



New South Wales

De Facto Relationships Amendment Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to define a ***domestic relationship***, and to amend the *De Facto Relationships Act 1984* so that its provisions will extend to apply to the parties to a domestic relationship in the sense defined, and
- (b) to amend certain other Acts whose provisions confer rights or impose obligations with respect to persons who are spouses by marriage or by a de facto marriage relationship so that those provisions will extend to apply:
 - (i) in some cases, to the parties to a domestic relationship, and
 - (ii) in other cases, to persons of the same sex who are in a stable, committed and cohabiting relationship.

The Bill proposes to rename the amended Act as the *De Facto and Domestic Relationships Act 1984*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

Clause 3 is a formal provision giving effect to the amendments to the *De Facto Relationships Act 1984* set out in Schedule 1.

Clause 4 is a formal provision giving effect to amendments to the Acts set out in Schedule 2.

Schedule 1 Amendment of De Facto Relationships Act 1984

De facto relationships

Schedule 1 [3] omits the definitions of *de facto relationship* and *de facto partner* from section 3 and **Schedule 1 [4]** re-defines de facto relationship for the purposes of the Act so that the concept includes same-sex couples (that is, persons of the same sex living together in a committed relationship).

Domestic relationships

Schedule 1 [4] and **[8]** together define a *domestic relationship* for the purposes of the Act. A domestic relationship is a relationship between two adult persons who are not married but who have a close personal relationship of interdependence. A domestic relationship may or may not be a de facto relationship.

Consequential amendments

Other amendments made by Schedule 1 are consequential. The effect of the amendments is that rights and obligations previously subsisting on account of a de facto relationship will now apply regardless of gender, and will also apply in relation to a domestic relationship in the sense described above.

Schedule 2 Amendment of other Acts

Schedule 2 amends provisions of various other Acts that mention de facto relationships or spouses. In general, the amendments have the effect of extending the provisions of the amended Act so that they apply to persons who are parties to a de facto relationship (as re-defined by **Schedule 1 [4]**). In the case of some Acts, however, the amendments have the effect of extending the provisions of the amended Act to persons who are parties to a domestic relationship, whether or not it is a de facto relationship. An explanatory note briefly describing the effect of the amendments to each Act is given at the end of those amendments.



New South Wales

De Facto Relationships Amendment Bill 1998

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New South Wales

De Facto Relationships Amendment Bill 1998

No , 1998

A Bill for

An Act to amend the *De Facto Relationships Act 1984* to extend the provisions of that Act so that they apply to parties to certain domestic relationships other than de facto relationships; and to amend certain Acts that confer rights or impose obligations with regard to spouses or de facto spouses.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *De Facto Relationships Amendment Act 1998*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of De Facto Relationships Act 1984 No 147

The *De Facto Relationships Act 1984* is amended as set out in Schedule 1.

4 Amendment of other Acts

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Each Act specified in Schedule 2 is amended as set out in that Schedule.

5 Savings and transitional provisions

Schedule 3 has effect.

Schedule 1 Amendment of De Facto Relationships Act 1984

(Section 3)

[1] Long title

Insert “and certain domestic relationships” after “de facto partners”. 5

[2] Section 1 Name of Act

Insert “*and Domestic*” after “*De Facto*”.

[3] Section 3 Definitions

Omit the definitions of *de facto partner* and *de facto relationship* from section 3 (1). 10

[4] Section 3 (1)

Insert in alphabetical order:

de facto relationship means the relationship between two persons who live together as a couple on a bona fide domestic basis. 15

domestic relationship means a relationship between two persons, whether or not they live together or share a sexual relationship, where there is emotional and financial interdependence, and which may or may not be a de facto relationship. 20

[5] Section 3 (1), definition of “financial resources”

Omit “de facto partners” where firstly occurring.
Insert instead “parties to a de facto or domestic relationship”.

[6] Section 3 (1), definition of "financial resources"

Omit "de facto partners" where secondly, thirdly and fourthly occurring.

Insert instead "parties to the relationship".

[7] Sections 3 (1) (definition of "property"), 8, 19, 22 (1), 52 5

Omit "de facto partners" wherever occurring.

Insert instead "parties to a de facto or domestic relationship".

[8] Section 3 (1A) and (2)

Omit section 3 (2). Insert instead:

(1A) For the purposes of the definition of *domestic relationship* in subsection (1), a domestic relationship is taken not to exist between two persons where one of them provides the other with domestic care: 10

(a) for fee or reward, or

(b) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation). 15

(2) A reference in this Act to a child of the parties to a de facto or domestic relationship is a reference to any of the following: 20

(a) a child born as a result of sexual relations between the parties,

(b) a child adopted by both parties,

(c) a child of whom the non-biological parent is presumed, by virtue of the *Status of Children Act 1996*, to be the parent, except where such a presumption is rebutted, 25

(d) a child for whose long-term welfare both parties have accepted responsibility of a parental nature. 30

[9] Sections 5, 7, 14, 18, 20, 21 (1), 23, 27 (1), 28, 35 (1), 47, 49 (1), 50, 51

Omit "a de facto partner" wherever occurring.

Insert instead "a party to a de facto or domestic relationship".

[10] Section 6 Application of Act

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Insert at the end of section 6:

(2) Without affecting subsection (1), this Act (except Part 5) does not apply to or in respect of:

(a) a de facto or domestic relationship (other than a de facto relationship between a man and a woman) that ceased before the commencement of Schedule 1 [10] to the *De Facto Relationships Amendment Act 1998*, or

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(b) a person in so far as he or she was a party to a relationship referred to in paragraph (a).

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[11] Section 8 Declaration of interests in property

Omit "a de facto partner" from section 8 (1).

Insert instead "either party to the relationship".

[12] Sections 8 (3), 14 (1), 20 (1), 21, 27, 47, 49 (1), 50 (a)

Omit "the de facto partners" wherever occurring.

Insert instead "the parties to the relationship".

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[13] Section 13A

Insert before section 14:

13A Declaration that de facto or domestic relationship exists or existed

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(1) A court may, on application or of its own motion, declare whether a de facto or domestic relationship exists, or existed, between specified persons on a specified date or during a specified period.

De Facto Relationships Amendment Bill 1998

Schedule 1 Amendment of De Facto Relationships Act 1984

- (2) A declaration under this section has effect as a judgment of the court.
- (3) A declaration under this section may be made whether or not the persons concerned or either of them are or is alive. 5
- (4) On the date or for the period specified in a declaration under this section, the persons to whom it relates are taken for all purposes to have been (or, if the court making the declaration so finds, not to have been) parties to a de facto or domestic relationship. 10
- (5) For the purpose of determining whether two persons are in a de facto or domestic relationship, all the circumstances of the relationship are to be taken into account, including (but without being limited to) the following matters: 15
 - (a) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship, and
 - (ii) the length of time during which the persons have lived together, and 20
 - (iii) the degree of companionship and emotional support that the persons draw from each other, and
 - (iv) whether the persons themselves see the relationship as a long-term one. 25
 - (b) the social aspects of the relationship, including:
 - (i) the opinion of the persons' friends and acquaintances about the nature of the relationship, and
 - (ii) any basis on which the persons plan and undertake joint social activities, and 30
 - (iii) whether the persons represent themselves to other persons as being in an interdependent relationship, and

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- (c) the nature of the household, including:
- (i) any joint responsibility for care and support of children, if any, and
 - (ii) the persons' living arrangements, and
 - (iii) any sharing of responsibility for housework, and 5
- (d) the financial aspects of the relationship, including:
- (i) any joint ownership of real estate or other major assets, and
 - (ii) any joint liabilities, and 10
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments, and
 - (iv) whether one party to the relationship owes any legal obligation in respect of the other, and 15
 - (v) the basis of any sharing of day-to-day household expenses.

[14] Sections 15, 17 (1), 56

Omit "de facto relationship" wherever occurring. 20
Insert instead "de facto or domestic relationship".

[15] Section 18 Time limit for making applications

Omit section 18 (1). Insert instead:

- (1) If a de facto or domestic relationship has ceased, an application to a court for an order under this Part may only be made within the period of 2 years after the date on which the relationship ceased, except as otherwise provided by this section. 25

Omit “the de facto partner”.
Insert instead “the party”.

Omit “de facto partner” wherever occurring.
Insert instead “party to the relationship”.

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Omit "the partners" wherever occurring.
Insert instead "the parties".

Omit “either partner”.
Insert instead “either party to the relationship”.

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Omit “that partner” wherever occurring. Insert instead “that party”.

Omit the section. Insert instead:

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A party to a de facto or domestic relationship is not liable to maintain the other party to the relationship, and neither party is entitled to claim maintenance from the other, except as provided in this Division.

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[22] Section 29

Omit the section. Insert instead:

29 Effect of subsequent relationship or marriage

If a de facto or domestic relationship has ceased, an application to a court for an order under this Part for maintenance may not be made by a party to the relationship who, at the time at which the application is made, has entered into a domestic or de facto relationship with another person or who, at that time, has married or remarried.

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[23] Section 30 Duration of orders for periodic maintenance

Omit section 30 (2) (b). Insert instead:

- (b) 4 years after the day on which the relationship ceased, or last ceased,

[24] Sections 32, 33, 37 (1)

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Omit "de facto partner" wherever occurring.
Insert instead "person".

[25] Section 32 Cessation of order—generally

Omit "the partner" from section 32 (2).
Insert instead "that person".

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[26] Part 4, heading

Omit the heading.
Insert instead "**Part 4 Relationship agreements and termination agreements**".

[27] Section 44

Omit the section. Insert instead:

44 Definitions

(1) In this Part:

relationship agreement means an agreement between 2
persons (whether or not there are other parties to the
agreement): 5

(a) that is made in contemplation of their entering into
a de facto or domestic relationship, or while they
are in one, and 10

(b) that makes provision with respect to financial
matters, whether or not it also makes provision
with respect to other matters,

and includes such an agreement that varies an earlier
relationship agreement and includes an agreement to 15
which subsection (2) applies.

financial matters, in relation to parties to a de facto or
domestic relationship, means matters with respect to any
one or more of the following:

(a) the maintenance of either or both of the parties, 20

(b) the property of the parties or either of them,

(c) the financial resources of the parties or either of
them.

termination agreement means an agreement between 2
persons, whether or not there are other parties to the 25
agreement:

(a) that is made in contemplation of the termination of
a de facto or domestic relationship existing
between them, or after the termination of such a
relationship between them, and 30

- (b) that makes provision with respect to financial matters, whether or not it also makes provision with respect to other matters,

and includes such an agreement that varies an earlier relationship agreement or termination agreement, but does not include an agreement to which subsection (2) applies.

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- (2) An agreement made in contemplation of the termination of a de facto or domestic relationship is taken to be a relationship agreement if the relationship is not terminated within 3 months after the agreement was made.

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- (3) An agreement is not precluded from being a relationship agreement or termination agreement for the purposes of this Part merely because it was made before the enactment of the *De Facto Relationships Amendment Act 1998* or before the commencement of any amendment made by that Act.

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[28] Sections 45–52

Omit “cohabitation agreement” wherever occurring.
Insert instead “relationship agreement”.

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[29] Sections 45–52

Omit “separation agreement” wherever occurring.
Insert instead “termination agreement”.

[30] Section 45 Entering into agreements

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Omit “a man and a woman” from section 45 (1).
Insert instead “two persons”.

[31] Section 47 Effect of agreements in certain proceedings

Omit "each partner" from section 47 (1) (d). Insert instead "each party".

[32] Section 51 Effect of death of party to relationship—periodic maintenance

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Omit "de facto partner" wherever (except firstly) occurring.
Insert instead "party to the relationship".

[33] Section 51 (2)

Omit "partner" where thirdly occurring. Insert instead "party".

[34] Section 52 Effect of death of party to relationship

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Omit "deceased partner". Insert instead "deceased party".

[35] Section 53 Granting of injunctions

Omit "a de facto partner" where firstly occurring.
Insert instead "a party to a de facto or domestic relationship".

[36] Section 53

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Omit "de facto partners" where firstly occurring.
Insert instead "parties to a de facto or domestic relationship".

[37] Section 53

Omit "de facto partner" wherever (except firstly) occurring.
Insert instead "party to the relationship".

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[38] Section 53

Omit "de facto partners" where secondly and thirdly occurring.
Insert instead "parties to the relationship".

[39] Section 56 Declaration as to existence of relationship

Omit "partner or partners" from section 56 (5).
Insert instead "party or parties".

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Schedule 2 Amendment of other Acts

(Section 4)

2.1 Adoption Information Act 1990 No 63

[1] **Section 9 Access to adoption information by relatives and others after death of adopted person or birth parent**

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Omit "de facto" from section 9 (2).
Insert instead "de facto or domestic".

[2] **Section 9 (5)**

Insert after section 9 (4):

(5) In this section:

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domestic relationship has the same meaning as in the *De Facto and Domestic Relationships Act 1984*.

spouse means:

(a) a husband or wife, or

(b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*,

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but where more than one person would so qualify as a spouse, means only the last person so to qualify.

Explanatory note

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The amendments affect the class of persons who may have access to adoption information after the death of an adopted person or natural parent.

2.2 Albury-Wodonga Development Act 1974 No 47

[1] Section 37 Disclosure of interest

Omit section 37 (6). Insert instead:

- (6) In the case of persons living with their spouses, the interest of one spouse, if known to the other, is taken for the purposes of this section to be also an interest of the other spouse. 5

[2] Section 37 (15)

Omit the subsection. Insert instead:

- (15) In this section: 10

shares includes stock.

spouse means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship, within the meaning of the *De Facto and Domestic Relationships Act 1984*, that has existed for at least two years, 15

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

Explanatory note 20

The amendments affect the duty of a member of the Albury-Wodonga Development Corporation, or of a committee or sub-committee of the Corporation, to declare any interest the member or the member's spouse may have in a matter being dealt with in a meeting of the Corporation, committee or sub-committee. 25

2.3 **Anatomy Act 1977 No 126**

[1] **Section 4 Definitions**

Omit “was not married or where the deceased person was married and” from paragraph (b) (ii) of the definition of *senior available next of kin* in section 4 (1).

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Insert instead “had no spouse or the deceased person had a spouse but”.

[2] **Section 4 (2) (d)**

Omit the paragraph. Insert instead:

(d) a reference to a spouse of a person is a reference to: 10

(i) the person’s husband or wife, or

(ii) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*, 15

but where more than one person would so qualify as a spouse, is a reference only to the last person so to qualify.

Explanatory note

The amendments affect the class of persons who may lodge objections to anatomical examinations of the bodies of deceased persons. 20

2.4 **Anti-Discrimination Act 1977 No 48**

[1] **Section 4 Definitions**

Omit paragraph (f) of the definition of *marital status*. Insert instead:

(f) in a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*. 25

[2] Section 4 (1), definition of "relative"

Insert "or any person to whom the person's spouse is so related" after "adoption".

[3] Section 4 (1), definition of "spouse"

Insert in alphabetical order:

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spouse means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*,

10

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

[4] Section 49ZYA What constitutes discrimination on the ground of age

Insert "or any person to whom the person's spouse is so related" after "adoption" in the definition of *relative* in section 49ZYA (3).

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Explanatory note

The amendments add to the categories of "marital status" for the purposes of Part 4 of the *Anti-Discrimination Act 1977*, which prevents discrimination against persons on the ground of their marital status.

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2.5 Bail Act 1978 No 161

[1] Section 4 Definitions

Omit the definition of *close relative* from section 4 (1).
Insert instead:

close relative, in relation to a person, means:

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- (a) a parent, spouse, child, step-child, sibling, half sibling or the other party to a de facto or domestic relationship, or

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Schedule 2 Amendment of other Acts

- (b) if the person is a party to a de facto or domestic relationship, any person who is a relative, of the kind mentioned in paragraph (a), of either party to the relationship.

[2] **Section 4 (1)** 5

Insert in alphabetical order:

de facto relationship means a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*.

domestic relationship has the same meaning as in the *De Facto and Domestic Relationships Act 1984*. 10

Explanatory note

The amendments affect the operation of sections 32 and 37 of the *Bail Act 1978*, which require a court or officer in granting bail or in setting bail conditions to consider, among other things, any possible danger that might be posed to close relatives of a person in custody in the event of the person's release. 15

2.6 Compensation to Relatives Act 1897 No 31

[1] **Section 4 By whom and for whom action may be brought**

Omit "wife, husband" from section 4 (1).
Insert instead "spouse". 20

[2] **Section 4 (2)**

Omit the subsection. Insert instead:

- (2) If there is more than one spouse of the person whose death has been so caused, the action is (without limiting the application of subsection (1) to other persons) for the benefit of each of the spouses, who are to be separate parties to the action. 25

[3] Section 7 Construction of Act

Omit "the word 'wife' shall include de facto wife; and the word 'husband' shall include de facto husband; and" from section 7 (1).

[4] Section 7 (1A), (1B)

Omit the subsections.

5

[5] Section 7 (4)

Insert after section 7 (3):

(4) In this Act, *spouse* means:

(a) a husband or wife, or

(b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*.

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[6] Section 8

Insert after section 7:

8 Saving of rights of action

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The amendments made to this Act by the *De Facto Relationships Amendment Act 1998* do not operate to deprive any person of a right of action that the person would have had if those amendments had never been made.

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Explanatory note

The *Compensation to Relatives Act 1897* provides the basis for the taking of legal action by a person's estate against those that caused the person's death. The amendments have the effect of enlarging the class of persons for whose benefit such an action may be taken.

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2.7 Co-operatives Act 1992 No 18

[1] Section 5 Definitions

Insert in alphabetical order in section 5 (1):

spouse means:

- (a) a husband or wife, or 5
- (b) the other party to a de facto relationship, within
the meaning of the *De Facto and Domestic
Relationships Act 1984*, that has existed for at least
two years.

but where more than one person would so qualify as a 10
spouse, means only the last person so to qualify.

[2] Schedule 6 Savings and transitional provisions

Insert at the end of clause 2 (1):

De Facto Relationships Amendment Act 1998

[3] Schedule 6 15

Insert in the Schedule (with appropriate Part and clause numbers):

Part Provisions consequent on enactment of the De Facto Relationships Amendment Act 1998

Acquisition and disposal of assets 20

The amendments made by the *De Facto Relationships
Amendment Act 1998* do not affect the legality of any
acquisition from, or disposal to, any person of any
property to which section 285 applies that was effected
before those amendments took effect. 25

Loans to spouses of directors and others

The amendments made by the *De Facto Relationships Amendment Act 1998* do not affect the legality of any loan to which section 232 applies that was made, or the making of which was approved, before those amendments took effect.

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Explanatory note

The amendments affect the operation of:

- (a) section 156 of the *Co-operatives Act 1992*, which requires disclosure, in certain circumstances, of share acquisitions by directors of co-operatives and their spouses and relatives, and 10
- (b) section 232 of the Act, which imposes restrictions on loans to directors and their spouses, and
- (c) section 285 of the Act, which imposes restrictions on the sale of assets to and the purchase of assets from directors and their spouses. 15

2.8 Coroners Act 1980 No 27**[1] Section 4 Definitions**

Omit paragraph (b) of the definition of *relative* from section 4 (1).
Insert instead:

- (b) a person who, at the time of the death or suspected death, was the spouse of the deceased, or 20

[2] Section 4 (1), definition of "senior next of kin"

Omit paragraphs (c)–(f). Insert instead:

- (c) if no person referred to in paragraph (a) or (b) is available, a person who, at the time of the death or suspected death, was the spouse of the deceased person, or 25

- (d) if no person referred to in paragraph (a), (b) or (c) is available, a parent of the deceased person, or
- (e) if no person referred to in paragraph (a), (b), (c) or (d) is available, a brother or sister of the deceased person, being a brother or sister who has attained the age of 18 years, or 5
- (f) if no person referred to in paragraph (a), (b), (c) or (d) is available, a brother or sister of the deceased person, or
- (g) if no person referred to in paragraph (a), (b), (c), (d) or (e) is available: 10
 - (i) any person named as an executor in the deceased person's will, or
 - (ii) any person who was the deceased person's personal representative immediately before the deceased person's death. 15

[3] Section 4 (1), definition of "senior next of kin"

Omit all words after paragraph (e) (ii) of the definition.

[4] Section 4 (1), definition of "spouse"

Insert in alphabetical order: 20

spouse means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*, 25

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

[5] Section 4 (5)

Insert after section 4 (4):

(5) For the purposes of this Act:

- (a) a reference, in paragraph (a) of the definition of *relative* in subsection (1), to the child of a person includes, where the person was in a de facto or domestic relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*, a reference to a person who was, by virtue of section 3 (2) of that Act, a child of the parties to the relationship, and 5
- (b) a reference in that paragraph to a parent includes a reference to a party to such a de facto or domestic relationship of which the deceased, or suspected deceased, was by virtue of section 3 (2) of the *De Facto and Domestic Relationships Act 1984*, a child. 10 15

Explanatory note

The amendments vary the definition of *relative* in the *Coroners Act 1980*. This has the effect of varying the class of persons who may exercise the rights and privileges of "relatives" under the Act, including: 20

- (a) requesting the coroner to hold an inquest into a person's death (section 14C), and
- (b) requesting that an inquest be held with a jury (section 18), and
- (c) appearing and making representations at an inquest or inquiry (sections 32 and 55 and Schedule 1), and 25
- (d) obtaining copies of certain medical reports (section 51).

2.9 Credit Act 1984 No 94**[1] Section 5 Definitions**

Insert in alphabetical order in section 5 (1): 30

spouse means:

- (a) a husband or wife, or

- (b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*,

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

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[2] Section 174

Insert after section 173:

174 Savings and transitional provisions arising from amendments

Schedule 9 has effect.

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[3] Schedule 9

Insert after Schedule 8:

Schedule 9 Savings and transitional provisions arising from amendments

Part 1 Regulations

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1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of any of the following Acts:

De Facto Relationships Amendment Act 1998.

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- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

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-
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done, or omitted to be done, before the date of its publication. 5

Part 2 Provisions arising from enactment of De Facto Relationships Amendment Act 1998 10

2 Regulated contracts not affected

The amendments made to this Act by the *De Facto Relationships Amendment Act 1998* do not operate so as to deprive any credit provider of the benefit of section 170 (3) in relation to a regulated contract that, by virtue of that subsection, was validly entered into before those amendments took effect. 15

3 Rights and obligations of guarantors

The amendments made to this Act by the *De Facto Relationships Amendment Act 1998* do not affect the rights or obligations, under any of sections 45, 46, 137, 138, 141 and 142 or otherwise, of any guarantor. 20

Explanatory note

The amendments:

- (a) affect the meaning of guarantor in the *Credit Act 1984*, the definition of which excludes "spouses" in certain cases, and 25
- (b) affect the circumstances in which a credit provider may charge more than the statutory maximum rate in a contract regulated under the Act (section 170).

2.10 Criminal Assets Recovery Act 1990 No 23

[1] Section 4 Definitions

Insert in alphabetical order:

de facto partner of a person means the other party to a de facto relationship, within the meaning of the *De Facto and Domestic Relationships Act 1984*, with the person. 5

[2] Section 12 Supreme Court may make further orders

Omit "(as defined in the *De Facto Relationships Act 1984*)" from section 12 (1) (b1).

[3] Section 24 Relief from hardship—spouses and dependants 10

Omit "*De Facto Relationships Act 1984*" from paragraph (a) of the definition of *dependant* in section 24 (4).

Insert instead "*De Facto and Domestic Relationships Act 1984*".

Explanatory note

The amendments affect the class of persons in relation to whom, under the *Criminal Assets Recovery Act 1990*, powers of the Supreme Court to order cross-examination of witnesses in relation to matters pertinent to property affected, or that could be affected, by a restraining order under that Act may be exercised. 15

2.11 Defamation Act 1974 No 18 20

Section 56 Criminating answer etc

Omit section 56 (3). Insert instead:

(3) In this section, in relation to an answer, production or discovery by any person, *spouse* means:

(a) a husband or wife, or 25

- (b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*,

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

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Explanatory note

Section 56 of the *Defamation Act 1974* abrogates a privilege of refusal to answer questions that might incriminate oneself or one's spouse. The amendment varies the concept of "spouse" for the purposes of the section.

2.12 Dentists Act 1989 No 139

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[1] Section 53 Incorporated practices

Omit "(within the meaning of the *De Facto Relationships Act 1984*)" from section 53 (2).

[2] Section 53 (3)

Insert after section 53 (2):

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- (3) In subsection (2), *de facto partner* of a dentist means the other party to a de facto relationship, within the meaning of the *De Facto and Domestic Relationships Act 1984*, with the dentist.

Explanatory note

20

The amendments affect the meaning of the expression "family member" for the purposes of a provision prescribing the circumstances in which a person may practise dentistry as a family company.

2.13 District Court Act 1973 No 9

[1] Section 134 Jurisdiction in equity proceedings

25

Omit "*De Facto Relationships Act 1984*" from section 134 (1) (g) .
Insert instead "*De Facto and Domestic Relationships Act 1984*".

[2] Section 134 (3)

Omit "*De Facto Relationships Act 1984*".

Insert instead "*De Facto and Domestic Relationships Act 1984*".

Explanatory note

The amendments are purely consequential and reflect the change of name of the *De Facto Relationships Act 1984*. 5

2.14 Door-to-Door Sales Act 1967 No 36

Section 2 Interpretation

Insert in alphabetical order in section 2 (1):

Spouse means: 10

(a) a husband or wife, or

(b) the other party to a de facto relationship, within the meaning of the *De Facto and Other Relationships Act 1984*, that has existed for at least two years, 15

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

Explanatory note

Section 4 of the *Door-to-Door Sales Act 1967* provides that certain credit purchase agreements may be terminated by the spouse of the purchaser. The amendments vary the concept of "spouse" for the purposes of the section. 20

2.15 Duties Act 1997 No 123

[1] Dictionary

Omit the definition of *de facto partner*. Insert instead:

de facto partner means a party to a de facto relationship, within the meaning of the *De Facto Relationships Act 1984*, that has existed for at least two years, and includes a person who was a party to such a relationship that has ceased, whether the cessation took effect in Australia or elsewhere. 25
30

[2] Sections 68 (2) (b), 119 (1) (f) and 267 (7)

Omit "*De Facto Relationships Act 1984*" wherever occurring.
Insert instead "*De Facto and Domestic Relationships Act 1984*".

[3] Section 119 (1) (f) Exempt acquisitions

Omit the note to the paragraph.

5

[4] Dictionary

Omit "*De Facto Relationships Act 1984*" from the definition of *de facto relationship*.

Insert instead "*De Facto and Domestic Relationships Act 1984*".

Explanatory note

10

The amendments extend certain duty concessions to persons who are in a de facto relationship as redefined in the *De Facto and Domestic Relationships Act 1984*.

2.16 Electricity (Pacific Power) Act 1950 No 22

[1] Section 73A Payments in respect of long service leave on death of employee

15

Omit "widow or widower" wherever occurring in section 73A.
Insert instead "surviving spouse".

[2] Section 73A (1)

Omit "widow, widower". Insert instead "surviving spouse".

20

[3] Section 73A (5)

Insert after section 73A (4):

(5) In this section, *spouse* means

(a) a husband or wife, or

(b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*,

but where more than one person would so qualify as a spouse, means only the last person so to qualify. 5

Explanatory note

The amendments extend to persons who are in a de facto relationship as redefined in the *De Facto and Domestic Relationships Act 1984* the right to inherit the unpaid balance of their late spouse's long service leave.

2.17 Evidence Act 1995 No 25 10

Dictionary

Omit the definition of *de facto spouse*. Insert instead:

de facto spouse means the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*, but where more than one person would so qualify as a spouse, means only the last person so to qualify. 15

Explanatory note

The amendments redefine *de facto spouse* for the purposes of the *Evidence Act 1995*. This has the effect of widening the class of persons who may object to being compelled to give evidence in certain circumstances (see sections 18, 19 and 20 of the Act) and who may not be the subject of certain comments in court proceedings (see section 20). 20

2.18 Family Provision Act 1982 No 160

[1] Section 6 Definitions 25

Insert in alphabetical order in section 6 (1):

de facto relationship has the same meaning as in the *De Facto and Domestic Relationships Act 1984*.

domestic relationship has the same meaning as in the *De Facto and Domestic Relationships Act 1984*.

spouse means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship. 5

[2] Section 6 (1), definition of "eligible person"

Omit paragraphs (a)–(c). Insert instead:

- (a) a person who was the spouse of the deceased person at the time of the deceased person's death, or with whom the deceased person had a domestic relationship at the time of the deceased person's death, if the deceased person had no spouse at that time, or 10
- (b) a child of the deceased person or, if the deceased person was, at the time of his or her death, a party to a de facto or domestic relationship, a person who is, for the purposes of the *De Facto and Domestic Relationships Act 1984*, a child of that relationship, or 15
- (c) a former spouse, or 20

[3] Section 37 and Schedule 1

Insert after section 36:

37 Savings and transitional provisions

Schedule 1 has effect.

Schedule 1 Savings and transitional provisions 25
(Section 37)

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of any of the following Acts: 30

De Facto Relationships Amendment Act 1998.

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 5
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done, or omitted to be done, before the date of its publication. 10

2 Estates the subject of proceedings

The amendments made to this Act by the *De Facto Relationships Amendment Act 1998* have no effect in relation to an estate in respect of which proceedings under this Act had commenced before those amendments took effect, and any such proceedings are to be dealt with and determined as if those amendments had not been made. 15

Explanatory note

The effect of the amendments is to enlarge the class of persons who are eligible to make a claim under the *Family Provision Act 1982* by including a person who was a party to a domestic relationship with the deceased or who was the child of the parties to such a relationship. 25

2.19 Financial Institutions Commission Act 1992 No 47

Section 3 Definitions 30

Insert in alphabetical order in section 3 (1):

spouse means:

- (a) a husband or wife, or

- (b) the other party to a de facto relationship, within the meaning of the *De Facto and Domestic Relationships Act 1984*, that has existed for at least two years,

but where more than one person would so qualify as a spouse, means only the last person so to qualify. 5

Explanatory note

The provisions of Division 2 of Part 5 of the *Financial Institutions Commission Act 1992* require the maintenance of a register of persons who have, or whose spouses or children have, a financial interest in one or more financial institutions. Employees of the Commission are also required to disclose any such interest to the proper officer (section 25). The amendments vary the meaning of "spouse" for the purposes of the relevant provisions. 10

2.20 Friendly Societies (New South Wales) Act 1997 No 11

Section 3 Definitions 15

Insert in alphabetical order in section 3 (1):

spouse means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship, within the meaning of the *De Facto and Domestic Relationships Act 1984*, that has existed for at least two years. 20

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

Explanatory note 25

By inserting a definition of *spouse*, the amendment alters the meaning of "associate" (defined in the *Friendly Societies Act 1989* to include a "spouse"), for the purposes of provisions of that Act requiring disclosure by directors of friendly societies of the interests of their spouses and of other provisions prohibiting financial accommodation to directors in certain circumstances. 30

**2.21 Growth Centres (Development Corporations) Act 1974
 No 49**

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

spouse means:

5

(a) a husband or wife, or

(b) the other party to a de facto relationship, within
 the meaning of the *De Facto and Domestic
 Relationships Act 1984*, that has existed for at least
 two years,

10

but where more than one person would so qualify as a
spouse, means only the last person so to qualify.

[2] Section 34 Disclosure of interest

Omit section 34 (4). Insert instead:

(4) In the case of persons living with their spouses, the
 interest of one spouse, if known to the other, is taken for
 the purposes of this section to be also an interest of the
 other spouse.

15

Explanatory note

The amendments affect the duty of a member of a development corporation, or of
a committee or sub-committee of the corporation, to declare any interest the
member or the member's spouse may have in a matter being dealt with in a
meeting of the corporation, committee or sub-committee.

20

2.22 Guardianship Act 1987 No 257

Section 3 Definitions

25

Omit the definition of *spouse* from section 3 (1). Insert instead:

spouse means:

(a) a husband or wife, or

- (b) the other party to a de facto relationship, within the meaning of the *De Facto and Domestic Relationships Act 1984*, that has existed for at least two years,

but where more than one person would so qualify as a spouse, means only the last person so to qualify. 5

Explanatory note

The amendment extends to "spouses" (in the redefined sense) the operation of provisions of the Act that determine the persons who are parties to proceedings under the *Guardianship Act 1987*, the eligibility of persons for appointment as enduring guardians under the Act and the persons whose views may be heard in connection with the making of a guardianship order. The amendment also alters the meaning of "person responsible" for another person (not being a child) in the Act (the meaning of which depends in part on the meaning of "spouse"). Accordingly, the amendment has the effect of varying the class of persons who may consent to medical and dental treatments in certain circumstances (section 36), and exercise or discharge other rights and obligations under the Act. The amendment requires that the "spouse" relationship be one that has endured for at least two years. 10 15

2.23 Health Insurance Levies Act 1982 No 159 20

Section 4 Definitions

Insert in alphabetical order in section 4 (1):

spouse means:

- (a) a husband or wife, or
(b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*, 25

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

Explanatory note 30

The amendment affects the meaning of "dependant" in the *Health Insurance Levies Act 1982*, which includes a "spouse". As a consequence, different persons may now be covered by membership of the State Ambulance Insurance Plan.

2.24 Human Tissue Act 1983 No 164

[1] Section 4 Definitions

Omit “was not married or where the deceased person was married and” from paragraph (b) (ii) of the definition of *senior available next of kin* in section 4 (1).

5

Insert instead “had no spouse or where the deceased person had a spouse but”.

[2] Section 4 (1), definition of “senior available next of kin”

Omit “was not married or where the deceased person was married and the person who was then” from paragraph (b) (ii) of the definition.

10

Insert instead “had no spouse or where”.

[3] Section 4 (1), definition of “senior next of kin”

Omit paragraph (b) (iii) and (iv) of the definition. Insert instead:

(iii) if no person referred to in subparagraph (i) or (ii) is available, a person who, at the time of the death or suspected death, was the spouse of the deceased person, or 15

(iv) if no person referred to in subparagraph (i), (ii) or (iii) is available, a parent of the deceased person, or 20

(v) if no person referred to in subparagraph (i), (ii), (iii) or (iv) is available, a brother or sister of the deceased person, being a brother or sister who has attained the age of 18 years. 25

[4] Section 4 (1), definition of "spouse"

Omit the definition. Insert instead:

spouse means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*, 5

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

[5] Section 4 (2) (d) 10

Omit the paragraph.

[6] Section 22 De facto spouses

Omit the section.

Explanatory note

The amendment affects the meaning of "senior available next of kin" in the *Human Tissue Act 1983*. This affects the class of persons who may authorise, or object to, the removal of body tissues from the body of a deceased person, or a post-mortem examination, under the Act (sections 23, 24, 28 and 29). 15

2.25 Industrial Relations Act 1996 No 17

[1] Sections 55 (3) and 58 (2) 20

Omit "Paternity leave" wherever occurring.
Insert instead "Co-parent leave".

[2] Sections 55 (3), 58 (2) and 60 (3)

Omit "paternity leave" wherever occurring.
Insert instead "co-parent leave". 25

[3] Section 55 (4)

Insert "or the employee's spouse" after "adoption by the employee".

[4] Section 55 (5)

Omit the subsection. Insert instead:

5

(5) In this Part, *spouse* means:

(a) a husband or wife, or

(b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*,

10

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

Explanatory note

The effect of the amendments is to extend the operation of the parental leave provisions contained in Part 4 of Chapter 2 of the *Industrial Relations Act 1996*.

15

2.26 Insurance Act 1902 No 49

[1] Section 3 Definitions

Insert in alphabetical order:

Spouse means:

(a) a husband or wife, or

20

(b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*,

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

25

[2] Section 8 Insurances for benefit of family, moneys payable not to form part of estate of insured

Omit "wife" wherever occurring. Insert instead "spouse".

[3] Section 8

Omit "husband" wherever occurring. Insert instead "spouse".

5

[4] Section 10 Shares in insurance money, how settled

Omit "wife or husband" wherever occurring.

Insert instead "spouse".

[5] Schedule 2 Savings and transitional provisions

Insert after Part 1:

10

**Part 2 Provisions consequent on enactment of the
De Facto Relationships Amendment Act
1998**

3 Life policies

The amendments made to this Act by the *De Facto Relationships Amendment Act 1998* have no effect in relation to the estate of any person who died before those amendments took effect.

15

Explanatory note

The amendment affects section 8 of the *Insurance Act 1902*, which provides that a policy of life insurance by a husband naming his wife as beneficiary, or by a wife naming her husband as beneficiary, does not form part of a deceased estate and is not available to creditors of the deceased. As a result of the amendment, the immunity will hold as between "spouses" in the re-defined sense. The amendment to section 10 of that Act is consequential.

20

25

2.27 Landlord and Tenant Act 1899 No 18

[1] Section 2B Spouse's tenancy rights on separation or desertion

Omit "his wife" wherever occurring.
Insert instead "his or her spouse".

[2] Sections 2B, 25

5

Omit "the wife" wherever occurring.
Insert instead "the spouse".

[3] Section 2B

Insert at the end of the section:

In this section, *spouse* means:

10

- (a) a husband or wife, or
- (b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*,

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

15

[4] Section 25 Mode of service of summons

Omit "wife" from section 25 (1).
Insert instead "husband, wife, friend".

Explanatory note

20

Section 2B of the *Landlord and Tenant Act 1899* provides that the protection afforded by the Act to a tenant of residential premises inures to the benefit of a wife who remains in occupation of the premises after the tenant quits. The amendment substitutes "spouse" (in the redefined sense) for "wife".

2.28 Law Reform (Miscellaneous Provisions) Act 1944 No 28

[1] Section 2 Effect of death on certain causes of action

Omit "*De Facto Relationships Act 1984*" from section 2 (1).
Insert instead "*De Facto and Domestic Relationships Act 1984*".

[2] Section 4 Extension of liability in certain cases

5

Omit "husband or wife" from section 4 (1) (a).
Insert instead "spouse".

[3] Section 4 (5), definition of "Member of the family"

Omit "husband, wife". Insert instead "spouse".

[4] Section 4 (5)

10

Omit the definitions of *Husband* and *Wife*.

[5] Section 4 (5), definition of "Spouse"

Insert at the end of the subsection:

Spouse means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*,

15

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

20

Explanatory note

The amendment made by item [1] reflects the change of name of the *De Facto Relationships Act 1984*. The other amendments affect the class of persons who may bring an action for nervous shock in accordance with the *Law Reform (Miscellaneous Provisions) Act 1944* arising from the death or injury or peril of another person. The class was previously confined to husbands, wives and members of the family.

25

2.29 Legal Aid Commission Act 1979 No 78

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

Spouse means:

- (a) a husband or wife, or 5
- (b) the other party to a de facto relationship, within the meaning of the *De Facto and Domestic Relationships Act 1984*, that has existed for at least two years,

but where more than one person would so qualify as a spouse, means only the last person so to qualify. 10

Section 35 Means test

Omit section 35 (4) (a). Insert instead:

- (a) the applicant's spouse,

Explanatory note

The amendments affect the application of the means test for legal aid under the *Legal Aid Commission Act 1979*. In assessing an applicant's means, the Commission looks at the persons for whose maintenance the applicant may be responsible. The class of such persons is widened by the amendment.

15

2.30 Legal Profession Act 1987 No 109

20

[1] Section 60 Definitions

Omit section 60 (3) (b). Insert instead:

- (b) the parties to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*, 25

[2] Section 172G Non-voting shareholders must be certain approved persons

Omit section 172G (4). Insert instead:

- (4) In this section, the *spouse* of a solicitor includes the other party to a de facto relationship, within the meaning of the *De Facto and Domestic Relationships Act 1984*, with the solicitor. 5

Explanatory note

The amendments bring a de facto (in the redefined sense) of a solicitor:

- (a) within the meaning of "an associate" of a solicitor for the purposes of provisions of the *Legal Profession Act 1987* that relate to trust accounts and other affairs of a solicitor that may be investigated under the Act, and 10
- (b) within the class of persons who may be shareholders in a solicitor corporation.

2.31 Liquor Act 1982 No 147 15

Section 4 Definitions

Omit the definition of *spouse* from section 4 (1).

Insert instead:

spouse means:

- (a) a husband or wife, or 20
- (b) the other party to a de facto relationship within the meaning of the *De Facto and Other Relationships Act 1984*,

but where more than one person would so qualify as a spouse, means only the last person so to qualify. 25

Explanatory note

The amendments affect the class of persons who may take over the running of licensed premises under the *Liquor Act 1982* in the event of the licensee's decease or disqualification from holding a licence (sections 63 and 69 of the Act).

2.32 Local Courts (Civil Claims) Act 1970 No 11

Section 4 Definitions

Insert in alphabetical order in section 4 (1):

spouse means:

- (a) a husband or wife, or 5
- (b) the other party to a de facto relationship within the meaning of the *De Facto and Other Relationships Act 1984*,

but where more than one person would so qualify as a spouse, means only the last person so to qualify. 10

Explanatory note

The amendments affect the right of appearance before a Local Court in a civil matter. A litigant may appear through his or her "spouse".

2.33 Local Government Act 1993 No 30

- [1] **Sections 443 (2) (a), 449 (6), 664 (2) and (3) and Dictionary, definition of "relative"** 15

Omit "or de facto partner" wherever occurring.

- [2] **Sections 443 (3) (a), 452 (a), 454**

Omit ", de facto partner" wherever occurring.

- [3] **Dictionary, definition of "de facto partner"** 20

Omit the definition and the note that follows.

[4] Dictionary, definition of "spouse"

Insert in alphabetical order:

spouse means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship, within the meaning of the *De Facto and Domestic Relationships Act 1984*, that has existed for at least two years, 5

but where more than one person would so qualify as a spouse, means only the last person so to qualify. 10

Explanatory note

The amendments affect the provisions of the *Local Government Act 1993* relating to disclosures by council members (Part 2 of Chapter 14, which requires interests of "spouses" to be disclosed) and misuse of information for the benefit of a "spouse" (section 664). 15

2.34 Mental Health Act 1990 No 9

[1] Schedule 1, Dictionary of terms used in the Act

Omit "is married and" from paragraph (a) of the definition of *nearest relative*.

Insert instead "has a spouse and is". 20

[2] Schedule 1, definition of "nearest relative"

Omit "is not married or is married" from paragraph (b).

Insert instead "has no spouse or has a spouse".

[3] Schedule 1, definition of "nearest relative"

Omit paragraph (c). 25

[4] Schedule 1, definition of "nearest relative"

Omit " , de facto spouse" from paragraph (d) wherever occurring.

[5] Schedule 1, definition of "spouse"

Insert in alphabetical order:

spouse means:

5

- (a) a husband or wife, or
- (b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*,

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

10

[6] Schedule 2 Medical certificate as to examination or observation of person

Insert at the end of note 4 of the notes in the Schedule:

Furthermore, "spouse" is defined in that Act as follows:

15

spouse means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*,

20

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

Explanatory note

The amendments affect the meaning of the term "nearest relative" in the *Mental Health Act 1990*. The nearest relative is required to be notified of a proposed inquiry into a person's mental capacity (section 38 of the Act) or of the transfer of a patient (section 78), and is entitled to be consulted or to appear at other hearings or inquiries and in relation to certain treatments to be carried out on patients (see, for example, sections 43, 158, 159, 190, 203 and 205).

25

2.35 Motor Accidents Act 1988 No 102

[1] Section 3 Definitions

Omit the definition of *de facto partner* from section 3 (1).

[2] Section 3 (1), definition of "spouse"

Omit the definition. Insert instead:

5

spouse means:

(a) a husband or wife, or

(b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*,

10

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

[3] Section 77 Damages for psychological or psychiatric injury

Insert at the end of the section:

- (2) In subsection (1) (b), *spouse* is taken to include the other party to a domestic relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*.

15

[4] Schedule 4 Savings and transitional provisions

Insert in the Schedule (with appropriate Part and clause numbers):

Part Provisions arising from the enactment of the De Facto Relationships Amendment Act 1998

20

Damages for psychological or psychiatric injury

The amendments made by the *De Facto and Domestic Relationships Amendment Act 1997* do not have effect so as to confer on any person a right that the person would

25

not otherwise have had to recover damages of the kind referred to in section 77 in respect of a motor accident that occurred before those amendments took effect.

Explanatory note

The amendments affect the class of persons to whom damages may be awarded in respect of psychological or psychiatric injury arising from the death or injury of a person in a motor accident (section 77 of the *Motor Accidents Act 1988*).

5

2.36 Police Service Act 1990 No 47

Section 216 Special risk benefit where certain police officers hurt on duty

10

Omit the definition of *spouse* from section 216 (6). Insert instead:

spouse means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*,

15

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

Explanatory note

The amendments redefine *spouse* for the purposes of a provision under which the Commissioner of Police may pay a benefit to the spouse of a police officer killed on duty in certain circumstances.

20

2.37 Pre-Trial Diversion of Offenders Act 1985 No 153

[1] Section 2A Purpose of Act

Omit "or de facto partner".

25

[2] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

spouse means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*,

5

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

[3] Sections 3A, 14 (2) (f)–(i), 30A

10

Omit “or de facto partner” wherever occurring.

[4] Section 14 Assessment

Omit “or de facto spouse” from section 14 (2) (c).

Explanatory note

The *Pre-Trial Diversion of Offenders Act 1985* applies to sexual offences committed by a person with or upon the person's child or a child of the person's spouse. The amendments affect the meaning of “spouse”.

15

2.38 Protected Estates Act 1983 No 179**Section 4 Definitions**

Insert in alphabetical order in section 4 (1):

20

spouse means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship, within the meaning of the *De Facto and Domestic Relationships Act 1984*, that has existed for at least two years,

25

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

Explanatory note

Section 28 of the *Protected Estates Act 1983* provides for the disposition of money in the hands of the Protective Commissioner to (among others) the spouse of a protected person. The amendment affects the meaning of “spouse”.

30

2.39 Public Sector Management Act 1988 No 33

[1] Schedule 5 Extended leave for officers etc of Public Service

Omit clause 3 (1) (a). Insert instead:

[2] Schedule 5, clause 5 (7)

Insert after clause 5 (6): 5

(7) In this clause, *spouse* means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*, 10

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

Explanatory note

The amendments affect the payment of the monetary value of unused long service leave under the *Transport Administration Act 1988*. Clause 5 of Schedule 5 to that Act provides for payment to be made to the widow or widower of a deceased person entitled to the leave. The amendments have the effect of providing for payment to a "spouse" (as defined in the terms contained in item [4]). 15

2.40 Retirement Villages Act 1989 No 74 20

[1] Section 3 Definitions

Omit "or de facto partner (within the meaning of the *De Facto Relationships Act 1984*)" from the definition of *resident* in section 3 (1).

[2] Section 3 (1), definition of "retired person" 25

Omit "or de facto partner (within the meaning of the *De Facto Relationships Act 1984*)".

[3] Section 3 (1), definition of "spouse"

Insert in alphabetical order in section 3 (1):

spouse means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*, 5

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

Explanatory note 10

The amendments affect the meaning of the expression "resident" in the *Retirement Villages Act 1989*. The expression currently includes the spouse of a resident. As a consequence, all the rights and obligations of the residents of a retirement village will have effect in relation to a "spouse" in a redefined sense.

2.41 Rural Lands Protection Act 1989 No 197 15

[1] Schedule 4 Sale of land for non-payment of money owing to a board

Insert after clause 4 (3):

(4) In this clause, *spouse* means:

- (a) a husband or wife, or 20
- (b) the other party to a de facto relationship, within the meaning of the *De Facto and Domestic Relationships Act 1984*, that has existed for at least two years,

but where more than one person would so qualify as a spouse, means only the last person so to qualify. 25

[2] Schedule 5 Savings and transitional provisions

Insert after Part 3:

**Part 4 Provisions consequential on the enactment
 of the De Facto Relationships Amendment
 Act 1998**

5

47 Regulated contracts not affected

The amendments made by the *De Facto Relationships Amendment Act 1998* do not preclude or invalidate a sale pursuant to an agreement that was entered into in writing before those amendments took effect.

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Explanatory note

When any land is sold, under the *Rural Lands Protection Act 1989*, by a rural lands protection board for payment of unpaid rates, it cannot be sold to a relative (including the spouse) of a board member. The amendment affects the meaning of "spouse".

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2.42 Sporting Injuries Insurance Act 1978 No 141

[1] Section 26 Payment of benefits for deaths

Omit the definition of *dependant* from section 26 (1).
Insert instead:

dependant means a child or spouse.

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[2] Section 26 (1), definition of "spouse"

Insert in alphabetical order in section 26 (1):

spouse means:

(a) a husband or wife, or

- (b) the other party to a de facto relationship within the meaning of the *De Facto and Other Relationships Act 1984*,

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

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Explanatory note

The effect of the amendments is to vary the effect of the death benefits payable under the *Sporting Injuries Insurance Act 1978*, by redefining **spouse** for the purposes of the relevant provision.

2.43 Sydney Cricket and Sports Ground Act 1978 No 72

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[1] Schedule 1 Provisions relating to constitution and procedure of the Trust

Omit clause 13 (8). Insert instead:

- (8) In the case of persons living with their spouses, the interest of one spouse, if known to the other, is taken for the purposes of this section to be also an interest of the other spouse.

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[2] Schedule 1, clause 13 (15)

Omit the subclause. Insert instead:

- (15) In this clause:

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shares includes stock, and **share capital** is to be construed accordingly.

spouse means:

- (a) a husband or wife, or

- (b) the other party to a de facto relationship, within the meaning of the *De Facto and Domestic Relationships Act 1984*, that has existed for at least two years.

but where more than one person would so qualify as a spouse, means only the last person so to qualify. 5

Explanatory note

The amendments affect the duty of a member of the Sydney Cricket and Sports Ground Trust to declare any interest the member or the member's spouse may have in a matter being dealt with in a meeting of the Trust. 10

2.44 Sydney Cove Redevelopment Authority Act 1968 No 56

[1] Section 8 Payments in respect of long service leave on death of servant

Omit "widow or widower" wherever occurring in section 8 (1).
Insert instead "surviving spouse". 15

[2] Section 8 (1)

Omit "or there are no such children".
Insert instead "and there are no such children".

[3] Section 8 (5)

Insert after section 8 (4): 20

(5) In this section, *spouse* means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship, within the meaning of the *De Facto and Domestic Relationships Act 1984*, 25

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

Explanatory note

The amendments affect the payment of the monetary value of unused long service leave under the *Sydney Cove Redevelopment Authority Act 1968*. Section 8 of that Act provides for payment to be made to the widow or widower of a deceased person entitled to the leave. The amendments have the effect of providing for payment to a "spouse" (in the redefined sense).

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2.45 Teaching Services Act 1980 No 23

[1] Section 81 Payment of money value of leave not taken or completed

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Omit section 81 (1) (a). Insert instead:

- (a) the person who, at the time of the officer's death, was the officer's spouse, or

[2] Section 81 (1) (b), (2) (b)

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Omit "widow or widower" wherever occurring.
Insert instead "surviving spouse".

[3] Section 81 (1) (c), (2) (c)

Omit "widow, widower" wherever occurring.
Insert instead "surviving spouse".

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[4] Section 81 (2) (a)

Omit the paragraph. Insert instead:

- (a) the person who, at the time of the officer's death, was the officer's spouse, or

[5] Section 81 (7)

Insert after section 81 (6):

(7) In this section, *spouse* means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*, 5

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

Explanatory note 10

The amendments affect the payment of the monetary value of unused long service leave under the *Teaching Services Act 1980*. Section 81 of that Act provides for payment to be made to the widow or widower of a deceased person entitled to the leave. The amendments have the effect of providing for payment to a "spouse" (as defined in the terms contained in item [4]). 15

2.46 Transport Administration Act 1988 No 109

[1] Schedule 5 Extended leave for staff of each Authority

Omit clause 5 (1) (a). Insert instead:

- (a) the person who, at the time of the officer's death, was the officer's spouse, or 20

[2] Schedule 5, clause 5 (1) (b), (2) (b)

Omit "widow or widower" wherever occurring.
Insert instead "surviving spouse".

[3] Schedule 5, clause 5 (1) (c), (2) (c)

Omit "widow, widower" wherever occurring. 25
Insert instead "surviving spouse".

[4] Schedule 5, clause 5 (2) (a)

Omit the paragraph. Insert instead:

- (a) the person who, at the time of the officer's death, was the officer's spouse, or

[5] Schedule 5, clause 5 (7)

5

Insert after clause 5 (6):

- (7) In this clause, *spouse* means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*,

10

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

Explanatory note

The amendments affect the payment of the monetary value of unused long service leave under the *Transport Administration Act 1988*. Clause 5 of Schedule 5 to that Act provides for payment to be made to the widow or widower of a deceased person entitled to the leave. The amendments have the effect of providing for payment to a "spouse" (as defined in the terms contained in item [4]).

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2.47 Trustee Act 1925 No 14

[1] Section 45 Protective trusts

Omit "wife or husband" from section 45 (6) (a).
Insert instead "spouse".

[2] Section 45 (6) (b)

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Omit "wife husband". Insert instead "spouse".

[3] Section 45 (11) and (12)

Insert after section 45 (10):

(11) In this section:

child includes, in relation to a person who is a party to a de facto or domestic relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*, a child who, by virtue of section 3 (2) of that Act, is regarded as a child of the parties to that relationship. 5

spouse means:

- (a) a husband or wife, or 10
- (b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*,

but where more than one person would so qualify as a spouse, means only the last person so to qualify. 15

(12) Subsection (11) does not apply in relation to a trust created before the commencement of the amendments made to this Act by the *De Facto Relationships Amendment Act 1998*.

Explanatory note 20

The amendments affect the operation of section 45 of the *Trustee Act 1925*, which deals with income that is the subject of a protective trust. If the trust fails before expiry, there is a resulting trust in favour of the wife or husband of the principal beneficiary, or his or her children and their descendants. The amendment substitutes "spouse", in the sense defined in proposed section 45 (11), for "wife or husband" and inserts a new definition of *child*. 25

2.48 Trustee Companies Act 1964 No 6

[1] Section 21 Court may order account

Omit "wife, husband" from section 21 (1).
Insert instead "spouse". 30

[2] Section 21 (5)

Insert after section 21 (4):

(5) In this section, *spouse* means:

(a) a husband or wife, or

(b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*,

5

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

Explanatory note

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Section 21 of the *Trustee Companies Act 1964* confers a right on certain persons to apply to the Supreme Court for an order directing a trustee company that holds property in which the applicant is interested to render a proper account. Wives and husbands are among those mentioned as possible applicants. The amendments confer the right instead on a "spouse" in a sense defined by the amendments.

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**2.49 Waste Recycling and Processing Service Act 1970
No 97**

**[1] Section 13 Payments in respect of long service leave on death
of servant**

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Omit "widow or widower" wherever occurring in section 13 (1).
Insert instead "surviving spouse".

[2] Section 13 (5)

Insert after section 13 (4):

(5) In this section, *spouse* means:

25

(a) a husband or wife, or

- (b) the other party to a de facto relationship, within the meaning of the *De Facto and Domestic Relationships Act 1984*,

but where more than one person would so qualify as a spouse, means only the last person so to qualify. 5

Explanatory note

The amendments affect the payment of the monetary value of unused long service leave under the *Waste Recycling and Processing Service Act 1970*. Section 13 of that Act provides for payment to be made to the widow or widower of a deceased person entitled to the leave. The amendments have the effect of providing for payment to a "spouse" (in the redefined sense). 10

2.50 Wills, Probate and Administration Act 1898 No 13

[1] Section 3 Definitions

Insert in alphabetical order:

Spouse means a person who was, in relation to the intestate: 15

- (a) a husband or wife, or
- (b) the other party to a de facto relationship, within the meaning of the *De Facto and Domestic Relationships Act 1984*, that has existed for at least two years, 20

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

[2] Section 15A Effect of termination of marriage

Omit "testator's spouse" from the definition of *former spouse* in section 15A (4). 25

Insert instead "testator's husband or wife".

[3] Part 2, Division 1A

Omit the Division.

[4] Sections 53, 61A (2) (definition of "interest"), 61B (2), (3), (4), (5), (10), (12) and (13), 61D (1), 63 (a) and (c) and 72 (1) and clauses 2 (1) and (3), 3, 4, 6 and 7 of the Fourth Schedule

5

Omit "husband or wife" wherever occurring.
Insert instead "spouse".

[5] Sections 61A (2) (definitions of "interest" and "value"), 61B (13), 61E (1) (c) and (3) and clauses 2 (3), 3, 5 and 7 of the Fourth Schedule

10

Omit "matrimonial home" wherever occurring.
Insert instead "shared home".

[6] Section 61A Application and interpretation

Omit "section 61B (3), (3A) or (3B)" from the definition of *interest* in section 61A (2).
Insert instead "section 61B (3)".

15

[7] Section 61A (2)

Omit the definition of *matrimonial home*.

[8] Section 61A (2), definition of "shared home"

Insert in alphabetical order:

20

shared home, in relation to an intestate's estate, means a dwelling-house in which the intestate held an interest in respect of which the surviving spouse of the intestate for whom part of the estate of the intestate is required to be held in trust under section 61B (3) is entitled to exercise the right conferred by section 61D.

25

[9] Section 61B Succession to real and personal property on intestacy

Omit subsections (3A) and (3B).

[10] Section 61B (6)

Omit the subsection. Insert instead:

5

- (6) If the intestate leaves no spouse, no issue and no parents, the estate is to be held for the following persons living at the death of the intestate and in the following order and manner:

- (a) firstly, in statutory trust for any person (not being a spouse or relative of the intestate) who, at the time of the intestate's death, was the other party to an emotionally interdependent relationship with the intestate, whether or not it was a de facto relationship and whether or not that person and the intestate lived together or shared a sexual relationship; but if there is no such person, then 10
- (b) secondly, in statutory trust for the siblings of the whole blood of the intestate; but if there are no such siblings, then 15
- (c) thirdly, in statutory trust for the siblings of the half blood of the intestate; but if there are no such siblings, then 20
- (d) fourthly, in trust for the grandparents of the intestate and, if more than one of them survive the intestate, in equal shares; but if there are no such grandparents, then 25
- (e) fifthly, in trust for the uncles and aunts of the intestate (being brothers or sisters of the whole blood of a parent of the intestate) and, if more than one of them survive the intestate, in equal shares; but if there are no such uncles or aunts, then 30
- (f) sixthly, in trust for the uncles and aunts of the intestate (being brothers or sisters of the half blood of a parent of the intestate) and, if more than one of them survive the intestate, in equal shares. 35

[11] Section 61D Rights of surviving spouse with respect to shared home

Omit "husband's or wife's" from section 61D (1) (d).
Insert instead "spouse's".

[12] Section 61D (2)

5

Omit the subsection.

[13] Fourth Schedule, heading

Omit "matrimonial home". Insert instead "shared home".

Explanatory note

The insertion of a new definition of *spouse* into the *Wills, Probate and Administration Act 1898* affects the operation of section 13 of that Act, which avoids a gift by will to the spouse of a witness to the testator's execution of the will. Amendments to Division 2A of Part 2 of the Act and the Fourth Schedule affect the law relating to distribution of intestate estates. That law currently affords a surviving husband or wife (or a de facto husband or wife of 2 years' standing) rights in the home in which they lived. The amendments have the effect of vesting those rights instead in a "spouse" as defined.

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2.51 Workers Compensation Act 1987 No 70

[1] Section 3 Definitions

Omit "divorced" from paragraph (b) of the definition of *dependants* in section 3 (1).
Insert instead "former".

20

[2] Section 3 (1), definition of "dependants"

Omit paragraph (c).

[3] Section 3 (1), definition of "member of a family"

Omit "wife or husband". Insert instead "spouse".

[4] Section 3 (1), definition of "spouse"

Insert in alphabetical order:

spouse means:

5

- (a) a husband or wife, or
- (b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*,

but where more than one person would so qualify as a spouse, means only the last person so to qualify.

10

[5] Section 31 Payment in respect of dependent children

Omit section 31 (1) (a) and (b). Insert instead:

- (a) be paid to the surviving parent of the child concerned, if there is one, or
- (b) be paid to the Public Trustee for the benefit of the child or to any person (approved by the Public Trustee) having the care or custody of the dependent child, if no such parent survives.

15

[6] Section 37 Weekly payment during total incapacity—after first 26 weeks

20

Omit section 37 (1) (b). Insert instead:

- (b) in addition, \$62 per week in respect of:
 - (i) a dependent spouse of the worker, or
 - (ii) if there is no dependent spouse at any time during which weekly payments are payable—any other family member of the worker, and

25

[7] Section 37 (3) and (4)

Omit "wife, husband, de facto" wherever occurring.

[8] Section 37 (5) (b)

Omit "de facto".

[9] Section 37 (6)

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Omit "husband, wife or de facto".

[10] Section 37 (7)

Omit the definition of *de facto spouse or other family member*.
Insert instead:

other family member, in relation to a worker, means: 10

(a) a person who is caring for any child of the worker,
or

(b) a person who (not being the worker's spouse) is in
a de facto or domestic relationship, within the
meaning of the *De Facto and Domestic Relationships Act 1984*, with the worker, or 15

(c) the worker's father, mother, grandfather,
grandmother, stepfather, stepmother, grandson,
grand-daughter, sibling or half-sibling.

[11] Section 85 Payments to Public Trustee for benefit of beneficiaries 20

Omit "widow or widower" from section 85 (3) wherever occurring.
Insert instead "dependent surviving spouse".

[12] Section 85 (4)

Omit the subsection.

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[13] Schedule 6 Savings, transitional and other provisions

Omit "wife or husband or dependent defacto" from clause 4 (1) (b) (i) of Part 4.

[14] Schedule 6, Part 20

Insert at the end of clause 1 (1):

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De Facto Relationships Amendment Act 1998

[15] Schedule 6, Part 21

Insert after Part 20:

**Part 21 Provisions consequent on the enactment of
the De Facto Relationships Amendment Act
1998**

10

1 Compensation payable by virtue of amendments

The amendments made to this Act by the *De Facto Relationships Amendment Act 1998* do not affect any right to compensation in respect of an injury sustained by any person before those amendments took effect.

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Explanatory note

The insertion of a new definition of **spouse** into the *Workers Compensation Act 1987* affects the operation of:

- (a) section 45 of the Act, in so far as it allows the Compensation Court to reduce or abolish an entitlement to weekly payments of compensation if that would result in a spouse's entitlement to social security benefits, and 20
- (b) section 61 of the Act, which defines the entitlement to medical care partly by reference to the care that an injured worker might reasonably expect from a spouse, and 25
- (c) section 151P of the Act, which limits the class of persons in whose favour damages for psychological or psychiatric injury may be awarded (family members and spouses).

Other amendments affect:

- (a) section 31 of the Act, which currently provides for payment of benefits in respect of dependent children of a deceased worker to a widow or widower (payment will in future be to a "spouse" as defined by the amendments), and 30

-
- (b) section 37 of the Act, which currently determines the rate of compensation payable for total incapacity by reference to dependent husbands and wives (the rate will in future be determined by reference to dependent "spouses" as defined by the amendments), and
- (c) section 85 (3) of the Act, which currently provides for the manner of payment of a death benefit to a widow or widower (the provision will in future provide for the manner of payment to a "dependent surviving spouse").

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2.52 Workers' Compensation (Dust Diseases) Act 1942 No 14

[1] Section 3 Definitions

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Omit the definitions of *Widow* and *Widower* from section 3 (1).

[2] Section 3 (1), definition of "Spouse"

Insert in alphabetical order:

Spouse means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship within the meaning of the *De Facto and Domestic Relationships Act 1984*,

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but where more than one person would so qualify as a spouse, means only the last person so to qualify.

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[3] Section 8 (2B) (a), (2D) (b) and (2E) (b)

Omit "widow or widower" wherever occurring.
Insert instead "surviving spouse".

[4] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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De Facto Relationships Amendment Act 1998

[5] **Schedule 2, Part 3**

Insert after Part 2:

**Part 3 Provisions consequent on the enactment of
the De Facto Relationships Amendment Act
1998**

5

8 Compensation payable by virtue of amendments

The amendments made to this Act by the *De Facto Relationships Amendment Act 1998* do not affect any right to compensation in respect of an injury sustained by any person before those amendments took effect.

10

Explanatory note

The insertion of a new definition of *spouse* into the *Workers' Compensation (Dust Diseases) Act 1942* affects the operation of section 8A of the Act, in so far as it allows the Compensation Court to reduce or abolish an entitlement to weekly payments of compensation if that would result in a spouse's entitlement to social security benefits. The other amendment affects section 8, which deals with death benefits, in so far as it determines the extent of those benefits by reference to a "widow or widower". In future such determinations will be made by reference to a "surviving spouse".

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