

Prenuptial rights for same-sex, unmarried

Caroline Marcus, October 19, 2008

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UNMARRIED and same sex-couples may soon be able to sign "prenups", giving de factos many of the same legal rights as those who are wed.

Reforms to the Family Law Act before the Senate would allow agreements to be drawn up by de factos to cover spousal and child maintenance, as well as the division of property in the event of a relationship breakup.

The principal of Nicholes Family Lawyers, Sally Nicholes, said the proposed financial agreements were similar to official binding financial agreements or prenuptials as they are widely known.

The bill was circulated in Federal Parliament on September 18 and is awaiting consideration by the Senate. If the legislation is passed, it is expected to be enacted by March.

A de facto relationship can be heterosexual or homosexual and can exist even if one of the people involved is legally married to someone else or has another de facto partner.

The legislation will also mean that a court can force a partner out of the home if they are violent or acting inappropriately to the other person.

"This is pretty dramatic stuff and it is a big change," Ms Nicholes said. "It is going to be huge, particularly with the spousal maintenance.

"What I have often found amazing is that someone could be in a de facto relationship for 30 years and have no obligation for spousal maintenance. But you could be married for one year and have more rights."

She agreed that the amendments may make marriage a less attractive prospect for some couples.

"It just depends on how legally minded a couple are," she said. "[But] some will come back to romance - to actually get married not for legal reasons, but romance."

Ms Nicholes said financial agreements were already common in second marriages or in the case of de facto relationships where people had been married before and were "burnt" by the divorce.

Agreements may also be necessary in cases where clients expected large inheritances or to avoid family conflict when one partner comes from greater wealth.

Prenups have been in force in Australia since December 2000, although public perception has changed greatly since then, Ms Nicholes said.

"Prior to the introduction of the laws in 2001, public perception did attribute prenups to American legal shows in the realm of Arena Becker from *LA Law*," she said.

"The profession has seen a request from average Joes who simply want to control their affairs and determine their destiny rather than [allow] a court [to]."

"They may have seen friends or relatives at the end of a harrowing divorce litigation and knowing such agreements are in force, chose to enter into them to control their affairs in the event of a relationship breakdown."

Under the legislation, courts will determine whether a couple are involved in a de facto relationship by taking a number of factors into account, including the duration of the partnership, whether they are living together, whether a sexual relationship exists, the degree of financial dependence and the ownership of property.