



Name of Country and Jurisdiction:

## New South Wales, 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 New South Wales, 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 New South Wales 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	Australia <sup>1</sup>	<i>Marriage Act 1961 (Cth)</i> <sup>2</sup>	Yes
Registered relationship	New South Wales	<i>Relationships Register Act 2010</i> <sup>3</sup>	Yes

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<sup>1</sup> Each state and territory provides for the registration of marriage.

<sup>2</sup> 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 marriages 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.

<sup>3</sup> Adults in opposite-sex and same-sex relationships are eligible to register their relationships.

LEGAL RECOGNITIONS FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LAW	AVAILABLE TO SAME-SEX COUPLE?
<i>De facto</i> relationship	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 registered relationship or marriage. <sup>4</sup>	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	<ul style="list-style-type: none"> <li>There is no requirement to be an Australian citizen or permanent resident to legally marry in Australia.</li> <li>The marriage ceremony must be conducted by an Australian resident celebrant, and the marriage must physically occur in Australia, except in narrowly defined circumstances.</li> </ul>
Registered relationship (New South Wales)	<ul style="list-style-type: none"> <li>At least one member of the couple seeking registration of their relationship must be resident in New South Wales.</li> <li>There is no requirement for a couple to live together to be eligible to register their relationship.</li> </ul>
<i>De facto</i> relationship	There is no geographic requirement for this relationship.

<sup>4</sup> The rights of people in New South Wales who are in recognised *de facto* relationships are the same as those of married people. A couple with a registered relationship will be recognised as '*de facto* partners' for the purposes of most legislation in New South Wales.

If a couple has not registered their relationship, they will still be recognised as '*de facto* partners' if they have a relationship as a couple living together and are not married to one another or related by family.

(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"> <li>• Not be married to anyone else;</li> <li>• Not be related to one another as parent, grandparent, child, grandchild, brother or sister;</li> <li>• Be at least 18 years of age, although the court may approve a marriage where one party is between 16 and 18;</li> <li>• Understand what marriage means and freely consent to marry;</li> <li>• Use specific words during the ceremony; and</li> <li>• Provide their authorised celebrant with written notice of their intention to marry.</li> </ul>
Registered relationship (New South Wales)	<p>Two persons, regardless of sex, are eligible to apply for the registration of their relationship.</p> <p>To be eligible, each person must be:</p> <ul style="list-style-type: none"> <li>• At least 18 years of age;</li> <li>• Unmarried;</li> <li>• Not related to the person with whom he/she wishes to register the relationship;</li> <li>• Not in any other relationship as a couple; and</li> <li>• Not already registered as being in a registered relationship (in New South Wales, Tasmania, Victoria, the Australian Capital Territory or Queensland) or an interstate relationship.</li> </ul>
<i>De facto</i> relationship	<ul style="list-style-type: none"> <li>• For the purposes of most laws in New South Wales, the definition of ‘de facto’ relationship under the <i>Interpretation Act 1987</i> (NSW) applies. Under this act, a person is in a <i>de facto</i> relationship with another person if:             <ol style="list-style-type: none"> <li>a) They have a relationship as a couple living together; and</li> <li>b) They are not married to one another or related by family.</li> </ol> </li> <li>• The following considerations are relevant when determining whether two persons have a ‘relationship as a couple’:             <ol style="list-style-type: none"> <li>a) The duration of the relationship;</li> <li>b) The nature and extent of their common residence;</li> <li>c) Whether a sexual relationship exists;</li> <li>d) The degree of financial dependence or independence, and any arrangements for financial support, between them;</li> <li>e) The ownership, use and acquisition of property;</li> <li>f) The degree of mutual commitment to a shared life;</li> <li>g) The care and support of children;</li> <li>h) The performance of household duties; and</li> <li>i) The reputation and public aspects of the relationship.</li> </ol> </li> </ul>

**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, although there is for registered relationships.
(b)	<ul style="list-style-type: none"> <li>• The registration of a registered relationship in New South Wales is automatically revoked by the marriage of either person in the relationship (whether to each other or to another person).</li> <li>• A married person who wishes to enter into a New South Wales registered relationship with the same or a different partner must first obtain a divorce or annulment of the marriage. A person who is also involved in another relationship as a couple or in a registered relationship (in New South Wales, Tasmania, Victoria, the Australian Capital Territory or Queensland) or an interstate relationship would not be eligible to enter into a subsequent registered relationship in New South Wales; he/she must first evidence that his/her other <i>de facto</i> relationship/pre-existing registered relationship(s) had been terminated.</li> <li>• Under most New South Wales 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, under the <i>Relationships Register Act 2010</i>, a person cannot be in a <i>de facto</i> relationship as well as a registered relationship if the <i>de facto</i> relationship pre-dates the registered relationship, since a relationship cannot be registered if either party is involved in a relationship as a couple with another person. It is probably the case that a person can be in a <i>de facto</i> relationship as well as a registered relationship only if the <i>de facto</i> relationship post-dates the registered relationship.</li> </ul>
(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.

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FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Registered relationship (New South Wales)	<p>A relationship cannot be registered if either person is married; involved in another relationship as a couple or in another registered relationship (whether in New South Wales, Tasmania, Victoria, the Australian Capital Territory or Queensland) or an interstate registered relationship; or if related to the other by family.</p> <p>Evidence that persons are no longer married, such as a divorce certificate or the spouse's death certificate, will be required.</p>
<i>De facto</i> relationship	<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 recognised relationship.</p>



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



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"> <li>• Was a valid marriage in the overseas country; and</li> <li>• Would have been recognised as valid under Australian law if the marriage had taken place in Australia.</li> </ul>

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FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Registered relationship (New South Wales)	<p>The legislation provides for the New South Wales government to make regulations recognising interstate registered relationships in New South Wales. Interstate registered relationships for the purposes of the <i>Relationships Register Act 2010</i> are:</p> <ul style="list-style-type: none"> <li>• Significant relationships for which deeds have been registered, and are in force, under the <i>Relationships Act 2003</i> of Tasmania;</li> <li>• Registered domestic relationships within the meaning of the <i>Relationships Act 2008</i> of Victoria;</li> <li>• Civil unions entered into and in force under the <i>Civil Unions Act 2012</i> of the Australian Capital Territory; and</li> <li>• Relationships for which registration as a registered relationship is in force under the <i>Relationships Act 2011</i> of Queensland.</li> </ul> <p>On the other hand, once their pre-existing registered relationship or interstate registered relationship has been properly dissolved, a couple can re-register their pre-existing relationship under the <i>Relationships Register Act 2010</i> (NSW).</p>
<i>De facto</i> relationship	<p>If a couple relocates to an Australian jurisdiction without being married or in a registered relationship, or if their previous relationship is not accorded formal recognition, the law will treat them as a <i>de facto</i> couple if they meet the criteria set out above.</p>



**6. How can each form of relationship be dissolved? What is the residency requirement or other link to New South Wales for an authority to grant a divorce/dissolution?**



FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage, registered	<p>A court can grant a divorce, even of a foreign-formed marriage, provided that both parties:</p> <ul style="list-style-type: none"> <li>• Regard Australia as their home and intend to live in Australia indefinitely;</li> <li>• Are Australian citizens by birth, descent or grant of Australian citizenship; or</li> <li>• Ordinarily live in Australia and have done so for 12 months immediately before filing for divorce.</li> </ul> <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>
Registered relationship (New South Wales)	<p>The registration of a registered relationship may be revoked by the Registrar, on application by either or both persons in the relationship. 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.</p> <p>The Registrar must revoke the registration of a registered relationship after the expiry of 90 days following the date of lodgement of the revocation application unless the 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> 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 Register Act 2010* (NSW), available at [http://www.austlii.edu.au/au/legis/nsw/consol\\_act/rra2010266](http://www.austlii.edu.au/au/legis/nsw/consol_act/rra2010266).
- *Relationships Register Regulation 2010* (NSW), available at [http://www.austlii.edu.au/au/legis/nsw/num\\_reg/rra2010rrr201020103361j2010720.pdf](http://www.austlii.edu.au/au/legis/nsw/num_reg/rra2010rrr201020103361j2010720.pdf).
- *Interpretation Act 1987* (NSW), available at <https://www.legislation.nsw.gov.au/#/view/act/1987/15>.

### Government Website:

- New South Wales Registry of Births, Deaths & Marriages, Department of Justice, <http://www.bdm.nsw.gov.au>.