



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	Australia <sup>1</sup>	<i>Marriage Act 1961</i> (Cth) <sup>2</sup>	Yes
Registered relationship	Victoria	<i>Relationships Act 2008</i> (Vic) <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 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.

<sup>3</sup> Victorians can register the following relationships with the Registrar of Births, Deaths & Marriages, regardless of whether such relationships are same-sex or opposite-sex:

- i) A domestic relationship, which must be between two people who are a couple; or
- ii) A caring relationship, which is between two people who are not a couple (such as siblings).

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	There is no requirement to be an Australian citizen or permanent resident to legally marry in Australia.  The marriage ceremony must be conducted by an Australian resident celebrant, and the marriage must physically occur in Australia, except in narrowly defined circumstances.
Registered relationship (Victoria)	In order to be capable of registering a domestic relationship, at least one of the partners in the relationship must live in Victoria.
<i>De facto</i> relationship	Under most Victorian legislation, no geographic link with Victoria is required for this form of recognition.

<sup>4</sup> For example, if a person dies intestate, under Victorian law, any and all of the spouses by marriage, registered relationship, or *de facto* relationship are treated as the deceased person's spouse(s).

Where a registered relationship is not recognised in a particular body of law, it will generally be treated as a *de facto* relationship. The *Relationships Act 2008* (Vic) governs how to register relationships.

(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>• Give written notice of their intention to marry to their authorised celebrant within the required time frame.</li> </ul>
Registered relationship (Victoria)	<p>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 gender and whether or not they are living under the same roof.</p> <p>A couple is eligible to register a registrable relationship if:</p> <ol style="list-style-type: none"> <li>a) Both persons are at least 18 years old; and</li> <li>b) Neither of the persons in the relationship is married, in a registered relationship or in another relationship capable of being registered.</li> </ol>

**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)	<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 marriage.</p>
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(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, a married person wishing to enter into a Victorian registered relationship with the same or a different partner must first 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 predates a marriage or come into existence if it postdates a marriage. On the other hand, 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 postdates the registered relationship. This is because one of the requirements for the registration of a registrable relationship is that the couple must be a 'couple', probably implying the exclusion of other cohabitation arrangements.</p>
(c)	Not applicable.



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



FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage, registered	A person who is already married cannot marry a third person.
Registered relationship (Victoria)	A relationship cannot be registered if either person is 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, a decree of nullity, or the spouse's death certificate, will be required.
<i>De facto</i> relationship	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 enter into a <i>de facto</i> relationship with a third party, which will then become a concurrently recognised relationship.



**5. When a couple comes to Victoria, 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 (Victoria)	<p>Victoria recognises relationships registered under ‘corresponding laws’. The general requirements of a corresponding-law relationship are that the relationship must be consensual and between two adults who are not family members, are not already married, or are not already in a relationship that is registered or formally recognised under the corresponding law. Such a relationship is taken to be a ‘registered domestic relationship’ in Victoria.</p> <p>The <i>Relationships Regulations 2016</i> (Vic) provide the corresponding laws, which include those of the following jurisdictions:</p> <ul style="list-style-type: none"> <li>• The Australian Capital Territory;</li> <li>• New South Wales;</li> <li>• Queensland;</li> <li>• Tasmania;</li> <li>• New Zealand;</li> <li>• Scotland;</li> <li>• The United Kingdom;</li> <li>• South Africa;</li> <li>• The Netherlands;</li> <li>• California;</li> <li>• Hawaii;</li> <li>• New York;</li> <li>• Nova Scotia;</li> <li>• Quebec; and</li> <li>• The jurisdictions covered by the <i>Canadian Civil Marriage Act 2005</i>.</li> </ul>
<i>De facto</i> relationship	<p>If a couple relocating to an Australian jurisdiction is not 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.</p>



**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?**



FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage, registered	<p>A court can grant a divorce (even if the marriage was performed overseas) 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 (Victoria)	<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 by sending it by registered post, addressed to the other party at his or her last known place of residence.</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 revocation application is withdrawn or a court or tribunal directs otherwise.</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> 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 Act 2008* (Vic), available at [http://www.legislation.vic.gov.au/Domino/Web\\_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/A7417CE604D359DECA25742C0022EC95/\\$FILE/08-012a.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/A7417CE604D359DECA25742C0022EC95/$FILE/08-012a.pdf).
- *Relationships Amendment Act 2016* (Vic), available at [http://www.legislation.vic.gov.au/Domino/Web\\_Notes/LDMS/PubStatbook.nsf/51dea49770555ea6ca256da4001b90cd/F1345ACAFC748BC0CA257F5B00171578/\\$FILE/16-004aa%20authorised.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/51dea49770555ea6ca256da4001b90cd/F1345ACAFC748BC0CA257F5B00171578/$FILE/16-004aa%20authorised.pdf).
- *Relationships Regulations 2016* (Vic), available at [http://www.legislation.vic.gov.au/Domino/Web\\_Notes/LDMS/PubStatbook.nsf/93eb987ebadd283dca256e92000e4069/4CF817D72FD8D1C5CA257FD3001F4B84/\\$FILE/16-057sra%20authorised.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/93eb987ebadd283dca256e92000e4069/4CF817D72FD8D1C5CA257FD3001F4B84/$FILE/16-057sra%20authorised.pdf).

### Government Websites:

- Getting Married, Australian Government, Attorney-General's Department, <https://www.ag.gov.au/FamiliesAndMarriage/Marriage/Pages/Getting-married.aspx>.
- Victorian Registry of Births, Deaths & Marriages, Department of Justice & Regulation, <http://www.bdm.vic.gov.au>.

### Case:

- *Taylor & Wallace v Registrar of Births, Deaths & Marriages* [2014] HCA 11.