

## The Relationships Act 2008 (Vic)

The Relationships Act 2008 (Vic) is due to come into force within the next few months. The Act deals with the way in which parties' property and financial resources will be distributed, in the event of the breakdown of the relationship. Parties in domestic relationships (formerly known as de facto relationships) should be aware of the changes to the existing laws and may wish to contract out of the new legislation by entering into a Relationship Agreement.

A domestic partner can apply to a Court for an Order for the adjustment of property interests, maintenance, or both, within two years of the domestic relationship ending (or outside of that two year period with the leave of the Court). The definition, "domestic relationship" includes same sex partners as well as those in heterosexual relationships. The Act creates a relationships register for domestic relationships where parties can register their relationship and such registration constitutes proof of a domestic relationship.

The Court will take into account a number of factors when deciding to make an Order to adjust an interest with respect to property, including:

- a) The financial and non financial contributions made by each partner to the acquisition, conservation or improvement of any property;
- b) The financial and non financial contributions to the financial resources of one or both parties;
- c) The contributions made to the welfare of the other partner or to the family unit; and
- d) The nature and duration of the domestic relationship.

Under the new Act a Court may make an Order for maintenance in favour of a domestic partner unable to support themselves because their earning capacity has been adversely affected by the domestic relationship, or for any other reason, arising from the relationship. In determining whether to make an Order for maintenance and fixing the amount to be paid, a Court must have regard to a number of factors. Currently, under the Property Law Act 1958 a Court cannot make an Order for the payment of maintenance by one partner to another partner.

Parties will be able to have any dispute between them heard in the Family Court or Federal Magistrates Court whereas currently parties can only make an application to State Courts. The

Family Court and the Federal Magistrates Court, which deal with property disputes between married parties, are more accessible, user friendly, and specialised.

A Court must not make an Order inconsistent with the terms of a relationship agreement between domestic partners, provided the agreement complies with the provisions of the Act. These provisions include the provision that the agreement must be in writing and signed by the parties and a provision that the parties have obtained independent legal advice. A certificate signed by each parties lawyer must be attached to the agreement certifying that they have provided their client with legal advice as to:

- a) The effect of the agreement on the powers of a Court under part 3.3 of the Act; and
- b) The advantages and disadvantages, at the time that the advice was provided, to the party of making the agreement.

Relationship Agreements must provide for financial matters, whether or not they provide for other matters. They can therefore deal with a range of matters including a broad range of financial matters which the parties may wish to deal with, including whether maintenance should be payable. They must be:

- i. in contemplation of the parties entering into a domestic relationship;
- ii. during the domestic relationship;
- iii. in contemplation of the termination of the domestic relationship; or
- iv. after the termination of the domestic relationship.

Courts may set aside agreements in certain circumstances for example if the agreement was entered into under duress or by fraud, or the partners circumstances have changed since the agreement was signed to such an extent that enforcement of the agreement would lead to serious injustice.

Parties in domestic relationships, or considering entering domestic relationships, should be aware of the new legislation and how it will impact upon them in the event of a relationship break down. They may wish to give consideration to entering into a relationship agreement to give themselves more certainty as to the division of assets and resources and whether maintenance should be payable, in the vent of a break down of the relationship.

If you require further information or advice about the Relationships Act 2008(Vic) please contact our office.

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