



When does my relationship become 'de facto'?

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What is a de facto relationship?

'De facto' means 'in fact' or 'in reality', and is used to describe a situation or relationship that exists in practice, even if it has not been officially or legally recognized.

There are a number of ways people determine whether or not they are in a de facto relationship. People can agree as to if and when they consider themselves to be in a 'de facto' relationship, while sometimes people become 'de facto' without formally agreeing or officially labelling themselves as such.

Often in family law matters, people disagree as to whether they are or were in a de facto relationship. It's not uncommon for one party to have considered their relationship to be committed and 'de facto' like, and the other to view the relationship in a more casual light. In a family law context, whether a relationship is 'de facto' is important because it can have [significant financial implications following the breakdown of the relationship](#).

How does the Family Law Act define a de facto relationship in Australia?

In family law matters, the definition of what is a 'de facto' relationship is found in [section 4AA of the Family Law Act 1975 \(Cth\)](#).

Under the Family Law Act, a person is in a de facto relationship with another person if:

1. The persons are not legally married to each other; and

2. The persons are not related by family; and
3. Having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a 'genuine domestic basis'.

What factors determine a de facto relationship in Australia?

The following factors are to be considered when working out if persons have a relationship as a couple living together on a 'genuine domestic basis':

1. The duration of the relationship

Generally speaking, the longer the relationship is, the more likely it would be considered to be 'de facto'. This can include relationships that are 'on again off again' in nature, and does not necessarily need to be a continual period of time.

A common misconception some people have is that once people have been in a relationship or living together uninterrupted (without someone moving out) for 2 years, they are automatically considered 'de facto' under the Family Law Act. This is incorrect.

This misconception likely stems from a jurisdictional requirement the Federal Circuit and Family Court has in relation to [making property orders](#) – being that in most (but not all) cases, the Court can only make orders for an [adjustment of property interests](#) in relation to a de facto relationship if it has existed as a de facto relationship for at least 2 years. This does not mean that a relationship necessarily becomes de facto after 2 years.

2. The nature and extent of their common residence

Did the couple live together – if so for how long, where, on what basis? Did they share a room and/or a bed? Did anyone else live with them, and on what basis? Did both parties contribute financially to the common residence?

If the couple did not live together – did they spend substantial time at each other's homes?

If there is a dispute as to whether the couple lived together, the Court will look to the usually used address of each party in official correspondence, for example their licenses, the electoral roll and taxation returns.

3. Whether a sexual relationship exists

While a sexual relationship is by no means a 'requirement' for a relationship to be a de facto relationship, the existence of a sexual relationship does support a determination that the relationship was de facto.

The Court will also consider the frequency of the sexual relationship, together with whether the sexual relationship was exclusive between the couple.

4. The degree of financial dependence or interdependence, and any arrangements for financial support, between them

This is determined by looking at how the couple shared their finances, including whether there were any joint accounts, and if so what were they used for, or whether one party is or was reliant on the other for financial support.

The Court will also look at what, if any, financial commitments the parties undertook jointly. For example, do they pay for separate health insurance, whether they have a family phone plan, do they file their taxes jointly?

5. The ownership, use and acquisition of their property

If there was an intermingling of finances, or the parties made joint decisions in relation to their property (regardless of whether the property was owned jointly), this suggests that the parties lived together on a genuine domestic basis.

6. The degree of mutual commitment to a shared life.

Whether a couple shows mutual commitment to a shared life can be incredibly personal and differ greatly between couples.

The Court can look at things such as whether the couple spends regular time together, whether they spend time together with their friends and family and how often they communicate with and about each other – this can be shown through phone calls, text messages and the like.

The Court can also have regard to whether the parties have Wills – is provision made for the other in their Will or are they listed as a beneficiary on any superannuation or life insurance policy?

7. The relationship registration status

Whether the relationship is or was registered under a prescribed law of a State or Territory as a prescribed kind of relationship.

8. The care and support of children (if any)

This includes whether the couple has any children together, or whether they assisted with the care of the other's children from another relationship. Is there any attempt between the parties to co-parent?

The Court will look at who is financially supporting the children, who looks after them, who attends to school drop offs and pick ups, attending medical appointments etcetera.

9. The reputation and public aspects of the relationship.

Similar to having a mutual commitment to a shared life, the reputation and public aspects of the relationship are personal and change between each relationship.

The Court will consider how the parties presented themselves to society, including whether the parties attended social functions together as a couple, how they present and refer to each other on social media posts, and how the couple refer to each other.

This is a non-exhaustive list of factors, which means that not all of the factors must be present in order for the Federal Circuit and Family Court to find that a de facto relationship exists. For example, a de facto relationship may still be found to exist even if the couple does not live together or share finances.

The Family Law Act also provides that a de facto relationship can exist between 2 persons of different sexes and between [2 persons of the same sex](#), and that a de facto relationship can exist even if one of the persons is legally married to someone else or in another de facto relationship.

In determining whether a de facto relationship exists, the Court 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. This makes it hard to predict the outcome of a case with any degree of certainty.

No particular finding in relation to any circumstance is to be regarded as necessary in deciding whether there is a de facto relationship. This means that even if it is determined that, for example, one or all of these factors exist, there is no certainty that the relationship will definitely be classified as 'de facto'.

This area of family law is incredibly complex, and due to the extremely personal nature of relationships no two cases are exactly the same. It is important that people understand their rights and obligations stemming from being in a de facto relationship prior to being in one, as it is often the case that people can be in a de facto relationship pursuant to family law without even realizing it.

What does [Services Australia \(Centrelink\)](#) consider a de facto relationship?

Services Australia, or Centrelink, requires individuals to provide information about their relationship status, as this can affect what payments people can apply for and how much they will receive.

Services Australia considers you to be in a 'relationship' if you are married, in a registered relationship, or in a de facto relationship. Services Australia assesses whether people are considered 'de facto' based on the following criteria:

1. The financial aspects of your relationship – i.e. if one person provides financial support to the other, whether you have joint accounts, debts or assets;
2. The nature of your household – the physical set-up of your household such as shared rooms, arrangements for chores and care of any children;
3. Social aspects of your relationship – how you present your relationship to others and how others view your relationship;
4. If you have a sexual relationship; and
5. The nature of your commitment to each other – the companionship and level of emotional support you give each other, and the length of your relationship.

A common misconception that people have is that once they are in a relationship for 6 or 12 months, Centrelink will automatically classify that relationship as 'de facto'. This is incorrect. While Centrelink does sometimes use 6-month or 12-month guidelines in relation to some of their payments to determine whether a party is 'independent', this does not translate to classifying whether a relationship is 'de facto'.

There is no minimum time frame that a couple needs to be in a relationship for it to be considered 'de facto'. There is also no time 'limit' that people need to be in a relationship for before it automatically becomes 'de facto'. Services Australia will look at all of the above factors when determining if your relationship is 'de facto' for their purposes.

Ultimately, even if Services Australia and/or Centrelink does assess your relationship to be 'de facto' for their purposes, this does not automatically mean your relationship is 'de facto' for family law or other purposes.

How do I register my de facto relationship in Victoria?

In Victoria, you can apply to register your domestic relationship if you are in a couple if you are:

1. Both at least 18 years old; and
2. At least one of you lives in Victoria at the time the application is made; and
3. You're not already married, in a registered relationship, or in another relationship that could be registered; and
4. You provide 'domestic support' to each other for the material benefit for the other, or live together in a 'domestic relationship';
and
5. You're committed to each other both personally and financially.

There is no requirement for you and your partner to live under the same roof to register a domestic relationship. Similarly, persons are not necessarily domestic partners because they live together. There are a number of factors set out under [section 35\(2\) of the Relationships Act 2008 \(Victoria\)](#) that essentially mirror the factors set out in the Family Law Act. All of these factors need to be considered to determine whether people are living in a 'domestic relationship'.

From a practical perspective, both applicants need to take part in providing a [statutory declaration](#) to Births, Deaths and Marriages to provide details about their relationship and confirm that you are eligible to enter the relationship. Each party needs to complete their section of the application separately.

Being in a registered domestic relationship makes it clear that, at the time of the application, both members of the couple considered they were in a de facto relationship. In the event of relationship breakdown, this can make it easier for parties to access their legal rights as it is clear that a de facto relationship existed. Parties will not have to go through the process of proving or disproving whether or not they lived together on a genuine domestic basis.

How a [family lawyer](#) can help

Legal advice will help you understand the law relating to your family law matter and help you settle and [formalise your arrangements](#). Receiving expert legal advice can equip you with the knowledge you need to make empowered and practical decisions about your next steps.

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.