



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	Australia ¹	<i>Marriage Act 1961 (Cth)</i> ²	Yes
Civil partnership, registered	Queensland	<i>Civil Partnership 2011</i> 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 Civil partnerships registered under the predecessor to this Act continue to be legally recognised.

LEGAL RECOGNITIONS FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
<i>De facto</i> , registered (Queensland)	National, state, and territory laws	In most cases, substantive laws treat a couple living together in the same or a similar fashion as a couple in a civil partnership or marriage. ⁴ Where a registered civil partnership is not recognised in a particular body of law, it will generally be recognised as a <i>de facto</i> relationship.	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	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.
Civil partnership (Queensland)	At least one person in the civil partnership must be living in Queensland for the couple to be eligible to apply for registration of the partnership.
<i>De facto</i> relationship	No geographic link with Queensland is required for this form of recognition.

⁴ For example, registered civil partners in Queensland enjoy legal rights equivalent to those of *de facto* couples without having to prove *de facto* status.

(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.
Civil partnership (Queensland)	<p>Two adults, regardless of sex, are eligible to apply for the registration of their civil partnership.</p> <p>To be eligible, the persons must be at least 18 years of age; unmarried; not related to one another (as lineal ancestor/lineal descendant, siblings, or half-siblings); and not registered as being in a civil partnership.</p> <p>Documentary evidence or proof of relationship may not be required when making an application to register, although the Registrar may require the provision of further information before reviewing 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)	There is no domicile or ordinary residency requirement for marriage, whereas at least one of the parties wishing to register a civil partnership must live in Queensland.
-----	---

continued on next page

(b)	<p>The registration of a civil partnership in Queensland is automatically revoked by the marriage of either person in the partnership (whether to each other or to a third party).</p> <p>A married person wishing to enter into a Queensland civil partnership with the same or a different partner must first obtain a divorce or annulment of the marriage. A person involved in a civil partnership is not eligible to enter into a subsequent civil partnership in Queensland until he or she has evidenced that the pre-existing civil partnership has 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 can come into existence if it post-dates a marriage. On the other hand, it is probably the case that a person can be in a <i>de facto</i> relationship as well as a civil partnership only if the <i>de facto</i> relationship post-dates the civil partnership, because one of the requirements for the registration of a registrable relationship is that the couple be a 'couple', probably implying the exclusion of other cohabitation arrangements.</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.
Civil Partnership (Queensland)	<p>A civil partnership cannot be registered if either person is married or in another civil partnership.</p> <p>Evidence that the persons are no longer married, such as a divorce certificate or a spouse's death certificate, will be required.</p>
<i>De facto</i> relationship	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 / civil partnership can enter into a different <i>de facto</i> relationship, which will then become a concurrently recognised relationship.

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

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 (Queensland)	<p>The legislation provides for the Queensland government to make regulations recognising interstate or foreign-formed civil partnerships in Queensland.</p> <p>A civil partnership formed under the corresponding laws of another state or country, if prescribed under a regulation, is taken to be a civil partnership under the Civil Partnerships Act 2011 (Qld).</p> <p>Regulations have been passed to recognise the following relationships as if they were Queensland civil partnerships:</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); and d) A relationship registered as a civil partnership under the Domestic Relationships Act 1994 (ACT). <p>On the other hand, once their pre-existing civil partnerships have been properly dissolved, couples can re-register those pre-existing partnerships under the Civil Partnerships Act 2011 (Qld).</p> <p>While the Civil Partnerships Act 2011 (Qld) makes reference to 'corresponding law' as the law of another state or country prescribed by regulation to be a corresponding law for the Act, as of the law currently in force, the only 'corresponding laws' defined by reg 4 of the Civil Partnerships Regulation 2012 (Qld) are those of the four Australian states mentioned above. Therefore, the present situation in Queensland is that no overseas relationships are recognised under the Civil Partnerships Act 2011 (Qld).</p>
<i>De facto</i>	<p>If a couple relocates to an Australian jurisdiction without being married or in a civil partnership, or if their previous relationship is not accorded formal recognition, the law will treat them as a <i>de facto</i> couple.</p>



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?



FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage, registered	<p>A court can grant a divorce (even for a foreign-formed marriage), 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 partnership (Queensland)	<p>The registration of a civil partnership may be terminated by the Registrar, on application by either or both persons in the partnership. 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 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 civil partnership after the expiry of a termination period of 90 days following 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 civil partnership 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 civil partnership.</p>
<i>De facto</i> relationship	<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 2011* (Qld) (later renamed the *Civil Partnerships Act 2011* (Qld)), available at <https://www.legislation.qld.gov.au/view/pdf/2013-09-23/act-2011-046>.
- *Civil Partnerships Act 2011* (Qld), available at <https://www.legislation.qld.gov.au/view/pdf/2016-03-22/act-2011-046>.
- *Civil Partnerships and Other Legislation Amendment Act 2012* (Qld), available at <https://www.legislation.qld.gov.au/LEGISLTN/ACTS/2012/12AC012.pdf>.
- *Civil Partnerships Regulation 2012* (Qld), available at <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/CivilPartnershipR12.pdf>.

Government Website:

- Queensland Registry of Birth, Deaths & Marriages, <http://www.qld.gov.au/law/births-deaths-marriages-and-divorces/>.