



Name of Country and Jurisdiction:

New South Wales, 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 New South Wales, 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 New South Wales 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 marriage performed within their jurisdiction according to the national law.	<p><i>Marriage Act 1961 (Cth)</i></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

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LEGAL RECOGNITIONS FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE
Registered relationship	New South Wales	<i>Relationships Register Act 2010</i> Adults in both heterosexual and same sex relationships are eligible to register their relationship.	Yes
<i>De facto</i>	National, State and Territory laws	<ul style="list-style-type: none"> 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. The rights of people in New South Wales who are in recognised <i>de facto</i> relationships are the same as people who are married. A couple with a registered relationship will be recognised as “<i>de facto</i> partners” for the purposes of most legislation in New South Wales. 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. 	Yes



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

(i) If a geographic link is required:



Marriage, registered	<ul style="list-style-type: none"> There is no requirement to be an Australian citizen or a 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.
Registered relationship (New South Wales)	<ul style="list-style-type: none"> At least one member of the couple seeking registration of their relationship must be resident in New South Wales. There is no requirement that a couple live together to be eligible to register their relationship.

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<i>De facto</i>	No geographic link with New South Wales is required for this form of recognition.
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(ii) 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 (New South Wales)	<ul style="list-style-type: none"> • <i>De facto</i> relationships between two adults, regardless of sex, are eligible to apply for registration of their relationship. The essential element of a <i>de facto</i> relationship is being a committed couple. • 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, not in any other relationship as a couple and not already registered as being in a registered relationship (in New South Wales, Tasmania, Victoria, the Australian Capital Territory or Queensland) or an interstate registered relationship. • 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.

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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)	<ul style="list-style-type: none"> • 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. • There is no domicile or ordinary residency requirement for marriage, whereas there is for registered relationships. • In most cases, couples must be living together as a couple to enter into a registered relationship, but this is not required for a marriage.
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(b)	<ul style="list-style-type: none"> • The registration of a registered relationship in New South Wales is automatically revoked by marriage of either person in the relationship (whether to each other or another person). • For a married person to enter into a New South Wales registered relationship with the same or a different partner, they would first need to obtain a divorce or annulment of the marriage. A person who is also involved in another relationship as a couple or in a registered relationship (in New South Wales, Tasmania, Victoria, the Australian Capital Territory or Queensland) or an interstate relationship would not be eligible to enter into a subsequent registered relationship in New South Wales, they would first need to evidence that their other <i>de facto</i> relationship / pre-existing registered relationship(s) had been terminated. • Under most New South Wales 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, under the <i>Relationships Register Act 2010</i>, a person cannot be in 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 the couple be a “committed couple” and that each party is not also involved in a relationship as a couple with another person. 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.
(c)	Not applicable.

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

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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).
Registered (New South Wales)	<ul style="list-style-type: none"> • A relationship cannot be registered if either person is under eighteen years old, married, involved in another relationship as a couple or in another registered relationship (whether in New South Wales, Tasmania, Victoria, the Australian Capital Territory or Queensland) or an interstate registered relationship or if related to each other by family. • Evidence that persons are no longer married, such as a divorce certificate or your spouse’s death certificate will be required.
<i>De facto</i>	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.



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

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<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>A union solemnised in a foreign country between:</p> <p>(a) a man and another man; or</p> <p>(b) a woman and another woman;</p> <p>must not be recognised as a marriage in Australia.”</p>
<p>Registered (New South Wales)</p>	<p>The legislation provides for the New South Wales Government to make regulations recognising interstate registered relationships in New South Wales. Interstate registered relationships for the purposes of <i>Relationships Register Act 2010</i> are:</p> <ul style="list-style-type: none"> • significant relationships for which deeds have been registered, and are in force, under the <i>Relationships Act 2003</i> of Tasmania; • registered domestic relationships within the meaning of the <i>Relationships Act 2008</i> of Victoria; • civil partnerships for which registration is in force under the Civil Partnerships Act 2008 of the Australian Capital Territory; and • relationships for which registration as a registered relationship is in force under the <i>Relationships Act 2011</i> of Queensland. <p>On the other hand, couples can re-register (once their pre-existing registered relationship or interstate registered relationship is properly dissolved) their pre-existing relationship under the <i>Relationships Register Act 2010</i> (New South Wales).</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>

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

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<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 (New South Wales)</p>	<p>The registration of a registered relationship may be revoked 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.</p> <p>The Registrar must revoke the registration of a registered relationship after the expiry of 90 days after 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>
<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 Register Act 2010* (New South Wales)
- *Relationships Register Regulation 2010* (New South Wales)

Government websites:

- New South Wales Registry of Birth, Deaths & Marriages, Department of Police & Justice.