



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?

**Q**

1. What forms of legally recognized relationships are available?

**A**

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
<i>De facto</i> relationship, unregistered	Western Australia	<i>Interpretation Act 1984</i> (WA) s 13A <sup>3</sup>	Yes

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 A reference in a written law to a ‘*de facto* relationship’ means a relationship (other than a legal marriage) between two people who live together in a marriage-like relationship. Where a written law refers to a ‘*de facto* partner’, it means a person who lives or has lived in a *de facto* relationship with the other person. The definition applies to all couples, regardless of sex or sexual orientation.

**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	<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>
<i>De facto</i> relationship (Western Australia)	<p>The relationship itself is not linked to a geographical requirement, but the definitions of 'de facto relationship' and 'de facto partner' apply only to Western Australian legislation. To invoke the jurisdiction of Western Australia's Family Court with respect to <i>de facto</i> partners (Part 5A), the court must be satisfied (s 205X <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"> <li>• Both parties have resided in Western Australia for at least one-third of the duration of their <i>de facto</i> relationship; or</li> <li>• Substantial contributions of the kind specified in the legislation have been made in the state by the applicant. 'Substantial contributions' include direct or indirect financial contributions; direct or indirect contributions to the acquisition, conversion or improvement of any property of the parties; and contributions to the welfare of the family.</li> </ul>

(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>

*continued on next page*

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
<p><i>De facto</i> relationship (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> <ul style="list-style-type: none"> <li>a) The length of the relationship;</li> <li>b) Whether the persons have resided together;</li> <li>c) The nature and extent of common residence;</li> <li>d) Whether there is, or has been, a sexual relationship between them;</li> <li>e) The degree of financial dependence or interdependence, and any arrangements for financial support, between them;</li> <li>f) The ownership, use and acquisition of their property (including property they own individually);</li> <li>g) The degree of mutual commitment by them to a shared life; or</li> <li>h) Whether they care for and support children; and</li> <li>i) The reputation, and public aspects, of the relationship between them (s 13A <i>Interpretation Act 1984</i> (WA)).</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)	Both opposite-sex couples and same-sex couples can enter into both relationships.
(b)	Two persons may not be in a <i>de facto</i> relationship if they are married to each other.
(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 married cannot marry a third party.
<i>De facto</i> relationship (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.

Q

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

A

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>
<i>De facto</i> relationship (Western Australia)	<p>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 (<a href="http://www.gaylawnet.com">http://www.gaylawnet.com</a>). The kit provides information and a template enabling each partner to prepare a statutory declaration as to their relationship status in another jurisdiction.</p> <p>There are also relationship-declaration programs in the City of Vincent and the Town of Port Hedland. However, these programs are not recognised by Australia's Immigration Department.</p>



**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?**



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>
<i>De facto</i> relationship (Western Australia)	<p>As the relationship is unregistered, there is no provision for dissolution of the relationship. Therefore, whether a <i>de facto</i> relationship continues to exist will depend on whether, as a matter of fact, the requirements provided for a <i>de facto</i> relationship in the <i>Interpretation Act 1984</i> (WA) continue to be met.</p>

**Sources:**

**Statutes:**

- *Marriage Act 1961* (Cth), available at <https://www.legislation.gov.au/Details/C2013C00164>.
- *Marriage Amendment Act 2004* (Cth), available at <https://www.legislation.gov.au/Details/C2004A01361>.
- *Family Law Act 1975* (Cth), available at <https://www.legislation.gov.au/Series/C2004A00275>.
- *Family Court Act 1997* (WA), available at [http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/wa/consol\\_act/fca1997153/](http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/wa/consol_act/fca1997153/).
- *Interpretation Act 1984* (WA), available at [http://www5.austlii.edu.au/au/legis/wa/consol\\_act/ia1984191/s13a.html](http://www5.austlii.edu.au/au/legis/wa/consol_act/ia1984191/s13a.html).
- *Acts Amendment (Lesbian and Gay Law Reform) Act 2002* (WA), available at [https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc\\_4748.pdf/\\$FILE/Acts%20Amendment%20\(Lesbian%20and%20Gay%20Law%20Reform\)%20Act%202002%20-%205B00-00-02%5D.pdf?OpenElement](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_4748.pdf/$FILE/Acts%20Amendment%20(Lesbian%20and%20Gay%20Law%20Reform)%20Act%202002%20-%205B00-00-02%5D.pdf?OpenElement).

**Government Website:**

- Legal Aid—Western Australia: <https://www.legalaid.wa.gov.au/>.

