

# Action for Children and Youth Aotearoa

## Incorporated



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### Justice and Electoral Select Committee

#### Wills Bill 2006

#### Position on Bill

1. ACYA seeks review of clause 10 and the age at which young people may sign a will.

#### Action for Children and Youth Aotearoa Inc

2. This submission is made by Action for Children and Youth Aotearoa Incorporated (ACYA).
3. ACYA is a coalition of non-governmental organizations, families and individuals whose purpose is to promote the well-being of children and young people in Aotearoa New Zealand through:
  - a. education and advocacy on the rights of children and young people;
  - b. encouraging the government to act on the recommendations of the United Nations Committee on the Rights of the Child; and
  - c. promoting opportunities for the voice and participation of children and young people.

In 2003, ACYA produced and published Children and Youth in Aotearoa 2003, the New Zealand NGO Report on New Zealand's implementation of the UN Convention on the Rights of the Child (NGO Report). This report was presented to the UN Committee on the Rights of the Child in Geneva in June 2003, accompanied by a video funded by ACYA and produced by New Zealand children called Whakarongo Mai / Listen Up.

ACYA has 100 or so members, both individual and child related organizations. These organizations are the leading child interest groups. Individual members of ACYA may not agree with all the items in this submission.

ACYA is indebted to Robert Ludbrook who carried out research for this submission and who is making a personal submission.

## Explanation of Position on Bill

4. Clause 10 of the Wills Bill retains the age of 18 years as the age at which all young people can make a valid will. However, it extends the categories of young people who can make a valid will under that age to include:
  - persons who have *previously* been married, in a civil union or de facto relationship;
  - persons who have *agreed to* marry or enter a civil union;
  - persons who satisfy the Family Court that they are able to understand the effect of making a will and have obtained the approval of the Family Court to make a particular will or to make any will: Clause 10(2)(b), 10(3) & 10(4)..
5. To deny a young person the opportunity to take some action which they have the capacity to undertake is a form of discrimination on the grounds of their youthfulness. Children can be treated differently than adults where different treatment is necessary for their protection. It is hard to see any protection needs that justify denying children the right to dispose of their own property in the way that they choose.
6. The United Nations Convention on the Rights of the Child states that signatories to the Convention must respect and ensure the rights of children without discrimination of any kind: Art 2 requires that in all actions in respect of children taken by the legislature the best interests of the child shall be a primary consideration. Articles 5 and 14 make it clear that the power of parents/carers to provide direction for their child in subject to the child's "evolving capacity" which, like the Gillick principle, empowers children to make decisions about their own lives when they have the capacity to decide the matter in question.
7. If the Wills Bill is enacted in its present form it will strongly discourage people under the age of 18 years who are not married or partnered from making a will even if they have a child or children because they will have to get a lawyer, file proceedings and appear in court to prove they understand the effect of any will they make. They may have to disclose to the Court the will they intend to make if granted leave. This is a breach of the personal autonomy and privacy.
8. New Zealand, young people at the age of 16 years are:
  - able to leave home;
  - able to leave school and to work full time;
  - able to buy and hold property or shares in their own name;
  - able to marry or enter a civil union (with parental consent)
  - legally free to have a sexual relationship and to enter into a de facto relationship;
  - able to have and care for a child or to have an abortion
  - able to own and drive a car.
9. At an even younger age young people are able to undertake a range of activities:
  - At age 14 years they can leave school and work full time if they obtain an exemption;
  - At any age they can work part time as long as it does not interfere with their education;
  - At age 15 they can obtain a license to drive a car;
  - At any age they can have an abortion or bear a child against the wishes of their parent or carer;
  - At any age they can own property or shares and have a personal bank account;
  - At any age they can go into business or form a company (although they cannot be a director until 18 years)

10. If a young person is a parent, it is important that he or she makes a will so as:
  - To appoint a testamentary guardian to make guardianship decisions about the child in the event that the young parent dies;
  - To avoid the extra cost and the delay in distribution of the estate which occurs where a person dies without a will;
  - To ensure that the child inherits the young parent's money and property (if a person dies without a will their personal property and one third of the money or any home they own goes to their spouse or partner and one third of any money or property goes to the spouse or partner and two-thirds of the money and the home goes to the child or children).
11. Evidence as to children's development shows that from the age of 14 or 15 years children are able to make rational decisions about matters that affect them. Evidence to this effect was cited by the Royal Commission on the Electoral System in its 1984 report where the Committee expressed the view that it could see no rational grounds why children aged 16 should not be able to vote.
12. In respect of clause 10 (5) we note special conditions apply for young people who are seafarers or in the military. We do not believe (b) can apply under NZ Defence regulations. The reasons for this clause should be looked at carefully and why only these two situations are catered for.

### **Recommendation**

We recommend that clause 10 of the Bill be amended to provide that:

- Anyone aged 16 years or older can make a will or other testamentary instrument,
- Any person aged 14 years or older who has given birth to a child or who is full time carer of a child can make a will or testamentary instrument; and
- Clause 10 (5) should be reviewed.