



New De Facto Legislation... How it affects you!

As at 1st March 2009 significant amendments have been made to the Family Law Act. The Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008 now provides for the majority of heterosexual and same sex de facto couples in Australia to have property and maintenance matters dealt with, upon the breakdown of their relationship under the Family Law Act.

The new laws enable de facto couples to access, as married couples can, the Family Court of Australia and the Federal Magistrates Court for property and spousal maintenance matters.

What do the new laws do?

The new laws provide for de facto couples, when they separate, to obtain property settlements on the same principles that apply under the Family Law Act 1975 to married couples.

The new laws enable the Family Law Courts to order a division of any property that the couple own, either separately or together with each other. Superannuation that each partner has can also be split (married couples have been able to split superannuation since 2002). De Facto spouse maintenance can also be ordered.

The Family Law Courts can make these orders if satisfied of one of the following:

- The period (or the total of the periods) of the de facto relationships is at least 2 years or
- There is a child of the de facto relationship or
- One of the partners made substantial financial or non-financial contributions to the property or as a homemaker or partner and serious injustice to that partner would result if the order was not made, or
- The de facto relationship has been registered in a State or Territory with laws for the registration of relationships.

What relationships are covered?

A de facto relationship is a relationship that two people who are not married or related by family have as a couple living together on a 'genuine domestic basis'.

It can exist between 2 people of the opposite sex, or between 2 people of the same sex.

All the circumstances of the relationship will determine whether a couple in fact have a de facto relationship. These include:-

- the duration of their relationship



- the nature and extent of their common residence
- whether a sexual relationship exists
- the degree of financial dependence or interdependence, and any arrangements for financial support, between them
- the ownership, use and acquisition of their property
- their degree of mutual commitment to a shared life
- whether the relationship has been registered, in a State or Territory with laws for the registration of relationships
- the care and support of children, and
- the reputation and public aspects of their relationship.

In which States and Territories do the new laws apply?

The new laws apply to couples, whose de facto relationship has a geographical connection with New South Wales, Victoria, Queensland, Tasmania, the Australian Capital Territory, the Northern Territory or Norfolk Island.

Where orders are sought in the Family Law Courts, the new laws will apply if the couple were ordinarily resident in one of those States or Territories when their de facto relationship broke down.

Alternatively, the new laws will also apply where court orders are sought if:

- the couple were ordinarily resident in one or more of those States or Territories during at least one third of their de facto relationship, or
- the party applying for the order made substantial financial or non-financial contributions to property or as a homemaker or parent in one or more of those States or Territories

provided that one of the parties is ordinarily resident in one of the States or Territories when the application to court is made.

My relationship broke down before 1 March 2009. Do the new laws apply?

Generally no as the new laws apply only to de facto relationships that break down on or after 1 March 2009.

State or Territory laws continue to apply to couples whose relationship broke down before 1 March 2009, although they may choose that the new laws apply to them.

The choice must be in writing and signed by both of them after each has obtained independent legal advice and received a signed statement from their lawyer that this advice was given.

However couples who have obtained final court orders about their property or for payment of spouse maintenance under a State or Territory law cannot choose to apply the new laws. Neither can couples who have made a written agreement binding courts on those matters under State or Territory law, except where the agreement has ceased to have effect without property being distributed or maintenance paid.



The new laws may also not apply in situations where the parties were no in a de facto relationship but rather a “domestic relationship”.

A domestic relationship may be either:-

1. A de facto relationship; or
2. A close personal relationship, other than a marriage or de facto relationship, between adult persons whether or not related by family, you are living together, one or each of whom provides the other with domestic support and personal care. A domestic relationship does not include a person who provides domestic support and personal care for a fee or reward or on behalf of an organisation. Under such circumstances arrangements may need to be made under the New South Wales *Property (Relationships) Act 1984*.

When and how can I apply for Orders under the new law?

Parties must apply to one of the Family Law Courts within 2 years of the end of their de facto relationship. In limited circumstances, one of those courts may grant leave to make an application after the end of that period.

What if I don't want to be covered by these laws?

It is possible for a couple to make it clear that they do not want the new laws to apply to their relationship provided this election is made prior to them separating. Couples can make an agreement about how they will distribute their property and maintain each other if their relationship was to break down. These are called financial agreements and can only be entered into after both parties have obtained independent legal advice.

Financial agreements can be made before entering into a relationship or during a relationship.

Written agreements binding courts that couples made about their property or spouse maintenance under State or Territory law before 1 March 2009 continue to apply.

At Bateman Battersby we have a number of experienced Lawyers who specialise in Family Law and De Facto matters. If you need help or advice about your entitlements and obligations under the new legislation or if you wish to discuss any of the matters addressed above, please feel free to contact Oliver Hagen or Ken Gray on (02) 4731 5899 or email us at familylaw@batemanbattersby.com.au.