



BRIESE LAWYERS FACTSHEET

De facto Property Matters



Recent amendments to the Family Law Act which took effect on 1 March 2009 now mean that de facto couples financial matters will be resolved by the Family Law Courts, under the Family Law Act, in the same way that those Courts presently deal with financial matters involving married couples.

Previously, couples in de facto relationships have had to apply to Queensland Courts to resolve their property rights under Queensland's *Property Law Act*, while having their parenting matter determined by the family law courts under the umbrella of the *Family Law Act*.

These new laws substantially change the Courts' approach de facto property disputes, particularly by introducing broader provisions for property division and maintenance. These new laws only automatically apply to de facto relationships that break down after 1 March 2009. Therefore, relationships that breakdown before 1 March 2009 are still dealt with under the *Property Law Act* however can elect to utilise the new *Family Law Act* provisions rather than the existing state-based legislation, by mutual agreement.

Changes to Note:

- **superannuation** of parties to a de facto relationship will be "property" available for division in de facto property settlements;
- de facto property matters will be subject to the "third step" by the Courts as per the current procedure for married couples, in that the Court will consider the parties' respective financial circumstances at the end of the relationship to determine whether a further adjustment ought to be made to their contribution based entitlements;
- Financial Agreements may be entered into before, during and after a de facto relationship exists and will be binding;
- Financial Agreements will be subject to the same formalities as those currently required by the *Family Law Act* for married couples. Of particular note:
 - a Financial Agreement for a de facto couple will require a certificate of independent legal advice for both parties (previously, this is not required for de facto couples);
 - a "Separation Declaration" will be required to give effect to Financial Agreements providing for property settlement, maintenance or superannuation orders.
- the reforms include same-sex de facto couples as well as opposite sex de facto couples;
- a child born to a de facto couple (same sex or opposite sex) by artificial conception procedures will be a 'child of the relationship';
- the amendments will allow parties in a de facto relationship to bring an application under the *Family Law Act* in Family Law Courts for:
 - ✓ an adjustment of interests in property (Court determined property settlement);
 - ✓ an application for maintenance (made only after separation);
 - ✓ Consent Orders in regards to their negotiated property settlements to be filed;
 - ✓ superannuation splitting orders;
 - ✓ an injunction in the nature of asset protection.



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For de facto spouses to be allowed to have their property matter resolved under the *Family Law Act* by the Family Law Courts, one of the following must be satisfied:

- the period (or the total of the periods) of the de facto relationship 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 their property or as a homemaker or parent 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.

BINDING FINANCIAL AGREEMENTS

The changes also include recognition of financial agreements between de facto couples under the Family Law Act. As per married couples, Binding Financial Agreements can be made before, during or after cohabitation. For further information in relation to the use and effect of Binding Financial Agreements, see our factsheet entitled **Binding Financial Agreements**.

SEPARATION & PROPERTY

With de facto relationships, an application for the division of property must be made **within 2 years** after the end of the de facto relationship.

After a de facto relationship has ended, a party may, in certain circumstances, apply to the Court for an Order adjusting an interest in the property of either or both of them.

For information on the factors that the Court takes into consideration when determining Family Law property matters, see our factsheet entitled **Family Law Property Settlement**.

The financial settlement provisions that determine the distribution of property upon separation are inherently complex and are only encountered at a time when the parties are under considerable emotional and financial stress. It is important that professional advice is sought early in order that the parties' rights are protected.

Further details with respect to de facto relationships may be obtained by contacting one of our Solicitors, who can offer practical legal advice and guidance to protect your rights and interests.



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