



Name of Country and Jurisdiction:

Australian Capital Territory, 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 the Australian Capital Territory, 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 the Australian Capital Territory 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 civil partnership | Australian Capital Territory | <i>Domestic Relationships Act 1994</i> (ACT) | Yes |
| <i>De facto</i> relationship | Australian Capital Territory | <i>Domestic Relationships Act 1994</i> (ACT) | Yes |

Under the *Civil Unions Act 2012* (ACT), civil unions became available exclusively to couples ineligible for marriage; therefore, in general, this relationship has been available only to same-sex couples. Now that same-sex marriage is possible, no new civil unions are expected.

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 marriages 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.



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

(i) Geographic requirements:



| FORM OF LEGAL RELATIONSHIP | REQUIREMENTS |
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| Marriage, registered | There is no requirement to be an Australian citizen or permanent resident to legally marry in Australia. The marriage ceremony must be conducted by an Australian resident celebrant, and the marriage must physically occur in Australia, except in narrowly defined circumstances. |
| Civil union, registered | At least one of the persons wishing to enter the union must live in the Australian Capital Territory. |
| Registered civil partnership | At least one of the persons wishing to enter the partnership must live in the Australian Capital Territory. |
| <i>De facto</i> relationship | There is no geographic requirement. |

(ii) Other substantive eligibility criteria:

| FORM OF LEGAL RELATIONSHIP | REQUIREMENTS |
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| Marriage, registered | To be legally married in Australia, the parties must: <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. |

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| FORM OF LEGAL RELATIONSHIP | REQUIREMENTS |
|------------------------------|---|
| Civil union, registered | <p>A person may enter into a civil union in this territory only if he/she meets the following requirements:</p> <ol style="list-style-type: none"> a) The person is an adult (i.e., aged at least 18); b) The person is not: <ul style="list-style-type: none"> • Married; • Already in a civil union; or • In a civil partnership with someone other than his/her proposed civil-union partner; c) The person cannot marry his/her proposed civil-union partner under the <i>Marriage Act 1961</i> (Cth); and d) The person does not have any of the following relationships ('prohibited' relationships) with his/her proposed civil-union partner: <ul style="list-style-type: none"> • Lineal ancestor/lineal descendant; • Sibling relationship; or • Half-sibling relationship. |
| Registered civil partnership | <p>Two adults (i.e., persons aged at least 18) who are in a relationship as a couple, regardless of their sex, and who meet the eligibility criteria below, may enter into a civil partnership by having their relationship registered with the Registrar-General of the Australian Capital Territory:</p> <ul style="list-style-type: none"> • Neither of the persons is married, in a civil union or in a civil partnership; and • The persons do not have any of the following relationships ('prohibited' relationships) with each other: <ul style="list-style-type: none"> • Lineal ancestor/lineal descendant; • Sibling relationship; or • Half-sibling relationship. |

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| FORM OF LEGAL RELATIONSHIP | REQUIREMENTS |
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| <p><i>De facto</i> relationship</p> | <p>Under the <i>Domestic Relationships Act 1994</i> (ACT), a 'domestic relationship', which includes unregistered <i>de facto</i> relationships, means a personal relationship between two adults (i.e., persons aged at least 18) in which one provides personal or financial commitment and support of a domestic nature for the material benefit of the other. These relationships include a 'domestic partnership' but not a legal marriage.</p> <p>A 'domestic partnership' is defined under the <i>Legislation Act 2001</i> (ACT) as a relationship between two people, whether of the same or opposite sex, living together as a couple on a genuine domestic basis. Indicators of whether two people are in a domestic partnership include:</p> <ul style="list-style-type: none"> • The length of their relationship; • Whether they are living together; • If they are living together, how long and under what circumstances they have done so; • Whether there is a sexual relationship between them; • Their degree of financial dependence or interdependence, and any arrangements for financial support, between or by them; • The ownership, use and acquisition of their property, including any property that they own individually; • Their degree of mutual commitment to a shared life; • Whether they mutually care for and support children; • The performance of household duties; and • The reputation, and public aspects, of the relationship between them. |

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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.).

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| (a) | In the ACT, provision for civil unions was made as a substitute for marriage under the federal law. A condition for obtaining a civil union was that the couple was ineligible for marriage. So until the federal Marriage Act was amended to permit same-sex marriage, in general it was only same-sex couples who met this requirement. Now that same-sex marriage is possible, no new civil unions are expected. A registered civil partnership, on the other hand, is equally available to same-sex and opposite-sex couples. |
| (b) | A civil union or civil partnership is terminated upon the death or marriage of either party. A civil partnership is terminated if the parties enter into a civil union with each other. |
| (c) | Nil. |

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

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| FORM OF LEGAL RELATIONSHIP | REQUIREMENTS |
|------------------------------|---|
| Marriage, registered | A person who is married cannot marry a third party. |
| Civil union, registered | A person cannot enter into a civil union if he/she is already in a marriage, civil union or civil partnership with someone other than his/her proposed civil-union partner. |
| Registered civil partnership | Two people who are married or have entered into a civil union in the Australian Capital Territory are not eligible to enter into a civil partnership. |
| <i>De facto</i> relationship | Nil. |

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5. When a couple comes to the Australian Capital Territory, 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. |
| Civil union, registered | <p>The government of the Australian Capital Territory can, by regulation, provide that a relationship under corresponding law is a civil union according to territory law, provided that, under the corresponding law, the relationship:</p> <ol style="list-style-type: none"> a) Must be between two people; b) Must be entered into consensually; c) Must not be entered into by persons who are in a prohibited relationship with each other; and d) Must not be entered into by persons who are eligible to marry each other under the <i>Marriage Act 1961</i> (Cth) or any law of an external territory or foreign country. |
| Registered civil partnership | <p>The government of the Australian Capital Territory can, by regulation, provide that a relationship under corresponding law is a civil partnership according to territory law, provided that, under the corresponding law, the relationship:</p> <ol style="list-style-type: none"> a) Must be between two people; b) Must be entered into consensually; and c) Must not be entered into by persons who are in a prohibited relationship with each other. <p>Regulations currently provide that the following are taken to be civil partnerships in the Australian Capital Territory:</p> <ol style="list-style-type: none"> a) A registered relationship under the <i>Relationships Register Act 2010</i> (NSW); b) A registered domestic relationship under the <i>Relationships Act 2008</i> (Vic); c) A registered relationship under the <i>Relationships Act 2011</i> (Qld); d) A significant relationship registered by a deed of relationship under the <i>Relationships Act 2003</i> (Tas), section 13(3)(a); or e) A civil union under the <i>Civil Union Act 2004</i> (New Zealand). |
| <i>De facto</i> relationship | <p>The recognition of these relationships is on the basis of the facts, and the facts establishing this legal status may arise before a couple's relocation to the Australian Capital Territory.</p> |





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



| FORM OF LEGAL RELATIONSHIP | REQUIREMENTS |
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| Marriage, registered | <p>A court can grant a divorce, even if the marriage was formed overseas, 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> |
| Civil union, registered | <p>Either or both parties can end the civil union by giving the Registrar-General a written notice of intention to end the civil union. If this 'termination notice' is given by only one party, the notice is effective only if:</p> <ol style="list-style-type: none"> a) A copy of the notice has been served personally on the other party; and b) A statutory declaration is given to the Registrar-General with the notice that: <ol style="list-style-type: none"> (i) Is made by the person who served the notice; and (ii) States that the notice was served personally by the person on the other party on the date stated in the statutory declaration. <p>A civil union ends 12 months after the day the termination notice is given to the Registrar-General unless:</p> <ul style="list-style-type: none"> • The termination notice is withdrawn; • The Supreme Court makes an order that the notice is not effective to terminate the civil union; or • The civil union has already been terminated by the death or marriage of either party. <p>On application by a party to a civil union, the Supreme Court may make an order ending the civil union if the Court considers that:</p> <ol style="list-style-type: none"> a) The civil union cannot be ended by the parties; but b) It is not the intention, or it is no longer the intention, of both parties to be in the civil union. <p>If the Supreme Court makes an order, the Court must give a copy of the order to the Registrar-General no later than 28 days after the day the order is made.</p> <p>A civil union also comes to an end automatically if one of the parties dies or marries.</p> |

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| FORM OF LEGAL RELATIONSHIP | REQUIREMENTS |
|------------------------------|---|
| Registered civil partnership | <p>A civil partnership may be terminated by either party, or jointly, by giving the Registrar-General a completed notice to terminate it.</p> <p>When a notice is given to the Registrar-General by only one party, it is effective only if a copy has been served personally on the other party and the statutory declaration attached to the notice is completed.</p> <p>At the end of 12 months after the day the notice is given to the Registrar-General, the civil partnership is terminated unless:</p> <ul style="list-style-type: none"> • The termination notice is withdrawn; • The Supreme Court makes an order that the notice is not effective to terminate the civil partnership; or • The civil partnership has already been terminated by the death or marriage of either party. <p>Upon termination, the Registrar-General will give each party written notice that the civil partnership has been terminated on the date stated in the notice. This notice will be mailed to the last known address of each party.</p> <p>A civil partnership comes to an end automatically if one of the parties dies, marries or enters into a civil union.</p> |
| <i>De facto</i> relationship | <p>There is no formal process for dissolving a domestic relationship in the Australian Capital Territory. A couple will cease to be in a domestic relationship if they no longer meet the definition set out in the <i>Domestic Relationships Act 1994</i> (ACT).</p> |

■ Sources:

Statutes and Regulations:

- *Marriage Act 1961* (Cth), available at <https://www.legislation.gov.au/Details/C2013C00164>.
- *Marriage Amendment Act 2004* (Cth), available at <https://www.legislation.gov.au/Details/C2004A01361>.
- *Family Law Act 1975* (Cth), available at <https://www.legislation.gov.au/Series/C2004A00275>.
- *Civil Unions Act 2012* (ACT), available at <http://www.legislation.act.gov.au/a/2012-40/20120911-53584/pdf/2012-40.pdf>.
- *Domestic Relationships Act 1994* (ACT), available at <http://www.legislation.act.gov.au/a/1994-28/current/pdf/1994-28.pdf>.
- *Domestic Relationships Regulation 2012* (ACT), available at <http://www.legislation.act.gov.au/sl/2012-38/20120911-53623/pdf/2012-38.pdf>.
- *Legislation Act 2001* (ACT), available at <http://www.legislation.act.gov.au/a/2001-14/current/pdf/2001-14.pdf>.

Government Website:

- Apply for a Birth, Death or Marriage Certificate, Access Canberra, ACT Government: https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/18/#!tabs-7.

Case

- *The Commonwealth v Australian Capital Territory* [2013] HCA 55 (12 December 2013), available at <http://www7.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2013/55.html>.