

Family & Relationship Law

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GLBTI* RELATIONSHIPS AND THE LAW: The Victorian Relationships Act 2008

Historically, Commonwealth legislation has afforded different treatment for people in same-sex relationships, de facto relationships and married couples.

The Victorian Relationships Act (**the Act**) came into effect in December 2008 and covers all types of domestic relationships, including same-sex. It applies to Victorian couples in de facto relationships (referred to in the legislation as “domestic” relationships) who separated before 1 March 2009, as well as domestic couples who choose to register their relationship with the Department of Births, Deaths and Marriages (see *Introduction of a relationships register* at right).

Separating couples who are covered by this Act have two years following their separation to resolve any maintenance or property claims against their former spouse, although in certain circumstances a court may allow this time frame to be extended.

The implementation of the Act was a notable move by the Victorian Government to help create greater equality under the law and an attempt to treat domestic couples in the same way as married couples. However, the Act raises a number of potentially interesting issues for the GLBTI community.

Introduction of a relationships register

The Act established a relationships register, which enables Victorian domestic couples to register their relationship with the Department of Births, Deaths and Marriages. This is designed to provide domestic couples with easier access to entitlements, such as superannuation, without the couple having to first prove that they are in a committed relationship.

Registration is considered conclusive proof of the existence of a domestic relationship – whether the couple lives together or not (such as long distance relationships, or those where the parties are forced to live separately, maybe temporarily, for work reasons).

There are legal consequences associated with registration which couples should be aware of before deciding whether to register their relationship. For example, if a domestic relationship breaks down, couples in non-registered relationships will need to prove that they have lived together for

* Gays, Lesbians, Bisexual, Transgender, Intersex

at least two years before a claim can be made for maintenance or property division. However, the same time requirement does not apply to those who have registered their relationships. Therefore, a partner from a registered relationship could make a claim for maintenance or for a share of property from the other, without having to prove that they had actually lived together.

This could potentially create legally binding obligations between registered couples who had not necessarily intended or foreseen such a consequence.

Introduction of relationship agreements

The Act allows domestic couples to create a binding agreement to set out how their property and finances would be divided if they separate.

If a couple who have a legally recognised relationship agreement separate, the Court must (in most instances) use the agreement as the basis for determining the division of assets. This level of protection gives domestic couples greater certainty than they were previously afforded under the *Property Law Act 1948* (Vic).

The Court can still set aside (ie disregard) a relationship agreement, or the terms in it, if the circumstances of the parties have changed materially, for example, in a way that would lead to a serious injustice if the agreement or a term of the agreement were to be enforced. An agreement can also be set aside if the applicant can prove that it was entered into under duress or by fraud.

Rules around property division for couples who end a domestic relationship

A significant change to the system of property division under the Act was the introduction of “future needs” factors in determining property settlements.

Previously, the Court had to consider the contribution that each party made to the purchase, maintenance or improvement of the property, as well as the financial resources of both parties. Under the Act, the Court still takes these into consideration. However, it also introduced a number of extra factors that the Court must consider, including:

- the income, property and financial resources of each partner;
- the financial needs and obligations of each partner;
- the responsibilities of each domestic partner to support another person;
- the terms of any order to be made in relation to property settlement;
- a standard of living for both parties that is reasonable in all circumstances;
- any child support payments that are being paid or received;
- the age and state of health of each partner;

- the length of the de facto relationship;
- the extent to which the de facto relationship has affected the earning capacity of the domestic partner; and
- any other fact or circumstance which the court considers relevant.

In line with the system that applies to married couples who separate/divorce, this may result in significant adjustments being awarded to economically inferior spouses and/or those who have the primary care of children.

Introduction of the right to maintenance for domestic couples

Upon the breakdown of a domestic relationship, either of the parties may apply for maintenance, provided the Court is satisfied that the applicant is unable to support themselves because:

- (a) their earning capacity has been adversely affected by the circumstances of the domestic relationship; or
- (b) any other reason arising in whole or in part from the circumstances of the domestic relationship.

Again, for those in registered relationships, there is no need to prove that they lived together for any period of time before bringing an application for maintenance. Although, as the diminished earning capacity must be somehow related to the circumstances of the relationship, it is unlikely that a partner in a very short-term relationship could successfully bring an application for maintenance, except where that couple had a child together.

Those in non-registered relationships must prove a period of co-habitation of at least two years before applying for maintenance.

Couples who choose to lodge a relationship agreement can, when they are drawing up their agreement, opt to exclude each other from any right to maintenance against the other person.

Summary

The *Victorian Relationships Act 2008* covers domestic couples in Victoria who separated prior to 1 March 2009. These couples have two years following their separation in which to make a claim for maintenance or property against their former spouse, although in certain circumstances a court may allow this time frame to be extended. Domestic couples who have separated after 1 March 2009 are covered by the updated *Family Law Act 1975*.

The rights of domestic couples are the same under both of these Acts, except in relation to superannuation. Under the Victorian Relationships Act, superannuation cannot be split between a separating couple.

For further information on either of these Acts and how they apply to your domestic relationship, please contact a member of our Family & Relationship Law group on +61 3 9269 9000.

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