

# same laws different solutions

## Financial settlements

- On 1 March 2009 amendments to the *Family Law Act* commenced. These changes mean that de facto couples (straight and gay and lesbian) are treated in a similar way to married couples when sorting out financial issues at the end of their relationship.
- Prior to March, de facto laws applied State by State.
- If you separated after 1 March 2009 you are covered by the new laws depending upon which State(s) in Australia you lived in during your relationship. If you lived together on the east coast you will be covered.

## How do I know if I am in a de facto relationship?

- You have to be living together as a couple on a genuine domestic basis.
- The *Family Law Act* lists circumstances to consider when working out whether people are in a relationship as a couple. You don't have to meet all of these to be in a de facto relationship:
  - How long you've been together
  - Whether you lived in the same house together and the circumstances of your living together
  - Whether or not you have a sexual relationship
  - Your financial relationship with each other
  - Your ownership and use of property and how bought property
  - Your commitment to a shared life together
  - Whether you are on a relationship register
  - Whether you care for and support children
  - Whether you are known in your community as being in a relationship
- You can be in more than one de facto relationship at a time. Someone can also be married and in a de facto relationship at the same time.
- Generally speaking, you need to be in a de facto relationship for 2 years (except in some limited circumstances) before the law will apply.

## Property settlements

- The law sets out a 4 step approach to dividing up your assets.
- The first step is to make a list of all the assets owned by you and your ex-partner. This includes
  - Assets owned individually
  - Assets owned jointly
  - Assets owned by family trusts or companies
  - superannuation

All the assets must be **valued as close to the date of your agreement to divide them as possible.**

- The second step is to look at the **contributions** that each of you made to the relationship. These include:
  - Each party's income
  - What each party owned when they first began living together
  - Any unpaid work either party did such as home renovation or unpaid work in a business
  - Homemaking and parenting contributions
- The Court generally gives financial contributions the same value as homemaking and parenting contributions.
- The third step is to look at each of your **future needs**. These include:
  - Each of your ages, health and capacities to earn an income
  - Whether either of you has a responsibility to care for children
  - Whether either of you has repartnered and the financial circumstances of that relationship
  - What assets each of you will receive as part of the property settlement
  - Whether either of you has an obligation to pay child support
- The fourth step is an overall assessment of whether the settlement is fair.

## Spousal maintenance

- A de facto partner has the right to claim spousal maintenance (financial support) from their former partner.
- This is a significant change in the law for couples in gay and lesbian relationships. It might mean that one party has the responsibility to support the other long after the relationship ends.

## **Other wide ranging powers**

- De facto couples can now resolve their property matters and parenting issues in the one court. This is cheaper and simpler.
- Under the new laws, it is possible to look behind company and trust structures in a way that wasn't always possible under the old laws. This means that people who thought that they had set up structures to protect their assets from a claim by a partner, may not be as protected as they thought.
- People who thought that their assets were protected because they kept their finances separate from their partner will need to think again and seek legal advice as to their position under the new laws.

## **Financial Agreements**

The new laws mean that gay and lesbian couples in existing relationships can enter into binding agreements about what will happen to their assets when they separate. Financial Agreements can give couples the security of knowing what will happen to their assets if they later separate.

## **Time limits**

If you have been in a de facto relationship and are now separated, you should seek legal advice about your rights, entitlements and obligations. There are important time limits.

You have 2 years from the date of your separation to make a claim for property settlement and /or spousal maintenance under the new laws. If you don't apply within that time, you have to ask for the Court's permission to apply to the Court. The Court will not grant permission lightly.

The contents of this brochure are not legal advice and not to be used as such. People should obtain their own legal advice about their particular circumstances.