



Name of Country and Jurisdiction:

Northern Territory, 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 the Northern Territory, 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 the Northern Territory 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 ¹	<i>Marriage Act 1961</i> (Cth) ²	Yes
<i>De facto</i> relationship, unregistered	Northern Territory	<i>De Facto Relationships Act 1991</i> (NT) (the "Act") ³	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 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.

3 Two persons, regardless of sex, are in a ‘de facto relationship’ if they are not married but have a marriage-like relationship.

In contrast to marriage, there is no provision for the registration of a *de facto* relationship, but it is possible to apply to a court for a declaration as to the existence of such a relationship.

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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>
<p><i>De facto</i> relationship, unregistered (Northern Territory)</p>	<p>A person may seek a declaration from a state court that a 'de facto relationship' exists, regardless of whether one or both of the persons have ever been domiciled in the Northern Territory.</p> <p>However, in order to obtain full benefits under the Act, the following conditions must be satisfied:</p> <ul style="list-style-type: none"> a) One or both parties to the <i>de facto</i> relationship must live in the Northern Territory on the date of the application; and b) Both partners must have lived together in the Territory for not less than one-third of the period of their <i>de facto relationship</i>, or substantial contributions to the relationship have been made in the Territory by the applicant.

(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"> • 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><i>De facto</i> relationship, unregistered (Northern Territory)</p>	<p>Under the <i>De Facto Relationships Act 1991</i> (NT), two persons are considered to be in a <i>de facto</i> relationship if they are not married but have a 'marriage-like' relationship.</p> <p>To determine whether two persons are in a <i>de facto</i> relationship, all circumstances of their relationship must be taken into account, including such of the following matters as are relevant in the circumstances of the particular case:</p> <ul style="list-style-type: none"> a) The duration of the relationship; b) The nature and extent of common residence; c) Whether or not a sexual relationship exists; d) The degree of financial dependence or interdependence, and any arrangements for financial support, between them; e) The ownership, use and acquisition of property; f) The degree of mutual commitment to a shared life; g) The care and support of children; h) The performance of household duties; or i) The reputation and public aspects of their relationship. <p>There is no provision for registration of <i>de facto</i> relationships in this Territory. However, a person:</p> <ul style="list-style-type: none"> a) Who alleges that a <i>de facto</i> relationship exists or has existed between himself or herself and another person; or b) Whose pecuniary interests, or whose rights or obligations at law or in equity, are affected according to whether a <i>de facto</i> relationship exists or has existed between two other persons; <p>may apply to a court for a declaration as to the existence of such a <i>de facto</i> relationship.</p> <p>If the court is satisfied that a <i>de facto</i> relationship exists or has existed, it may make a declaration that the persons named in the declaration have or have had a <i>de facto</i> relationship.</p> <p>If the court makes such a declaration, it must state in the declaration that the <i>de facto</i> relationship existed:</p> <ul style="list-style-type: none"> a) At a date specified in the declaration; and/or b) Between dates specified in the declaration. <p>While the declaration remains in force, the persons named in the declaration are to be presumed conclusively for all purposes to have had a <i>de facto</i> relationship at the date specified and/or between the dates so specified in the declaration.</p> <p>The <i>De Facto Relationships Act 1991</i> (NT) does not specify what information or documents are needed to support an application for a declaration (nor are there any regulations made under this 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)	Both relationships are available to same-sex and opposite-sex couples.
(b)	Two persons cannot be in a <i>de facto</i> relationship under the <i>De Facto Relationships Act 1991</i> (NT) if they are married to each other.
(c)	There are no significant differences.

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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	If a person is already married, he or she cannot marry a third party.
<i>De facto</i> relationship, unregistered (Northern Territory)	If two persons are already married to each other, they cannot also be in a <i>de facto</i> relationship under the <i>De Facto Relationships Act 1991</i> (NT). However, the <i>De Facto Relationships Act 1991</i> (NT) makes clear that it is not relevant for the purposes of determining whether two persons are in a <i>de facto</i> relationship that either of the persons is married to another person or is in another <i>de facto</i> relationship.

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5. When a couple comes to the Northern Territory, 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	Australia is a signatory to the Convention on Celebration and Recognition of the Validity of Marriages signed at The Hague on 14 March 1978. An overseas marriage will generally be recognised in Australia if it: <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.

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FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
<i>De facto</i> relationship, unregistered (Northern Territory)	A pre-existing relationship may be recognised as a <i>de facto</i> relationship if it meets the eligibility criteria described above.

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6. How can each form of relationship be dissolved? What is the residency requirement or other link to the Northern Territory 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 if the marriage was formed overseas, 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>
<i>De facto</i> relationship, unregistered (Northern Territory)	<p>The <i>De Facto Relationships Act 1991 (NT)</i> is silent as to when or how a <i>de facto</i> relationship may be dissolved. Presumably, a <i>de facto</i> relationship will dissolve when the two persons no longer meet the eligibility criteria described above.</p> <p>If the court has made a declaration stating that a <i>de facto</i> relationship exists or has existed, the court may later make an order annulling the declaration:</p> <ol style="list-style-type: none"> a) On the application of a person who applied for the declaration, or could have applied for it, or is affected by it; and b) If the court is satisfied that new facts or circumstances have arisen which have not previously been disclosed and could not by the exercise of reasonable diligence have been so disclosed. <p>It is also possible to apply to a court for a declaration that the persons named in the declaration are not, or were not at a particular time, in a <i>de facto</i> relationship. The court may make this declaration if it is satisfied that a <i>de facto</i> relationship does not, or did not at a particular time, exist.</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>.
- *Births, Deaths and Marriages Registration Act* (NT), available at http://classic.austlii.edu.au/au/legis/nt/consol_act/bdamra383/.
- *De Facto Relationships Act 1991* (NT), available at http://www5.austlii.edu.au/au/legis/nt/consol_act/dfra220.

Government Website:

- Northern Territory Government of Australia, Births, Deaths and Marriages, <http://www.nt.gov.au/justice/bdm/>.