the nature of marriage, and homosexual sex:
  - “(b) the **Crown** includes—
    - “(i) local government, and any agency of central or local government, whether acting directly or indirectly:
    - “(ii) any person employed by any of the organisations in **subparagraph (i)**, but only while acting in that capacity:
  - “(c) references to the term **person** include classes of person.
- “(5) This section prevails over of the enactments and instruments set out in **subsection (6)** and they must be read subject to it, but it does not authorise or exempt the use of violence or the threat of violence or other crime under the Crimes Act 1961 or the Summary Proceedings Act 1957, or any breach of contract or any defamation or other tort.
- “(6) An otherwise lawful act or omission to act in pursuit of the purposes set out in **subsections (2) and (3)** may not be made unlawful by any tribunal or authority acting under any of the following enactments:
- “(a) Broadcasting Act 1989:
  - “(b) Employment Relations Act 2000:
  - “(c) Films, Videos and Publications Classification Act 1993:
  - “(d) Harassment Act 1997:
  - “(e) New Zealand Bill of Rights Act 1990:
  - “(f) any convention, treaty, or other international instrument having effect in New Zealand by or through any of the enactments in **paragraphs (a) to (e)**, and not expressly incorporated in New Zealand law by another enactment.”
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### Explanatory note

The first amendments remove marital status and sexual orientation from the list of prohibited grounds of discrimination. As the select committee found when considering the Bill, there was no general justification in principle for considering it wrong to discriminate on the grounds of marital status.

Furthermore, civil unions and other changes eliminate legal discrimination against gay couples. It is wrong to leave these grounds available as tools for the Human Rights Commission or other people to create or to claim special privileges against the freedom of their fellow citizens to associate, or not to associate, as they choose.

The proposed new section 32A is designed to ensure that bodies cannot use vague powers conferred by antidiscrimination law to restrict more fundamental freedoms. The amendment would ensure that people will not be criminalised for doing what they can peaceably and within the law to live their beliefs and to persuade others to do the same.

For example, if the Bill passes without this amendment to the Human Rights Act, a caterer or a taxi driver with strong social or religious objections to facilitating same-sex relationships could be prosecuted for declining to be connected with the solemnization of a civil union.

Extraordinary as it may seem, a church could be prosecuted for refusing to make their church premises available for a civil union, even though it is clear that a cleric could not be forced to conduct one without registering as a celebrant. The employment and education exceptions for religions in the Human Rights Act do not seem to cover the provision of premises made available to others.

The amendments do not make judgements about morality. That judgement is for individuals. "The State has no place in the bedrooms of the nation". That good slogan does not mean the State must punish any one else who wants to use their best efforts to influence what should or should not happen in the bedroom.