



Name of Country and Jurisdiction:
Queensland, Australia

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

Q

1. What forms of legally recognized relationships are available?

A

LEGAL RECOGNITIONS FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE
Marriage, registered	National legislation provides for entry into marriage; each State and Territory provides for the registration of a marriages performed within their jurisdiction according to the national law.	<p><i>Marriage Act 1961</i> (Cth)</p> <ul style="list-style-type: none"> • Subsection 5(1): “<i>marriage means the union of a man and a woman to the exclusion of all others, voluntarily entered into for life</i>”; and • Although marriages can only be formed under Federal law, each State and Territory separately maintains a registry of marriages and requires that a marriage formed within its jurisdiction be registered. Note that a failure to register a marriage under State or Territory law is an offence but it does not invalidate a marriage. 	No

continued on next page

LEGAL RECOGNITIONS FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE
Registered relationship	Queensland	<p><i>Relationship Act 2011</i></p> <p>Adults in both heterosexual and same sex relationships are eligible to register their relationship.</p> <p>For couples that had registered a civil partnership under the <i>Civil Partnerships Act 2011</i> (amended and renamed the <i>Relationship Act 2011</i>), legal recognition will continue through the provisions of the <i>Relationships Act 2011</i> as an official registered relationship.</p>	Yes
<i>De facto</i>	National, State and Territory laws	<p>In most cases, substantive laws treat a couple living together in the same or a similar fashion to a couple with a registered relationship or a marriage.</p> <p>For example, registered couples in Queensland enjoy equivalent legal rights to <i>de facto</i> couples without having to prove <i>de facto</i> status.</p> <p>Where a registered relationship is not recognized in a particular body of law then it will generally be recognized as a <i>de facto</i> relationship.</p>	Yes

Q

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

- (i) If a geographic link is required:

A

Marriage, registered	<p>There is no requirement to be an Australian citizen or a permanent resident to legally marry in Australia.</p> <p>The marriage ceremony must be conducted by an Australian resident celebrant and the marriage must physically occur in Australia except in narrowly defined circumstances.</p>
Registered relationship (Queensland)	At least one person in the relationship has been living in Queensland for at least six months prior to making the application for registration of the relationship.

continued on next page



<i>De facto</i>	No geographic link with Queensland is required for this form of recognition.
(i) If other substantive eligibility criteria must be satisfied:	
Marriage, registered	<p>To be legally married in Australia, a man and woman (“marriage” being defined as only between man and woman in the <i>Marriage Amendment Act 2004</i> (Cth)) must:</p> <ul style="list-style-type: none"> • understand what marriage means and freely consent to becoming husband and wife; • use specific words during the ceremony; and • give written notice of their intention to marry to their authorised celebrant.
Registered relationship (Queensland)	<p>Two adults, regardless of sex, are eligible to apply for registration of their relationship.</p> <p>To be eligible, couples must be over eighteen years of age, unmarried, not related to the person with whom they wish to register the relationship (lineal ancestor, lineal descendent, sibling or half sibling) and not registered as being in a registered relationship.</p> <p>Documentary evidence or proof of relationship may not be required when making an application to register, although the Registrar may require further information to be provided to determine the application for registration.</p>

Q

3. If both marriage and civil unions exist:

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

A

(a)	<p>A marriage is defined under the federal <i>Marriage Act 1961</i> to be between a man and woman only, whereas registered relationships are available to same-sex or heterosexual couples.</p> <p>There is no domicile or ordinary residency requirement for marriage, whereas there is a requirement that at least one of the parties has lived in Queensland for six months before a relationship can be registered.</p> <p>In most cases, persons must be living together as a couple to enter into a registered relationship, but this is not required for a marriage.</p>
-----	---

continued on next page

(b)	<p>The registration of a registered relationship in Queensland is automatically revoked by marriage of either person in the relationship (whether to each other or another person).</p> <p>For a married person to enter into a Queensland registered relationship with the same or a different partner, they would first need to obtain a divorce or annulment of the marriage. A person involved in a registered relationship is not eligible to enter into a subsequent registered relationship in Queensland, they would first need to evidence that their pre-existing registered relationship had been terminated.</p> <p>Under most Queensland laws, a <i>de facto</i> relationship can remain on foot if it pre-dates a marriage or comes into existence if it post-dates a marriage. On the other hand, it is probably the case that a person can only be in a <i>de facto</i> relationship as well as a registered relationship if the <i>de facto</i> relationship post-dates the registered relationship because a requirement for registration of a registrable relationship is that the couple be a “couple”, probably implying that it be to the exclusion of other co-habitation arrangements.</p>
(c)	Not applicable.

Q

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

A

Marriage , registered	<p>If a person is already married to a different person they cannot marry again. Marrying a parent, grandparent, child, grandchild, brother or sister is prohibited and persons must be at least eighteen years old, unless a court has approved a marriage (where one party is aged between sixteen and eighteen years old).</p>
Registered (Queensland)	<p>A relationship cannot be registered if either person is under eighteen years old, married, in another registered relationship or if it is a prohibited relationship (between 2 people who are lineal ancestor, lineal descendent, sibling or half sibling).</p> <p>Evidence that persons are no longer married, such as a divorce certificate or your spouse's death certificate will be required.</p>
<i>De facto</i>	<p>Under most bodies of substantive law, there are no explicit pre-existing relationships that prevent a <i>de facto</i> relationship from forming. Generally a person in a marriage / registered relationship can then enter into a different <i>de facto</i> relationship which will then become a concurrently recognized relationship.</p>

Q

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

A

<p>Marriage, registered</p>	<p>Australia is a signatory to the Convention on Celebration and Recognition of the Validity of Marriages signed at The Hague on 14 March 1978.</p> <p>An overseas marriage will generally be recognised in Australia if it:</p> <ul style="list-style-type: none"> • was a valid marriage in the overseas country; and • would have been recognised as valid under Australian law if the marriage had taken place in Australia (foreign formed same sex marriages are thus not recognised as legal marriages in Australia). <p>However, the following exception applies such that same sex marriages entered into overseas are not recognized:</p> <p>“88EA Certain unions are not marriages</p> <p style="padding-left: 40px;">A union solemnised in a foreign country between:</p> <p style="padding-left: 80px;">(a) a man and another man; or</p> <p style="padding-left: 80px;">(b) a woman and another woman;</p> <p style="padding-left: 40px;">must not be recognised as a marriage in Australia.”</p>
<p>Registered (Queensland)</p>	<p>The legislation provides for the Queensland Government to make regulations recognising interstate or foreign formed registered relationships in Queensland.</p> <p>Civil partnerships formed under corresponding laws of another State or country, if prescribed under a regulation, is taken to be a registered relationship under the Relationship Act 2011.</p> <p>Regulations have been passed to recognize the following relationships as if they were Queensland registered relationships:</p> <ol style="list-style-type: none"> a) a registered relationship under the Relationships Register Act 2010 (NSW); b) a registered domestic relationship under the Relationships Act 2008 (Vic); c) a significant relationship for which a deed of relationship is registered under the Relationships Act 2003 (Tas); d) a relationship registered as a civil partnership under the Civil Partnerships Act 2008 (ACT). <p>On the other hand, couples can re-register (once their pre-existing registered relationship is properly dissolved) their pre-existing relationship under the Relationships Act 2011 (Queensland).</p>
<p><i>De facto</i></p>	<p>If a couple relocates to an Australian jurisdiction either without a marriage or a registered relationship, or their previous relationship is not accorded formal recognition, the law will treat them as a <i>de facto</i> couple.</p>

Q

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

A

<p>Marriage, registered.</p>	<p>A Court can grant a divorce (including foreign formed marriages) provided that both the parties:</p> <ul style="list-style-type: none"> • regard Australia as their home and intend to live in Australia indefinitely, or • are Australian citizens by birth, descent or by grant of Australian citizenship, or • ordinarily live in Australia and have done so for 12 months immediately before filing for divorce. <p>The Court must be satisfied that the parties seeking divorce have lived separately and apart for at least 12 months, and that there is no reasonable likelihood of resuming married life. It is possible to live together in the same home and still be separated.</p> <p>Because a union solemnised in a foreign country between same-sex couples must not be recognised as a marriage in Australia, an Australian court would not grant a divorce in relation to a foreign-formed same sex marriage.</p>
<p>Registered (Queensland)</p>	<p>The registration of a registered relationship may be terminated by the Registrar, on application by either person or both persons in the relationship. Where a notice is given to the Registrar by only one party, it is only effective if a copy has been served personally on the other party by sending it by registered post addressed to the other person at that person's last known place of residence.</p> <p>The Registrar must terminate the registration of a registered relationship after the expiry of a termination period of 90 days after the date of lodgement of the termination application unless the termination application is withdrawn or a Court or tribunal otherwise directs.</p> <p>A Court may order the termination of the registration of a registered relationship on application made by an interested person or on its own motion.</p> <p>Entering into a marriage or the death of a partner automatically dissolves a registered relationship.</p>
<p><i>De facto</i></p>	<p>Under most bodies of law, ceasing to co-habit will bring legal recognition of a <i>de facto</i> relationship to an end.</p>

Sources:

Statutes:

- *Marriage Act 1961* (Cth)
- *Marriage Amendment Act 2004* (Cth)
- *Family Law Act 1975* (Cth)
- *Relationship Act 2011* (Queensland)
- *Civil Partnership Act 2011* (Queensland)
- *Civil Partnerships and Other Legislation Amendment Act 2012* (Queensland)

Government websites:

- Queensland Registry of Birth, Deaths & Marriages, Queensland Government.

