

LEGISLATIVE COUNCIL

Property (Relationships) Legislation Amendment Bill 1999

First Print

Amendment to be moved in Committee

- No. 1 Pages 17 and 18, Schedule 2.6, line 28 on page 17 to line 21 on page 18.
Omit all words on those lines. Insert instead:

2.6 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 *Property (Relationships) Act 1984*, with the person.

[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

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

Explanatory note

The amendment made by item [2] extends, to de facto partners (in the sense defined by the amendment made by item [1]) 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. The amendment made by item [3] will require the Supreme Court, when considering whether to decline to make an order for forfeiture on grounds of hardship that might be occasioned to a dependant of the person against whom the order would be made, to consider the interests of a de facto partner, in the redefined sense.

No. 2 Page 30, Schedule 2.17, lines 1-19.
Omit all words on those lines. Insert instead:

2.17 Legal Aid Commission Act 1979 No 78

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

de facto partner of a person means the other party to a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with the person.

[2] Section 35 Means test

Omit "within the meaning of the *De Facto Relationships Act 1984*" from section 35 (4) (a).

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.

No. 3 Pages 37-39, Schedule 2.25, line 1 on page 37 to line 12 on page 39.
Omit all words on those lines. Insert instead:

2.25 Wills, Probate and Administration Act 1898 No 13

[1] Section 32G Interpretation

Omit the section. Insert instead:

32G Interpretation

(1) In this Part:

de facto relationship has the same meaning as in the *Property (Relationships) Act 1984*.

de facto spouse, in relation to a person dying wholly or partly intestate, means someone who:

(a) was the sole partner in a de facto relationship with the person, and

(b) was not a partner in any other de facto relationship.

(2) Except where the contrary intention appears, a reference in this Part to the spouse of an intestate includes a reference to a person who, at the time of death of the intestate, was the de facto spouse of the intestate.

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

Omit "husband or wife" wherever occurring.

Insert instead "spouse".

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- [3] **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**
Omit “matrimonial home” wherever occurring.
Insert instead “shared home”.
- [4] **Section 61A (2)**
Omit the definition of *matrimonial home*.
- [5] **Section 61A (2), definition of “shared home”**
Insert in alphabetical order:
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 or de facto spouse of the intestate for whom part of the estate of the intestate is required to be held in trust under section 61B (3), (3A) or (3B) is entitled to exercise the right conferred by section 61D.
- [6] **Sections 61B Succession to real and personal property on intestacy**
Omit “husband or wife” wherever occurring in section 61B (2)-(6), (9), (10), (12) and (13).
Insert instead “spouse”.
- [7] **Sections 61B (3A), (3B)**
Omit “de facto husband or de facto wife” wherever occurring,
Insert instead “de facto spouse”.
- [8] **Section 61B (9)**
Omit “A husband and wife”. Insert instead “Spouses”.
- [9] **Section 61B (12)**
Omit “husband’s or wife’s”. Insert instead “spouse’s”.
- [10] **Section 61D Rights of surviving spouse with respect to shared home**
Omit “husband or wife” wherever occurring.
Insert instead “spouse”.
- [11] **Section 61D (1) (d)**
Omit “husband’s or wife’s”. Insert instead “spouse’s”.
- [12] **Section 61D (2)**
Omit “de facto husband or de facto wife” wherever occurring.
Insert instead “de facto spouse”.
- [13] **Fourth Schedule, heading**
Omit “**matrimonial home**”. Insert instead “**shared home**”.

Explanatory note

The amendments made by items [6] - [12] extend to de facto spouses (as redefined

by the amendment made by item [1]) the rights of de facto spouses under the law relating to distribution of intestate estates. The amendments made by other items are consequential.

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

[3] Section 24 Relief from hardship - spouses and dependants

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

Explanatory note

The amendment made by item [2] extends, to de facto partners (in the sense defined by the amendment made by item [1]) 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. The amendment made by item [3] will require the Supreme Court, when considering whether to decline to make an order for forfeiture on grounds of hardship that might be occasioned to a dependant of the person against whom the order would be made, to consider the interests of a de facto partner, in the redefined sense.

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(2) Except where the contrary intention appears, a reference in this Part to the spouse of an intestate includes a reference to a person who, at the time of death of the intestate, was the de facto spouse of the intestate.

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

Omit "husband or wife" wherever occurring.

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- [3] **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**
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Omit “husband or wife” wherever occurring in section 61B (2)-(6), (9), (10), (12) and (13).
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Omit “de facto husband or de facto wife” wherever occurring.
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Omit “husband’s or wife’s”. Insert instead “spouse’s”.
- [10] **Section 61D Rights of surviving spouse with respect to shared home**
Omit “husband or wife” wherever occurring.
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- [11] **Section 61D (1) (d)**
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- [12] **Section 61D (2)**
Omit “de facto husband or de facto wife” wherever occurring.
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- [13] **Fourth Schedule, heading**
Omit “**matrimonial home**”. Insert instead “**shared home**”.

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