



RELATIONSHIPS FACTSHEET

WEAR IT WITH PRIDE

In 2008 the Federal Government changed 85 different laws so that same-sex couples would be recognised as having many of the same rights and obligations as different-sex de facto couples.

This factsheet talks specifically about relationships. Have a look through all the other factsheets on www.wearitwithpride.com.au [<http://www.wearitwithpride.com.au/>] to make sure that you know how these many changes to the law affect you.

The major change to most of the 85 laws has been an update to include same-sex couples in the new “de facto partner” definition. This definition has been included in places that previously were limited to “spouse”, “husband”, “wife” or “de facto spouse”. To be considered a “de facto partner” you have to be either in a “de facto relationship” or “registered relationship”.

De facto Relationships

A ‘de facto relationship’ is where two people live together as a couple, who are not married to each other and are not related by family. Generally if you meet these three key aspects you will be considered to be in a de facto relationship. However it’s important to note that you may have to ‘prove’ that you are in a de facto relationship in some situations. Examples could be immigration or if your partner says you were not in a de facto relationship after a break up.

If you have to “prove” that you are in a de facto relationship there are a number of factors which will be considered. These are:

- how long you’ve been in the relationship;
- what your living arrangement is;
- if the relationship is sexual;
- the financial arrangements between the two of you;
- the properties you own together;
- the degree of mutual commitment to a shared life;
- if there are any children involved;
- if your relationship is public or not.

You can still be in a de facto relationship even if:

- you are living separately from your partner because of an illness, on a temporary basis;
- one partner is legally married to someone else;
- one partner has a registered relationship with someone else in ACT, VIC or TAS; and/or
- one partner is in a de facto relationship with someone else.

If you are concerned about having to prove your de facto relationship at some time in the future, and are not sure if you have everything you need, it might be a good idea to talk to your local community legal centre about how to best document the relationship.

Registered Relationships

The new federal changes recognise State and Territory based relationship registers. As at 1 January 2010, there were relationship registers in Victoria, Tasmania and the Australian Capital Territory. Different names are used in the different States/Territories, including registered relationships and civil partnerships.

Those in a recognised State/Territory-based “registered relationship” usually have the same rights as de facto straight couples without having to prove their relationship through the above de facto relationship criteria.

Need more information?

Community Legal Centres

Family Relationships Australia

Gay and Lesbian Counselling and
Community Services of Australia
1800 18 45 27

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 and
Federal Magistrates Court)
1300 352 000

Same-sex registered relationships or civil partnerships entered into at local council level or overseas, and marriages entered overseas are not automatically recognised under federal law, but may be used as evidence that you are in a de facto relationship.

Information on recognition of same-sex relationships by state/territory governments
All state and territories have similar laws recognising same-sex couples as de facto partners for state benefits, however there are some differences between state and federal governments. To see the information specific to your state or territory please follow the below links:

- Australian Capital Territory [<http://www.letsgetequal.org.au/Info-legislative-recognition-same-sex-relationshipsAU.doc>] (see page 16) or for registered relationships click here [http://www.ors.act.gov.au/bdm/WebPages/bdm_civil.html] .
- New South Wales [<http://laxtra.legalaid.nsw.gov.au/Publications/FileUpload/Doc/ImprintFile463.pdf>]
- Northern Territory [http://www.ntlac.nt.gov.au/legal_info/you_and_family_law.pdf] (see page 9.)
- Queensland [<http://www.hhfamilylaw.com.au/defactofacts.php>]
- South Australia [<http://www.lawhandbook.sa.gov.au/ch19s10.php>]
- Tasmania [<http://www.legalaid.tas.gov.au/Factsheets/Defacto%20Property.html>] or for registered relationships click here. [http://www.justice.tas.gov.au/bdm/relationships/how_to_register_a_deed_of_relationship]
- Victoria [<http://www.legalaid.vic.gov.au/defacto.htm>] or for registered relationships click here [<http://www.bdm.vic.gov.au/>] .
- Western Australia [http://www.familycourt.wa.gov.au/_files/defacto.pdf]

Actions you can take

- If you live in the ACT, Victoria or Tasmania, you can register your relationship with a State/Territory registry and have it recognised under federal law.
- If you live elsewhere, check if your local government body lets you register your relationship with them. This will not be enough proof of a de facto relationship on its own, but it will help towards proving you are in a de facto relationship.
- Consider keeping a file of documents to help you prove that you are in a de facto relationship, such as receipts for shared furniture, joint bank account statements, documents with both names on it such as leases or mortgages, photos of shared holidays, etc. Remember to put these in a safe place that you can easily get to, such as a shoe box under the bed or a file in your filing cabinet.

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.

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Things you should know

- If you and your partner split up, you now have the same rights as straight de facto couples. This means that instead of needing to go to your state Supreme Court, the federal family courts (the Family Court of Australia or Federal Magistrates Court) can resolve disputes (for instance, about who gets to keep the house.) This process will be much cheaper and easier than it was previously. (Not applicable for people in WA— see below. SA has recently passed laws allowing people in that State to access the federal family courts for this purpose - this law will take effect on proclamation)
- Most lesbian mums and some gay dads, including step parents, now have the same Federal legal recognition as different-sex parents or step-parents.
- If your partner dies you may be able to access death benefits through superannuation, just as different sex couples do. See the Financial fact sheet for more information.
- In some situations, you may no longer be required to testify in court against your same-sex de facto partner.
- You can now ask for your own details, as well as the details of your children and

your de facto partner to be listed as a 'silent elector' on the Commonwealth electoral roll if you are at risk, for instance of domestic violence. Complete a silent elector form at your local electoral office or download from the Australian Electorate Office website.

- If you die in a plane crash, your partner and children can now seek compensation from the airline.
- Your same-sex partner may now be recognised as your 'associate' in certain circumstances in relation to Corporation law.
- When travelling overseas you and your partner's tax-free duty allowances may be pooled as a family when calculating the limit of your tax rebate.

Frequently asked Questions

▼ **How and where can I register my relationship so it will be recognised under Federal Law?**

You can register your relationship with a State/Territory registry if you live in the ACT, Victoria or Tasmania. Some local governments let you register your relationship with them, but unfortunately these won't be recognised automatically. However, registering on local council registers can help you prove to that you are in a de facto relationship.

If you want to know more about where you can register your relationship please see the referral section at the bottom of this factsheet.

▼ **My same-sex partner and I were married overseas. Will our marriage be legally recognised in Australia?**

Unfortunately no, the Australian Federal Government does not recognise same-sex marriage ceremonies performed in other countries. However, that being said, you can still use your marriage as evidence that you are in a de facto relationship.

▼ **What happens if my de facto partner and I break up?**

If at all possible, it is a good idea for all couples to have a discussion about money and property, and create a legal agreement about it, while you are still together.

However, if you have broken up and you can't resolve things between the two of you, in most places you can now apply to the federal family courts to have your property dispute resolved by the court. You can apply for this up to two years after your break up. It is important to get legal advice before you go ahead with this.

It is important to note that people in Western Australia are not able to access the federal family courts in the event of a relationship break up for property division. In Western Australia you can access the Family Court of WA. South Australia has recently passed laws allowing people in that State to access the federal family courts for property division - this law will take effect on proclamation. People in South Australia can continue to access the Supreme Court of SA until this change takes effect.

Legal advice will also be able to help you figure out if you and your children are able to get financial support from your ex-partner.

▼ **What happens if my partner or I get in trouble with the law?**

The special processes for crime and courts are now very similar to different-sex couples' rights. For example, if your partner is in court, you may not have to testify against them. If your de facto partner commits a crime and the courts are considering taking back the proceeds from the crime, your financial situation will be checked first.

▼ **Does this law reform impact on the rights of my partner to be considered my next of kin, for example, when dealing with hospitals or in relation to my will?**

Laws about next of kin, wills, medical powers of attorney and powers of guardianship are State/Territory-based and therefore not part of the Federal reform package. It is important to protect yourself by determining who can make decisions on your behalf, for example to determine treatment regimes in event of terminal illness or the continuation of life support in the event of a persistent vegetative state and, to ensure that your partner has access to property in the event of your death. Contact your local community legal centre for more information about how to do this.

The Relationships laws that have changed

- #38** Trade Representatives Act 1933
- #39** Acts Interpretation Act 1901
- #40** Australian Passports Act 2005
- #41** Commonwealth Electoral Act 1918
- #42** Broadcasting Services Act 1992
- #42** Broadcasting Services Act 1992
- #43** Crimes Act 1914
- #44** Evidence Amendment Act 2008
- #45** Privacy Act 1988
- #46** Proceeds of Crime Act 2002
- #47** Australian Meat and Live-stock Industry Act 1997
- #48** Civil Aviation (Carriers' Liability) Act 1959
- #49** Corporations Act 2001

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