



Name of Country and Jurisdiction:
Tasmania, 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 Tasmania, 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 Tasmania for an authority to grant a divorce/ dissolution?



1. What forms of legally recognized relationships are available?



LEGAL RECOGNITIONS FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
Marriage, registered	Australia ¹	<i>Marriage Act 1961</i> (Cth) ²	Yes
Registered relationship	Tasmania	<i>Relationships Act 2003</i> (Tas) ³	Yes

continued on next page

1 Each state and territory provides for the registration of marriage.

2 Subsection 5(1) holds that “*marriage*” means the union of 2 people to the exclusion of all others, voluntarily entered into for life.’

Although marriages can be formed only under federal law, each state and territory separately maintains a registry of marriages and requires a marriage formed within its jurisdiction to be registered. Note that failure to register a marriage under state or territory law is an offence but does not invalidate the marriage.

3 The *Relationships Act 2003* (Tas) extends relationship entitlements to ‘significant relationships’ and ‘caring relationships’ (collectively referred to in the Act as ‘personal relationships’), which are available to unmarried same-sex and opposite-sex couples. A couple wishing to register their relationship must sign a deed of relationship, which is lodged with the Registrar of Births, Deaths and Marriages. Once the deed has been filed, the couple can apply for the certificate that serves as legal evidence of their relationship.

A ‘significant relationship’ is between two unmarried adults living in Tasmania who have a relationship as a couple and are not related by family.

A ‘caring relationship’ is between two unmarried adults living in Tasmania who are not in a significant relationship or other caring relationship and may or may not be related by family, with one providing the other with domestic support and personal care without monetary compensation.

A

LEGAL RECOGNITIONS FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
<i>De facto</i> (i.e., unregistered) relationship (Tasmania)	National, state and territory laws	<p>In most cases, substantive laws treat a couple living together in the same or a similar fashion as a couple with a registered relationship or a marriage.⁴</p> <p>Where a registered relationship is not recognised in a particular body of law, it will generally be recognised as a <i>de facto</i> relationship.</p>	Yes

Q

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

A

(i) Geographic requirements:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage, registered	<p>There is no requirement to be an Australian citizen or 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 (Tasmania)	<p>To register a deed of relationship in Tasmania, each of the two persons must be either:</p> <ul style="list-style-type: none"> a) Domiciled in Tasmania; or b) Ordinarily resident in Tasmania.
<i>De facto</i> (i.e., unregistered) relationship (Tasmania)	No geographic link with Tasmania is required for this form of recognition.

⁴ Under Tasmanian law, personal relationships (defined by the *Relationships Act 2003* (Tas) to be 'significant relationship[s]' or 'caring relationship[s]') provide virtually the same rights as marriage. For example, if a couple is in a significant relationship (referred to in the Commonwealth's *Family Law Act 1975* as a 'de facto relationship'), property settlements and parenting orders may be sought and made through the Family Court of Australia. In all caring relationships, as well as certain significant relationships, the *Relationships Act 2003* provides for property settlements to be made.

(ii) Other substantive eligibility criteria:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage, registered	<p>To be legally married in Australia, the parties must:</p> <ul style="list-style-type: none"> • Not be married to anyone else; • Not be related to one another as parent, grandparent, child, grandchild, brother or sister; • Be at least 18 years of age, although the court may approve a marriage where one party is between 16 and 18; • Understand what marriage means and freely consent to marry; • Use specific words during the ceremony; and • Provide their authorised celebrant with written notice of their intention to marry.
Registered relationship (Tasmania)	<p>A significant relationship is between persons who are at least 18 years of age, have a relationship as a couple, are not married, and are not related by family. (A caring relationship is between persons who are at least 18 years of age and are neither married, in a significant relationship, nor in another caring relationship, although they may be related by family; one member of the caring relationship provides the other with domestic support and personal care without fee or wages.)</p> <p>In this state, couples in significant relationships are eligible to register their relationship with a deed of relationship.</p> <p>If a significant relationship is registered with a deed of relationship, proof of registration is proof of the relationship. Tasmania has an established system for registering deeds of relationship to allow partners in significant relationships to guarantee their entitlements and affirm their relationships. A deed of relationship certifies that a relationship exists and provides immediate access to relationship rights (certain financial and property claims), as well as access to federal and state entitlements.</p> <p>If a significant relationship is not registered with a deed of relationship, all the circumstances of the relationship are to be taken into account, including (as may be relevant):</p> <ol style="list-style-type: none"> a) The duration of the relationship; b) The nature and extent of common residence; c) Whether or not a sexual relationship exists; d) The degree of financial dependence or interdependence, and any arrangements for financial support, between the parties; e) The ownership, use and acquisition of property; f) The degree of mutual commitment to a shared life; g) The care and support of children; h) The performance of household duties; and/or i) The reputation and public aspects of the relationship. <p>It is not necessary to satisfy all of the above criteria to establish that a relationship is a significant (or caring) relationship. A court (and other bodies) must have regard to these factors only in determining the existence of a relationship for the purposes of the <i>Relationships Act 2003</i> (Tas). Only the Supreme Court of Tasmania has the power to conclusively determine whether or not a significant relationship exists (or existed).</p>

continued on next page

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
<p><i>De facto</i> (i.e., unregistered) relationship (Tasmania)</p>	<p>If a significant relationship is not registered with a deed of relationship, all the circumstances of the relationship are to be taken into account, including (as may be relevant):</p> <ul style="list-style-type: none"> a) The duration of the relationship; b) The nature and extent of common residence; c) Whether or not a sexual relationship exists; d) The degree of financial dependence or interdependence, and any arrangements for financial support, between the parties; e) The ownership, use and acquisition of property; f) The degree of mutual commitment to a shared life; g) The care and support of children; h) The performance of household duties; and/or i) The reputation and public aspects of the relationship.



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)	There is no domicile or ordinary residency requirement for marriage, but there is for registered relationships.
	(b)	<p>A deed of registered relationship in Tasmania is automatically revoked by the marriage or death of either person to the deed (whether to each other or another person).</p> <p>On the other hand, a married person wishing to enter into a Tasmanian registered relationship with the same or a different partner would first need to obtain a divorce or annulment of the marriage.</p> <p>Under most Tasmanian laws, a <i>de facto</i> relationship can remain on foot if it pre-dates a marriage or can come into existence if it post-dates a marriage. On the other hand, under the <i>Relationships Act 2003</i>, a person cannot be in an unregistered significant (or caring) relationship (considered to be a <i>de facto</i> relationship) as well as a registered relationship if the <i>de facto</i> relationship pre-dates the registered relationship; a requirement for registration of a registrable relationship is that neither person is a party to another significant (or caring) relationship. It is probably the case that a person can be in a <i>de facto</i> relationship as well as a registered relationship only if the <i>de facto</i> relationship post-dates the registered relationship.</p>
	(c)	Nil.

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

A	FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
	Marriage, registered	A person who is already married cannot marry a third party.
	Registered relationship (Tasmania)	<p>A relationship cannot be registered if either person is married, a party to a deed of relationship or in another significant (or caring) relationship.</p> <p>Evidence that persons are no longer married, such as a divorce certificate or a spouse's death certificate, will be required.</p>
	<i>De facto</i> (i.e., unregistered) relationship (Tasmania)	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 enter into a different <i>de facto</i> relationship, which will then become a concurrently recognised relationship.



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



FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage, registered	<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.
Registered relationship (Tasmania)	<ul style="list-style-type: none"> • Interstate registered relationships or overseas registered civil unions are recognised in Tasmania. However, this interstate or overseas recognition applies only to states and countries with 'corresponding laws'. The <i>Relationships Regulations 2013</i> (Tas) stipulates generally, under reg. 8, that states with 'corresponding laws' include: <ul style="list-style-type: none"> • The Australian Capital Territory; • New South Wales; • Queensland; • Victoria; • The Republic of Ireland; • New Zealand; • The United Kingdom; and • 13 different Canadian legal jurisdictions.
<i>De facto</i> (i.e., unregistered) relationship (Tasmania)	<p>If a couple relocates to an Australian jurisdiction without being married or in a registered relationship, or if 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 Tasmania for an authority to grant a divorce/ dissolution?

A

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage, registered	<p>A court can grant a divorce (even for foreign-formed marriages), provided that both parties:</p> <ul style="list-style-type: none"> • Regard Australia as their home and intend to live in Australia indefinitely; • Are Australian citizens by birth, descent or 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>
Registered relationship (Tasmania)	<p>The registration of a registered relationship may be terminated by the Registrar, on application by either or both persons in the relationship. Where a notice is given to the Registrar by only one party, it is effective only if a copy has been served personally on the other party.</p> <p>The Registrar must revoke the registration of a registered relationship after the expiry of 90 days following the date of lodgement of the revocation application unless the revocation application is withdrawn or a court or tribunal otherwise directs.</p> <p>A court may order the revocation 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>
De facto (i.e., unregistered) relationship (Tasmania)	<p>Under most bodies of law, ceasing to cohabit will bring legal recognition of a <i>de facto</i> relationship to an end.</p>

Sources:

Statutes:

- *Marriage Act 1961* (Cth), available at <https://www.comlaw.gov.au/Details/C2013C00164>.
- *Marriage Amendment Act 2004* (Cth), available at <https://www.comlaw.gov.au/Details/C2004A01361>.
- *Family Law Act 1975* (Cth), available at <https://www.comlaw.gov.au/Series/C2004A00275>.
- *Relationships Act 2003* (Tasmania), available at http://www.thelaw.tas.gov.au/tocview/index.w3p;cond=;doc_id=44%2B%2B2003%2BAT%40EN%2B20170526000000;histon=;pdfauthverid=;prompt=;rec=;rtfauthverid=;term=;webauthverid=.
- *Relationships Regulations 2013* (Tasmania), available at http://www.thelaw.tas.gov.au/tocview/index.w3p;cond=;doc_id=%2B108%2B2013%2BAT%40EN%2B20150212090000;histon=;prompt=;rec=;term=.

Government Website:

- Tasmanian Government, Department of Justice, Births, Deaths and Marriages, <http://www.justice.tas.gov.au/bdm>.

