

Am I in a de facto relationship? Defining the meaning of ‘de facto’ and why it’s important in family law

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You are in a de facto relationship with another person if you are both not legally married to each other but you have a relationship as a couple living together on a genuine domestic basis. This is an important definition if your relationship ends and you need to divide your assets and/or access spousal maintenance.

Some criteria that will determine a de facto relationship

1. Have you been living together for 2 years or longer?
2. Did a sexual relationship exist?
3. Was there a degree of financial interdependence and financial support between both of you? For example, did you operate a joint bank account and pay for groceries and other household goods out of that account?
4. Do you own shared property together?
5. Was there a mutual commitment to a shared life?
6. Was the relationship registered?

7. Do you have children together? That fact alone means that you are in a de-facto relationship at the time you were living with the other person.

A de-facto relationship can exist between two persons of the same sex or of different sexes and can even exist when one person is legally married to someone else or in another de-facto relationship.

In the case of *Meyvans &Kempton [2019] FCCA 1845 (9 July 2019)* ("**Meyvans &Kempton**"), the court considered the criteria outlined above, particularly focusing on the mutual commitment to a shared life and the duration of the relationship.

A review of the Meyvans &Kempton case

For your ease of reading, we have given the Applicant and the Respondent fake names.

In this case, the Applicant ("John") sought a declaration that he and his partner ("Jane") were in a de facto relationship for three years and one month. Jane claimed that a de facto relationship did not meet the two-year threshold and only existed for approximately nine months.

The **length of the relationship** is particularly important because, under s90SB of the *Family Law Act 1975 (Cth),* a Court may make an order in relation to spousal maintenance or alteration of property interests **only** if the Court is satisfied that:

1. the period, or total periods, of the de facto relationship, is at least 2 years; **or**
2. that there is a child of the relationship; **or**
3. that the party to the de facto relationship who applies for the order or declaration made substantial contributions to the relationship and a failure to make the order or declaration would result in serious injustice to the applicant.

The court considered the following matters

- During the relationship, whilst the parties were living separately, John included Jane and her two children on his private health insurance.
- John also rented a three-bedroom unit to ensure Jane and her two young sons could reside there when they decided to live together. These actions were consistent with a mutual commitment to a shared life.
- Once the parties lived together continuously, John would regularly care for Jane's children and undertook some homemaker duties.
- The parties were financially interdependent but they presented to friends and family as a couple.
- During the relationship, the parties temporarily separated for a short period of time.
- Both parties were sharing payment for family needs.
- John was dropping off and collecting Jane's children from school and kindergarten.
- John was attending parent-teacher interviews for Jane's children and taking them to extra-curricular activities.

- The parties were in a sexual relationship.
- The parties resided together.

The court’s decision

The combination of the above facts allowed His Honour Judge Howard to find that there was a de facto relationship between the parties.

He found that Jane continually tried to downplay the extent of time that the parties spent together and lived together.

His Honour was satisfied that the parties were living together as a couple on a genuine domestic basis and were in a de facto relationship during the time they resided together, apart from the one week of temporary separation.

He referenced a previous decision of Murphy J in Jonah v White *(2011) 258 FLR 236* in which His Honour stated:

"*the issue, as it seems to me, is the nature of the union rather than how it manifests itself in quantities of joint time. It is the nature of the union - the merger of two individual lives into life as a couple that lies at the heart of the statutory considerations…*"

Get help from a family lawyer

If you’re in a de facto relationship and considering separating (or have separated), it’s important to be aware of the various factors that will contribute to how your relationship is defined and what effect that may have on future maintenance and property settlement.

If you require any assistance, our family lawyer Bridget can help clarify whether a de-facto relationship exists in your individual circumstances and assist you with any of your family law needs.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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