

The Federal Government has changed 85 laws to give same-sex couples in a de facto or registered relationship the same legal rights and protections as different-sex de facto couples.

A major part of the changes are about household finances. These laws have been changed to recognise same-sex de facto partners and children in same-sex families in relation to things like superannuation and taxation.

For tax purposes, same-sex partners are now included as "spouse". This means that on any tax return you complete after June 30th 2010, you can declare your partner and any dependent children.

In terms of superannuation, all government superannuation schemes, and some private funds will now recognise same-sex partners and their children. It is important to note that the changes allow superannuation funds to recognise same-sex couples, however this recognition is not mandatory. This means that if you are in a private or industry super fund, you should read your Product Disclosure Statement or call them to check whether your same-sex partner is recognised.

It is important that you see if your fund allows you to put in a 'binding nomination' form so that the person you want to receive your super is guaranteed to receive it. Without a binding nomination form, the trustees of your superannuation fund may change who receives your superannuation after you pass away.

Actions you can take

- Call your super fund and check if they recognise your relationship. If they do not recognise your relationship, consider switching to a superannuation fund that does.
- When you do your next tax return, think about visiting a tax agent. They will make sure that you are getting the full benefit of these changes. The costs charged by tax agents are generally tax deductible.

Alternatively if you need one-on-one, detailed help, you can make an appointment for a personal interview at your nearest Australian Tax Office shopfront by phoning 132 861.

Please note: This factsheet provides general information only. It does not constitute legal advice and may not be applicable to your individual circumstances. If you need specific legal advice contact your local Community Legal Centre.

Last updated: January 2010

Things you should know

- Your same-sex partner and your children may now be taken into account when deciding how much tax you have to pay. Depending on your circumstances, you might get extra offsets because of a dependant partner or child, and end up paying less tax. It's a good idea to talk to a tax professional to ensure you're making all your available tax deductions.
- Most children of same-sex de facto couples will now be considered as a Family Tax Benefit (FTB) child, provided they meet the other requirements. The Family Tax Benefit Scheme provides financial support for the parents or guardians of dependent children. (See the Social Security factsheet for more information)
- If your same-sex partner is a low income earner, their income may be taken into account when figuring out your Medicare levy surcharge. This surcharge applies to people who do not have private patient hospital cover. This means if you meet all the criteria you may pay a lower surcharge.
- If your same-sex de facto partner were to take out a life insurance policy and then

Need more information?

Financial Planning Association of Australia
1300 626 393

Australian Taxation Office
13 28 61

ATO Superannuation Information
131 020

Association of Superannuation Funds

Family Assistance Office
136 150

Family Relationships Australia

If in WA - Family Court of Western Australia

If in SA -- Supreme Court of South Australia

All other States - federal family courts (Family Court of Australia or Federal Magistrates Court)
1300 352 000

later pass away, the courts can't force you to use any money you receive to pay off debts.

- If your same-sex de facto partner were part of a private superannuation scheme (such as a defined benefit scheme) or a public superannuation scheme, and then later passed away, you may be eligible for part of your partner's pension. If you are with a private fund, make sure you check whether their policies are same-sex relationship friendly.
- Same-sex de facto couples with a retirement savings account now have the same entitlements as straight de facto couples. For example if you and your same-sex partner had a child together and your partner passed away, you and your children may now be eligible to receive your partner's death benefits.
- Same-sex partners who are not the birth parent of their child may still take 'parental leave' and not have to pay contributions to the Commonwealth Superannuation Scheme (CSS) while they're on leave.
- When working out the recovery and distribution of property when someone goes bankrupt, the government now recognises same-sex partners and children, and all other family relations who are related through the same-sex relationship.
- Same-sex grandparents, and grandparents of children in a family headed by same-sex couples, are now recognised in relation to Family Assistance Payments (which include Family Tax Benefits and child care benefits). This potentially means that eligible same-sex families may be eligible for a special 'grandparent rate' which gives child care benefits by reducing fees.
- Same-sex de facto partners, parents and children of someone who is part owner of a company are now recognised as an 'associate' of each other for the purposes of determining who owns how much of the company.
- If you are not an Australian citizen, and you and close family (including same-sex de facto partners, parents and children) together own more than 15% of an Australian business, you will now need approval from the Federal Treasurer as these family members are now included as "associates."

Frequently asked Questions

▼ **If my partner and I separate, how do we figure out who gets what?**

The best thing any couple can do is to try to create an agreement about your finances and property while you are still together, with legal help.

However, if you cannot figure out things between yourselves, you can apply to the federal family court (the Family Court of Australia or Federal Magistrates Court) to have your property divided 12 months after your relationship has ended. It is recommended that you get some legal advice before you apply to court. You may also want to try mediation or another form of dispute resolution before applying to court.

Some de facto partners and their children may be entitled to financial support from their partners after breaking up. You can seek legal advice from your community legal centre.

Couples in Western Australia may access the Family Court of WA and couples in South Australia may continue to access the Supreme Court of SA. South Australia has recently passed laws allowing people in that State to access the federal family courts for property disputes - this law will take effect on proclamation.

▼ **If I'm on a Centrelink / Family Assistance/Department of Veteran Affairs benefit, how do these changes affect me?**

Your benefits may be affected because your income is no longer looked at as an individual's, but considered alongside your partner's income. For more information on this question, please see our Social Security factsheet.

▼ **How do I apply for a Family Tax Benefit?**

To apply for the Family Tax Benefit (FTB) you can visit a Family Assistance Office, located in all Centrelink Customer Service Centres and Medicare Australia Offices, apply online [<http://www.familyassist.gov.au/OnlineServices/Pages/default.aspx>], or call these places for more information. See referral section below.

FTB Part A helps families with the cost of raising children. You may be eligible for FTB if you have a child under 21, or a full time student aged between 21 and 24 years who is not receiving another social security benefit. To be eligible you must

care for the child for at least 35 percent of the time (this is at least 128 nights of the year) and the child must meet certain residency requirements

[http://www.familyassist.gov.au/Payments/familyassistance/ftb_partA/Pages/residency_requirements.aspx]

Child support payments and family assistance are closely linked. The more child support you receive, the less Family Tax Benefit you may receive. Similarly, if you receive less child support you may be entitled to more Family Tax Benefit. This is important to know, even if you arrange your child support privately with the other parent or have a child support agreement.

If you are eligible for FTB, you may also be eligible for other benefits including a Health Care card and the FTB Part A Supplement, which is a one-off payment.

The Financial laws that have changed

- #56** Student Assistance Act 1973
- #57** Veterans' Entitlements Act 1986
- #58** A New Tax System (Family Assistance) (Administration) Act 1999
- #59** A New Tax System (Family Assistance) Act 1999
- #60** A New Tax System (Medicare Levy Surcharge, Fringe Benefits) Act 1999
- #61** Income Tax Assessment Act 1936
- #62** Bankruptcy Act 1966
- #63** Crimes (Superannuation Benefits) Act 1989
- #64** Financial Sector (Shareholdings) Act 1998
- #65** Foreign Acquisitions and Takeovers Act 1975
- #66** Fringe Benefits Tax Assessment Act 1986
- #67** Income Tax (Transitional Provisions) Act 1997
- #68** Income Tax Assessment Act 1997
- #69** Insurance Acquisitions and Takeovers Act 1991
- #70** Life Insurance Act 1995
- #71** Retirement Savings Accounts Act 1997
- #72** Small Superannuation Accounts Act 1995
- #73** Superannuation (Government Co-contribution for Low Income Earners) Act 2003

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