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White Wedding or De Facto Bliss?
New Changes Affecting De Factos

Denise Foster, Associate

Steven Edward, Associate

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**An Overview of the Law
Governing De Facto Financial
Disputes in Victoria
Financial Agreements**

Denise Foster, Associate

Family Law (De Facto Financial Matters and Other Measures) Act 2008 (Cth)

- Commonwealth legislation
(WA and SA have not yet opted in)
- Commences 1 March 2009
- Gives de facto couples who separate after 1 March 2009 the same rights as divorcing couples under the Family Court system
- De facto couples include both heterosexual and same sex relationships

Currently Three Tiered Approach to De Facto Financial Disputes

- **Pre 1 December 2008**
Part IX Property Law Act 1958 (Vic)
- **Post 1 December 2008**
Relationships Act 2008 (Vic)
- **Post 1 March 2009**
Family Law (De Facto Financial Matters and Other Measures) Act 2008 (Cth)

Which Act Applies?

Relevant legislation applicable to separating de facto couples will depend on:

- Date of commencement of any court proceedings

OR

- Date of separation

De facto financial proceedings issued Pre 1 December 2008

Property Law Act 1958 (Vic) applies

- Limitations include:
 - Retrospective only / contributions-based
 - No future needs of the parties taken into account
 - No maintenance provisions
 - No alteration of superannuation interests
 - Private agreements not binding
 - Inconsistent Victorian case law

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Post 1 December 2008

Relationships Act 2008 (Vic) applies

- Enacted by State government to be seen as being “active” in this area of law
- Repeals part IX of the *Property Law Act* (except for proceedings issued prior to 1 December 2008)
- Applies to all unissued financial disputes between de factos who separate prior to 1 March 2009 (commencement of new Commonwealth Act)

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Post 1 December 2008

Has 2 main parts:

Part 1: Establishes Relationships Register in Victoria

- System to register all de facto relationships
- Gives these relationships recognition
- Implemented by Registrar of Births, Deaths and Marriages
- Provides conclusive evidence of existence of relationship
- Relationship Certificate = Marriage Certificate
- Registration revoked by death / marriage / or at discretion of Registrar upon application

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Post 1 December 2008

Part 2: Establishes regime for division of property and payment of maintenance for separating de facto couples, similar to Family Court system

- Expands the range of financial relief available to de factos
 - Spouse maintenance
 - Future needs taken into account
- Order to be just and equitable

Post 1 March 2009

The New Commonwealth Act

Family Law (De Facto Financial Matters and Other Measures) Act 2008 (Cth)

- Gives de facto couples who separate after 1 March 2009 the same rights as divorcing couples under the Family Court system
- Commences on 1 March 2009 and will, in time, cover the field and be the only legislation governing property disputes between separating de facto couples

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Financial Agreements

Pre 1 December 2008

- Not possible to have a binding Financial Agreement for separating de facto couples

Post 1 December 2008

- Relationships Act enables de facto couples to enter into binding financial agreements for division of property and maintenance obligations
- Court must not make an order inconsistent with a relationship agreement
- If properly executed under the Relationships Act, these agreements will remain binding under the new Commonwealth Act which commences on 1 March 2009
- De factos with a pre-December 2008 agreement, or with no agreement, should endeavour to execute a financial agreement without delay

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Congratulations De Factos,
You're As Good as Married

Steven Edward, Associate

From 1 March 2009

- Property settlement/spouse maintenance claims to be in the same court as for people who are married
 - Family Court of Australia
 - Federal Magistrates' Court
- Same rules for property division and spouse maintenance to apply for people in de facto relationships and people who are married
- De facto relationships include heterosexual relationships and same-sex relationships

What is a De Facto Relationship?

It depends on the facts:

- Nature and extent of common residence
- The existence of a sexual relationship
- The degree of financial dependence or interdependence
- Ownership, use and acquisition of property

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What is a De Facto Relationship?

- Degree of mutual commitment to a shared life
- Registration of the relationship under State law
- Care and support of children
- Reputation and public aspects of the relationship

The 2 Year Rules

- Duration of relationship to be at least 2 years

Unless:

- There is a child of the relationship; or
 - Substantial contributions by one person to the other and there would be serious injustice
 - Registration of the relationship
- All property and spouse maintenance claims to be made within 2 years of separation

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Benefits of the Changes for De Factos

- Easier to predict outcomes of property settlement court proceedings
- Lower legal costs
- Pre-action procedures
- Confidentiality of court proceedings

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Benefits of the Changes for De Factos

- Potential for claims against creditors and other third parties
- Superannuation splitting
- “Opting In”
- “Opting Out” - Binding Financial Agreements for de factos

MASON SIER TURNBULL LAWYERS

315 Ferntree Gully Road, Mount Waverley, Victoria 3149
Telephone +61 3 8540 0200
mst.com.au

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