

Questionnaire

(E)

### About this Questionnaire

1. Couples cohabiting outside marriage may face legal uncertainties when they leave the State where the registered partnership or unmarried cohabitation was formed and become subject to a foreign legal system that does not necessarily recognise their status in relation to one another, or in relation to their (adopted) children, or third parties. Even if they do not leave the State wherein their relationship originated, issues may arise abroad concerning the validity or effects of their relationship or aspects thereof.

2. The Hague Conference on Private International Law (“Hague Conference”) has been monitoring the legal situation of cohabiting couples and registered partners, focusing on the private international law implications, since 1987. In March 2015, the Permanent Bureau presented an “[u]pdate on the developments in internal law and private international law concerning cohabitation outside marriage, including registered partnerships” (“2015 Update on cohabitation outside marriage”)<sup>1</sup> at the Council on General Affairs and Policy of the Hague Conference (“the Council”). The Council subsequently asked the Permanent Bureau to prepare a Questionnaire to seek further information on private international law issues relating to cohabitation outside marriage, including registered partnerships. It requested that a report on the results from this survey be presented to the Council in 2017.<sup>2</sup>

3. In line with the mandate provided by the Council, the **objective** of this Questionnaire is to gather information from various national legal systems about aspects of internal and private international law relating to cohabitation outside marriage (e.g., information about the recognition of partnerships registered abroad or the applicable law in cross-border situations). The information gathered will facilitate a better understanding of the issues that registered partners and unmarried cohabitants may face in a cross-border situation.

4. Terms used to describe cohabitation outside marriage differ widely.<sup>3</sup> For this reason, and in order to facilitate the survey, it is suggested that the **terminology** as described in the “2015 Update on cohabitation outside marriage” be applied in this Questionnaire:<sup>4</sup>

- The term **“cohabitation outside marriage”** encompasses “unmarried cohabitation” and “registered partnerships”.
- The term **“registered partnerships”** refers to a form of cohabitation outside marriage which, under the domestic law of the State where it originates, requires the fulfilment of certain formalities, specifically registration in a central registry. The term as used here has a wide meaning and thus also covers, *inter alia*, “domestic partnerships”, “civil partnerships”, “civil unions”, “permanent couple unions”, “statutory cohabitation”, registered “de facto relationships” and “civil

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<sup>1</sup> Prel. Doc. No. 5 of March 2015 for the attention of the Council on General Affairs and Policy of March 2015, available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under “Projects” then “Legislative Projects” and “Cohabitation outside marriage”. This document was completed pursuant to the mandate given by the Council in April 2013, which invited the Permanent Bureau to continue to follow developments in this area and, resources permitting, to update its “Note on developments in internal law and private international law concerning cohabitation outside marriage, including registered partnerships”, Prel. Doc. No. 11 of March 2008 for the attention of the Council on General Affairs and Policy of April 2008.

<sup>2</sup> See the Conclusions and Recommendations adopted by the Council of 2015 (24-26 March 2015), para. 10, available on the Hague Conference website at < [www.hcch.net](http://www.hcch.net) > under “Governance” then “Council on General Affairs and Policy”.

<sup>3</sup> For an explanation of the terminology, see, e.g., Prel. Doc. No. 11 of 2008 (*op. cit.* note 1), paras 10 *et seq.*, paras 18 *et seq.* and paras 72 *et seq.*

<sup>4</sup> See Prel. Doc. No. 5 of March 2015 (*op. cit.* note 1), paras 7-10.

pacts of solidarity". Individuals in a registered partnership are referred to as "registered partners".

- The term "**unmarried cohabitation**" refers to *concubinage* or *de facto* union without this union having been registered with an authority, formed by the parties' actual cohabitation.<sup>5</sup> Individuals living in unmarried cohabitation are referred to as "unmarried cohabitants".

5. The **structure** of the Questionnaire reflects the situation that most legal systems which allow for the registration of a partnership draw a distinction between unmarried cohabitation and registered partnerships. For this reason, the questions for each of these (legal) institutions are addressed in different sections of the Questionnaire accordingly (Part A: Registered Partnerships, Part B: Unmarried Cohabitation).

6. The Questionnaire further distinguishes between aspects that are **purely domestic** – aspects of internal law – and those that have an **international connection** – issues of private international law.

7. Moreover, while certain questions are **for all States to complete**, others are **relevant only to specific States**, *e.g.*, those whose internal domestic law provides for the possibility to register a partnership or have a special regime for cohabitation (or attach certain legal effects to cohabitation). Whether a question is to be answered by all or only specific States is indicated at the beginning of each question.

8. Furthermore, if the answer to any of the questions depends on the relevant **type of registered partnership or unmarried cohabitation** (*e.g.*, same-sex or opposite-sex), Members and non-Member States are kindly requested to answer the questions for each of the different types.

9. Finally, while the focus of the Questionnaire lies on the **legal aspects** of cohabitation outside marriage, the final section of the Questionnaire (Part C) asks for **statistical data** which Members and non-Member States are kindly requested to provide to the extent available.

### **Instructions for completion**

10. In this Questionnaire the term "State" is used to cover any jurisdictional unit having competence to regulate the subject matter. Members and non-Member States are invited to complete the Questionnaire for each jurisdictional unit, if applicable.

11. Members and non-Member States are kindly invited to complete the Questionnaire (in either English or French) at their earliest convenience, but in any event by no later than **Friday 16 September 2016**.

12. In order to allow the Permanent Bureau to extract parts of the Questionnaire for a compilation and analysis of the responses, please **use this Word version** of the document, and please **do not return a PDF version** of the completed Questionnaire.

13. The Permanent Bureau would also appreciate it if a copy of, or a link to, any **legislation** mentioned in the response (preferably in English or French) could be provided, as well as relevant **case law** on private international law issues in relation to cohabitation outside marriage, including registered partnerships, if available.

14. The completed Questionnaire, as well as additional information on legislation and case law, should be sent by e-mail to < **secretariat@hcch.net** > to the attention of Ms Kerstin Bartsch, Senior Legal Officer, with the subject line: "Questionnaire – Cohabitation outside marriage".

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<sup>5</sup> Since in most legal systems this term is not defined, this is simply a working definition. For an explanation of the terminology, see Prel. Doc. No 11 of 2008 (*op. cit.* note 1), paras 10 *et seq.*

## Publication of responses

15. The Permanent Bureau will place all responses to this Questionnaire on the Hague Conference website < [www.hcch.net](http://www.hcch.net) > unless expressly asked not to do so. A report summarising the results of this consultation will also be made available on the Hague Conference website.

## Identification

Your contact information:

Name of Member or non-Member  
State (or territorial unit, where [New Zealand](#)  
applicable):

For follow-up purposes:

Name of contact person: [Caroline Greaney](#)  
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## PART A: REGISTERED PARTNERSHIPS

The term “**registered partnership**” refers to a form of cohabitation outside marriage which, under the domestic law of the State where it originates, requires the fulfilment of certain formalities (*i.e.*, registration). The term as used here has a wide meaning (see *supra* para. 4).

### A.1. INTERNAL LAW

#### Formation:

##### 1. *For all States:*

- a. Does the law of your State provide for the possibility of registering partnerships?  
 Yes  
 No
- b. If the answer is “No”, is the introduction of registered partnerships being envisaged or studied by your State?  
[N/A](#)

##### 2. *For States that provide for the possibility to register a partnership:*

- a. Who can register a partnership in your State?
- (1) Only opposite-sex couples  
 Yes  
 No
- (2) Only same-sex couples  
 Yes  
 No
- (3) Both opposite-sex and same-sex couples  
 Yes  
 No

- b. If the answer is "Yes" to questions (1) or (2), does your State envisage or study a change in the existing partnership regime? (If yes, please explain.)

N/A

3. *For States that provide for the possibility to register a partnership:*

- a. What are the requirements regarding the formation of a registered partnership? (If the answer depends on the relevant type of registered partnership (e.g., same-sex or opposite-sex), please answer the question for each of the different types.)

In particular, does the law of your State include the following requirements?

- (1) Neither of the partners must be married or united in a partnership with a third person.

No one can enter into a civil union with another person if they are already in a marriage or civil union with another party (section 8 of the Civil Union Act 2004). Under section 205 of the Crimes Act 1961 bigamy is illegal in New Zealand.

- (2) The partners must not be related by marriage, adoption or blood. (In the latter case, what is the accepted degree of blood relationship?)

Yes. New Zealand does not have an 'accepted degree of blood relationship' within which people may enter a civil union. However, the following relationships are prevented from entering a civil union: grandparents, parents, children, grandchildren, siblings, parents siblings, siblings children, grandparent's spouse/civil union partner, parent's spouse/civil union partner, spouse/civil union partner's parent, spouse/civil union partner's grandparent, child's spouse/civil union partner, grandchild's spouse/civil union partner, or spouse/civil union partner's grandchild (section 9, schedule 2 of the Civil Union Act 2004).

Under section 10 of the Act, two people who are within the prohibited degrees of affinity may apply to the Family Court for an order dispensing with the prohibition in section 9.

- (3) Both partners must attain a minimum age in order to form a partnership. (If yes, what is the minimum age?)

Yes. 18 years, or 16 years with parental consent, (sections 7 and 19 of the Civil Union Act 2004). If parents do not consent to their child aged under the age of 18 years entering into a civil union, a Family Court Judge may consent instead (section 20 Civil Union Act 2004).

- (4) Both partners must have the mental capacity to consent to the partnership.

Yes. A civil union may be declared void ab initio if either party did not have capacity to consent to the union (sections 29 and 31 of the Family Proceedings Act 1980).

- (5) Both partners must consent freely to the partnership.

Yes. A civil union may be declared void ab initio if there was not consent to the union (sections 29 and 31 of the Family Proceedings Act 1980).

- (6) Please state any other requirements:

The parties must have a license (sections 11 to 13 of the Civil Union Act 2004) and the ceremony must be solemnised by a registrar or a registered celebrant (sections 14 and 15 of the Civil Union Act 2004).

- b. Does your State envisage or study any changes regarding the present requirements? (If yes, please explain.)

Not at this time

**Effects:**

4. *For States that provide for the possibility to register a partnership:*

- a. What **rights** and **obligations** do registered partners have under the internal law of your State?

Please answer this question by taking into account the following subject matters and provide the legal basis (*i.e.*, legal rules or case law). (If your answer depends on the relevant type of registered partnership (*e.g.*, same-sex or opposite-sex), please answer for each of the different types.)

- (1) relationship between partners, *e.g.*,
- (a) personal obligations and duties of partners (*e.g.*, duty of care of partners):

N/A

- (b) maintenance obligations:

Under sections 63 and 64 of the Family Proceedings Act 1980, each party to a civil union is liable to financially maintain the other party to the extent necessary to meet the reasonable needs of the other party, where the other party cannot practicably meet those needs. This takes into account factors such as division of functions within the relationship and the likely earning capacity of each party. This applies during a civil union, during separation, and for a reasonable period after a civil union is dissolved (section 64A).

- (c) property

The Property (Relationships) Act 1976 is premised on equal sharing of relationship property between parties to a civil union subject to a limited number of exceptions (eg. sections 13 and 44C) and the parties having been in their civil union for 3 years or more (sections 11). If a civil union was immediately preceded by a *de facto* relationship between the couple then the *de facto* relationship must be treated as if it were part of the marriage (section 2B).

If the civil union is less than 3 years duration (a relationship of short duration) then the equal sharing rules generally do not apply to assets owned by 1 partner at the date of the civil union or inherited or acquired by him or her (eg. as a beneficiary under a trust) after the date the civil union began. Shares in the relationship property are determined in accordance with the contribution of each partner to the relationship (section 14).

Under Part 6 of the Act parties are able to contract out of equal sharing.

On the death of one party to a civil union the surviving party can either make an application under the Property (Relationships) Act 1976 or receive property under the will of the deceased party (section 61 of the Act).

- (d) inheritance:

On the death of one party to a civil union the surviving party can either make an application under the Property (Relationships) Act 1976 or accept the conditions under the will of the deceased party (section 61 of the Property (Relationships) Act 1976). If the surviving partner chooses to make an application under the act they have priority to the interests of the estate (section 78 of the Property (Relationships) Act 1976).

- (e) other(s):

N/A

- (2) children, *e.g.*,

- (a) parental status:

The woman who gives birth to the child is recognised as the legal mother by operation of law. The male partner of the woman who gave birth is presumed to be the biological, and therefore legal, father. This presumption can be rebutted if there is evidence to the contrary. Either the mother or putative father can seek a declaration of paternity or non-paternity from the Family Court or High Court. The court may decide any question of fact that arises in relation to paternity on the balance of probabilities, following the procedure specified in law.

If a civil union couple (including same sex couples) adopt a child they become the child's legal parents. If the child was conceived as a result of assisted

reproductive technology procedure then the woman's partner (male or female) must have formally consented to the treatment to be considered a parent of the child. The couple must have cohabitated at any time during the period beginning with the conception of the child and ending with the birth of the child.

Children born to civil union partners have the same status as children of married couples (section 3 of the Status of Children Act 1969).

(b) parental responsibility:

New Zealand law uses the term guardianship to describe the rights and responsibilities of parents rather than parental responsibility. Both parents of a child are usually joint guardians of a child (section 17 of the Care of Children Act 2004). Mothers are automatically guardians of their children and fathers, if they were married to, or in a civil union or de facto relationship with the mother at any time during the period beginning with the child's conception and ending with the child's birth.

A civil union partner who is not automatically a guardian of the child may apply to the Family Court to be appointed as a guardian or will be a guardian if their details are included on the child's birth certificate with the mother's consent. Guardians have all duties, powers, rights and responsibilities of a parent for the upbringing of a child, including providing day to day care, contributing to their development and determining important matters affecting the child. These matters include: where a child lives; non routine medical treatment; the child's name, education, religion, and culture (section 16 of the Care of Children Act 2004).

(c) child support:

Under sections 6 and 7 of the Child Support Act 1991 parents' child support obligations are the same regardless of whether the parents are in a marriage or a civil union.

(d) adoption:

The Adoption Act 1955 (section 3) allows children to be adopted by spouses. Current Child, Youth and Family practice includes civil union partners in the definition of spouse for the purpose of adoption.

(e) inheritance:

Under the Family Protection Act 1955 children are entitled to inherit from their legal parents (i.e. biological parents or adopted parents) regardless of their parent's marital status. If a child is adopted they cannot also inherit from their biological parents (only their adoptive parents).

(f) assisted reproduction:

A woman who gives birth through assisted reproduction is the legal mother of that child (s 17 Status of Children Act 1969). Her civil union partner (whether male or female) is a legal parent if they consented to the assisted reproduction procedure (s 18 Status of Children Act 1969).

(g) surrogacy:

Under sections 17 and 18 of the Status of Children Act 1969 the woman giving birth is the legal mother, regardless of who donated gametes. If she is married, in a civil union or has a partner at the time she gives birth, there is a presumption that her husband or partner (including a civil union partner) at the time she gives birth is also a legal parent of a child. Adoption by commissioning parents is necessary to gain parenthood (section 16 Adoption Act 1955).

(h) other(s):

N/A

(3) other financial matters, e.g.,

(a) pensions, including social security benefits:

Anyone in a partnership (including a civil union partnership) is eligible for a couples pension. If one party dies or the civil union is dissolved then the other party becomes eligible for the independent (single person) pension (schedule 1 New Zealand Superannuation and Retirement Income Act 2001).

(b) other(s):  
Please insert text here

- b. Does your State envisage or study any changes in respect of these effects? (If yes, please explain.)

Not at this time

### Annulment or Dissolution:

#### 5. For States that provide for the possibility to register a partnership:

- a. Consider the situation where a couple has registered their partnership in your State.

Does your State have a special procedure for **annulment** and / or **dissolution** of the partnership? Please describe the judicial or administrative process. (If your answer depends on the relevant type of registered partnership (e.g., same-sex or opposite-sex), please answer for each of the different types.)

Yes. The Family Court can only grant an order for dissolution of a civil union (or marriage) if it is satisfied that the relationship has broken down irreconcilably. Proof that the relationship has broken down irreconcilably is if the parties are not living together and have not lived together for 2 years prior to the application being made.

One or both of the parties must be domiciled in New Zealand in order for an application to be made. An application may be made by either party or jointly.

Dissolutions may be granted by a judge or court registrar. If an application is defended then it must always be made by a judge and the order is operative from the time it is made. Dissolutions by agreement may be granted by a court registrar. A dissolution order made by a registrar comes into effect 1 month after the date on which it was made.

- b. Does your State envisage or study any changes regarding the conditions or procedures for annulment or dissolution of a registered partnership? (If yes, please explain.)

No

## A.2. PRIVATE INTERNATIONAL LAW

### Formation (in situations with an international element):

#### 6. For States that provide for the possibility to register a partnership:

- a. Does the law of your State provide for the possibility of registering a partnership if:

- (1) One partner is a national of your State and the other partner is not?

Yes

If yes, are there further requirements (e.g., regarding habitual residence)?

No

No

- (2) Neither of the partners are nationals of your State?

Yes

If yes, are there further requirements (e.g., regarding habitual residence)?

No

No

- (3) One partner is habitually resident in your State and the other partner is not

Yes

If yes, are there further requirements (e.g., regarding nationality)?

No

No

- (4) Both partners have their habitual residence in a State other than your State?

Yes

If yes, are there further requirements (*e.g.*, regarding nationality)?

No

No

- b. If the response to any of these questions is "Yes":

- (1) Does the internal law of your State govern the **formal requirements for registration** in your State, or does, under the conflict of law rules of your State, the internal law of another State apply and, if so, what law(s)?

The formal requirements for registration are set out by New Zealand's Civil Union Act 2005.

- (2) Does the internal law of your State govern the **substantive requirements for registration** in your State, or does, under the conflict of law rules of your State, the internal law of other State(s) apply and, if so, what law(s)?

The formal requirements for registration are set out by New Zealand's Civil Union Act 2005.

### Recognition of the validity and effects of a partnership registered abroad:

#### 7. For all States:

- a. Would the **validity** of a partnership registered abroad be **recognised** in your State?

Yes

Yes, except for situations where there is a substantial link to my State.

Please indicate what connecting factor(s) would prevent recognition (*e.g.*, no recognition if one or both partners are nationals of or habitually resident in your State).

Yes, with exceptions (*e.g.*, where there is no substantial connection of partners with my State, or: no connection between the partners and the State of registration).

Please provide details of any such exceptions to recognition by your State.

Under section 3 of the Civil Union (Recognised Overseas Relationships) Regulations 2005 recognised relationships are Registered Partnerships from Finland, Life Partnerships from Germany, Civil Partnerships from the United Kingdom, Domestic Partnerships from New Jersey and Civil Unions from Vermont.

Other partnerships are recognised as de facto relationships rather than as civil unions.

No

- b. Would any of the following **effects** of the partnership registered abroad be **recognised** in your State?

- (1) relationship between partners, *e.g.*,

(a) personal obligations and duties of partners (*e.g.*, duty of care of partners):

Generally, the overseas partnerships recognised and registered in New Zealand as a civil union (Finland, Germany, the United Kingdom, New Jersey and Vermont) share the same obligations and rights as New Zealand civil unions.

(b) maintenance obligations:

If there is a reciprocal agreement between New Zealand and another



state for the recovery and/or recognition of maintenance obligations then the agreement would apply. If no reciprocal agreement is in force and a party seeks to establish a maintenance obligation then our domestic law applies. The domestic law is based on the relationship of the person to the child, whether a parent or guardian, rather than on the partnership. New Zealand has three such agreements: one with Australia which is governed in New Zealand by the Child Support Act 1991, United Nations Convention for the Recovery Abroad of Maintenance 1956 and the Commonwealth Scheme from the 1920s. These last two are governed in New Zealand by the Family Proceedings Act 1980.

- (c) property:  
See 7(b)(1)(a) above
  - (d) inheritance:  
See 7(b)(1)(a) above
  - (e) other(s):  
See 7(b)(1)(a) above
- (2) children, *e.g.*,
- (a) parental status:  
See 7(b)(1)(a) above
  - (b) parental responsibility:  
See 7(b)(1)(a) above
  - (c) child support:  
See 7(b)(1)(a) above
  - (d) adoption:  
See 7(b)(1)(a) above
  - (e) inheritance:  
See 7(b)(1)(a) above
  - (f) assisted reproduction:  
See 7(b)(1)(a) above
  - (g) surrogacy:  
See 7(b)(1)(a) above
  - (h) other(s):  
See 7(b)(1)(a) above
- (3) other financial matters, *e.g.*,
- (a) pensions, including social security benefits:  
See 7(b)(1)(a) above
  - (b) other(s):  
See 7(b)(1)(a) above
- (4) Would the registered partnership constitute an impediment to the conclusion or formation by one of the partners of a marriage or a new partnership with a third person?
- Yes
- No

- (5) Would the surname declared by the partners upon the registration of their partnership be recognised in your State?

Yes  
 No

- c. If your response to a. is "Yes" or "Yes, except for situations where there is a substantial link to my State", what are the **requirements for recognition** of the **validity** of the registered partnerships?

Section 35(1)(a) of the Civil Union Act 2004 allows the Governor-General to prescribe types of overseas relationships which are recognised in New Zealand as civil unions. Under section 35(2) in order for a type of overseas relationship to be recognised in this way the Minister of Justice needs to be satisfied that the law of the overseas country does not permit relationships between parties who are under 16; does not permit relationships between parties who are related as parent and child, sibling or half-sibling or grandparent and grandchild; requires explicit consent of both parties to the relationship; only allows the relationship to end when one part dies or there is a judicial or other process which would be recognised in New Zealand as a dissolution; and requires that during the relationship neither party may enter into that sort of relationship or a marriage with anyone else. Any overseas relationships which are not specified by the Governor-General and/or do not meet the above criteria are recognised as de facto relationships.

In particular, does the law of your State require any of the following?

- (1) The registered partnership must be valid in accordance with the internal law or conflict of law rules of the State in which registration took place.

Yes  
 No

- (2) There is a civil status document proving the (existence and) validity of the registered partnership.

Yes  
 No

- (3) Neither of the partners is married or united in a partnership with a third person.

Yes  
 No

- (4) The partners are not related by marriage, adoption or blood. (In the latter case, what is the accepted degree of blood relationship?)

Yes  
 No

Not a parent, sibling, grandparent, grandchild or child.

- (5) Both partners had attained a minimum age when they formed the partnership.

Yes  
 No

- (6) Both partners had the mental capacity to consent to the partnership.

Yes  
 No

- (7) Both partners had consented freely to the partnership.

Yes

No

(8) The effects of the partnership under the applicable law must be similar to those of a marriage:

Yes

No

(9) The effects of the partnership granted in the State where the partnership was registered should not exceed the effects granted for registered partnerships under your State.

Yes

No

Not applicable (My State does not provide for registration of a partnership.)

(10) Any other requirements for the recognition of the (existence and) validity of the registered partnership (please explain):

[Please insert text here](#)

(11) May or must recognition of the (existence or) validity of a registered partnership or its effects be refused if this recognition would be manifestly contrary to public policy? If yes, under which circumstances?

Yes

[N/A](#)

No

d. Would your reply to the previous questions be different when a question regarding the validity or effects of a registered partnership arises as a **preliminary issue** in the context of another question of private international law before the authorities of your State (e.g., about maintenance or inheritance)?

[No](#)

### Recognition of the annulment or dissolution of a partnership registered abroad:

#### 8. [For all States:](#)

Consider the situation where the partners have registered their partnership in State X. Subsequently, their partnership has been dissolved or annulled in that State or in a third State.

Would the **annulment** or **dissolution** of the partnership be **recognised** in your State? If so, under what conditions?

Yes

[New Zealand would recognise the dissolution of the partnership in the State that registered the partnership \(State A\). New Zealand would only recognise a dissolution made in a third State if that dissolution was recognised in the country where the partnership was originally registered \(State A\).](#)

No

[Please insert text here](#)

Not applicable (My State would not recognise the validity or certain effects of the partnership.)

9. *For States that provide for the possibility to register a partnership:*

Consider the situation where partners have registered their partnership in your State. Subsequently the partnership has been dissolved or annulled in a *foreign* State. Would that **dissolution** or **annulment** be recognised in your State? If so under what conditions?

Yes

Provided dissolution valid in the country where it occurred.

No

Please insert text here

**Jurisdiction:**

10. *For States that provide for the possibility to register a partnership:*

- a. Please state any specific rule applying in your State concerning the **jurisdiction** of the authorities of your State regarding the **validity** of

- (1) a partnership registered in your State.

Under section 4 of the Family Proceedings Act 1980 New Zealand courts may have jurisdiction over proceedings where either party to the proceedings is domiciled in New Zealand at the commencement of the proceedings.

- (2) a partnership registered in a foreign State.

Under section 4 of the Family Proceedings Act 1980 New Zealand courts may have jurisdiction over proceedings where either party to the proceedings is domiciled in New Zealand at the commencement of the proceedings.

- b. Please state any specific rule applying in your State concerning the **jurisdiction** of the authorities of your State regarding the **annulment** and **dissolution** of

- (1) a partnership registered in your State.

Under section 37 of the Family Proceedings Act 1980 one of the parties must be domiciled in New Zealand in order to make an application for dissolution.

- (2) a partnership registered in a foreign State.

Under section 37 of the Family Proceedings Act 1980 one of the parties must be domiciled in New Zealand in order to make an application for dissolution.

**Applicable law (conflict of laws):**

11. *For States that provide for the possibility to register a partnership:*

- a. Please state any specific conflict of law rule(s) applying in your State concerning the validity or any of the effects, or the dissolution or annulment of a registered partnership.

Section 37 of the Family Proceedings Act 1980 states that civil unions may only be dissolved in New Zealand if one or both of the parties are domiciled in New Zealand at the time of the application being filed. This extends to overseas partnerships recognised under the Civil Union (Recognised Overseas Relationships) Regulations 2005.

Under section 44 of the Family Proceedings Act 1980 an overseas order of dissolution of a civil union is recognised in New Zealand where one or both of the parties to the civil union was domiciled in that overseas country at the time of the order; or the relevant country has exercised its jurisdiction where one or both of the parties had been resident in that country for 2 years, one or both of the parties is a national of that country, one of the parties has been deserted by their spouse, or one of the parties is deported.

- b. In particular, please explain your State's approach to determine the applicable law, e.g., application of, exclusively, domestic law to the effects of the partnership; application of the law of the common habitual residence of the

partners, application of the law where the partnership was registered (*lex loci registrationis* rule). (See Prel. Doc. No 5 of March 2015, paras. 49 *et seq.*)

Section 37 of the Family Proceedings Act 1980 states that civil unions may only be dissolved in New Zealand if one or both of the parties are domiciled in New Zealand at the time of the application being filed. This extends to overseas partnerships recognised under the Civil Union (Recognised Overseas Relationships) Regulations 2005.

Under section 44 of the Family Proceedings Act 1980 an overseas order of dissolution of a civil union is recognised in New Zealand where one or both of the parties to the civil union was domiciled in that overseas country at the time of the order; or the relevant country has exercised its jurisdiction where one or both of the parties had been resident in that country for 2 years, one or both of the parties is a national of that country, one of the parties has been deserted by their spouse, or one of the parties is deported.

12. *For States that provide for the possibility to register a partnership:*

Does your State envisage or study any changes in relation to the conflict of law rules and other private international law aspects of registered partnerships (*e.g.*, in relation to the formation of a partnership, the recognition of the validity and effects of a partnership registered abroad or the recognition of the annulment or dissolution of a partnership)? (If yes, please explain.)

Not at this time

**Legal and practical problems:**

13. *For all States:*

- a. Do you know of any legal and / or practical problems that have arisen in your State in the context of registered partnerships where there are international elements involved? If so, please describe briefly.

There have been a number of international couples (particularly same sex couples) who have come to New Zealand for a civil union but the civil union is not recognised in the country they're from. If these couples want to dissolve their union they are unable to do so in their country, but if neither of them is domiciled in New Zealand they are unable to do so in New Zealand. This issue is not limited to civil unions, as the same applies to marriages.

- b. In particular, do you know of any situation where registered partners lost rights they had acquired under the law of the State where they had registered their partnership after moving to another State? If so, please describe briefly.

No

**PART B: UNMARRIED COHABITATION**

The term "**unmarried cohabitation**" refers to *concubinage* or *de facto* union without this union having been registered with an authority, formed by the parties' actual cohabitation (see *supra*, para. 4).

**B.1. INTERNAL LAW**

**Legal regime and effects:**

14. *For all States:*

- a. Does the national law of your State establish a **specific legal regime** for cohabitation? (If yes, please explain.)

Yes

N/A

No

- b. If not, does the national law of your State attach **certain legal effects** to (aspects of) cohabitation? (If yes, please explain.)

Yes

See below. For most purposes a de facto relationship is treated in the same way as marriage or a civil union. For example, if de facto partners have lived together for 3 or more years, they have the same relationship property rights as married and civil unioned couples. However, if the relationship is less than 3 years there are different rules concerning entitlement to a share of relationship property than for married couples or couples in a civil union.

No

15. *For States that establish a specific legal regime for cohabitation or which attach certain legal effects to (aspects of) cohabitation:*

What **rights** and **obligations** do unmarried cohabittees have under the law of your State? Are there any requirements which have to be fulfilled before such rights or obligations arise?

Please answer both questions by taking into account the following subject matters and provide the legal basis (*i.e.*, legal rules or case law). (If the answer depends on the type of unmarried cohabitation (*e.g.*, whether the couple is of the same-sex or opposite-sex), please answer the question for each type):

- a. relationship between unmarried cohabittees, *e.g.*,
- (1) personal obligations and duties of unmarried cohabittees (*e.g.*, duty of care of unmarried cohabittees):

N/A

- (2) maintenance obligations:

In general, parties to a de facto relationship are not required to maintain each other during or at the completion of the relationship. However, there are exceptional circumstance which require one party (partner A) to maintain the other (partner B) for a reasonable period of time after they cease living together. These circumstance are dictated by the ability of partner B to become self supporting due to the division of functions during the relationship; the responsibility of each partner for the care of children; the standard of living of the parties when they lived together; or an undertaking of partner B to undertake education to increase their earning potential or to eliminate their need for maintenance from partner A (sections 64 and 64A of the Family Proceedings Act 1980)

- (3) property relations:

The Property (Relationships) Act 1976 is premised on equal sharing of relationship property between parties to a relationship subject to the parties having been in a de facto relationship for 3 years or more. It is also subject to a number of exceptions in the Act. This is the same as if the the parties were married or in a civil union.

If the de facto relationship is less than 3 years (a relationship of short duration) then the Court cannot make orders for the division of relationship property unless the Court is satisfied that: there is a child of the de facto relationship; or that the applicant has made a substantial contribution to the de facto relationship; and that failure to make the order would result in serious injustice.

Under Part 6 of the Act parties are able to contract out of equal sharing.

On the death of one party to a de facto relationship the surviving party can either make an application under the Property (Relationships) Act 1976 or receive property under the will of the deceased party (section 61 of the Act).

- (4) inheritance:

On the death of one party to a de facto relationship the surviving party can either make an application under the Property (Relationships) Act 1976 or accept the conditions under the will of the deceased party (section 61 of the act). If the surviving chooses to make an application under the act they have priority to the interests of the estate (section 78 of the Property (Relationships) Act 1976).

## (5) other(s):

N/A

## b. children, e.g.,

## (1) parental status:

Under section 5 of the Status of Children Act 1969 the woman who gives birth to the child is recognised as the legal mother by operation of the law. The male partner of the woman who gave birth is presumed to be the biological, and therefore legal, father. This presumption can be rebutted if there is evidence to the contrary. Either the mother or putative father can seek a declaration of paternity or non-paternity from the Family Court or High Court. The court may decide any question of fact that arises in relation to paternity on the balance of probabilities, following the procedure specified in law.

If a de facto couple (including same sex couples) adopt a child they become the child's legal parents. If the child was conceived as a result of assisted reproductive technology procedure the woman's partner (male or female) must have formally consented to the procedure to be considered a parent of the child (sections 17 and 18 of the Status of Children Act 1969). The couple must have cohabitated at any time during the period beginning with the conception of the child and ending with the birth of the child.

Children born to de facto partners have the same status as children of married couples (section 3 of the Status of Children Act 1969).

## (2) parental responsibility:

New Zealand law uses the term guardianship to describe the rights and responsibilities of parents rather than parental responsibility. Both parents of a child are usually joint guardians of a child (section 17 of the Care of Children Act 2004). Mothers are automatically guardians of a child and fathers, if they were married to, or in a civil union or de facto relationship with the mother at any time during the period beginning with the child's conception and ending with the child's birth.

A de facto partner who is not automatically a guardian of the child may apply to the Family Court to be appointed as a guardian or will be a guardian if their details are included on the child's birth certificate with the mother's consent. Guardians have all duties, powers, rights and responsibilities of a parent for the upbringing of a child, including providing day to day care, contributing to their development and determining important matters affecting the child. These matters include: where a child lives; non routine medical treatment; the child's name, education, religion, and culture (section 16 of the Care of Children Act 2004).

## (3) child support:

Under the sections 6 and 7 of the Child Support Act 1991 parents' child support obligations are the same regardless of whether the parents were in a marriage or a civil union.

## (4) inheritance:

Under the Family Protection Act 1955 children are entitled to inheritance from their legal parents (i.e. birth mother and her partner at time of birth, or adopted parents) regardless of their parents' marital status. If a child is adopted they cannot also inherit from their biological parents (only the adoptive parents).

## (5) adoption:

The Adoption Act 1955 (section 3) allows children to be adopted by spouses. Family Court decisions and current practice include de facto partners in the definition of spouse for the purpose of adoption.

## (6) assisted reproduction:

A woman who gives birth through assisted reproduction is the legal mother of that child (s 17 Status of Children Act 1969). Her de facto partner (whether male or female) is a legal parent if they consented to the assisted reproduction procedure (s 18 Status of Children Act 1969)

## (7) surrogacy:

Under sections 17 and 18 of the Status of Children Act 1969 the birth

mother is the legal mother of a child regardless of who donated the gametes. If she is married, in a civil union or has a de facto partner at the time she gives birth, there is a presumption that her partner at the time of birth is also a legal parent of a child. Adoption by commissioning parents is necessary to gain legal parenthood (section 16 Adoption Act 1955).

(8) other(s):

N/A

c. other financial matters, *e.g.*,

(1) pensions, including social security benefits:

Anyone in a partnership (including a de facto partnership) is eligible for a couples pension. If one party dies or the relationship is dissolved then they become eligible for the independent pension (schedule 1 New Zealand Superannuation and Retirement Income Act 2001).

(2) other(s):

N/A

## B.2. PRIVATE INTERNATIONAL LAW

### Recognition of the validity of a special legal regime for, or of certain legal effects of, unmarried cohabitation:

16. *For all States:*

Consider the situation where a couple has acquired certain rights and obligations under a special legal regime for unmarried cohabitation in State X, or the couple has acquired certain rights and obligations because the laws of State X attach certain legal effects to their unmarried cohabitation.

a. Would the **validity** of the legal regime for unmarried cohabitation of State X be recognised in your State?

Yes

No

b. Would any of the **effects** which the unmarried cohabitation has under the laws of State X be recognised in your State?

Yes

No

c. If the answer to a. or b., is "yes", what are the requirements (*substantive and / or formal* requirements) for the recognition of the legal regime or of its effects?

Please insert text here

d. Would the reply to the previous questions be different when a question regarding the validity or effects of the unmarried cohabitation arises as a **preliminary issue** in the context of another question of private international law before the authorities of your State (*e.g.*, about maintenance or inheritance)?

Please insert text here

### Jurisdiction:

17. *For States that provide for a specific legal regime for cohabitation or which attach certain legal effects to (aspects of) cohabitation:*

Please state any specific rules applying in your State concerning the **jurisdiction** of the authorities of your State regarding the specific legal regime for cohabitation or its effects.



Under section 4 of the Family Proceedings Act 1980 New Zealand courts may have jurisdiction over proceedings where either party to the proceedings is domiciled in New Zealand at the commencement of the proceedings.

**Applicable law (conflict of laws):**

18. *For States that provide for a specific legal regime for cohabitation or which attach certain legal effects to (aspects of) cohabitation:*

Please state any specific conflict of law rules applying in your State concerning the legal regime for cohabitation or concerning the legal effects attached to (aspects of) cohabitation.

The definition of de facto relationship under section 2D of the Property (Relationships) Act 1976 does not include any reference to the nationality of the parties to that relationship. Section 7 of that Act specifies that the Act applies to any immovable property within New Zealand and any moveable property if one or both parties are domiciled in New Zealand. However, the Court may decline to make an order under the Act in relation to moveable property outside of New Zealand against a party who is not resident or domiciled in New Zealand.

**Legal and practical problems:**

19. *For all States:*

- a. Do you know of any legal and / or practical problems that have arisen in your State in the context of unmarried cohabitation where there are international elements involved? If so, please describe briefly.

When couples (especially same sex couples) from states that do not recognise civil unions get a civil union in New Zealand then want to dissolve that civil union they cannot do so in New Zealand unless they are habitually resident in in New Zealand. This can create an issue where they are unable to dissolve their civil union in either their own state or the state where they registered their civil union. Similar issues have been experienced with same sex marriage.

- b. In particular, do you know of any situation where unmarried cohabitantes lost rights they had acquired under the law of the State where they had cohabited after moving to another State? If so, please describe briefly.

No

**Future developments:**

20. *For all States:*

Are any developments foreseen in your national law, e.g., modification or introduction of a legal regime for cohabitation or of certain legal effects of cohabitation? Are any developments foreseen in relation to private international law aspects of cohabitation outside marriage?

Not at this time

**PART C: Statistics**

21. *For all States:*

Please provide any statistics relating to registered partnerships and unmarried cohabitation where applicable, if available, e.g.,

- a. the (estimated) number of registered partners in your State and any trend in this regard;

In 2015 there were 66 civil unions registered in New Zealand. In 2005 (the year civil unions were introduced) 279 civil unions were registered. In the following seven years the number of civil unions registered was consistently in the range of 339 to 429 each year, before dropping to 234 in 2013 (when same sex marriage became legal), and 63 in 2014. It

is estimated that there are currently 2,682 civil unions registered in New Zealand

- b. the (estimated) number of couples who are cohabiting without being married in your State and any trend in this regard:

According to the most recent Census there were approximately 190,000 de facto couples in New Zealand in 2013. This is approximately the same number as in 2006, but an increase of approximately 50,000 from 2001, 70,000 from 1996, 110,000 from 1991 and 140,000 from 1986.

- c. the (estimated) birth / adoption / surrogacy rates for registered partners and unmarried cohabittees in your State and any trends in this regard:

The percentage of children born to de facto couples has been steady over the last decade at between 27% and 28%. The number of children born to de facto couples has steadily declined over this time period from 11,700 to 9,500. We do not have reliable data on children born to civil union partners or adoption and surrogacy rates.

- d. the (estimated) number of registered partnerships that have been annulled or dissolved in your State:

There were approximately 60 dissolutions of civil unions in each of 2014 and 2015, approximately 40 for each of the two years before, around 30 in each of the two years before that and 24 before 2010. In total there have been approximately 300 dissolutions of civil unions.

- e. the (estimated) number of international couples (*i.e.*, at least one partner is not a national of or habitually resident in your State) and any trends in this regard:

In 2015 there were 33 civil unions (50% of the total) where neither partner was born or in New Zealand or either partner was not a New Zealand resident. This is approximately the same as 2014 and significantly lower than the 105 international civil unions (45% of all civil unions) in 2013. Between 2006 and 2012 the number of international was consistently between 130 and 160, and 30% and 40% of all civil unions.

In 2013 there were 60,000 de facto couples (a third of total de facto couples) where one or both partners were born outside of New Zealand. This is up from 53,000 (28%) in 2006, 33,000 (23%) in 2001, 27,000 (22%) in 1996, 21,000 (26%) in 1991 and 12,000 (24%) in 1986.

- f. any other relevant statistics:

Since same sex marriage has become legal there has been a significant increase in the number of civil unions that have been transferred to marriages. Prior to 2013 there were of a total of 42 civil unions which were transferred to marriages (an average of 7 a year between 2007 and 2012). In 2013 there were 111 transfers, in 2014 there were 150 and in 2015 there were 69.