



# Are we just dating or are we in a de facto relationship?

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Whilst in the infant stages of a relationship, a common question is often, “What *are* we?” Are we something as simple as boyfriend and girlfriend or friends hanging out together, or are we actually in a de facto relationship?

Relationships come in many different forms these days. There is no ‘one size fits all’ when it comes to modern relationships or families. So sometimes the lines become blurred as to whether it’s a more ‘formal’ relationship or not.

So, you didn’t get married, but were you in a de facto relationship, according to the law?

If you were married, your relationship status clear-cut. You have jurisdiction under the *Family Law Act 1975* (Cth) (‘the FL Act’) to [apply to the Family Court for property settlement orders](#) and/or [spousal maintenance](#).

The same can’t be said for the balance of relationships. In Western Australia, being in a ‘de facto’ relationship is the standard for being entitled to a property settlement under the *Family Court Act 1997* (WA) (‘the FC Act’).

## How is a de facto relationship defined in Western Australia?

In Western Australia, a de facto relationship by definition and reference to Section 13A(1) of the *Interpretation Act 1984* (WA) (‘the *Interpretation Act*’), is:

*‘...a relationship (other than a legal marriage) between 2 persons who live together in a marriage-like relationship’.*

Whilst a previous school of thought considered you were in a de facto relationship if your relationship spanned 2 years or more and you lived together, this is a myth and is certainly not the case.

## What is a 'marriage-like relationship' according to the law?

Section 13A(2) of the *Interpretation Act* lists many factors which indicate a de facto relationship exists between two people. These include:

the length of the relationship between them;

whether the two persons have resided together;

the nature and extent of common residence. For example, did they share a bed?;

whether there is, or has been, a sexual relationship between them;

the degree of financial dependence or interdependence and any arrangements for financial support between them. For example, did they:

amalgamate their finances?

open joint bank accounts?

take out loans in their joint names?

the ownership, use and acquisition of property (including property they own individually). For example:

Were assets which were accumulated during the relationship purchased using joint funds?

Were assets which were accumulated during the relationship registered in joint names?

How were assets held in a person's sole name used during the relationship? For example, a motor vehicle purchased and registered in one person's name, however exclusively used by the other person.

the degree of mutual commitment by them to a shared life. For example, were there mutual long-term plans to cohabit or

get married? Engagement can be a good indication of this. Or were there plans to have children?

whether they care for and support children (whether that is children of the relationship, adopted children, foster children or children of a previous marriage or relationship);

the reputation and public aspects of the relationship between them. For example, did they present to friends and to the public as a couple? Did they introduce their spouse to their friends and family member as their spouse?

When considering whether a de facto relationship exists or existed, it is not necessary for all of the above factors to be present or proven. Rather, the presence of one, some or all of them are indicative of a de facto relationship existing.

## **Same-sex couples no longer treated differently**

It is also important to note that a de facto relationship can exist between people of different sexes or the same sex.

In Western Australia, a de facto relationship can also exist regardless of whether either of the persons is legally married to someone else or in another de facto relationship (Section 13A(3)(b) of the *Interpretation Act*). Notably, in Australia, family law works on a 'no fault' basis. This means that the law does not, generally, take into account any acts of adultery.

Section 4AA of the FL Act (extracted below), also provides guidance as to the meaning of a de facto relationship:

### ***Meaning of de facto relationship***

A person is in a ***de facto relationship*** with another person if:

the persons are not legally married to each other; and

the persons are not related by family (see subsection (6)); and

having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis.

Paragraph (c) has effect subject to subsection (5).

*Working out if persons have a relationship as a couple*

Those circumstances may include any or all of the following:

the duration of the relationship;

the nature and extent of their common residence;

whether a sexual relationship exists;

the degree of financial dependence or interdependence, and any arrangements for financial support, between them;

the ownership, use and acquisition of their property;

the degree of mutual commitment to a shared life;

whether the relationship is or was registered under a prescribed law of a State or Territory as a prescribed kind of relationship;

the care and support of children;

the reputation and public aspects of the relationship.

No particular finding in relation to any circumstance is to be regarded as necessary in deciding whether the persons have a de facto relationship.

A court determining whether a de facto relationship exists is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.

For the purposes of this Act:

a de facto relationship can exist between 2 persons of different sexes and between 2 persons of the same sex; and

a de facto relationship can exist even if one of the persons is legally married to someone else or in another de facto relationship.

### *When 2 persons are related by family*

For the purposes of subsection (1), 2 persons are **related by family** if:

one is the child (including an adopted child) of the other; or

one is another descendant of the other (even if the relationship between them is traced through an adoptive parent); or

they have a parent in common (who may be an adoptive parent of either or both of them).

For this purpose, disregard whether an adoption is declared void or has ceased to have an effect.

## **If you are in a de facto relationship, what does this mean for your family law entitlements?**

If you've determined you were in a de facto relationship, what does this mean in respect of your entitlements and obligations in a family law matter?

In Western Australia, under the FL Act, [de facto couples are entitled to almost the same rights and claims in family law in respect of property settlement, spousal maintenance and parenting matters](#). In fact, the provisions of the FC Act largely mirror the provisions of the FL Act.

In Western Australia, the main distinction is that de facto couples can presently **not** split their superannuation entitlements.

## **Change coming for WA couples to split superannuation in property settlement**

On 28 October 2018, Federal Attorney General, Christian Porter, announced that the Commonwealth Government agreed with the WA State Government to introduce legislation to allow de facto couples in Western Australia to split their superannuation entitlements.

On 27 November 2019, the *Family Law Amendment (WA De Facto Superannuation Splitting and Bankruptcy) Bill 2019* was introduced into Federal Parliament.

De facto couples must be mindful of the time limits for applying to the court for financial orders (whether that be property settlement

orders or spousal maintenance orders).

For de facto couples, this is two years from the date of separation.

If you are unsure if your past relationship met the criteria of a de facto relationship and what relief you may be entitled to under the *Family Court Act* or if you'd like to discuss your family law matter with a lawyer or arrange an initial consultation, call one of our family lawyers.

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