



Name of Country and Jurisdiction:

Victoria, 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 Victoria, 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 Victoria 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"> • 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	Victoria	<p><i>Relationship Act 2008</i></p> <p>Victorians can register their same-sex or heterosexual domestic relationship, or a caring relationship as a registered domestic relationship.</p> <p>Victoria allows “domestic partners” whether same or mixed sex couples to enter deeds of relationship.</p>	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>For example, if a person dies intestate, under Victorian law, any and all of the spouses by marriage, registration or <i>de facto</i> are treated as a person’s spouse(s).</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>
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Registered relationship (Victoria)	Each of the two persons must be either: a) Domiciled in Victoria; or b) Ordinarily resident in Victoria.
<i>De facto</i>	Under most Victorian legislation, no geographic link with Victoria is required for this form of recognition.

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

Marriage, registered	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: <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 (Victoria)	A registrable relationship in this State means a relationship between two adult persons who are not married to each other but are a couple where one or each of the persons in the relationship provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof. A couple is eligible to register a registrable relationship if they are: <ul style="list-style-type: none"> a) both at least 18 years old; b) both ordinarily resident in Victoria; and c) if they are not married, in a relationship that is already registered in Victoria, or in another relationship that could be registered.



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>The registration of a registered relationship in Victoria is automatically revoked by marriage of either person in the relationship (whether to each other or another person).</p> <p>On the other hand, for a married person to enter into a Victorian 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 Victorian laws, a <i>de facto</i> relationship can remain on foot if it pre-dates a marriage or come into existence if it post-dates a marriage. On the other hand, 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 because a requirement for registration of a registrable relationship is that the couple be a “couple”, probably implying that it be to the exclusion of other co-habitation arrangements.</p>
(c)	<p>Not applicable.</p>

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

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<p>Marriage , registered</p>	<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>
<p>Registered (Victoria)</p>	<p>A relationship cannot be registered if either person is under 18 years old, married, in another registered relationship or in another relationship that could be registered in Victoria. Evidence that persons are no longer married, such as a divorce certificate, decree of nullity, or your spouse's death certificate will be required.</p>
<p><i>De facto</i></p>	<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>

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5. When a couple comes to Victoria, 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 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 (Victoria)</p>	<p>Victoria does not recognise any other jurisdiction’s civil union or registered relationship.</p> <p>On the other hand, it would be possible for the couple to re-register their pre-existing relationship under the <i>Relationships Act 2008</i> (Victoria).</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 Victoria 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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Registered (Victoria)	<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 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 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 automatically dissolves a registered relationship.</p>
<i>De facto</i>	Under most bodies of law, ceasing to co-habit will bring legal recognition of a <i>de facto</i> relationship to an end.

Sources:

Statutes:

- *Marriage Act 1961* (Cth)
- *Marriage Amendment Act 2004* (Cth)
- *Family Law Act 1975* (Cth)
- *Relationship Act 2008* (Victoria)

Government websites:

- Victorian Registry of Births, Deaths and Marriages, Department of Justice.

Cases

- *Taylor & Wallace v Registrar of Births Deaths & Marriages*