



Name of Country and Jurisdiction:

New Zealand

- 1. What forms of legally recognized relationships are available?
- 2. What are the requirements to be able to enter into the above relationships?
- 3. Differences between marriage and civil unions and how the two sets of laws interact.
- 4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?
- 5. When a couple comes to New Zealand, is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?
- 6. How can each form of relationship be dissolved? What is the residency requirement or other link to New Zealand for an authority to grant a divorce/dissolution?



1. What forms of legally recognized relationships are available?



LEGAL RECOGNITIONS FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
Marriage, registered	New Zealand	Marriage Act 1955, § 2(1). Marriage (Definition of Marriage) Amendment Act 2013, § 5 (effective from 19 August 2013). Births, Deaths, Marriages, and Relationships Registration Act 1995, § 53.	Yes
Civil union, registered	New Zealand	Civil Union Act 2004, § 4(1). Births, Deaths, Marriages, and Relationships Registration Act 1995, § 62A(1).	Yes
<i>De facto</i> relationship, not registered	New Zealand	Property (Relationships) Act 1976, § 2D(1).	Yes



2. What are the requirements to be able to enter into the above relationships?



(i) Geographic requirements:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>There is no citizenship or residency requirement for marriage (section 3 of the Marriage Act 1955).</p> <p>No marriage solemnized outside New Zealand shall be registered, although the Registrar-General may register certain marriages under the Births, Deaths, Marriages, and Relationships Registration Act 1995.</p>
Civil union	<p>There is no citizenship or residency requirement in the Civil Union Act 2004 for entering into a civil union in New Zealand.</p>
<i>De facto</i> relationship	<p>There is no requirement to be a citizen or resident of New Zealand for a <i>de facto</i> relationship to be recognized.</p> <p>However, the Property (Relationships) Act 1976—which governs how property of <i>de facto</i> couples (amongst others) is dealt with—applies only to:</p> <ul style="list-style-type: none"> • Immovable property (e.g., real estate) situated in New Zealand; and • Movable property situated in or outside New Zealand if one of the parties is domiciled in New Zealand. <p>The Family Court can also decline to make a property order about movable property situated outside New Zealand if the person against whom the order is sought is neither domiciled nor resident in New Zealand.</p>

(ii) Other substantive eligibility criteria:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>Persons at least 18 years of age can marry; those aged 16 or 17 can marry with consent from parents, a guardian, or a Family Court judge.</p> <p>Marriage cannot be between persons within the prohibited degrees of familial relationships, and the couple must obtain a marriage license prior to the marriage.</p> <p>In general, the marriage may be solemnized by either a marriage celebrant (which includes ministers of religion), a Registrar, or the Registrar-General.</p>
Civil union	<p>Persons at least 18 years of age can enter into a civil union; those aged 16 or 17 require the consent of parents, a guardian, or a Family Court judge.</p> <p>Persons within the prohibited degrees of familial relationships cannot enter into civil unions. Persons entering into civil unions must obtain a license from the Registrar.</p> <p>A civil union may be solemnized by a civil union celebrant, Registrar, or exempt body. Couples must say specific words set out in the Civil Union Act 2004 during the solemnization of a civil union unless the civil union is solemnized by an exempt body.</p>
<i>De facto</i> relationship	<p>A <i>de facto</i> relationship is a relationship between any two persons regardless of gender who:</p> <ul style="list-style-type: none"> a) Are both aged 18 years or older; b) Live together as a couple; and c) Are not married to, or in a civil union with, one another. <p>In determining whether two persons “live together as a couple,” all the circumstances of the relationship are to be taken into account, including any of the following matters that are relevant in a particular case:</p> <ul style="list-style-type: none"> a) The duration of the relationship; b) The nature and extent of common residence; c) Whether or not a sexual relationship exists; d) The degree of financial dependence or interdependence, and any arrangements for financial support, between the parties; e) The ownership, use, and acquisition of property; f) The degree of mutual commitment to a shared life; g) The care and support of children; h) The performance of household duties; and i) The reputation and public aspects of the relationship. <p>There is no provision for registration of a <i>de facto</i> relationship. It is possible for either person or both persons in the relationship to apply to the Family Court for an order that a <i>de facto</i> relationship exists—for example, in the context of dealing with property rights on the ending of a <i>de facto</i> relationship or the death of one of the parties.</p>

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3. Differences between marriage and civil unions and how the two sets of laws interact.

- (a) Identify any significant differences in eligibility; and
- (b) Briefly highlight how they interact if both are in effect (e.g., in some countries, entering into a marriage with the same or a different person automatically dissolves any civil union that the two parties were previously party to, making the latter vulnerable and potentially circumventing separation laws).
- (c) If both marriage and civil unions are available to same-sex couples, briefly highlight areas where major differences exist between marriage and civil unions (e.g., taxes, adoption, immigration, etc.).

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(a)	None.
(b)	<p>Two people may not enter into a marriage or civil union if one is currently married or in a civil union with someone else.</p> <p>Any former marriage or civil union must be formally dissolved before entering into the new marriage or civil union.</p> <p>However, the Civil Union Act 2004 provides that a married couple may convert their relationship into a civil union and that partners in a civil union may convert their relationship into a marriage.</p>
(c)	<p>The laws with respect to tax, pensions, immigration, obligations of spousal support/maintenance, succession, and next of kin apply in the same manner to married couples and partners in civil unions. Relationships (Statutory References) Act 2005 (itself amending more than 110 statutes).</p> <p>However, the Adoption Act 1955 permits adoption only by “spouses,” and the High Court appears to interpret “spouses” to include opposite-sex <i>de facto</i> couples but not parties to a civil union or parties to a same-sex <i>de facto</i> relationship. Nevertheless, the Act allows a party in a civil union to apply individually to adopt a child pursuant to section 3(1).</p>



4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?



FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage, civil union	<p>It is generally illegal for a person in an existing marriage or civil union with one person to enter into a marriage or civil union with another person. Any former marriage or civil union must be dissolved before entering into the new marriage or civil union. However, since the Civil Union Act 2004, a married couple can change the form of their relationship to a civil union, and partners in a civil union may convert their relationship to a marriage.</p> <p>A person may not marry or enter into a civil union with his or her: (a) grandparent; (b) parent; (c) child; (d) grandchild; (e) sibling; (f) parent's sibling; (g) sibling's child; (h) grandparent's spouse or civil union partner; (i) parent's spouse or civil union partner; (j) spouse's or civil union partner's parent; (k) spouse's or civil union partner's grandparent; (l) spouse's or civil union partner's child; (m) child's spouse or civil union partner; (n) grandchild's spouse or civil union partner; or (o) spouse's or civil union partner's grandchild.</p> <p>This applies whether the above relationships are whole-blood or half-blood.</p> <p>"Spouse" and "civil union partner" include a former spouse or former civil union partner, whether alive or deceased, and whether the marriage or civil union was terminated by death, dissolution, or otherwise.</p> <p>In the case of the prohibited non-blood relationships, it is possible to apply to the High Court for consent to marry or to the Family Court for consent to enter into a civil union.</p>
<i>De facto</i> relationship	<p>Persons who are married to each other or in a civil union together cannot also be in a <i>de facto</i> relationship with each other (section 2D of the Property (Relationships) Act 1976).</p> <p>It is possible for a person who is married or in a civil union with one person to also be in a <i>de facto</i> relationship with another person. It is also possible for a person to be in two or more <i>de facto</i> relationships at the same time. In these circumstances, sections 52A and 52B of the Property (Relationships) Act 1976, respectively, provide for priorities to be assigned where there are competing claims on a person's property.</p>



5. When a couple comes to New Zealand, is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?



FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>New Zealand generally recognizes overseas marriages as valid. However, subject to certain exceptions for marriages involving citizens of Commonwealth countries, citizens of the UK, or citizens of the Republic of Ireland, it is not possible to register a marriage that was solemnized outside New Zealand unless a New Zealand Embassy or High Commission official witnessed the marriage. Even when registration of an overseas marriage is permitted, there is no obligation to do so, and the only benefit of registration appears to be that the couple can then obtain a New Zealand marriage certificate (in addition to the certificate issued by the country in which the marriage was formed).</p> <p>In addition, if a couple wishes to confirm that an overseas marriage is valid in New Zealand, they may apply to the Family Court for a declaration as to the validity of the marriage (section 27 of the Family Proceedings Act 1980).</p>
Civil union	<p>Overseas relationships listed in the Civil Unions (Recognized Overseas Relationships) Regulations 2005 are recognized as civil unions in New Zealand. Regulation 3 currently lists:</p> <ul style="list-style-type: none"> • Registered partnership (<i>rekisteröity parisuhde</i>) (Finland); • Life partnership (<i>Lebenspartnerschaft</i>) (Germany); • Civil partnership (the United Kingdom); • Domestic partnership (New Jersey, USA); and • Civil union (Vermont, USA). <p>However, a civil union solemnized overseas cannot be registered in New Zealand. If a couple is in one of the recognized relationships set out above, the certificate issued in that country can be used as evidence of that relationship in New Zealand.</p> <p>If a couple is in a registered relationship that is not one of the recognized relationships set out above, it may still be recognized as a <i>de facto</i> relationship in New Zealand.</p> <p>If a couple wishes to confirm that an overseas civil union is valid in New Zealand, it is possible to apply to the Family Court for a declaration as to the validity of the civil union (section 28 of the Family Proceedings Act 1980).</p>
<i>De facto</i> relationship	<p>A pre-existing <i>de facto</i> relationship will be recognized so long as it meets the requirements for a <i>de facto</i> relationship under section 2D(1) of the Property (Relationships) Act 1976.</p>



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6. How can each form of relationship be dissolved? What is the residency requirement or other link to New Zealand for an authority to grant a divorce/dissolution?

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FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	One or both parties to the marriage can apply to the Family Court for a divorce (known as a “Dissolution Order”), provided that at least one party is domiciled in New Zealand. This generally means that the party’s permanent home must be New Zealand, even if that party has been living overseas for a time.
Civil union	One or both parties to the civil union can apply to the Family Court for the dissolution of the civil union (known as a “Dissolution Order”), provided that at least one party is domiciled in New Zealand. This generally means that the party’s permanent home must be New Zealand, even if that party has been living overseas for a time.
<i>De facto</i> relationship	A <i>de facto</i> relationship legally ends if the <i>de facto</i> partners cease to live together as a couple or if one of the <i>de facto</i> partners dies.

Sources

Primary

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- *Marriage (Definition of Marriage) Amendment Act 2013*, available at <http://www.legislation.govt.nz/act/public/2013/0020/latest/DLM4505003.html>.
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- *Property (Relationships) Act 1976*, available at http://www.legislation.govt.nz/act/public/1976/0166/latest/DLM440945.html?search=ts_act_property+relationships_resele_25_a&p=1.
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- *Family Proceedings Act 1980*, available at <http://www.legislation.govt.nz/act/public/1980/0094/latest/whole.html#DLM40067>.
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Secondary

- New Zealand Parliament, *Progress of Legislation – Schedule of Bills*, <http://www.parliament.nz/resource/en-nz/00HOOCProgressLegislation1/8601823435422a99f9692a51bd418a4b8cc509fd>.
- O. Rundle, *Chapter 6 – Following the Legislative Leaders: Judicial Recognition of Same Sex Couples in Australia and New Zealand*, in *Same-Sex Couples before National, Supranational and International Jurisdictions* (D. Gallo, L. Paladini & P. Pustorino eds., 2014).

