



FINANCIAL PLANNING

FOR SAME SEX COUPLES



Wealth Adviser

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Before you get started

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- Wealth Today (AFSL 340289)
- Sentry Advice (AFSL 227748)
- Synchron Advice (AFSL 243313)
- Millennium3 (AFSL 244252)

Before acting on any information contained herein you should consider if it is suitable for you. You should also consider consulting a suitably qualified financial, tax and/or legal adviser.

Information in this handbook is no substitute for professional financial advice.

We encourage you to seek professional financial advice before making any investment or financial decisions. We would obviously love the opportunity to have that conversation with you, and at the rear of this handbook you will find information about our authorised representative and how to go about booking an appointment.

If ultimately you decide not to meet with us we still encourage you to consult with another suitably licensed and qualified financial adviser.

In any circumstance, before investing in any financial product you should obtain and read a Product Disclosure Statement and consider whether it is appropriate for your objectives, situation and needs.

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Letter from the Wealth Adviser Library

Dear Reader

Welcome to the Wealth Adviser Library

This library was built specifically to facilitate the provision of sound financial information to everyday Australians.

Our mission is to build an accessible, comprehensively supported team of members who share our vision and commitment to providing tailored financial advice and a new foundation of financial understanding and security for everyone.

With a national network of likeminded experts, we have the potential to provide the financial building blocks for future generations.

Knowledge gives you a huge advantage

We believe that knowledge gives you a huge advantage in creating and effectively managing wealth; in planning to reach your goals; and in being prepared for whatever unexpected twists and turns life may present.

That's why our team of experts has created this series of digital handbooks and manuals that seek to inform you of not only the benefits but also the potential risks and pitfalls of various strategies and investments.

We trust you enjoy this publication and find it informative and professionally presented. Of course, your feedback is always welcome as we strive to continually offer content in a format that is relevant to you.

Take the next step

Wealth Adviser (a division of WT Financial Group Limited) supports more than 400 privately owned and operated advice practices around the country. We invite you to engage with one of our advisers to discuss what it was you were hoping to achieve when you obtained this handbook, and to establish if they can help you achieve your goals and objectives.

At the rear of this handbook you will find details on how to book an appointment.

Wealth Adviser Library



Introduction

If you are in a committed same-sex relationship you will no doubt, be following the debate on marriage equality with keen interest. While there are few people who doubt that we will join much of the rest of the Western world in a legislative affirmation of marriage equality same-sex couples will in the meantime have to ask some hard questions on the organisation of their financial affairs in a way that will reflect their commitment to each other and their children. The good news is that this is, for the most part, an eminently achievable goal.

The purpose of this guide is to focus on some of the questions that same-sex couples may ask when it comes to financial planning.

Some of the issues we will cover include:

- Superannuation
- Taxation
- Separation
- Social Security and Aged Care

It should, of course be noted, that the contents of this guide may be overtaken by events (e.g. the achievement of full marriage equality). This is probably unlikely to happen under the present Coalition government but it might be that the strong grassroots campaign pays off and result in a conscience vote being allowed and legislation passing through parliament. There are also, as you are no doubt aware, several promising moves in this area on State and Territory level. All of this illustrates that you will have to make sure that you make decisions based on up-to-date advice. Your financial advisor should be able to assist you in this regard.

Historical overview

For most of Australian history same-sex couples sadly had few, if any, rights when it came to the legal recognition of their relationships. Thankfully this is not the case anymore (although we are of course not yet at the 'holy grail' of full marriage equality).

A major push in recognising the rights of Same-sex Couples occurred in response to a 2007 report by the Australian Human Rights Commission entitled 'Same-Sex: Same Entitlements'. This report pointed out the significant problems that same-sex couples experienced in terms of the recognition of their relationships. To its credit the Federal Government responded by pushing through a raft of legislation towards the end of 2008.

The stated aim of the Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Act 2008 (and related legislation) was to get rid of the areas of discrimination highlighted in the report. Unfortunately, it stopped short of granting full marriage rights. The aim was instead to ensure the same recognition for same-sex couples as those enjoyed by opposite-sex de facto couples.

The legislation had significant implications in a variety of areas that are directly related to the field of financial planning. These include taxation, superannuation, relationship breakdown, social security and aged care. It is to some of these areas that we will now turn.



Defining relationship status

Australian law confers certain rights and benefits to 'couples'. Historically a couple was defined as two people who are married to one another. More recently the law began to recognise de facto couples as well. This was defined as people living together as husband and wife on a 'genuine domestic basis'.

In the previous section it was made clear that two people in a committed long term same-sex relationship have the right to be regarded as having the same rights as an opposite-sex couple in a de facto relationship.

The relevant sections of the Equal Treatment Act (2008) therefore redefined the definition of 'spouse' as someone who:

- is in a relationship with another person (of the same or opposite-sex), that is registered under a State or Territory law, or
- lives with another person on a 'genuine domestic basis in a relationship as a couple' — whether legally married to the person or otherwise — regardless of gender.

It is possible (from 1 July 2009) to formally register this type of relationship in State based 'Births, Deaths and Marriages' registries.

Registration of a relationship in this way is highly recommended as it will be regarded as definitive proof of the existence of a relationship by the governments and by the courts.

Children of same sex couples

In the past it was not the case that the children of same-sex couples were automatically recognised as the dependants of both partners (e.g. for superannuation purposes). This was because children were defined as natural, adopted, step or ex-nuptial children of opposite-sex couples.

In line with the push to remove discrimination against same-sex couples the definition of 'child' now includes a child of a member's spouse (see the section above on how this might be defined) or a child of the person within the meaning of the Family Law Act of 1975.

This can include the following:

- A child born using artificial insemination
- A child born through a surrogacy arrangement
- A child deemed to be a child of the person under a State or Territory court order

Same-sex couples can rest assured, in light of the above, that they can have their shared commitment to children recognised under the law and as part of their superannuation arrangements. They can further strengthen their position in this regard by ensuring that they have an up-to-date will in order to ensure that their exact wishes and instructions are respected.



Tax, Medicare, Social Security and aged care

When it comes to filling in your tax form you will quickly notice that there are several types of payments, concessions and thresholds that are predicated on couple or family income.

The fact that same-sex couples now fall within the definition of spouse means that these payments, concessions and thresholds are relevant to them and should be kept in mind in their overall financial planning.

We will briefly consider the most important implications of being a couple at tax time:

Medicare Safety Net

Same-sex couples (and their children) can register as a family for the Medicare Safety Net. In practical terms this means that they will be able to claim a greater proportion of non-hospital medical expenses (since a couple or family is likely to reach the threshold at which you are able to claim quicker than an individual).

For 2013 the threshold at which the safety net kicks in for a family is \$2120. Families (with an income below \$168 000) will also be able to claim a 20% tax offset for out of pocket medical expenses above this amount.

Medicare Levy Surcharge

The Medicare Levy Surcharge is payable by tax payers who do not have private health cover and who earn above a certain income. As such it is designed to encourage individuals who can afford it to take out private cover.

If you are part of a family or couple with a combined income of \$176 000 in the 2013-2014 financial year you will be liable to pay the surcharge (1-1.5% depending on income). Same-sex couples will be assessed under the couple's threshold and this combined income may put a partner who would not normally have to pay the surcharge (the threshold is \$88 000 for individuals) 'over the edge'. Liability in this area will obviously have to be carefully

monitored to avoid mistakes or nasty surprises.

Dependant Spouse Tax Offset

It is possible to claim a tax offset (currently to a maximum of \$2432) if you earn less than \$150 000 and have a spouse who earns nothing (or very little). Since same-sex couples fit the definition of 'spouse' under taxation regulations this offset may be available to some of them.

A calculator to determine whether you are eligible (and the size of the offset) can be found here: [http://ato.gov.au/Calculators-and-tools/Spouse-\(without-dependent-child-or-student\)-tax-offset-calculator/](http://ato.gov.au/Calculators-and-tools/Spouse-(without-dependent-child-or-student)-tax-offset-calculator/)

Aged Care

In the past someone in a same-sex relationship would have been regarded as single when it came to the income and assets tests related to aged care.

With the legislative changes mentioned above this is a thing of a past and spouses in same-sex relationships will now be regarded as having 50% of the combined income and assets of the couple (as is the case with opposite-sex couples). It should be noted that this provision was enacted on 1 July 2009 and is open to new entrants only, in other words those who entered an aged care facility before this date will still be assessed under the old system (unless they move to a new facility). The 50% will be used to calculate accommodation, charges or bonds payable on entry to aged care facilities.

It should also be noted that, as with opposite-sex couples, the family home will be exempt from inclusion in the income/asset assessment should one of the spouses continue to reside in it.

Social Security

The Department for Social Services will have to be satisfied that a 'marriage like relationship' exists between same-sex or opposite-sex couples in order for these couples to be eligible for family related social security benefits or entitlements.

Centrelink will have to be notified of the existence of this relationship. Once this is

done the same rate of social security and family assistance payments available to other couples will apply. Same-sex couples will also be able to access previously unavailable bereavement benefits and couple concession cards.

Unfortunately, the ability to be regarded as a couple under the Social Security arrangements can also have less beneficial outcomes.

These may include:

- Couples are assessed on combined income. This may lead to changes in benefits for a spouse who previously received a benefit based on lower assets or income.
- Couples receive a lower rate of pensions or allowances (when compared to two single entitlements). The total Social Security payment for a same-sex couple could therefore be adversely affected by them registering as a couple.

Relationship breakdown

From 1 July 2009 couples in a same-sex relationship that is being dissolved have been able to apply to have their financial and other arrangements determined according to the provisions of the Family Law Act 1975 which allowed for the division of the assets of de facto couples. The reforms described allowed above same-sex couples living together on a 'genuine domestic basis' to access the Family Court of Australia or the Federal Magistrates Court for property division and spousal maintenance¹.

It is possible to opt-out from having the relationship covered under the legislation through signing a legal and binding agreement. This will have to be done before or during the relationship and both partners will have to agree to this. If no agreement exists, but one or both partners would like

the relationship to be recognised under the provisions of the act, certain circumstances will be considered in order to determine whether the partners are (or were) living together on a 'genuine domestic basis':

- duration of the relationship
- whether a sexual relationship existed
- the degree of financial dependence or interdependence.
- Whether there is a child of the de facto relationship involved

The implications of dealing with a relationship breakdown under the Family Law Act can be wide ranging.

They include:

- Possible division of superannuation funds (see below)
- Possible division of property and other assets
- Possible 'spouse maintenance' payments

Superannuation

The changes discussed earlier in this guide had some significant implications for the way in which same-sex couples are treated in the area of superannuation.

Some of these changes should be taken into account when it comes to future financial planning:

Death Benefits

Members of same-sex relationships are now able to designate their partner as a 'spouse' in order to receive their death benefits. This may include the payment of a lump sum or the commencement of a death benefit pension from the deceased member's account.

Children of the couple can, of course, also be named as dependents.

One of the most important implications of

¹ Levels and conditions of access may differ from state to state and it is important to ensure that you familiarise yourself with the exact situation in your state. More information can be found at: www.familylawcourts.gov.au

the designation of 'spouse' and 'dependant' respectively is that it can have significant tax implications (e.g. possibly allowing the surviving partner to qualify for tax-free status on superannuation lump sum death benefits).

As with other aspects of superannuation planning it is very important that you get the best possible advice in order to set up your arrangements in a way that will provide the best outcomes for you and your loved ones.

Super Splitting

As spouses same-sex couples are able to 'split' their super. Under legislation 85% of concessional contributions can be split to an account belonging to your spouse. The most significant beneficiaries of this will be couples where one partner is significantly older than the other. The younger partner (who may not meet any condition of release) can 'split' to the older partner (who may meet a condition) ensuring that the funds may be available 'tax-free to them as a couple.

Spouse Contributions

One member of a same-sex relationship may be able to claim an 18% tax offset on super contributions of up to \$3,000 by making a 'Spouse Contribution' on behalf of a non-working or low-income-earning spouse. There are certain strict rules governing this type of transaction and it is advised that you consult the relevant information on the ATO's website.

This can be found here:

<http://www.ato.gov.au/Individuals/Families/In-detail/Income-tax-offsets/Spouse-super-contribution-tax-offset/>

SMSF 'Related Party Rules'

Self-Managed Super Funds are not allowed to enter into a variety of investment related activities with 'related parties'.

Prior to 2008 same-sex partners were excluded from this prohibition since they were not regarded as 'spouses'. They are, however, now regarded as such and fall under related party prohibitions. This situation came into effect on 4 December

2008 and transactions entered into before this are not affected. Penalties for breaching related party rules can be severe and it is, therefore, of the utmost importance that you ensure compliance if you have a SMSF.

Superannuation and Relationship Breakdown

The fact that same-sex couples living together on a 'genuine domestic basis' are recognised as de facto couples means that asset division will be carried out in line with the Family Law Act 1975. It is possible to opt out of this arrangement but this will obviously have to be done before there are signs of relationship breakdown. (See the section on 'Relationship Breakdown' for more information on this topic)

Applied to super the involvement of the Family Law Act means that superannuation splitting arrangements applicable to marriages may now be applied to same-sex couples (living together on a 'genuine domestic basis).

The superannuation balances of each partner will be taken into account in any property settlement and may be split in line with the determination of the Family Court.



Conclusion

It should be clear from this guide that the financial position of same-sex couples has been put on a significantly firmer basis by relatively recent reforms. In a nutshell we can restate that same-sex couples will be treated in the same way as opposite-sex de facto couples in the areas of taxation, social security, superannuation and aged care. This is certainly a massive step forward and this guide spelled out some of the implications of this change. Make sure that you make the most of the rights and privileges that were discussed!

It is, however, important to remember that a de facto relationship is not the same thing as marriage under Australian law and that significant areas of vulnerability remains when it comes to protecting the interests of de facto couples (same or opposite-sex). This is one reason why the ongoing fight for marriage equality is so important. Until this happens it is vital that you do your utmost to protect your interests and that of your spouse and children. One way to do this is to ensure that you get the best possible advice, something that a competent and experienced financial advisor will be able to provide.

It is our sincere hope that the information presented above set you thinking about some of the issues that you will have to pay attention to in planning your financial future. It would be impossible, however, to present a complete guide to all your financial planning needs in a document as brief as this.

We urge you to continue your explorations by making use of some of the other resources and eBooks available. We also stand ready to serve you with independent and professional advice, so please do not hesitate to contact us if we can be of further assistance.

Take the next step

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We now invite you to take the next step and meet with an adviser to discuss what it was you were hoping to achieve when you downloaded this handbook and to establish if we can help you achieve your goals and objectives.

Next you will find details on how to book an appointment with one of our experts.

We look forward to meeting you soon.

Appointment booking request form

About the Adviser

Please complete the Appointment Booking Request below and scan and email to:

Appointments are available Monday-to-Friday.

Please nominate your preferred day, date and time to meet with us. One of our client services representatives will call you to confirm your appointment.

Our services

Preferred appointment day and time

Day

Date

Time am/pm

Contact details

If you would like us to contact you via email to confirm your appointment or to answer any questions you have, please provide a valid email address for our records.

Email

Your Details

Title

First name

Last name

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Reader Notes



Reader Notes



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