



Name of Country and Jurisdiction:
Tasmania, 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 Tasmania, 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 Tasmania 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	Tasmania	<p><i>Relationship Act 2003</i></p> <ul style="list-style-type: none"> • Extends relationship entitlements to all same sex and unmarried opposite-sex relationships, called 'significant relationships' and 'caring relationships'. • Tasmania allows same sex and unmarried opposite-sex couples to enter deeds of relationship. 	Yes
<i>De facto</i>	National, State and Territory laws	<p>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.</p> <p>Under Tasmanian law, personal relationships (defined by the <i>Relationship Act 2003</i> to be a "significant relationship" or "caring relationship") have virtually the same rights as married couples.</p> <p>For example, if the couple is in a significant relationship (referred to in the Commonwealth's <i>Family Law Act 1975</i> as a "de facto relationship") then property settlements and parenting orders may be sought and made through the Family Court of Australia. For those in caring relationships (and only in some very limited circumstances in significant relationships) the <i>Relationships Act 2003</i> provides for property settlements to be made.</p> <p>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.</p>	Yes



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

(i) If a geographic link is required:



Marriage, registered	<p>There is no requirement to be an Australian citizen or a permanent resident to legally marry in Australia.</p> <p>The marriage ceremony must be conducted by an Australian resident celebrant and the marriage must physically occur in Australia except in narrowly defined circumstances.</p>
Registered relationship (Tasmania)	<p>To register a deed of relationship in Tasmania, each of the two persons must be either:</p> <ul style="list-style-type: none"> a) Domiciled in Tasmania; or b) Ordinarily resident in Tasmania.
<i>De facto</i>	No geographic link with Tasmania is required for this form of recognition.

(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.
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<p>Registered relationship (Tasmania)</p>	<p>In this State couples in significant relationships are eligible to register their relationship with a deed of relationship.</p> <p>If a significant relationship is registered with a deed of relationship, proof of registration is proof of the relationship. Tasmania has an established system for registering deeds of relationship to allow partners in significant relationships to guarantee their entitlements and affirm their relationships. A deed of relationship certifies that a relationship exists, provides immediate access to relationship rights (certain financial and property claims) as well as access to federal and State entitlements.</p> <p>If a significant relationship is not registered with a deed of relationship, all the circumstances of the relationship are to be taken into account, including (as may be relevant):</p> <ul style="list-style-type: none"> a) the duration of a relationship; b) the nature and extent of common residence; c) whether or not a sexual relationship exists; d) the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties; e) the ownership, use and acquisition of property; f) the degree of mutual commitment to a shared life; g) the care and support of children; h) the performance of household duties; or i) the reputation and public aspects of the relationship. <p>It is not necessary to satisfy all of the above criteria to establish that a relationship is a significant (or caring) relationship. A Court (and other bodies) must only have regard to these factors in determining the existence of a relationship for the purposes of the <i>Relationships Act 2003</i>. Only the Supreme Court of Tasmania has the power to conclusively determine whether or not a significant relationship exists (or existed).</p>
<p>De facto (ie unregistered) relationship (Tasmania)</p>	<p>If a significant relationship is not registered with a deed of relationship, all the circumstances of the relationship are to be taken into account, including (as may be relevant):</p> <ul style="list-style-type: none"> a) the duration of a relationship; b) the nature and extent of common residence; c) whether or not a sexual relationship exists; d) the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties; e) the ownership, use and acquisition of property; f) the degree of mutual commitment to a shared life; g) the care and support of children; h) the performance of household duties; or i) the reputation and public aspects of the relationship.

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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)	<p>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.</p> <p>There is no domicile or ordinary residency requirement for marriage whereas there is for registered relationships.</p> <p>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.</p>
(b)	<p>A deed of registered relationship in Tasmania is automatically revoked by marriage or death of either person to the deed (whether to each other or another person).</p> <p>On the other hand, for a married person to enter into a Tasmanian registered relationship with the same or a different partner, they would first need to obtain a divorce or annulment of the marriage.</p> <p>Under most Tasmanian 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>Relationship Act 2003</i>, a person cannot be in another unregistered significant (or caring) relationship (considered to be 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 each party is not a party to another significant (or caring) relationship. 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.</p>
(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	<p>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).</p>
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Registered (Tasmania)	<p>A relationship cannot be registered if either person is married, a party to a deed of relationship or in another significant (or caring) relationship or related to each other by family.</p> <p>Evidence that persons are no longer married, such as a divorce certificate or your spouse's death certificate will be required.</p>
<i>De facto</i>	<p>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.</p>



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



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 (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>
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Registered (Tasmania)	<p>Interstate registered relationships or overseas civil unions are not recognised in Tasmania. However a registration certificate from another jurisdiction evidencing the relationship or civil union may be accepted by authorities as evidence of the existence of the relationship, rather than requiring other forms of evidence.</p> <p>On the other hand, couples can re-register their pre-existing relationship under the <i>Relationship Act 2003</i> (Tasmania).</p>
<i>De facto</i>	<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 Tasmania for an authority to grant a divorce/ dissolution?

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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"> • 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>
Registered (Tasmania)	<p>The registration of a registered relationship may be terminated 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>
<i>De facto</i>	<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 Act 2003* (Tasmania)

Government websites:

- Tasmanian Registry of Births, Deaths and Marriages, the Consumer Affairs and Fair Trading division of the Department of Justice.