

Financial Planning and Same-Sex Advice

*The following **E-Book on “Financial Planning and Same-Sex Advice”** will help you remain informed about recent legislation changes and identify how these changes may impact you and your loved ones!*

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| <p>Financial & Lifestyle Planning abound</p>  | <p>Abound Financial and Lifestyle Planning is proud to be a gay and lesbian friendly organisation, with a long history of helping our gay and lesbian clients achieve their financial goals and objectives.</p> <p>Abound Financial and Lifestyle Planning advisers are experts in helping our GLBTI clients cut through legislation jargon and get down to the important things – assisting them to achieve their financial and lifestyle goals!</p>   |
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The 'Client-Financial Planner' Relationship



The relationship between a client and their financial planner is a rare one.

Over time you may have utilised other professional services; ie accountants, real-estate agents, lawyers and doctors. When you engage their professional services, it might be a 'one-off' and you may generally tell them only 'pieces' of your life puzzle. As a result, their service objectives for you are therefore also narrow and

limited ... ie get you a good tax return, sell your house, create your will, or get you back on your feet and feeling better!

The 'client – financial planner' relationship is one of the closest professional relationships you will ever have! You will discuss your financial position, health, family, issues and concerns, hopes and dreams! Not just financially but personally!

It's the financial planner's role to help put all the pieces of your puzzle together, determine what is missing from your life puzzle and put plans in place to ensure you can achieve your idea of the perfect financial and lifestyle picture!

In some instances, your financial planner will end up knowing more about you than your family and friends– so it's critical you are the right 'fit' for each other!

In this regard, the 'client-financial planner' relationship needs to be underpinned by a high level of trust, offer open and easy to understand communication and ideally provide you with comfort that your interests are being put first.



Problems faced by Lesbian and Gay clients seeking financial advice!

The Lesbian and Gay community can face some additional hurdles when seeking financial planning advice. While these might not apply to everyone – they can be large stumbling blocks for some when seeking financial advice.

- 1. Given the level of information a financial planner is privy to, some people may not feel comfortable divulging their sexual orientation to someone they have just met. Especially if they don't know how this will be received. Unfortunately for this reason many don't even take the first step.*
 - 2. Secondly, they may find it hard to find a financial planner who has an intimate knowledge of same sex issues, whether it be in relation to Centrelink, taxation, or superannuation – or just in general - and therefore don't end up seeking advice. Which is a shame, as everyone (gay or straight) should take control of their finances!*
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It's not uncommon for members of the gay and lesbian community to have a financial adviser, but never mention they have a same sex partner! Whether they weren't comfortable elaborating on their circumstances or too much time had passed to bring it up!

As you will see later in this E-book – this decision could be to both their and their spouse's detriment– especially in light of recent legislative changes.

Same-sex – Same Entitlements

What has changed with legislation?

In December 2008, the Government passed legislation that aimed to ensure that 'same-sex' couples and their families are recognised with the same entitlements as 'opposite-sex de facto' couples.

These reforms were made in response to the Australian Human Rights Commission's 2007 report, 'Same-Sex: Same Entitlements', which recommended the amendment of a number of laws that discriminated against same-sex couples and their children in areas of financial and workplace benefits.

The reforms amended 84 Commonwealth laws to eliminate discrimination against same-sex couples and their children in a wide range of areas, including social security, taxation, Medicare, veteran's affairs, workers' compensation, educational assistance, superannuation, family law and child support.

It is important that all members of the gay and lesbian community are aware of these changes and how they may impact on them, their loved ones and their children. While the changes help to remove discrimination and provide better outcomes for same-sex couples – some beneficial loopholes previously available to same-sex couples have now been closed. The Government has also been very specific that ignorance to the changes isn't a defence!

First Step to Equality

The changing of 'Spouse' and 'Child' definitions – for super and tax purposes



The legislation changes have meant key terms such as '[spouse](#)' and '[child](#)' have changed to recognise the relationships [of same-sex couples and their children](#).

For such a small change in the legislation wording, it has resulted in a snow ball effect on all areas of Financial Planning.

Previously 'Spouse' was referred to a couple of the 'opposite sex' who were in a relationship that was registered by State or Territory law, or although not legally married, lived in a 'genuine domestic basis' in a relationship as a couple. **This previously meant that 'same sex' couples were excluded under this terminology.**

This has since changed to include 'same sex' couples. Adding these two words (as simple as it is), opens up many doors which were never opened to same sex couples.

While it doesn't provide all the rights of a married couple, it does put gay and lesbian couples on similar footings to those in a 'de facto' relationship.

In a direct link – as a result of the 'spouse' definition changing, it has meant the definition of 'child' has also changed.

Each of the following is **also** the child of an individual:

- the individual's natural, adopted child, stepchild or ex-nuptial child
- a child of the individual's spouse
- someone who is a child of the individual within the meaning of the Family Law Act 1975.

For superannuation purposes, a child has previously been defined as a natural, adopted, step- or exnuptial child, only.

Superannuation – Death Benefits



One of the biggest changes has been that the changing of the above legislation now allows private sector superannuation trustees to make same-sex couples and their children eligible for reversionary and death benefits. This means that your spouse or child may be entitled to your superannuation benefit on a tax free basis. This took effect on 1 July 2009.

As a same-sex partner may now be considered a 'spouse', an anti-detriment payment may be available, where offered by the fund (potentially resulting in a larger payout figure on death).

Janine and Michelle's story

Janine and Michelle never took too much interest in their super. They weren't aware of the recent changes to legislation and had always assumed that they couldn't leave their super to each other – so didn't put any death benefit nominations in place with their respective super funds.

Unfortunately Janine passed away suddenly. It was therefore the responsibility of the trustee of the super funds (someone who never met Janine, nor knew of Michelle) to decide who Janine's super and life insurance would be left to.

Michelle is currently in her battle to prove she had a relationship with Janine – which is being made harder by Janine's parents who never accepted or acknowledged their relationship – and they continue to deny Janine was in a same sex relationship with Michelle.

Had Janine simply made a binding nomination (with her super fund) nominating Michelle as her 'spouse' – Michelle wouldn't need to be fighting for Janine's super and life insurance at a time when she should be mourning the love of her life!

Overview of the Australian Government's Same-Sex Law Reforms



So how do these changes impact me?

Tax

The reforms have ensured that same-sex couples are able to access the same tax concessions available to married and opposite-sex de facto couples.

While the Australian taxation system is largely based on individual assessments, a number of thresholds,

concessions and payments are assessed on family or couple income. The inclusion of same-sex partners in the definition of a spouse now enables same sex couples to access these thresholds and concessions (as a family), which can be a mixed blessing for some.

This has impacted Medicare Levy surcharge, Medicare Safety Net, and Dependent spouse tax offset to name just a few.

Capital Gains tax rollover relief

Same-sex couples may now apply to the Federal family law court to have their property settlement handled. A binding settlement from the Federal Court, a State or Territory court order, or a pre-existing binding agreement, now affords same-sex couples the right to capital gains tax (CGT) relief where assets are transferred directly as a result of the property settlement.

Donna and Karen's story

Donna and Karen have lived together as life partners for the past seven years. They have a house together as well as some joint shares and an investment property.

On separating they apply to have their property settlement handled by the Federal family law court, which issues a binding settlement. Under the terms of the settlement, Donna will receive the home and Karen the shares and investment property.

As capital gains tax (CGT) generally applies to all changes of ownership of assets on or after 20 September 1985. Under old legislation the transfer of the shares and investment property to Karen would have likely triggered a capital gains tax liability for Donna.

However, if you transfer an asset to your 'spouse' as a result of the breakdown of your marriage or relationship (Donna and Karen now meet the definition), there is automatic rollover in certain cases. You cannot choose whether or not it applies.

This rollover ensures the transferor spouse disregards a capital gain or capital loss that would otherwise arise. In effect, the one who receives the asset (the transferee spouse) will make the capital gain or capital loss when they subsequently dispose of the asset. If you are the transferee spouse, the cost base of the asset is transferred to you.

Superannuation – Other

As spouses, same-sex partners may now also split their superannuation contributions. Superannuation splitting allows for 85% of concessional contributions to be split to a spouse's superannuation account. They may also be entitled to a tax offset for making a contribution to their spouse's superannuation. Both are of course subject to certain requirements being met.

Social Security and Family Assistance



Same-sex couples were not previously recognised as couples for social security or family assistance purposes. A person who had a same-sex de facto partner was treated as a single person. The reforms ensure that same-sex couples are recognised as a couple. Consequently, a same-sex couple will receive the same rate of social security and family assistance payments as an opposite-sex couple.

The reforms made to social security and family assistance also allow for the recognition of children of same-sex couples.

IMPORTANT - Failure to notify Centrelink of your relationship may result in penalties applying!!

Bill and Jack Story

Bill and Jack have been in a relationship for 15 years – they own a house together, and share everything. However until 1 July 2009, Centrelink treated them as two 'single' people with no connection to each other, rather than as a 'couple'.

As their relationship was not recognised prior to 1 July 2009 Bill and Jack had both been assessed as single home owners. In this regard, Bill received the Age Pension but Jack couldn't get the Age Pension as his income was too high (over the allowable limit).

Bill and Jack notified Centrelink that they were a couple. In this regard, from 1 July 2009 the couple's income and assets were combined. This meant that Jack would now be eligible for a small Age Pension. However Bill's Age Pension rate was reduced significantly due to their combined income (and being on a 'couple' rate).

While their Centrelink income has reduced, on the positive side, they are both now entitled to the Pensioner Concession Cards, which allows them be entitled to concessions such as cheaper pharmaceuticals.

Note, people were expected to notify Centrelink prior to 1 July 2009 of their partner status. Centrelink have indicated failure to make such a declaration may result in the requirement to repay any overpayment and potentially harsher fines and penalties.

While it might seem unfair that Bill and Jack's pension payments change, from 1 July 2009 same-sex couples and their families will receive the same rate of social security and family assistance payments as opposite-sex couples and families. This includes access to bereavement benefits and partner concession cards, which were previously unavailable.

Overview of the Australian Government's Same-Sex Law Reforms



The reforms have also impacted on areas of Medicare, Aged Care, Veterans' Affairs, Fair Work, Child Support, Immigration and Citizenship. We have briefly detailed some of these changes below.

PBS Safety Net and the Medicare Safety Net

Previously, same-sex couples and their dependent children could not access the Medicare or Pharmaceutical Benefits Scheme (PBS) safety nets as a family – legislation amendments were implemented 1 January 2009.

Aged Care

Under the reforms same-sex couples will be treated in the same way as opposite-sex couples. This means that a member of a same-sex couple will be taken to have 50% of the total value of the couple's income and assets. It will also mean that the value of the couple's home will be excluded in the assets assessment if the person's partner or dependant child is still living in the home, or if a child of the couple, who is eligible to receive an income support payment, has lived in the home for the past five years. This could lower the accommodation costs paid by aged care residents and increase the level of Government subsidy paid to homes on behalf of some residents.

The reforms will result in some current and future residents paying less and some paying more, by way of income tested fees, as their partner's income will taken into consideration in the income test.

The reforms will also mean that some members of same-sex couples who first enter permanent residential aged care on or after 1 July 2009 may pay a higher accommodation bond or charge.

Veterans' Affairs

The changes include the provision of assistance to members of the Defence Force to acquire homes; certain pensions and other benefits becoming available to same-sex partners widows or widowers; and other benefits, including death benefits, becoming available to the children of impaired or deceased Defence Force members or veterans.



Fair Work

Minimum statutory employment entitlements provided for in the National Employment Standards (NES) to parental leave, carer's leave and compassionate leave will extend to same-sex and de facto couples. The NES commenced on 1 January 2010

Child Support

Changes have been made to the *Child Support (Assessment) Act 1989* and *Child Support (Registration & Collection) Act 1988* to recognise the new parentage laws for same-sex couples. Where same-sex couples separate, they will be able to apply for child support. Decisions on parentage will be based on the changes to the *Family Law Act 1975*.

Immigration

As well as reform to the areas of tax, superannuation and social security, the same-sex legislation also means changes to immigration law. This entitles a same-sex partner and their children to be included as a 'member of the family unit' for visa purposes. Additionally, same-sex partners of Australian citizens, Australian permanent residents and eligible New Zealand citizens will be able to apply for the same partner visa as opposite-sex partners.

Citizenship

The reforms in relation to citizenship commenced on 15 March 2009. The reforms mean that same-sex couples have the same entitlements as opposite-sex couples. In particular, this will allow the same-sex partner of an Australian citizen to count a period of time spent outside Australia as a period of time spent in Australia for the purposes of meeting the requirements for citizenship by conferral. Reforms also allow for the recognition of children of same-sex and opposite-sex de facto couples where artificial conception procedures have been used, or where approved surrogacy arrangements have been entered into.

Conclusion

While the breadth of changes to legislation has been enormous in order to accommodate the many areas of legislation that affect couples in general, and had previously discriminated against same-sex couples and their children, these changes introduce greater simplicity and transparency for same-sex couples.

As with any change, some individuals may have benefited financially from not being treated as a couple previously — client education will be necessary to ensure that all parties are aware of both the advantages and disadvantages of this change.

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