



Australian Government  
Attorney-General's Department

# **DE FACTO PROPERTY REGIME – FREQUENTLY ASKED QUESTIONS**

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## De facto property regime – frequently asked questions

### When did the laws commence?

Commonwealth laws for the division of property for people in de facto relationships that break down commenced on 1 March 2009. The laws commenced in South Australia on 1 July 2010.

### What do the laws do?

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

The 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). Spouse maintenance can also be ordered (not previously possible in Queensland, South Australia, or before December 2008, in Victoria).

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 relationship is at least 2 years
- there is a child of the de facto relationship
- 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.

### 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 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 laws apply?**

The laws apply to couples whose de facto relationship has a geographical connection with New South Wales, Victoria, Queensland, South Australia, Tasmania, the Australian Capital Territory, the Northern Territory, Norfolk Island, Christmas Island or the Cocos (Keeling) Islands.

Where orders are sought in the Family Law Courts, the 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 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 the court is made.

## **My relationship broke down before 1 March 2009 (or before the laws commenced in South Australia on 1 July 2010). Do the laws apply?**

The laws apply to de facto relationships that break down on or after 1 March 2009. Where a couple's de facto relationship has one of the above-mentioned geographical connections with South Australia (and with no other State or Territory in which the laws apply), the laws apply to their relationship if it breaks down on or after 1 July 2010.

State or Territory laws continue to apply to couples whose relationship broke down before 1 March 2009 (and South Australian law continues to apply to couples connected only to South Australia whose relationship broke down before 1 July 2010), although they may choose that the 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 the advice was given.

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 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.

## **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 laws to apply to their relationship. 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 binding financial agreements and can only be entered into after both parties have obtained independent legal advice.

Binding 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 the commencement of the laws continue to apply.

### **When and how can I apply?**

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.