

MARKS & SANDS

L a w y e r s

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DeFacto Relationships and Superannuation

The State Governments have recently decided to “refer their power” about de facto relationships to the Commonwealth Government.

What this means is that in Western Australia our State Government will allow the Commonwealth Government to make law about de facto couples being able to split their superannuation formally either by agreement or by Court Order through the Family Court process.

Since December 2002 Western Australians living in de facto relationships have been allowed to apply to the Family Court for a division of their property and maintenance but not splitting the superannuation. This is shortly to change.

How will superannuation of a de facto couple be split?

We gather that the law as it currently operates for married couples will be applied to de facto couples.

Currently, in the Family Court of Western Australia a de facto spouse can apply for property settlement and maintenance after their relationship has ended if:

- (a) The relationship has lasted for at least two years; OR
- (b) There is a child of the relationship; OR
- (c) The applicant has made a substantial financial contribution and it would be highly unjust if the Court was not allowed to consider the case.

This superannuation splitting simply opens up more avenues for property settlement.