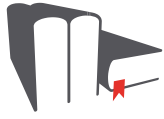


# PROPERTY CLAIMS





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## IN DE FACTO RELATIONSHIPS

Couples in de facto marriage relationships, whether they are heterosexual relationships or same-sex, will find that their property rights and their right to claim property settlement are almost identical to the law for married couples. They are even covered by the same legislation as married couples, the Commonwealth Family Law Act.

De facto relationships are often very different to marriages and the law recognises this by accepting that there can be a de facto marriage relationship even where a couple do not live together all the time.

### FAMILY LAW FAST FACTS

In de facto relationships there are, of course, no formalities such as a wedding and a divorce. A property claim can be made after a couple has been living together for two years or if there are children from the relationship or if a person

has made a significant contribution to property. A claim needs to be filed in court within one year of separation.

Like the law in relation to married couples, a person who lived in a de facto marriage relationship may have a right to seek spouse maintenance from their partner under certain circumstances.

This fact sheet is for general information purposes only and is not legal advice. If you require legal advice please contact us to discuss your personal situation.

1





# 2

## PROPERTY SETTLEMENT HOW TO DIVIDE THE PROPERTY?

Under Australian law there is no presumption that the property of a married couple will be divided equally between them. Property settlement is based on assessing contribution and the respective needs of each of the parties.

Many things are considered in calculating the division of property.

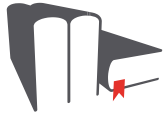
The assets that a person brings to the relationship may be important, although the significance of pre-cohabitation assets diminishes as the years go by.

Gifts or inheritances received during the

### FAMILY LAW FAST FACTS

relationship may increase the entitlement of the spouse who received the gift or inheritance.

The contribution of money from earning income is, of course, very important but so is the contribution that a parent makes in caring for children or as a home-maker.



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The division of property can also be affected by an assessment of the needs of each spouse. A person who has the primary care of children, or who earns significantly less than their spouse, or who cannot work because of poor health or childcare responsibilities, may have those matters taken into account.

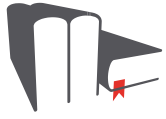
# CUSTODY OF CHILDREN

## PARENTING RIGHTS & DISPUTE

In Australian law there is no assumption that the care of children should be divided equally between their parents once they separate. Under the Family Law Act, which applies to all children, whether their parents are married, unmarried or in a same-sex relationship, the best interests of the child is the paramount consideration.

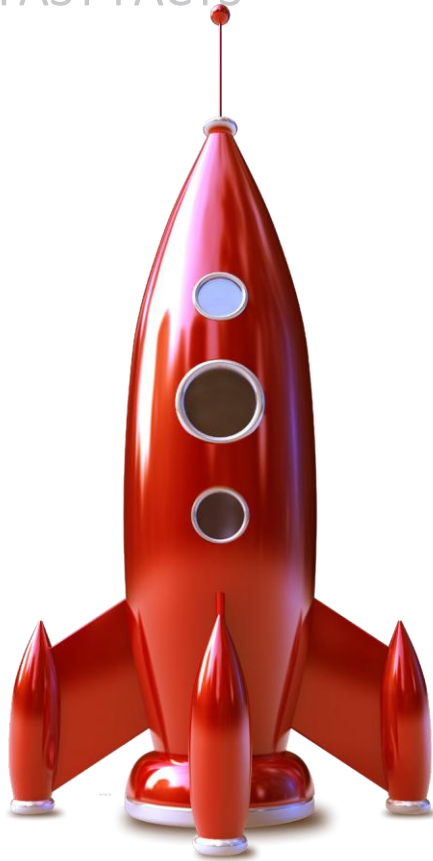
However, parenting laws under the Family Law Act are complex.





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## FAMILY LAW FAST FACTS



3



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Perhaps the most important thing to know about parenting rights is that it is difficult to change a pattern of care once it is established. Seeking the assistance of a court can take time and courts are often inclined to maintain an existing pattern of care even where it may not seem to one parent to be appropriate. With this in mind it is very important to get advice about parenting rights before separation. The pattern of parenting care that commences at separation may well dictate the long-term arrangements.

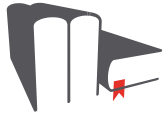
# SUPERANNUATION

## FOR SEPARATING COUPLES

Under the Family Law Act superannuation can be important when it comes to property settlement.

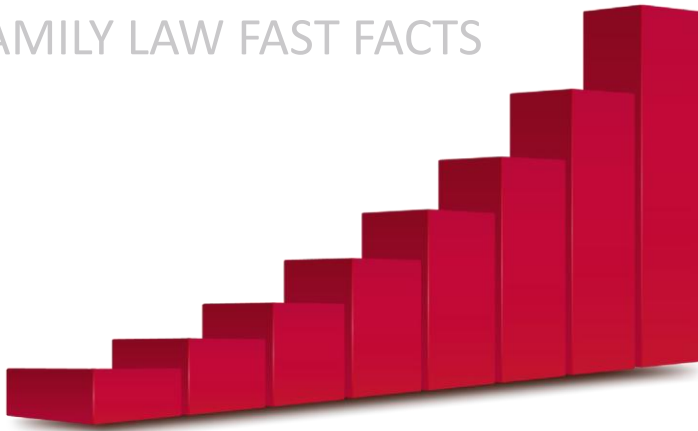
For separating couples, superannuation has “portability” in the sense that superannuation of one person can be transferred to a superannuation fund nominated by the other person provided there is an order or agreement which complies with the Family Law Act.





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# 4





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Establishing the correct value of superannuation is usually required. Family law provides for compulsory valuations in relation to some types of superannuation and can impose a mandatory formula for valuing superannuation interests in a “defined benefits fund”. Government and defence employees often have this type of superannuation.

# GET EARLY ADVICE

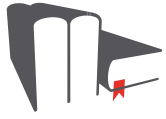
## RISK OF AVOIDING ADVICE

Some of the work of family lawyers relates to resolving problems which have arisen because of a lack of early advice. It can be tempting to put off getting advice until after separation and sometimes it is months or years after separation that a person first gets advice.

Many people mistakenly think that in property settlement the assets are taken as they were at the date of separation. In fact, it is usual for assets to be considered at the date of settlement,







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## FAMILY LAW FAST FACTS



5

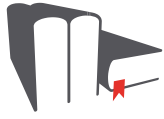


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which may be months or years after separation. A spouse may be considered to have contributed to post-separation assets acquired by the other spouse simply because after separation they have continued in their role of caring for children.

It is very important to get advice early and preferably to get advice before separation. Getting advice never creates problems and it often avoids later complications and problems.

# CHILD SUPPORT

## UNDERSTANDING THE SYSTEM

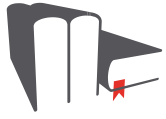


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Australia has a child support system but participation in it is only compulsory for couples where



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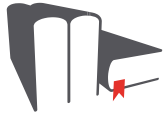


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at least one parent is in receipt of Centrelink benefits. Where that does not apply parents can make their own arrangements or agreements about child support.

Australia's child support system includes a special formula which can be a useful guide as to what child support should be paid by a parent and in the

## FAMILY LAW FAST FACTS

case of persons on pension benefits Centrelink expects a pensioner will obtain child support in an amount equal to the amount which the formula says is appropriate to their circumstances.

The formula is based on the income of each party, the division of care (by calculation of nights) between the parents, and the age of the child.



# PRENUPTIAL



AND



## COHABITATION AGREEMENTS

For many years pre-nuptial and cohabitation agreements were not legally binding in Australia but the law has changed and these agreements, provided they are entered into in compliance with the requirements of the Family Law Act are now binding.

The key requirement in making a binding agreement is that each person must have independent legal advice,





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# 7

not only as to the effect of the agreement but also as to their rights and entitlements and the impact which the agreement will have on those. The practical effect of this requirement is that if an agreement is to be legally binding then each party needs to have comprehensive family law advice from a lawyer who

## FAMILY LAW FAST FACTS

example, independent

advice was obtained from a lawyer who knew little about family law then the requirements of the Family Law Act would not have been fulfilled and it may well be that the agreement could later be set aside if one party regretted having entered into it.

practices in family law. If, for

Agreements can cover every aspect of financial and property arrangements including what property each party retains, how future property is to be dealt with, and whether either party will have a right to claim spouse maintenance from the other party.

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