



LAW·COMMISSION
TE·AKA·MATUA·O·TE·TURE

Study Paper 4

RECOGNISING SAME-SEX
RELATIONSHIPS

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Preface

TWO POINTS URGED BY THE LAW COMMISSION in its report published in August 1997, *Succession Law: A Succession (Adjustment) Act*¹ were that in relation to Court interference in the provisions of wills or the normal rules as to intestacy:

- there should be no distinction between claims by de facto partners and those by de jure partners; and
- there should be no distinction between claims by same-sex and opposite-sex partners.

In the event, in the new legislation prepared by the Ministry of Justice, (the Matrimonial Property Bill and the De Facto Relationships (Property) Bill) and introduced on 24 March 1998 into Parliament by the then Minister of Justice:

- there were marked differences between the rights under the two bills of de jure partners on the one hand and de facto partners on the other; and
- there was no provision whatsoever made for claims by same-sex partners.

In its submissions to the select committee to which the bills were referred, the Law Commission repeated its view that there is no logical reason not to apply the same property regime in a de facto situation (be it homosexual or heterosexual) as in the case of married couples. There were 83 other submissions (out of a total of 163 submissions) which favoured including same-sex relationships within the definition of a de facto relationship. The committee in September 1999 presented only an interim report (1.5E) on the De Facto Relationships (Property) Bill, this to enable completion of the process described in the next paragraph.

On 24 August 1999 the Ministry of Justice published a media release by the Secretary of Justice, a discussion paper *Same-sex Couples and the Law* posing questions to be answered by members of the public ("What do you think about there being a law on dividing property when same-sex relationships break down?") and a third document called *Same-sex Couples and the Law – Backgrounding the Issues*. The time for making submissions expires on 31 March 2000.

It is the Law Commission's view that to properly inform public debate there is more that could and should be said than is to be found in the Ministry's publications. We are therefore, in the hope of assisting public debate, publishing this paper in our study papers series. A copy will be formally presented to the Ministry as the Commission's submission on its proposals. We hope that even if the conclusions which we suggest do not command general support this paper may have some value, if only as a quarry that could be mined for ideas and

¹ NZLC R39.

information. In relation to comparative material the scene is one of continual change.² We decided to confine our references to measures that had passed into law and not to discuss a number of proposals that, as best as we can ascertain from a distance, have not yet reached that stage of finality.

The Commission was assisted in preparing this paper by the proceedings of a conference on the Legal Recognition of Same-Sex Partnerships held at King's College, London from 1–3 July 1999.³ It is grateful to Dr Kees Waaldijk, lecturer and research fellow at the Faculty of Law, University of Leiden and to the organisers of the conference for permission to reproduce the statistics to be found in Appendix A.

² In the Netherlands there has been Cabinet approval for same-sex marriage but legislation has yet to be enacted.

³ The conference proceedings will be published by Cassell in mid-2000.

Recognising same-sex relationships

THE SUBJECT DEFINED

- 1 **T**WO MEN OR TWO WOMEN WHOSE SEXUAL ORIENTATION is homosexual may commit themselves to a relationship intended to be enduring. If the relationship were heterosexual then in the absence of any impediments the couple could marry, a change of status having both legal and social implications. This paper discusses the question of whether the law should make some provision identical or comparable to marriage recognising gay and lesbian pairings, and if so what that provision should be.

THE JUSTIFICATION FOR RECOGNITION

The limits of state power

- 2 Perhaps the strongest argument advanced in favour of decriminalising the private homosexual acts of adult males (a reform not achieved in New Zealand until 1986) was that the then law concerned itself with matters that are not the state's concern. The theoretical powers of Parliament are limitless. However, in practice there is a boundary which, by general consent, should not be crossed. The location of the boundary varies from society to society and from age to age. It would today, for example, be thought inappropriate for there to be in New Zealand sumptuary laws aimed at personal extravagance or laws regulating Lord's Day Observance. The shifts in the nineteenth and twentieth centuries from laissez-faire to economic intervention and back again neatly illustrate the way the boundary can move.
- 3 JS Mill made clear his view of where, in relation to personal conduct, the boundary should lie in the famous passage from the first Chapter of *On Liberty*:⁴

[T]he only purpose for which power can be rightfully exercised over any member of a civilised community against his will, is to prevent harm to others. His own good, either physical or even moral, is not a sufficient warrant.

The same sentiment (with sub-textual reference to laws proscribing male homosexual acts) is implicit in the lines by AE Housman:

Their deeds I judge and much condemn,
Yet when did I make laws for them?
Please yourselves, say I and they

⁴ JS Mill *On Liberty* (M Warnock ed, Collins, London, 1952) 135.

Need only look the other way.
But no they will not; they must still
Wrest their neighbour to their will. . . . (*The laws of God, the laws of man*)

Mill's formulation is reflected in the recommendations of the Wolfenden Report:⁵

We do not think that it is proper for the law to concern itself with what a man does in private unless it can be shown to be so contrary to the public good that the law ought to intervene in its function as the guardian of that public good.

- 4 Cogent though considerations of the proper limits of state power were in the decision to decriminalise, they do not significantly advance the argument in favour of state recognition of same-sex relationships. Such a recognition goes beyond live and let live and would of course itself constitute an exercise of state power. What is being sought is not just toleration in the sense of a shutting of one's eyes, but affirmative action signifying acceptance.

Laws against discrimination

- 5 In New Zealand section 21(1)(m) of the Human Rights Act 1993 prohibits discrimination on the grounds of:

Sexual orientation, which means a heterosexual, homosexual, lesbian or bisexual orientation

in relation to employment; access to places, vehicles and facilities; provision of goods and services; provision of land, leasing and other accommodation; and access to educational establishments.⁶ Section 19(1) of the New Zealand Bill of Rights Act 1990 provides:

Everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993.

A second argument advanced in favour of statutory provision for same-sex marriage is that the absence of such provision constitutes discrimination of a sort proscribed by the legislation referred to.

- 6 It is understandable that in jurisdictions where rights-protection measures, comparable to the two New Zealand statutes referred to, trump other legal rules, such measures should have been invoked by those pressing for recognition of same-sex relationships. In North America in particular, calling up as analogies the victories obtained by those means for blacks and women, supporters of recognition have sought change relying on relevant Bill of Rights and Canadian Charter of Rights and Freedoms provisions. In the United Kingdom recourse can be and has been had to the European Court of Human Rights and the European Court of Justice and the application of English and Scottish law will be affected by the Human Rights Act 1998.
- 7 In New Zealand, however, neither the Human Rights Act nor the New Zealand Bill of Rights Act overrides other unambiguous legislation. So the matters with which this paper is concerned are not advanced by rights talk. This has

⁵ *Report of the Committee on Homosexual Offences and Prostitution* (HMSO, London, 1957 Cmnd 247) 21.

⁶ The drafting style employed by the Human Rights Act is to impose blanket prohibitions then provide certain exceptions, and there are exceptions which it is unnecessary to particularise in relation to discrimination on the grounds of sexual orientation.

always been obvious, and is reinforced by the decision of the Court of Appeal in *Quilter v Attorney-General*.⁷ In that case each of three lesbian couples sought to have the Registrar of Marriages compelled to issue the couple with a marriage licence under the Marriage Act 1955. It being clear that by *marriage* the legislators of 1955 contemplated only a heterosexual union and there being no subsequent legislation able to be construed as an amendment to the 1955 statute in that respect, the claim of the plaintiffs inevitably failed.

- 8 Even if the matter is approached not as an inquiry as to what New Zealand law is, but as a search for arguments in favour of change, it may be doubted whether rights talk assists. The argument is that because heterosexual relationships can be formalised by marriage it is wrongfully discriminatory for the law not to make comparable provision for formalising homosexual relationships. But this assumes an equivalence between the two types of relationship. Such an equivalence is not so universally regarded as axiomatic as to escape the need to be demonstrated. It may be noted that the *obiter* observations of the five Court of Appeal Judges in *Quilter*⁸ were not unanimous on the existence of such an equivalence. The argument for change is better approached directly than cluttered by an inquiry as to whether a particular situation is embraced by some generalised statutory formula. To pose the question of whether non-recognition can be said improperly to discriminate against same-sex couples within the meaning of the Human Rights Act is to fail to identify the real issue. The question that matters is whether there exist sound reasons for changing the law.

Personal autonomy

- 9 It seems to the Law Commission that the most compelling argument in favour of the recognition of same-sex partnerships is a third one. It can be expressed simply. The history of mankind demonstrates that one of the ways in which human sexuality manifests itself is in the formation of publicly avowed and socially recognised relationships intended to be enduring. The legal code of a state properly responsive to the aspirations of its citizens will make provision for such relationships be they heterosexual or homosexual.
- 10 The matter has been put cogently by Nicholas Bamforth:⁹

Community clearly plays a strong role in shaping people's conceptions of the world, and individuals cannot generally sustain a meaningful existence outside of a community of some sort. Nevertheless, human autonomy is valuable both in its own right – allowing people to be empowered by taking control of their lives – and for the common good, by allowing for individual enterprise and initiative. The primary duty of the state is thus to maximise the scope for individual autonomy – across all spheres of life – while preventing individual exercises of autonomy from unacceptably disempowering others.

Maximising the scope for individual autonomy includes the provision of machinery for the legal recognition of same-sex relationships.

⁷ [1998] 1 NZLR 523.

⁸ Above n 7.

⁹ *Sexuality, Morals and Justice: A Theory of Lesbian and Gay Rights Law* (Cassell, London, 1997) 264.

WHAT SHOULD BE DONE?

- 11 In New Zealand any legal recognition of same-sex relationships must necessarily be statutory. The response of the legislature to demands for change is likely to be classifiable as falling into one of six categories.
 - 11.1 Do nothing.
 - 11.2 Extend a degree of recognition to cohabitants without any requirement that their association be marriage-like.
 - 11.3 Recognise same-sex couples for certain limited purposes.
 - 11.4 Recognise same-sex couples for most or all purposes.
 - 11.5 Recognise same-sex couples for most or all purposes, subject to a requirement of registration.
 - 11.6 Alter the definition of marriage to include same-sex couples.

We will proceed to discuss these different possibilities.

Do nothing

- 12 The Commission does not advocate doing nothing but there are two matters to which, in the interests of presenting a rounded picture, it should refer. The first is that in those jurisdictions which have made provision for same-sex relationships only a very small proportion of those who might take advantage of such provisions seem to do so.¹⁰
- 13 Secondly there are schools of thought, most vocal in North America, whose adherents unabashedly describe themselves by terms such as *queer* or *faggot* which are pejorative in origin. They are dismissive of proposals for same-sex marriage or marriage substitutes because such proposals imply acceptance of monogamy as the social norm and rejection of the view that sexual categories are fluid and impermanent. Those discriminated against on the grounds of race or sex are not usually able to hide the fact that they belong to the discriminated-against category. However, where the ground of discrimination is sexual orientation it is possible to avoid persecution by foregoing or concealing expressions of same-sex sentiment. Many people in many places and for large segments of history have found it politic and possible so to do. Same-sex marriage, pretending to be like married heterosexuals, is properly to be seen as just another form of protective assimilation, "... homo conformity with hetero society. *We comply with their system*".¹¹
- 14 In the Commission's view neither the fact that there has not been the flocking to take advantage of the measures for registering same-sex relationships that might have been expected, nor the tenets of what its proponents term "Queer Jurisprudence", constitutes an argument in favour of doing nothing. Any reform will be facilitative, not compulsory.

Cohabitation as the determinant

- 15 In 1984 New South Wales enacted the De Facto Relationships Act 1984 which provided for financial adjustments between parties to a de facto relationship, defined as:

¹⁰ See the table of statistics contained in Appendix A.

¹¹ P Tatchell *We Don't Want to March Straight: Masculinity, Queers and the Military* (Cassell, London, 1995) 29.

[T]he relationship between de facto partners, being the relationship of living or having lived together as husband and wife on a bona fide domestic basis although not married to each other.

In 1999 there was enacted, under the disarming title of the Property (Relationships) Legislation Amendment Act, an amendment to the 1984 statute which alters the name of the 1984 statute and makes provision for what is called a domestic relationship. In Appendix B we set out the provisos of the new sections 4, 5 and 5A of the principal act. They have been carefully framed so as to include same-sex relationships within the definition of domestic relationships. That a partnership contain a sexual element or be in any other respect marriage-like is not essential to its coming within the definition. The bill which became the statute was introduced into the Legislative Council on 15 May 1999, where it was passed by 37 votes to three. In the lower house it was passed without division. The absence of opposition to the measure was such that the whole parliamentary process was completed within 19 days of the introduction of the bill.

- 16 The statute confers a wide range of rights by way of consequential amendment to a number of statutes. Where a de facto partner dies intestate, the surviving de facto partner will inherit the estate¹² if the de facto relationship has existed for at least two years.¹³ A de facto partner is entitled to bring a claim under the Family Provision Act 1982 where he or she has not been provided for (or has been inadequately provided for) in the deceased partner's will.¹⁴ Further financial security for the surviving de facto partner is assured by a provision that excludes a life insurance policy from the deceased's estate where the surviving de facto partner is named as the beneficiary.¹⁵ Where a person is accidentally killed, the surviving de facto partner may seek compensation either for the death,¹⁶ or for nervous shock at witnessing the death.¹⁷ The new provisions also cover de facto partners' entitlement to pensions.¹⁸
- 17 The statute gives a de facto partner the right to participate in decision making in relation to the personal welfare of the other partner. It confers the right upon a de facto partner to have input into medical¹⁹ and mental health²⁰ treatment issues, and the right to be appointed as a guardian of the other partner.²¹ The amendment also expands the class of persons who may object

¹² The right of the de facto partner to inherit is not absolute. Where the intestate had an existing husband or wife and the de facto relationship was of less than two years duration, the husband or wife will inherit. If there are surviving children they must be provided for.

¹³ Wills, Probate and Administration Act 1898, ss 32G, 45, 53, 61A–61D; Trustee Act 1925, s 45.

¹⁴ Family Provision Act 1982, s 6.

¹⁵ Insurance Act 1902, ss 3, 8, 10.

¹⁶ Compensation to Relatives Act 1897, ss 4, 7; Motor Accidents Act 1988, s 3.

¹⁷ Law Reform (Miscellaneous Provisions) Act 1944, s 2.

¹⁸ For example, State Judges' pensions can be claimed against by a de facto partner – Judges' Pensions Act 1953, s 11.

¹⁹ Guardianship Act 1987, s 3.

²⁰ Mental Health Act 1990, schs 1–2.

²¹ Guardianship Act 1987, s 3; Inebriates Act 1912, ss 2–3.

to an anatomical examination of the body of a deceased person,²² allows participation in inquests before coroners²³ and gives the right to control the use of human tissue from one's de facto partner.²⁴

- 18 The statute does not affect the existing law relating to marriage and confirms the existing limit on the right of same sex de facto couples to adopt. Section 62 expressly provides:

Nothing in the Property (Relationships) Legislation Amendment Act 1999 is to be taken to approve, endorse or initiate any change in the marriage relationship, which by law must be between persons of the opposite sex, nor entitle any person to seek to adopt a child unless otherwise entitled by law.

- 19 There are various objections to New Zealand adopting the New South Wales model. One objection is political. It would be difficult for the legislature to create such rights in favour of the parties to same-sex relationships without making comparable provision for opposite-sex de facto relationships. Yet there is a clear distinction between the position of same-sex partners on the one hand and opposite-sex de facto partners on the other. The latter (absent impediments to marriage such as an existing spouse) are unmarried as a matter of choice. The case for helping the former is much stronger because, as the law now stands, they have no such choice. Another objection relates to the problems of deciding whether in a given case there is a domestic relationship as defined. The amounts at stake could be very substantial indeed, and it is not fanciful to imagine elaborate and expensive court cases of the sort that persuaded various American states to cease to recognise common law marriage. A registered partnership system avoids such inquests in situations where registration is availed of. It should not be overlooked that one reason for New South Wales proceeding along the path it has is that the law of marriage (either *stricto sensu* or it could be argued registered partnerships tantamount to marriage) is constitutionally determined by the Commonwealth not the States. A third objection is to the fragmented and piecemeal nature of the reform.

Limited recognition

- 20 Currently there are only four New Zealand statutes which recognise same-sex marriage-like relationships:

- The Electricity Act 1992 which in section 111(2)(e) includes such relationships in the definition of *near relative* in the context of an exception to a prohibition of carrying out electrical work by unregistered persons.
- The Domestic Violence Act 1995 in the definition of *partner* in section 2.
- The Harassment Act 1997 in its definition of *partner* in section 2.
- The Accident Insurance Act 1998 in its definition of *spouse* (in relation to the entitlements of the relicts of those killed by accident) in section 25.

In the absence of any statute comparable to the matrimonial property legislation property disputes between same-sex couples, as are those between opposite-sex couples, are determined by an application of general legal principles, usually the adventurous use of the notion of implied trust.

²² Anatomy Act 1977, s 4(2)(d).

²³ Coroners Act 1980, s 4.

²⁴ Human Tissue Act 1983, s 5.

- 21 It would be possible for reform in New Zealand to consist of piecemeal changes to specific statutes. That, as mentioned, is the approach of the New South Wales legislation (referred to in paragraphs 15–19). In the Law Commission’s view this is a clumsy technique that runs an unacceptable risk of oversight.

Provision for registration

- 22 As a preliminary to discussing the possibilities we listed in paragraph 11 as items 11.4, 11.5 and 11.6, namely recognition of same-sex couples for most or all purposes, their recognition for those purposes only if there is a registered partnership and an alteration to the definition of marriage, we first give an account of the registration provisions adopted in other jurisdictions.
- 23 The pioneering statute was the Danish Registered Partnership Act 1989. A translation of this statute is to be found in Appendix C. The key provision is section 3 which provides that the legal effects of registering a partnership are the same as those of contracting a marriage. The principal exception is a prohibition of adoption by same-sex couples in section 4(1). This provision has been amended as from 1 July 1999 by substituting for section 4(1) the following provision allowing step-child adoptions:
- A registered partner may however adopt the other partner’s child, unless the child is adopted from another country.
- It should be noted that applying marriage law to registered same-sex partnerships means that one cannot be simultaneously married and a registered partner, or simultaneously a partner under more than one registered same-sex partnership and that dissolution of such a partnership requires the same processes as dissolution of a marriage. The Danish law was extended to Greenland in 1996.
- 24 In Norway the Co-Habitation Act 1991 provided some regulation of the rights of cohabitants both opposite-sex and same-sex. Registered partnership along the lines of the Danish model was provided for by statute in 1993 (Appendix D). The position in Sweden is essentially identical.²⁵ Iceland made provision for registered partnerships by the Law on Registered Cohabitation in 1996.
- 25 Such legislation is not found only *in partibus infidelium*. Comparable legislation was enacted in two regions of Spain, Catalunya and Aragon, in 1998 and 1999 respectively.
- 26 In 1998 the Netherlands made legislative provision for registered partnerships which can be either heterosexual or homosexual. The differences between marriage and registered heterosexual partnerships are trifling. There are differences in relation to immigration and pension rights, and dissolution does not need rubber stamping by a court order. The presumption that a child born to a married woman is the child of her husband does not apply to registered partnerships.
- 27 France has also recently enacted legislation²⁶ providing for registration of partnerships by same-sex and heterosexual de facto couples.

²⁵ The Co-habitees (Joint Homes) Act 1987 and The Registered Partnership (Family Law) Act 1994.

²⁶ The civil pact of solidarity legislation [“PACS”] was passed on 13 October 1999 and entered into force on 15 November 1999.

Marriage

- 28 No country has altered its definition of marriage to include same-sex couples. To attempt to do so in New Zealand would cause unnecessary and understandable offence. In the Commission's view this possibility should be excluded as an option for reform. It seems far more sensible to devise a separate code for same-sex relationships. If the European model is followed such a code in all or nearly all of its incidents will be identical to or at least strongly resemble marriage, so that it will be possible for the cynical (adopting Lord Templeman's celebrated *mot* in *Street v Mountford*) to observe that:²⁷

The manufacture of a four-pronged implement for manual digging results in a fork even if the manufacturer, unfamiliar with the English language, insists that he intended to make and has made a spade.

This is not to require gays and lesbians to be content with an inferior, second-class institution. Toleration of diversity is a two-way street. If there is available to same-sex couples a system of registered partnerships conferring rights and obligations virtually identical to those resulting from marriage then gays and lesbians should be prepared to acknowledge that they are not harmed by a legal code designed to avoid giving what may be seen as gratuitous offence to those for whom matrimony is a holy estate.

The Law Commission's recommendations on registered partnerships

- 29 In the Commission's view the sensible choice is for New Zealand law, by a measure analogous to the Danish legislation, to provide for the registration of same-sex partnerships – such partnerships to confer the same rights and liabilities as marriage.
- 30 We need to consider whether there needs to be an exception made in the case of same-sex couples seeking to adopt. Many of the countries which recognise same-sex relationships make an exception in the case of gay couples seeking to adopt a child as a couple. The Commission has in hand a reference from the Minister of Justice concerned with New Zealand's adoption laws generally. It published in November 1999 a discussion paper, *Adoption: Options for Reform*.²⁸ This paper asks whether there are compelling reasons why gay couples should not be considered to be appropriate persons to adopt. Research indicates that:
- the homosexuality of a parent does not predispose a child to psycho-social disorders;
 - children of gay parents are no more likely to be gay than children raised by heterosexual couples;
 - children raised by same-sex parents frequently have greater access to opposite sex role models than do children raised in a single parent family; and
 - children raised by same-sex parents are not teased any more, or to a greater degree, than children raised in a heterosexual family.

²⁷ [1985] AC 809, 819.

²⁸ NZLC PP38.

The crucial factor is not the sexual orientation of the parents, but their general parenting skills. The discussion paper seeks responses to the question whether adoption by a same-sex couple (neither of whom is related to the child) should be permitted. At this stage we would prefer to await the outcome of the consultation process before expressing a view as to whether such adoptions should be permitted.

- 31 We do not recommend that registration of their partnerships be available, as in the Netherlands, to heterosexual couples. Under the law which we propose, same-sex couples will continue to have a choice between registering or not and opposite-sex couples will have a choice between marrying by a process that can be either religious or secular, or not marrying. We see no justification for opposite-sex couples having the additional option of a registered partnership agreement.

The position of the unmarried and unregistered

- 32 It is of course the case that marriage and (if our recommendations are adopted) registered partnerships create disqualifications and impose duties as well as conferring rights. Some heterosexual couples choose not to marry and no doubt some same-sex couples (perhaps most if the statistics in Appendix B are any guide) will choose not to register their partnerships. Should the legislature take steps to cover this situation? In the Commission's view the provisions for de facto heterosexual couples and parties to unregistered same-sex partnerships should march in step, so that if for example the De Facto Relationships (Property) Bill is to proceed it should make the same provision for members of unregistered same-sex partnerships as it does for de facto heterosexual relationships. This leaves the potential for dispute as to whether a relationship falls within whatever qualifying definition is adopted, a dispute that is avoided by either marriage or the registration of a same-sex partnership. But unless the law is to withhold statutory remedies from such cohabitants the possibility of such disputes seems unavoidable.

Summary of recommendations

- 33 It may be thought that the following conclusions follow from what is set out above.
- 33.1 There should be an enactment providing for the registration of same-sex partnerships, such registration to have the same effect as a marriage between opposite-sex parties. As in the Scandinavian models the effects of registration of same-sex partnerships should be identical to those of marriage (whether adoption ought to constitute an exception needs to be considered). The necessary legislation can be elegantly succinct.
- 33.2 The question of adoption by same-sex couples is discussed at some length in our preliminary paper dealing with the law of adoption and until submissions on that paper are received and considered we defer expressing an opinion on whether registered same-sex parties should have the same right to adopt as married couples.
- 33.3 There should be no question of registered same-sex partnerships being regarded as in any way inferior to traditional marriage. If it be necessary to afford some hierarchic ranking to the two institutions, they should rank equally.

33.4 Just as some heterosexual couples live in de facto relationships in preference to marrying so also some homosexual couples will prefer not to enter into registered partnerships. To the extent that the law regulates the affairs of those who abstain from formal relationships in this way the same rules should apply to same-sex as to opposite-sex couples.

APPENDIX A

Comparative table

OVER THE LAST TEN YEARS SEVERAL EUROPEAN COUNTRIES have introduced legislation creating the marriage-like institution of registered partnership for same-sex couples (and, in the Netherlands and two regions of Spain, for different-sex couples). In these countries partnership registration has almost all the consequences of marriage with the exception of most rights and duties of parents and children.

Partnership registration became possible in Denmark on 1 October 1989, in Norway on 1 August 1993, in Sweden on 1 January 1995, in Iceland on 27 June 1996, and in the Netherlands on 1 January 1998. It also became possible in Greenland (1996), Catalunya (Spain, 1998) and Aragon (Spain, 1999), but no figures from these countries could be found. The figures from the other five countries are as follows. Female-female partnerships are indicated with "ff", male-male with "mm", and female-male with "fm". In the table (...) indicates the figures were not available and (-) indicates no registrations.

Country Population	Period	Absolute Numbers				Frequency			
		Total	ff	mm	fm	Total	ff	mm	fm
Denmark 5.3 million (1997)	10/89–12/90	746	173	573	–	23	5	17	–
	1991	258	87	171	–	10	3	6	–
	1992	218	79	139	–	8	3	5	–
	1993	185	61	124	–	7	2	5	–
	1994	197	92	105	–	7	3	4	–
	1995	194	75	119	–	7	3	4	–
	1996	199	93	106	–	8	4	4	–
	1997	178	101	77	–	7	4	3	–
	1998	197	113	84	–	7	4	3	–
	Total:	10/89–12/98	2372	874	1498	–	10	4	6
Norway 4.4 million (1998)	8/93–12/94	294	91	203	–	9	3	7	–
	1995	98	34	64	–	4	2	3	–
	1996	127	47	80	–	6	2	4	–
	1997	118	43	75	–	5	2	3	–
	1998	–	–
Total:	8/93–12/97	674	232	442	–	7	2	5	–
Sweden 8.8 million (1998)	1995	333	84	249	–	8	2	6	–
	1996	160	59	101	–	4	1	2	–
	1997	131	52	79	–	3	1	2	–
	1998	125	46	79	–	3	1	2	–
Total:	1/95–12/98	749	241	508	–	4	1	3	–
Iceland 0.27 million (1997)	7/96–12/97	33	17	16	–	16	8	8	–
	1998	12	7	5	–	9	5	4	–
	Total:	7/96–12/98	45	24	21	–	13	7	6
Netherlands 15.7 million (1998)	1/98–3/99	5217	1487	1860	1870	53	15	19	19
	Total:	1/99–7/99	1793	500	490	803			

APPENDIX B

Property (Relationships) Act 1984 (NSW)²⁹ Sections 4, 5 and 6

4 De facto relationships

- (1) For the purposes of this Act, a de facto relationship is a relationship between two adult persons:
 - (a) who live together as a couple, and
 - (b) who are not married to one another or related by family.
- (2) In determining whether two persons are in a de facto relationship, all the circumstances of the relationship are to be taken into account, including such of the following matters as may be relevant in a particular case:
 - (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,
 - (i) the reputation and public aspects of the relationship.
- (3) No finding in respect of any of the matters mentioned in subsection (2) (a) (i), or in respect of any combination of them, is to be regarded as necessary for the existence of a de facto relationship, and a court determining whether such a relationship exists is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.
- (4) Except as provided by section 6, a reference in this Act to a party to a de facto relationship includes a reference to a person who, whether before or after the commencement of this subsection, was a party to such a relationship.

5 Domestic relationships

- (1) For the purposes of this Act a domestic relationship is:
 - (a) a de facto relationship, or
 - (b) a close personal relationship (other than a marriage or a de facto relationship) between two adult persons, whether or not related by family, who are living together, one or each of whom provides the other with domestic support and personal care.
- (2) For the purposes of subsection (1) (b), a close personal relationship is taken not to exist between two persons where one of them provides the other with domestic support and personal care:

²⁹ As amended by the Property (Relationships) Legislation Amendment Act 1999.

- (a) for fee or reward, or
 - (b) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation).
- (3) A reference in this Act to a child of the parties to a domestic relationship is a reference to any of the following:
- (a) a child born as a result of sexual relations between the parties,
 - (b) a child adopted by both parties,
 - (c) where the domestic relationship is a de facto relationship between a man and a woman, a child of the woman:
 - (i) of whom the man is the father, or
 - (ii) of whom the man is presumed, by virtue of the Status of Children Act 1996, to be the father, except where such a presumption is rebutted,
 - (d) a child for whose long-term welfare both parties have parental responsibility (within the meaning of the Children and Young Persons (Care and Protection) Act 1998).

Except as provided by section 6 a reference in this Act to a party to a domestic relationship includes a reference to a person who, whether before or after the commencement of this subsection, was a party to such a relationship.

5A Family relationship

- (1) For the purposes of sections 4 and 5, persons are related by family if:
- (a) one is the parent, or another ancestor, of the other, or
 - (b) one is the child, or another descendant, of the other, or
 - (c) they have a parent in common.
- (2) For the purposes of this section:
- (a) a person is taken to be an ancestor or descendant of another person even if the relationship between them is traced through, or to, a person who is or was an adopted child, and
 - (b) the relationship of parent and child between an adoptive parent and an adopted child is taken to continue even though the order by which the adoption was effected has been annulled, cancelled or discharged or the adoption has otherwise ceased to be effective, and
 - (c) the relationship between an adopted child and the adoptive parent, or each of the adoptive parents, is taken to be or to have been the natural relationship of child and parent, and
 - (d) a person who has been adopted more than once is taken to be the child of each person by whom he or she has been adopted.
- (3) In subsection (2), adopted means adopted under the law of any place, whether in Australia or not, relating to the adoption of children.
-

APPENDIX C

Danish Registered Partnership Act 1989

We Margarethe The Second, by the Grace of God Queen of Denmark, do make known that:-

The Danish Folketing has passed the following Act which has received the Royal Assent:

- 1.- Two persons of the same sex may have their partnership registered.

Registration

- 2.- (1) Part I, sections 12 and 13(1) and clause 1 of section 13(2) of the Danish Marriage (Formation and Dissolution) Act shall apply similarly to the registration of partnerships, cf subsection 2 of this section.
- (2) A partnership may only be registered provided both or one of the parties has his permanent residence in Denmark and is of Danish nationality.
- (3) The rules governing the procedure of registration of a partnership, including the examination of the conditions for registration, shall be laid down by the Minister of Justice.

Legal Effects

- 3.- (1) Subject to the exceptions of section 4, the registration of a partnership shall have the same legal effects as the contracting of marriage.
- (2) The provisions of Danish law pertaining to marriage and spouses shall apply similarly to registered partnership and registered partners.
- 4.- (1) The provisions of the Danish Adoption Act regarding spouses shall not apply to registered partners.
- (2) Clause 3 of section 13 and section 15(3) of the Danish Legal Incapacity and Guardianship Act regarding spouses shall not apply to registered partners.
- (3) Provisions of Danish law containing special rules pertaining to one of the parties to a marriage determined by the sex of that person shall not apply to registered partners.
- (4) Provisions of international treaties shall not apply to registered partnership unless the other contracting parties agree to such application.

Dissolution

- 5.- (1) Parts 3, 4 and 5 of the Danish Marriage (Formation and Dissolution) Act and Part 42 of the Danish Administration of Justice Act shall apply similarly to the dissolution of a registered partnership, cf subsections 2 and 3 of this section.
- (2) Section 46 of the Danish Marriage (Formation and Dissolution) Act shall not apply to the dissolution of a registered partnership.
- (3) Irrespective of section 448c of the Danish Administration of Justice Act a registered partnership may always be dissolved in this country.

Commencement

- 6.– This Act shall come into force on October 1, 1989.
- 7.– This Act shall not apply to the Faroe Islands nor to Greenland but may be made applicable by Royal order to these parts of the country with such modification as are required by the special Faroese and Greenlandic conditions.

Given at Christiansborg Castle, this seventh day of June, 1989
Under Our Royal Hand and Seal
Margarethe R.

Act to amend the conditions of partnership registration and stepchild adoption

1.

The Registered Partnership Act no 372 of June 7 1989, shall be amended as follows:

- 1. Section 2(2) shall be repealed and worded as follows:
 - 2(2) A partnership may only be registered, if
 - 1) one of the parties has his permanent residence in Denmark or Danish nationality or
 - 2) both parties have had permanent residence in Denmark for the preceding two years before registration
 - (3) Norwegian, Swedish and Icelandic nationality will be treated as equivalent to Danish nationality according to section 2(1). The Minister of Justice may designate that nationality in another country with a Registered Partnership Act corresponding to the Danish Act will be treated as equivalent to Danish nationality.
 - (3) shall be substituted for (4)
- 2. Section 4(1) shall be amended as follows:

A registered partner may, however, adopt the other partner's child, unless the child is adopted from another country.

2.

This Act shall come into force on July 1 1999.

3.

- (1) This Act shall not apply to the Faroe Islands nor to Greenland cf (2).
 - (2) This Act may be applicable by Royal order to Faroe Island or Greenland with such modifications as are required by the special Faroese and Greenlandic conditions.
-

APPENDIX D

Norwegian Registered Partnership Act 1993

Act no 40 of 30 April 1993 relating to Registered Partnerships

Section 1

Two persons of the same sex may register their partnership, with the legal consequences which follow from this Act.

Section 2

Chapter 1 of the Marriage Act, concerning the conditions for contracting a marriage, shall apply correspondingly to the registration of partnerships. No person may contract a partnership if a previously registered partnership or marriage subsists.

Chapter 2 of the Marriage Act, concerning verification of compliance with conditions for marriage, and Chapter 3 of the Marriage Act, concerning contraction and solemnization of a marriage, do not apply to the registration of a partnership.

A partnership may only be registered if one of both of the parties is domiciled in the realm, and at least one of them has Norwegian nationality.

Verification of compliance with the conditions and the procedure for registration of partnerships shall take place pursuant to the rules laid down by the Ministry.

Section 3

Registration of a partnership has the same legal consequences as contraction of a marriage, with the exceptions that follow from section 4.

The provisions of Norwegian legislation dealing with marriage and spouses shall apply correspondingly to registered partnerships and registered partners.

Section 4

The provisions of the Adoption Act concerning spouses shall not apply to registered partnerships.

Section 5

Irrespective of the proviso in section 419a of the Civil Procedure Act, actions concerning the dissolution of registered partnerships that have been contracted in this country may always be brought before a Norwegian court.

Section 6

The Act shall enter into force on a date to be decided by the King.

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