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## Big Change On De facto Couples' Rights

*For the first time within Australia's history, the rights of couples in de facto relationships, including those same sex relationships, will mirror married couples' rights.*

Coming into effect on 1st March 2009, the most significant change is the provision for de facto couples to seek spousal maintenance from their partner on the breakdown of their relationship.

The new legislation also allows for superannuation splitting from one de facto party to the other.

This may be the most significant change in relationship law in Australia since the introduction of the Family Law Act, said **msl** family lawyer and trained psychologist, Carrae Dawson-Wheeler.

*"It is still important to note that the court will only make orders regarding de facto property or spousal maintenance if it is satisfied that several conditions are met,"* she said.

These include that the total period (single or cumulative) of the de facto relationship was at least two years, and/or that there is a child of the relationship.

Alternatively, if one party made substantial contributions to the relationship and would suffer serious injustice if no order were made, the courts will consider this as well.

This legislation means it is more crucial than ever for de facto couples, or parties contemplating the commencement of a de facto relationship, to enter into a financial agreement with their partner in order to protect their assets.

As has always been the case with married couples, de facto couples may also now enter into a financial agreement with their partner before, during or on the breakdown of the relationship.

However, before rushing into any new agreements it is important that couples understand what a de facto couple is.

*"It is imperative to note that couples do not need to be residing together to be classed as being in a de facto relationship,"* said Ms Dawson-Wheeler.

Case law indicates that couples can be deemed to be in a de facto relationship despite the fact they live in separate residences.

The new legislation defines a person as being in a de facto relationship with another if they are not legally married to each other, not related by family and in all the circumstances of their relationship, are a couple living together on a genuine domestic basis.

Nevertheless, as in any new legal matter, each case is slightly different.

Carrae Dawson-Wheeler stresses the importance of consulting an experienced family lawyer before entering into any financial agreement in a relationship. *"It is important to know that should the worst ever happen, you have the security of knowing that a legally binding agreement is in place, protecting your assets,"* she said.

**msl** is a one of Queensland's largest full-service law firms with award winning offices on the Gold Coast and Brisbane CBD.

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