



Name of Country and Jurisdiction:

Western 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 Western 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 Western Australia 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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<p><i>De facto</i>, unregistered</p>	<p>Western Australia</p>	<p><i>Interpretation Act 1984</i> (WA) s13A</p> <p>A reference in a written law to a <i>de facto</i> relationship means a relationship (other than a legal marriage) between 2 people who live together in a marriage-like relationship. Where a written law refers to a “<i>de facto</i> partner” it means a person who lives or has lived in a <i>de facto</i> relationship with the other person.</p> <p>The definition applies to all couples regardless of sex or sexual orientation.</p>	<p>Yes</p>
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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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<p>Marriage, registered</p>	<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>
<p><i>De facto</i> (Western Australia)</p>	<p>The relationship itself is not linked to a geographical requirement, but the definition of <i>de facto</i> relationship and <i>de facto</i> partner, only applies to Western Australian legislation. To invoke the jurisdiction of the Western Australian Family Court with respect to <i>de facto</i> partners (Part 5A), the court must be satisfied (s205X <i>Family Court Act 1997</i> (WA)):</p> <p>a) that one or both of the parties to the application were resident in Western Australia on the day on which the application was made; and</p> <p>b) that —</p> <ul style="list-style-type: none"> • both parties have resided in Western Australia for at least one third of the duration of their <i>de facto</i> relationship; or • substantial contributions of the kind specified in the legislation have been made in the State by the applicant.

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

<p>Marriage (Australia wide)</p>	<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.
<p><i>De facto</i> (Western Australia)</p>	<p>In deciding whether a <i>de facto</i> relationship exists, there are a number of factors that will be indicators (but are not essential):</p> <ol style="list-style-type: none"> a) the length of the relationship; b) whether the people have resided together; c) the nature and extent of common residence; d) whether there is, or has been, a sexual relationship between them; e) the degree of financial dependence or interdependence, and any arrangements for financial support, between them; f) the ownership, use and acquisition of their property (including property they own individually); g) the degree of mutual commitment by them to a shared life; or h) whether they care for and support children; the reputation, and public aspects, of the relationship between them (s13A <i>Interpretation Act 1984</i> (WA)).

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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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<p><i>De facto</i> (Western Australia)</p>	<ol 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). In this State, two persons are considered to be in a <i>de facto</i> relationship if they live together in a marriage-like relationship. b) Two persons cannot be in a <i>de facto</i> relationship if they are married to each other. 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).
<i>De facto</i> (Western Australia)	A <i>de facto</i> relationship exists between two persons living together in a marriage-like relationship, regardless of whether either of the persons is legally married to someone else or in another <i>de facto</i> relationship.

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

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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>
<i>De facto</i> (Western Australia)	There is no formal means for recognising a pre-existing relationship, although a do-it-yourself kit has been developed and is available on the 'GayLawNet' website. The kit provides information and a template for each partner to prepare a statutory declaration as to their relationship status in another jurisdiction.

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6. How can each form of relationship be dissolved? What is the residency requirement or other link to Western 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>
<p><i>De facto</i> (Western Australia)</p>	<p>As the relationship is unregistered, there is no provision for dissolution of the relationship. Therefore, whether a de facto relationship continues to exist will depend on whether, as a matter of fact, the requirements of the definition of a de facto relationship in the <i>Interpretation Act 1984</i> (WA) continue to be met.</p>

Sources:

Statutes:

- *Marriage Act 1961* (Cth)
- *Marriage Amendment Act 2004* (Cth)
- *Family Law Act 1975* (Cth)
- *Family Court Act 1997* (WA)
- *Interpretation Act 1984* (WA)
- *Acts Amendment (Lesbian and Gay Law Reform) Act 2002* (WA)

Government websites:

- Legal Aid – Western Australia