

Children

Regardless of the marital status of their parents, all children have the right to be cared for and supported. When a parent dies, children are entitled to a share of their parent’s estate if there is no will, or to challenge a will that does not adequately provide for their proper maintenance.

It is best if separated parents decide together how to care for their children. A **family relationships counsellor** or **mediation service** may help you reach agreement. Indeed, it is usually compulsory to attempt mediation before applying to the court. In making orders for the care of children, the court will consider the same factors regardless of the marital status of their parents.

If a child has been present during a relationship, a de facto partner who is not a parent of the child may also wish to continue to spend time with, communicate with or care for the child. If agreement cannot be reached after genuine attempts, the partner may apply to the Federal Circuit and Family Court of Australia for a **parenting order**. The applicant must be able to show they are concerned with the care, welfare and development of the child. In determining whether to grant a parenting order, the court must put the interests of the child first. The court will consider matters such as maintaining any established arrangements, the relationship between the applicant and the child, the child’s safety and the child’s wishes.

Child support

Separated parents are legally required to provide a proper level of financial support for their children. If there is a dispute about parentage, seek advice about DNA parentage testing procedures.

In Australia, the child support scheme ensures that children are supported by their parents, often with the assistance of government benefits. Child support is determined by either a mathematical formula set out in the law, or a child support agreement made by the parents.

A person who starts a de facto relationship with someone who already has children is not legally obliged to support those children except in special circumstances. However, Centrelink payments may be affected if you live together. If you receive Centrelink payments, Centrelink must be told of the relationship as soon as it starts.

For free legal advice, call the Legal Services Commission Child Support Helpline on 8111 5576.

Reproductive technology

Assisted reproductive technology, such as artificial fertilisation and insemination, may be accessed if it is unlikely that a person will become pregnant otherwise.

In South Australia, the Family Relationships Act 1975 automatically recognises partners in a ‘marriage-like relationship’ as parents of children born following their access to assisted reproductive technology, regardless of whose genetic material may have been involved.

Surrogacy

In South Australia, a surrogate mother may make a surrogacy agreement with one or more intended parents whereby parentage of the child or children born as a result of the agreement is surrendered by the surrogate mother and conferred upon the intended parent(s). The law does not require intended parents to be married or to have been together for any length of time, but other criteria apply. All parties to the agreement must be at least 25 years of age, have legal capacity, either Australian citizens or permanent residents, and must undergo counselling. There must be a medical reason for accessing surrogacy.

Adoption

To be eligible to adopt under the Adoption Act 1988 (SA), a couple must be married or in a marriage-like relationship and have lived together continuously for at least 5 years.

Legal Helpline 1300 366 424
Child Support Advice 8111 5576

Legal Services Commission Offices

- Adelaide Office
159 Gawler Place
Adelaide 5000
Telephone 8111 5555
- Port Adelaide Office
263 St Vincent Street
Port Adelaide 5015
Telephone 8111 5460
- Elizabeth Office
Suite 2 Windsor Building
1 Windsor Square
(off Playford Boulevard)
Elizabeth Shopping Centre
Elizabeth 5112
Telephone 8111 5400
- Port Augusta Office
34 Flinders Terrace
Port Augusta SA 5700
Telephone 8686 2200
- Whyalla Office
17A Forsyth Street
Whyalla 5600
Telephone 8620 8500
- Noarlunga Office
Noarlunga House
Ramsay Place
Noarlunga Centre 5168
Telephone (08) 8111 5340
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This information is general and not a substitute for legal advice. The Legal Services Commission provides free legal advice for most legal problems.

De Facto Relationships



When is a relationship recognised by law?

A de facto relationship recognised by law is one where two adults **live together as a couple on a genuine domestic basis**, but are not married. It is not enough just to live in the same house, or even to sleep in the same bed. To have a recognised relationship you must both intend to live together as a couple.

When a relationship is recognised under South Australian law, the relationship is called a **domestic partnership**. Under Commonwealth law, the relationship is called a **de facto relationship**.

Some laws recognise de facto relationships immediately and without any formal step being taken. Other laws may not grant partners rights and entitlements unless their relationship is registered or they have lived together for a minimum period of time or have a child together.

Registered relationships

If formal recognition of a relationship is needed, couples may **register their relationship** under the Relationships Register Act 2016 (SA). This can ensure automatic legal recognition of a relationship that might not otherwise meet the criteria of a de facto relationship.

There are two main differences between a registered relationship and a **marriage**. Marriage falls under Commonwealth law which means it will be recognised interstate and (usually) overseas. Marriage also requires an irretrievable breakdown evidenced by 12 months separation to end, whereas a registered relationship can end by application of either partner without proof of actual separation, after 90 days cooling off.

For some legal purposes, if the relationship is not registered, a formal court declaration may be required before the relationship can be recognised. If there is doubt about whether a relationship can be recognised, a court may be asked to make a declaration.

Is a de facto relationship the same as marriage?

In some areas of law, a de facto relationship is treated like a marriage, where there is no minimum period of time required for the relationship to be recognised.

There is **no minimum time period** for recognising a de facto relationship for:

- applying for legal aid
- Centrelink payments and benefits
- income tax deductions
- child support
- property agreements
- court orders for the protection of family members (intervention orders) or the care of children
- reproductive technologies
- surrogacy and adoption.

Under South Australian law, domestic partners may also be entitled to the same rights as married partners when:

- one partner dies without a will
- one partner leaves the other partner out of their will
- there are compensation claims from the death or injury of a partner
- a partner is ill and needs someone to make medical decisions for them
- organ donation is being considered.

However, in these situations, the relationship must usually be one:

- that is **registered** under the Relationships Register Act 2016 (SA), or
- where the partners have been living together as a couple for **3 years**, or for periods totalling 3 years over 4 years, or
- where the partners are **living together** as a couple and they have had a **child** together.

If the relationship is not registered, a **declaration** from the court stating that the relationship is or was a domestic partnership at a certain time is often required before making a claim, such as a claim against an estate.

An application for a declaration can be made under section 11B of the Family Relationships Act 1975 (SA), which sets out what the court must consider when making its decision.

Property Agreements

A couple living or intending to live together can prepare a **binding financial agreement** under the Family Law Act 1975 (Cth) that sets out how property will be divided if the relationship ends. A binding financial agreement can also be made after the relationship has ended.

To be binding, agreements must be in **writing** and **signed by both partners**. Each partner must get independent legal advice (each partner must have their own lawyer). Each lawyer must sign a statement stating the required advice was given and a copy of the statement must be sent to the other partner.

In some circumstances, a court may set aside or change an agreement, for example if there has not been full disclosure, or there has been fraud or unconscionable conduct.

Property disputes

Applications can only be made for the court to resolve a property or maintenance dispute if:

- the relationship was registered or existed for at least 2 years, or
- there is a child of the relationship, or
- serious injustice would result if an order was not made.

A claim for property or maintenance must be made within **2 years** of the relationship ending, unless there are special reasons. Property matters between de facto partners are dealt with in the Federal Circuit and Family Court of Australia under the same principles as for married partners.

It is not true that if you live with someone they are automatically entitled to half of everything you own. See our booklet [Family Law and You](#) for more information.

Debts

In any relationship, there is no rule that a partner is responsible for the debts of their partner. If you both sign a contract, or if an account is in both names, then you are both responsible for any payments. Beware of signing as a guarantor for a partner as you may become responsible for their debt.

Property in joint names

Property disputes can be minimised by taking steps to clarify who owns what. Some useful strategies include:

- not holding property in joint names unless each person contributes equally
- keeping a record of each partner’s contributions
- keeping receipts
- avoiding statements that property is ‘ours’ or ‘shared’ unless that is your real intention.

Give special thought to your **home**. If it is held jointly, your partner will own it all if you die first. You cannot make a will leaving your share to someone else. If this is not your wish (for example, if you have children from another relationship), consider owning the home as ‘tenants in common’. This will allow you to leave your share of the house to someone else in your will, or sell your share of the house while you are alive. Seek legal advice if you are not sure which type of ownership will suit you best.

