Introduction

This brief paper outlines relationship law in New Zealand. It identifies overseas jurisdictions where same-sex marriage is either legal or being considered.

New Zealand

A marriage is the formalisation of a relationship between a man and a woman, in accordance with the Marriage Act 1955. In Quilter v Attorney General [1998] 1 NZLR 523 the Court of Appeal held that the Act applies to marriage between a man and a woman only, and that this does not constitute discrimination. Under the Civil Union Act 2004 a civil union may be entered into by couples of the same-sex or by couples of different sexes. “‘De facto couples’ are in many important respects treated in the same way as married couples and civil union couples”.

Marriages and civil unions 2005 – 2012

From the June quarter of 2005 to September 2012 there were 170,604 marriages registered. These fluctuated between 23,918 in 2008 and 22,431 in 2011. During the same period there were 2,870 civil unions registered in New Zealand (2012 figures are provisional). The first civil unions were celebrated on 29 April 2005, and fluctuated between 430 in 2006 and 338 in 2010.

Composition of civil unions registered in New Zealand 2005 – 2012

### Jurisdictions that currently allow same-sex marriage

<table>
<thead>
<tr>
<th>Year</th>
<th>Jurisdiction</th>
<th>Sources</th>
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- Government of the Netherlands [Same-sex marriage](31 January 2003). |
| 2003 | Belgium      | - Statistics Belgium [Number of same sex marriages](2004-2010).  
- [UPI](Belgium legalizes gay marriage (31 January 2003).) |
| 2005 | Spain        | - Reuters [Same-sex marriage upheld by Spain’s highest court](6 November 2012).  
|      | Canada       | - [Civil Marriage Act](14 September 2005).  
| 2006 | South Africa | - [Civil Union Act](2006).  
- South Africa.info [SA legalises gay marriage].  
|      | Sweden       | - [Sweden parliament passes same-sex marriage law](1 April 2009).  
- Sweden.Se [Sweden says “I do” to same-sex marriage](28 June 2010). |
| 2010 | Portugal     | - Reuters [Portugal approves gay marriage](8 January 2010).  
- [Portugal president ratifies same-sex marriage law](18 May 2010). |
|      | Iceland      | - Reuters [Iceland passes gay marriage law in unanimous vote](11 June 2010).  
- [Ice News](Iceland parliament votes for gay marriage (11 June 2010).  
- [Iceland parliament approves same-sex marriage legislation](11 June 2010). |
|      | Argentina    | - Reuters [Argentina approves landmark gay marriage bill](15 July 2010).  
- [Argentina Senate passes same-sex marriage legislation](15 July 2010). |
| 2012 | Denmark      | - Reuters [New Danish law lets homosexuals wed in church](8 June 2012).  
- Copenhagen Post [You may now kiss the groom](14 June 2012). |

**Note:** Table provides the year when legislation came into force.

### Subnational jurisdictions

Several subnational jurisdictions allow same-sex couples to marry.

In the United States the National Conference of State Legislatures provides an information page on states that have [Defense of Marriage Acts and Same-Sex Marriage Laws](last updated November 2012).
Mexico revised their civil code to allow same-sex couples to marry in December 2009.

Developments in selected jurisdictions

Australia

Commonwealth – Senate

Two Private Members’ bills proposing amendments to the Marriage Act 1961 to allow same-sex marriage have been introduced in the Senate.

The Marriage Equality Amendment Bill 2010 was introduced on 29 September 2010 by Greens Senator Sarah Hanson-Young. It proposes amending the Marriage Act 1961 so that marriage is defined as:

“the union of two people, regardless of their sex, sexual orientation or gender identity, to the exclusion of all others, voluntarily entered into for life.”

The bill was referred to the Senate Legal and Constitutional Affairs Legislation Committee which reported back on 25 June 2012. The Committee recommended that the definition of marriage in the bill should be amended to mean “the union of two people, to the exclusion of all others, voluntarily entered into for life”. The Committee strongly supported the bill and recommended that it be debated and passed into law with the amendments suggested. The Marriage Equality Amendment Bill 2010 is still before the Senate.

The Marriage Amendment Bill (No.2) 2012, introduced in the Senate on 10 September 2012, was negatived at its second reading.

Commonwealth – House of Representatives

Two Private Members’ bills were introduced in the House of Representatives on 13 February 2012. The Marriage Equality Amendment Bill 2012, introduced by Greens MP Adam Bandt with the support of Independent MP Andrew Wilkie, proposes substituting the same definition of marriage as proposed by the Senate bill on its introduction. The Marriage Amendment Bill 2012 was introduced by Labor MP Stephen Jones. The object of the Marriage Amendment Bill 2012 was “to ensure equal access to marriage for all adult couples irrespective of sex who have a mutual commitment to a shared life”. The bill proposed repealing the current definition of marriage in the Marriage Act and substituting the following text:

“marriage means the union of two people, regardless of their sex, to the exclusion of all others, voluntarily entered into for life.”

The Marriage Amendment Bill 2012 was negatived at its second reading on 19 September 2012.

The House Standing Committee on Social Policy and Legal Affairs inquired into both the Marriage Equality Amendment Bill 2012 and the Marriage Amendment Bill 2012. The Committee reported back on 18 June 2012.
States

A Marriage Equality Bill was introduced in the Legislative Council of South Australia 15 February 2012 by Greens MP Tammy Franks. Premier Jay Weatherill announced his support for the bill in August.

On 4 August 2012, Tasmanian Premier Lara Giddings issued a press release stating that the Parliamentary Labor Party had announced “its support for legislation to grant marriage equality for same-sex couples in Tasmania”. The Same-Sex Marriage Bill passed its third reading in Tasmania’s House of Assembly on 30 August 2012 but was negatived in the Legislative Council the following month. A factsheet on the bill is available.

Further reading

Mary Anne Neilsen Same-sex marriage Australian Parliamentary Library (February 2012).


England and Wales

In June 2012 the Home Office closed their Equal Civil Marriage Consultation on the Government’s proposals to enable same-sex couples to have a civil marriage. Current legislation allows same-sex couples to enter into a civil partnership but not civil marriage.

The key proposals of the consultation were:

- to enable same-sex couples to have a civil marriage i.e. only civil ceremonies in a register office or approved premises (like a hotel)
- to make no changes to religious marriages. No religious organisation will be forced to conduct same-sex religious marriages as a result of these proposals
- to retain civil partnerships for same-sex couples and allow couples already in a civil partnership to convert this into a marriage
- civil partnership registrations on religious premises will continue as is currently possible i.e. on a voluntary basis for faith groups and with no religious content
- individuals will, for the first time, be able legally to change their gender without having to end their marriage.

Scotland

In July 2012 the Scottish Government announced its intention to legislate to allow same-sex marriage. A draft bill for consultation has been published later in the year.

The Scottish Government’s consultation on same-sex marriage and the registration of civil partnership ran between 2 September and 9 December 2011.

Further reading

Catherine Fairbairn ‘Same-sex marriage and civil partnerships’ Commons Library Standard Note (12 August 2012).

Selected reading


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