



## The Relationships Act 2008 (Vic)

### What does this mean for the GLBTI Community?

The Relationships Act 2008 (the Act) came into effect in December 2008. The Act was specifically enacted to bring into line the rights of couples in domestic relationships (that is, defacto relationships – irrespective of whether they are same sex) with that of heterosexual couples and married couples.

The Act was the first enacted at that time which provided specifically for the GLBTI Community addressing issues such as the registration of relationships with Births, Deaths & Marriages Registry, the implementation of “maintenance” for same sex couples upon the unfortunate breakdown of their relationship, and property division principles in line with those afforded to married couples under the Family Law Act 1975.

The Act applies to Victorian couples in domestic relationships whose relationships broke down prior to 1 March 2009. Although it is anticipated that the Act will no longer be the governing legislation for the GLBTI community after 1 March 2010 (given that parties to a domestic relationship only have 12 months post separation to effect a property settlement) it will continue to legislate areas such as the registration of relationships with the Melbourne registry of Births, Deaths & Marriages. It should also be noted that relationships that broke down after 1 March 2010 are now governed by the principles of the Family Law Act 1975, which bring into line the rights of heterosexual and same sex couples.

### The Relationships Register

The Act established a right for people in same sex relationships (or heterosexual defacto relationships) to register their relationship with Birth, Deaths & Marriages. It was implemented to provide domestic couples with legal recognition of their relationship, and provide easier access to entitlements, such as superannuation, without first having to establish that you were in a relationship.

This is important because for any de facto relationship that breaks down, you must first be able to establish that you were in a de facto relationship. Unfortunately,

upon the breakdown of relationships, we see it all too frequently, where one party refuses to acknowledge that a relationship existed, and it was nothing more than a shared house accommodation. By registering your relationship, it is conclusive proof that a relationship existed and the status of the relationship will automatically be accepted by a Court. It is interesting to note that to register your relationship you do not need to be living in a de facto relationship with your partner.

Accordingly, from this flows many legal issues for the GLBTI community which people must be aware of prior to registering their relationship.

### How do I register my relationship?

To register your relationship both parties must complete an application to register a relationship form available either online from [www.bdm.vic.gov.au](http://www.bdm.vic.gov.au) or by attending at the Births, Deaths and Marriages registry located at 595 Collins Street, Melbourne. There is a fee of \$180.00 to lodge your application and you pay a further \$26.60 to receive a certificate of registration.

### What if a registered relationship breaks down?

To revoke a domestic registration, both parties to the relationship must complete an Application to Revoke a Registered Relationship form, which can either be collected from the Births, Deaths & Marriages registry or online. If one party to a relationship is not able to complete the application form, the party applying to revoke the registration must also complete a Revocation Statutory Declaration.

### What are the implications for a party if a relationship is registered?

There are legal implications if you register your relationship, which include automatic legal recognition of your relationship (regardless of if you are living together) which in turn automatically allows your partner potential entitlement to your property and

financial resources if the relationship breaks down. In contrast, if you did not register your relationship, your partner would, in the event that your relationship breaking down, have to establish with a Court that

you had been living together for a period of 2 years prior to any claim being made by them. This period of time is not relevant if a relationship is registered.

## How a Court determines entitlements of parties for the division of property

The Act (and now as of 1 March 2009 - the Family Law Act 1975) determines the interests of parties to a relationship having regard not only to the contributions (both financial and non financial) made by each party to the relationship, as well as the financial resources of the parties, but it also considers the 'future needs' of the parties. In determining the division of property upon the breakdown of a relationship, the Court must consider:

- The income, property and financial resources of each partner;
- The financial needs and obligations of the 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 the circumstances;
- Any child support payments that are being made 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.

This means that it is likely that there will be significant adjustments in favour of economically inferior parties and/or those who have the primary care of the children.

## Maintenance for domestic couples

The Act provides that upon the breakdown of a relationship, either party may apply to the Court for maintenance. They must establish and the Court must be satisfied that they are unable to support themselves without financial assistance from the other party as:

- Their earning capacity has been adversely affected by the circumstances of the relationship; or
- Any other reason arising in whole or in part from the circumstances of the domestic relationship.

For those parties in registered relationships, there is no requirement to prove to a Court that you lived together for any period of time prior to making the application. However, given that there must be some link between a party's inability to financially support themselves, and

the relationship, it is unlikely that a partner in a very short-term relationship could be successful in bringing an application before the Court.

## Relationship Agreements

The Act introduced "Relationship Agreements" for people in domestic relationships who seek to outline how their property would be divided in the event of their relationship breakdown. For couples who separate after 1 March 2009, there is similar provision in the Family Law Act 1975, whereby couples can execute Binding Financial Agreements.

A Relationship Agreement can opt to exclude each other from any right to maintenance that may arise as a result of the relationship, and to also exclude the other party from any right to property owned by one party prior to the relationship commencing, or acquired by one party throughout the relationship.

Relationship Agreements can be executed either prior to, during or upon the breakdown of a relationship (to reflect the agreement reached between the parties). If a Relationship Agreement has been executed prior to the relationship breaking down, then the Court must (in most circumstances) use the agreement as the basis to determine the division of assets.

However, the Court can still set aside (i.e. disregard) a relationship agreement, or the terms in it, if the circumstances of the parties have changed materially, in such a way that it would lead to a serious injustice if the agreement or a term of the agreement were to be enforced.

## Conclusion

The Relationship Act 2008 covers the rights of parties in relationships that break down prior to 1 March 2009. All relationships that break down after 1 March 2009 are covered by the Family Law Act 1975 (as amended).

Both pieces of legislation afford same sex couples the same rights under the law, however, the Relationships Act does not allow separating parties to split superannuation entitlements, which the Family Law Act 1975 (as amended) does.

Nicholes Family Lawyers specialise in property division and maintenance matters between separating parties, and we welcome your enquiries.



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