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RIGHTS



DE FACTO RELATIONSHIPS

Does the law recognise unmarried relationships?

The law generally recognises two different types of relationships between unmarried people who live together.

If you're living together with someone as part of a couple, the law will recognise your de facto relationship and your rights will often be exactly the same as if you were married.

If you're living with someone and providing them with free care or domestic support (or if they do the same for you), the law recognises this as a 'close personal relationship' and also gives you certain rights.

For instance, if you're in a de facto relationship or a close personal relationship and the other person in the relationship dies without a will, you may be entitled to a share of their estate. If they die and haven't provided for you in their will, you may be entitled to make a claim for financial support.

You may even have the right to claim workers compensation if they die on the job, as well as the right to receive financial support or social security.

If you're living with someone else and you're uncertain about your rights, your solicitor can help you work out what you're entitled to.

What happens to property when a de facto or close personal relationship breaks down?

You can generally make a claim for the court to divide property within two years of the relationship breaking down, and sometimes you can even bring a claim if more than two years have passed.

You usually need to prove that you lived together for more than two years. In some circumstances you may also be entitled to bring a claim if you've lived together for less than two years, especially if:

- You have a child with your former partner
- In the case of a close personal relationship, you care for the other person's child and would suffer an injustice if the court doesn't make an order
- You've made substantial financial or personal contributions which you won't be adequately compensated for unless the court makes an order.

When a court divides property it takes into account both people's financial and non-financial contributions to the relationship. For example, it will look at the division of household labour and the contribution you've both made as a parent. For de facto couples it will also take into account the amount of money both you and your former partner earned and will consider any differences in your future earning capacity and your obligations to care for the children.

Can you claim maintenance?

You can sometimes claim maintenance if you can't support yourself after the relationship breaks down and your former partner has the means to contribute to your finances. Your entitlement to maintenance will end if you marry or enter into another de facto relationship.

Are you entitled to child support?

Regardless of whether or not you're married, you're entitled to support from your former partner if you care for a joint child. If there is a dispute about who the child's parents are a court may order a DNA test.

You may also be able to claim child support from your former partner if you were in a same sex relationship.



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Who will the children live with?

If you and a former partner have children together, you should always try to share parental responsibilities. You can do this through a parenting plan or by asking a court to make orders which you've both agreed to (called consent orders).

If you can't work something out between yourselves, you can apply to the court, which will always base a decision about who your children should live with on the children's best interests. The court can make orders about how much time a child should spend with each parent and sometimes even the extended family. It can also make orders about how you should both bring up the child. For instance, which school they should go to or which religion you should bring them up in.

Before a court makes any orders, it will usually ask you and your former partner, as well as anyone else with a legitimate interest in the child's welfare, to participate in dispute resolution. This won't be the case where there is evidence of any family violence or child abuse.

What is a binding financial agreement?

A binding financial agreement is a legal contract setting out how you and your former partner have agreed to arrange your financial affairs, as well as things like maintenance and any rights to property.

You should always see your solicitor before making a binding financial agreement. After all, they're only legally enforceable if you've both had independent legal advice.

What social security rights do de facto couples have?

De facto couples have the same social security rights as married couples. That means if you separate from your de facto partner and you have a dependent child, you could qualify for assistance. You may also qualify for a benefit if you have dependent children and your partner dies.

What if you're the victim of domestic violence?

If you feel under threat of violence, or you think a child is under threat of violence, contact the police immediately.

The court can grant a restraining order if you're experiencing ongoing violence or your former partner is harassing you. A restraining order can prevent someone from contacting you or your child, or from entering your home or workplace.

How can a solicitor help?

If you're worried about your rights in a de facto relationship, your solicitor can help in a number of ways, including:

- Advising you on your rights and obligations if your de facto relationship has broken down
- Guiding you through the mediation or counselling process
- Helping you make a financial agreement that's in your interests
- Negotiating parenting arrangements or making a parenting plan
- Obtaining parenting orders from the court
- Preparing and arguing your case in court.

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