



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	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"> <li>• 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</li> <li>• 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.</li> </ul>	No

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LEGAL RECOGNITIONS FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE
Civil Union	Australian Capital Territory	Civil Union Act 2012	Yes.  Indeed, in general, Civil Unions are only available to same-sex couples and not heterosexual couples because a requirement is that the couple is not eligible for marriage.
Registered civil partnership	Australian Capital Territory	Domestic Relationships Act 1994	Yes
<i>De facto</i>	Australian Capital Territory	Domestic Relationships Act 1994	Yes

**NOTE:** The Australian Capital Territory government has long provided for the recognition of same sex relationships, providing for registered civil partnerships, civil unions (as a substitute for marriage) and for same sex marriage. However, by the time that the ACT government had passed its law providing for same sex marriage (and repealing the legislation providing for civil unions), the national government had passed a law providing that marriage is an institution that can exist only between a man and a woman.

A constitutional law case was brought which considered whether the ACT same sex marriage law could operate concurrently with the national law providing that marriage can only be between a man and a woman. The High Court of Australia (which is the constitutional court) determined that the two laws were inconsistent and that in its entirety the ACT marriage law was invalid—including the provision repealing the law that had previously provided for civil unions. Consequently, the civil unions law was revived and the ACT now provides for civil unions, registered partnerships and recognition of relationships on a *de facto* basis.

## Q

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

Example(s):

- (i) If a geographic link is required:

## A

Marriage, registered	<ul style="list-style-type: none"> <li>• There is no requirement to be an Australian citizen or a permanent resident to legally marry in Australia.</li> <li>• The marriage ceremony must be conducted by an Australian resident celebrant and the marriage must physically occur in Australia except in narrowly defined circumstances.</li> </ul>
Civil Union, registered (Australian Capital Territory)	One or both of the persons who wish to enter the union must live in the Australian Capital Territory
Registered civil partnership (Australian Capital Territory)	One or both of the persons who wish to enter the union must live in the Australian Capital Territory.
<i>De facto</i>	There is no geographic link required.

(ii) If other substantive eligibility criteria must be satisfied:

<p>Civil Union (Australian Capital Territory)</p>	<p>A person may enter into a civil union in this State only if they are:</p> <ol style="list-style-type: none"> <li>a) an adult; and,</li> <li>b) the person is not –             <ul style="list-style-type: none"> <li>• married; or,</li> <li>• in a civil union; or, in a civil partnership with someone other than the person's proposed civil union partner; and</li> </ul> </li> <li>c) the person cannot marry the person's proposed civil union partner under the Marriage Act 1961 (<i>Cth</i>); and,</li> <li>d) the person does not have any of the following relationships with the person's proposed civil union partner:             <ul style="list-style-type: none"> <li>• lineal ancestor;</li> <li>• lineal descendent;</li> <li>• sister;</li> <li>• half-sister;</li> <li>• brother;</li> <li>• half-brother; and,</li> </ul> </li> <li>e) the person, or the person's proposed civil union partner, or both of them, live in the ACT.</li> </ol>
<p>Registered civil partnership (Australian Capital Territory)</p>	<p>Two adults may enter into a domestic partnership only where:</p> <ol style="list-style-type: none"> <li>a) one of the proposed civil partners' lives in the ACT;</li> <li>b) neither proposed civil partner is married, in a civil union or a civil partnership; and</li> <li>c) they are not in a prohibited relationship with the person's proposed civil partner. Prohibited relationships are:             <ul style="list-style-type: none"> <li>• lineal ancestor;</li> <li>• lineal descendent;</li> <li>• sister;</li> <li>• half-sister;</li> <li>• brother; and</li> <li>• half-brother.</li> </ul> </li> </ol>
<p><i>De facto</i></p>	<p>A "domestic relationship" under the Domestic Relationships Act 1994 means a personal relationship between 2 adults in which one provides personal or financial commitment and support of a domestic nature for the material benefit of the other and includes a domestic partnership (but does not include a legal marriage).</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)	<ul style="list-style-type: none"> <li>• In the ACT, provision for civil unions has been made as a substitute for marriage under the federal law. A condition for obtaining a civil union is that the couple is ineligible for marriage. In general, it will only be a same-sex couple who meets this requirement of being ineligible for marriage.</li> <li>• A registered civil partnership, on the other hand, is equally available to same-sex couples and heterosexual couples.</li> </ul>
(b)	<ul style="list-style-type: none"> <li>• A civil union or civil partnership is terminated upon the death or marriage of either party. A civil partnership is also terminated if the parties to a civil partnership enter into a civil union with each other.</li> <li>• A civil partnership with a former partner must first be cancelled if entering into a civil union with a different partner.</li> </ul>
(c)	Not applicable

**Q**

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

**A**

Marriage, registered	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).
Civil union, registered (Australian Capital Territory)	Any marriage or a civil partnership in the ACT with a different person.
Registered civil partnership (Australian Capital Territory)	If persons are married or have entered into a civil union in the ACT, such persons are ineligible to enter into a civil partnership.
<i>De facto</i>	Nil.



**Q**

**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?**

**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"> <li>• was a valid marriage in the overseas country; and</li> <li>• 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).</li> </ul> <p><b>However</b>, 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>Civil union, registered (Australian Capital Territory)</p>	<p>The ACT Government can, by regulation, provide that a corresponding law is a civil union for territory law provided, under the corresponding law, the relationship—</p> <ul style="list-style-type: none"> <li>a) must be between 2 people; and</li> <li>b) must be entered into consensually; and</li> <li>c) must not be entered into by people who are in a prohibited relationship with each other; and</li> <li>d) must not be entered into by people who may marry each other under the Marriage Act 1961 (<i>Cth</i>) or a law of an external territory or foreign country if the marriage can be recognised under that Act.</li> </ul>
<p>Registered civil partnership (Australian Capital Territory)</p>	<p>The ACT Government can, by regulation, provide that a corresponding law is a civil partnership for territory law provided, under the corresponding law, the relationship—</p> <ul style="list-style-type: none"> <li>a) must be between 2 people; and</li> <li>b) must be entered into consensually; and</li> <li>c) must not be entered into by people who are in a prohibited relationship with each other.</li> </ul> <p>Regulations currently provide that the following are taken to be civil partnerships in the ACT:</p> <ul style="list-style-type: none"> <li>a) a registered relationship under the <a href="#">Relationships Register Act 2010</a> (NSW); or</li> <li>b) a registered domestic relationship under the <a href="#">Relationships Act 2008</a> (Vic); or</li> <li>c) a registered relationship under the <a href="#">Relationships Act 2011</a> (Qld); or</li> <li>d) a significant relationship registered by a deed of relationship under the <a href="#">Relationships Act 2003</a> (Tas), section 13 (3) (a); or</li> <li>e) a civil union under the <a href="#">Civil Union Act 2004</a> (New Zealand).</li> </ul>

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<i>De facto</i>	The recognition of these relationships is on the basis of the facts and the facts establishing this legal status may arise prior to a couple relocating to the ACT.
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**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?**



Marriage, registered.	<p>A Court can grant a divorce (including foreign formed marriages) provided that both the parties:</p> <ul style="list-style-type: none"> <li>• regard Australia as their home and intend to live in Australia indefinitely, or</li> <li>• are Australian citizens by birth, descent or by grant of Australian citizenship, or</li> <li>• ordinarily live in Australia and have done so for 12 months immediately before filing for divorce.</li> </ul> <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>
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<p>Civil union, registered (Australian Capital Territory)</p>	<p>Either or both parties can end the civil union by giving the Registrar-General a written termination notice of intention to end the civil union. If a termination notice is given by only one party, the notice is effective only if:</p> <ol style="list-style-type: none"> <li>a) a copy of the notice has been served personally on the other party; and</li> <li>b) a statutory declaration is given to the Registrar-General with the notice that—             <ol style="list-style-type: none"> <li>(i) is made by the person who served the notice; and</li> <li>(ii) states that the notice was served personally by the person on the other party on the date stated in the statutory declaration.</li> </ol> </li> </ol> <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"> <li>• the termination notice is withdrawn;</li> <li>• the Supreme Court makes an order that the notice is not effective to terminate the civil union; or,</li> <li>• the civil union has already been terminated by the death or marriage of either party.</li> </ul> <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"> <li>a) the civil union cannot be ended by the parties; but</li> <li>b) it is not the intention, or is not longer the intention, of both parties to be in the civil union.</li> </ol> <p>If the Supreme Court makes an order, the Court must give a copy of the order to the Registrar-General not 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>
<p>Registered civil partnership (Australian Capital Territory)</p>	<p>A civil partnership may also be terminated by either party, or jointly, by giving the Registrar-General a completed notice to terminate a civil partnership.</p> <p>Where a notice is given to the Registrar-General by only one party, it is only effective 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"> <li>• the termination notice is withdrawn;</li> <li>• the Supreme Court makes an order that the notice is not effective to terminate the civil partnership; or,</li> <li>• the civil partnership has already been terminated by the death or marriage of either party.</li> </ul> <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 posted to the last known address of each party.</p> <p>A civil union also comes to an end automatically if one of the parties dies, marries or enters a civil union.</p>
<p><i>De facto</i></p>	

## ■ Sources:

### Statutes and Regulations:

- *Marriage Act 1961* (Cth)
- *Marriage Amendment Act 2004* (Cth)
- *Family Law Act 1975* (Cth)
- *Civil Union Act 2012* (ACT)
- *Domestic Relationships Act 1994* (ACT)
- *New Domestic Relationships Regulation 2012* (ACT)

### Government websites:

- The Office of Regulatory Services - Births, Deaths & Marriages – ACT Government

### Cases

- *The Commonwealth v Australian Capital Territory* [2013] HCA 55 (12 December 2013)