



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	Australia ¹	<i>Marriage Act 1961</i> (Cth) ²	Yes
Domestic partnership, unregistered	South Australia	<i>Family Relationships Act 1975</i> (SA) ³	Yes

NOTE: In early June 2016, the South Australian Law Reform Institute published a report commissioned by the South Australian government recommending that South Australia introduce a relationships register that would be available to same-sex couples. Parliament has not yet considered the report.

1 Each state and territory provides for the registration of marriage.

2 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 a marriage 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.

3 Two people in a ‘close personal relationship’ (see Question 2(ii)), regardless of sex, may be considered ‘domestic partners’ for the purposes of the *Family Relationships Act 1975* (SA) and other state laws.

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.

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

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(i) Geographic requirements:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage, registered	<p>There is no requirement to be an Australian citizen or 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>
Domestic partnership (South Australia)	<p>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 have ever been domiciled in South Australia.</p>

(ii) Other substantive eligibility criteria:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage, registered	<p>To be legally married in Australia, two people must:</p> <ul style="list-style-type: none"> • Not be married to anyone else; • Not be related to one another as parent, grandparent, child, grandchild, brother or sister; • Be at least 18 years of age, although the court may approve a marriage where one party is between 16 and 18; • Understand what marriage means and freely consent to marry; • Use specific words during the ceremony; and • Provide their authorised celebrant with written notice of their intention to marry.

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FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
<p>Domestic partnership (South Australia)</p>	<p>In this state, a 'domestic partnership' is considered to exist where:</p> <p>a) Two people who are at least 18 years old live together in a 'close personal relationship' (see below); and</p> <p>b) Either:</p> <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 gender) who live together as a couple on a genuine domestic basis, but it does not include:</p> <p>a) The relationship between a legally married couple; or</p> <p>b) A relationship where one person provides the other with domestic support or personal care (or both) for a fee or reward or on behalf of some other person or an organisation of whatever kind.</p> <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. However, for the purposes of other state and federal laws (e.g., relating to property, inheritance or superannuation), it may be necessary to apply to a South Australian court for a declaration that a 'domestic partnership' exists.</p> <p>The court will make a declaration that a 'domestic partnership' exists only if it is satisfied that:</p> <p>a) The persons in question were 'domestic partners' (taking into account the criteria set out above); or</p> <p>b) 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> <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> <p>a) The duration of the relationship;</p> <p>b) The nature and extent of common residence;</p> <p>c) The degree of financial dependence and interdependence, or arrangements for financial support;</p> <p>d) The ownership, use and acquisition of property;</p> <p>e) The degree of mutual commitment to a shared life;</p> <p>f) Any domestic partnership agreement made under the <i>Domestic Partners Property Act 1996</i> (SA);</p> <p>g) Any Part VIIIAB financial agreement made under the <i>Family Law Act 1975</i> (Cth);</p> <p>h) The care and support of children;</p> <p>i) The performance of household duties; and/or</p> <p>j) The reputation and public aspects of the relationship.</p> <p>The Family Relationships Act 1975 (SA) does not specify what information or documents 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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(a)	There are no significant differences in eligibility.
(b)	If two people are in a 'domestic partnership', the 'domestic partnership' will cease to exist if they legally marry.
(c)	Nil.

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

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FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage, registered	A person who is already married cannot marry a third party.
Domestic partnership (South Australia)	<ul style="list-style-type: none"> • A 'domestic partnership' does not exist if either person is married or if 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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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"> • 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.
Domestic partnership (South Australia)	<p>A pre-existing relationship will be recognised in this state automatically so long as it meets the requirements 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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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"> • Regard Australia as their home and intend to live in Australia indefinitely; • Are Australian citizens by birth, descent or 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>
Domestic partnership (South Australia)	<p>The <i>Family Relationships Act 1975 (SA)</i> 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, as the Act does not provide for the reversal of such declarations.</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>.
- *Family Relationships Act 1975* (SA), available at <https://www.legislation.sa.gov.au/LZ/C/A/FAMILY%20RELATIONSHIPS%20ACT%201975.aspx>.
- *Domestic Partners Property Act 1996* (SA), available at <https://www.legislation.sa.gov.au/LZ/C/A/Domestic%20Partners%20Property%20Act%201996.aspx>.

Government Website:

Government of South Australia, Births, deaths and marriages,
<https://www.sa.gov.au/topics/family-and-community/births,-deaths-and-marriages>.