



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

Q 1. What forms of legally recognized relationships are available?

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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
Domestic partnership, unregistered	South Australia	<p><i>Family Relationships Act 1975 (SA)</i></p> <p>Two people in a “close personal relationship”, regardless of sex, may be considered “domestic partners” for the purposes of the <i>Family Relationships Act 1975 (SA)</i> and other State laws.</p> <p>There is no provision for the registration of a “domestic partnership”, but it is possible to apply to a State Court for a declaration that a domestic partnership exists.</p>	Yes

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

(i) If a geographic link is required:

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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.
Domestic Partnership (South Australia)	No geographic link is required. A person may seek a declaration from a State Court that a “domestic partnership” exists regardless of whether one or both of the persons has ever been domiciled in South Australia.

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

Marriage (Australia wide)	<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 (Cth)</i>) 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.
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<p>Domestic partnership, (South Australia)</p>	<p>In this State, a “domestic partnership” is considered to exist where:</p> <ul style="list-style-type: none"> a) two people live together in a “close personal relationship” (see below); and b) either: <ul style="list-style-type: none"> • they have lived together continuously for a period of three years; • during the previous four years, they have lived together for an aggregate period of not less than three years; or • a child of whom the two people are the parents has been born (whether or not the child is still living). <p>A “close personal relationship” is a relationship between two adult persons (whether or not related by family and irrespective of their gender) who live together as a couple on a genuine domestic basis, but does not include:</p> <ul style="list-style-type: none"> a) the relationship between a legally married couple; or b) a relationship where one person provides the other with domestic support or personal care (or both) for fee or reward, or on behalf of some other person or an organisation of whatever kind. <p>Two persons may live together on a genuine domestic basis whether or not a sexual relationship exists, or has ever existed, between them.</p> <p>There is no provision for registration of “domestic partnerships” in this State. For the purposes of other State and Federal laws (e.g. relating to property, inheritance or superannuation), however, it may be necessary to apply to a South Australian Court for a declaration that a “domestic partnership” exists.</p> <p>The Court will only make a declaration that a “domestic partnership” exists if it is satisfied that:</p> <ul style="list-style-type: none"> a) the persons in question were “domestic partners” (taking into account the criteria set out above); or b) if the persons in question are or were living together in a close personal relationship and the interests of justice require the declaration to be made. <p>In addition, when considering whether to make a declaration, the Court must take into account all of the circumstances of the relationship between the persons, including:</p> <ul style="list-style-type: none"> a) the duration of the relationship; b) the nature and extent of common residence; c) the degree of financial dependence and interdependence, or arrangements for financial support; d) the ownership, use and acquisition of property; e) the degree of mutual commitment to a shared life; f) any domestic partnership agreement made under the <i>Domestic Partners Property Act 1996</i> (SA); g) any Part VIIIAB financial agreement made under the <i>Family Law Act 1975</i> (Cth); h) the care and support of children; i) the performance of household duties; or j) the reputation and public aspects of the relationship. <p>The <i>Family Relationships Act 1975</i> (SA) does not specify what documents or information are needed to support an application for a declaration (nor do the Regulations made under that Act).</p>
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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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Domestic partnership (South Australia)	<ul style="list-style-type: none"> a) Only a man and woman may marry in Australia, in accordance with the eligibility criteria under the <i>Marriage Act 1961</i> (Cth). However, in this State, any two people, regardless of sex or family relationship, may be “domestic partners”. b) If two people are in a “domestic partnership”, this will cease to exist if they legally marry. 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).
Domestic Partnership (South Australia)	<ul style="list-style-type: none"> • A “domestic partnership” does not exist if either person is under 18 years old or married or the two persons are in a paid domestic support or personal care relationship. • A previous “domestic partnership” does not appear to preclude a later “domestic partnership” from existing. • It is unclear whether a person may be considered to be in more than one “domestic partnership” at the same time.

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5. When a couple comes to South Australia, 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 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>Domestic partnership (South Australia)</p>	<p>A pre-existing relationship will be recognised in this State automatically so long as it meets the requirement for a “domestic partnership” under the <i>Family Relationships Act 1975 (SA)</i>.</p>

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6. How can each form of relationship be dissolved? What is the residency requirement or other link to South Australia 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>
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<p>Domestic Partnership (South Australia)</p>	<p>The <i>Family Relationships Act 1975</i> (SA) is silent as to when or how a “domestic partnership” may be dissolved or ends, e.g. there is no provision for a South Australian Court to make an order to this effect.</p> <p>Presumably, a “domestic partnership” will dissolve or end as soon as the requirements under the Act for a “domestic partnership” cease to exist (e.g. the couple ceases to be in a “close personal relationship”). It is unclear how this would affect pre-existing declarations made by a Court that a “domestic partnership” exists.</p>
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■ Sources:

Statutes:

- *Marriage Act 1961* (Cth)
- *Marriage Amendment Act 2004* (Cth)
- *Family Law Act 1975* (Cth)
- *Family Relationships Act 1975* (SA)

Government websites:

- Government of South Australia, Attorney-General's Department, the Births, Deaths and Marriages (BDM) Registration Office – South Australia.