

DEFACTO ISSUES

13 July 2020

You may have an understanding that you are in a defacto relationship but what happens now? Like every relationship there are challenges to resolve: parenting, property, child support. How does that effect you? Here's a quick guide.

PROPERTY SETTLEMENTS

How will our Property be Divided?

The Family Law Act sets out how property is divided for defacto couples.

Determining a Property Division

The court has the right to determine how property is divided when a defacto relationship has broken up.

There is no set percentage for how that happens. There is definitely no automatic 50%/50% entitlement.

The court takes a number of steps in determining how property should be divided in a particular case. For this article we have summarised this into two steps.

The first step involves quantifying the value of the pool of property, that looks at:

- The court takes an inventory of all assets and liabilities that existed at the time of separation;
- A current value is put on each asset and total value determined.

The second step then looks at what percentage will be applied to a division of the property. This specifically looks at financial and non-financial contributions both parties made during the relationship, as well as looking to the 'future needs' of the partners, such as:

- future obligations;
- financial situation; and
- the cost of caring for any children from the relationship.

What Happens to Superannuation?

In property settlements under the Family Law Act, superannuation is defined as 'property'.

The law regarding superannuation was changed in 2002. From that time on it has provided detailed formulas for calculating the value of superannuation in property settlements.

These formulas need specialist advice. Ask your solicitor for help in these situations.

Superannuation funds can be split between spouses and rolled over as part of a property settlement. It is not compulsory to split superannuation.

CHILDREN

Children and the Law

The child's rights are the most important thing in child custody matters. To protect children, the court prioritises the following basic principles:

- Children have the right to be properly cared for and protected from harm
- If possible, both parents should be meaningfully engaged in their children's lives
- Parents are responsible for caring for their children.

What Does the Court Consider When Deciding Child Custody?

The court considers a range of factors before deciding on a child custody matter. The court must first consider if an 'equal time' arrangement is appropriate or failing that if, a 'significant and substantial' time arrangement is appropriate. It does this by looking at the 'best interest' factors. This includes matters such as, the child's wishes, the current living arrangements and many more. The court must also consider if the arrangements proposed are 'reasonably practicable'.

Each case is unique, but anything to do with a child's wellbeing can impact the final decision.

What Is Parental Responsibility and How Is It Relevant?

The law presumes that both parents have shared parental responsibility.

Under a shared parental responsibility arrangement, parents play an equally important role in deciding the big issues in a child's life such as, religion and health.

Will the Child's Preferences Be Considered?

Children do not need to meet a specific age requirement before their wishes can influence a child custody matter. If a child expresses a wish as to which parent they want to live with, their emotional maturity will need to be assessed.

Even though the views of young children are of interest, the court is more likely to seriously consider and give more weight to the opinion of a child in their mid-to-late teens.

What Is Child Support?

Child support is a form of financial support designed to help parents cover the costs of day-to-day care. The parent who pays child support is known as the 'payer parent' while the recipient is referred to as the 'payee parent/carer'.

Child support amounts can vary depending on how much money each parent makes and the child's living arrangements. The Department of Human Services (formerly the Child Support Agency) is responsible for overseeing child support payments.

Different Types of Child Support

Depending on their unique situation, families can receive different types of child support payments. Most payments fit into one of the following categories:

- Periodic payments
- Non-periodic payments
- Lump-sum provision.

These are the most common categories of child support, although other types of payments do exist. For example, it's not uncommon for parents to make non-cash transactions by exchanging property. However, any agreement for this to be credited to child support should be clearly documented. Payments can also be made to a third party to cover a child support debt.

How is Child Support Calculated?

Unless separated parents can come to a private agreement, child support amounts are calculated by the Department of Human Services using the following 8-step formula:

1. Each parent's taxable income is calculated.
2. These incomes are added together to determine a combined child support income.
3. Each parent's cost percentage is calculated using the care and cost table.
4. Using the [care and cost table](#), each parent's cost percentage is calculated.
5. Each parent's percentage of care is calculated.
6. Each parent's cost percentage is subtracted from the income percentage. This calculation determines which parent will receive child support. The parent with a negative percentage receives child support, while the parent with a positive percentage pays child support.
7. The costs for the child are then worked out using the [costs of children](#)
8. The total amount of child support is decided by multiplying the positive child support percentage by the costs of the child.

The DHS office website has an online calculator that is very useful.

SPOUSE MAINTENANCE

Spouse maintenance is where a payment is made by one spouse to the other (whether the couple was married or de facto) because of a significant difference in their incomes.

Under the Family Law Act, there is no formula to apply in determining how much spouse maintenance should be paid, rather there are a number of factors that need to be considered.

Spouse maintenance does not arise for every couple, however where it is an issue the amount will differ in every case.

The Family Law Act states that a person has a responsibility to financially assist their spouse or former de facto partner if that person cannot meet their own reasonable expenses.

Where applicable, both parties have an equal duty to support and maintain each other. This obligation can continue even after separation. The extent of the support depends on what the other party can afford to pay.

When making a decision, the Court considers:

- The financial needs of an applicant
- The respondent's capacity to pay
- Your age and health
- Your income, property and financial resources
- Your ability to work
- What is a suitable standard of living
- If the relationship has affected your ability to earn an income
- With whom any children (under 18 years of age or adult children who are disabled) live.