



New South Wales

Property (Relationships) Legislation Amendment Bill 1999

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to redefine a *de facto relationship*, and
- (b) to define a *domestic relationship* in terms that include de facto relationships in the redefined sense and other relationships subsisting between persons in certain circumstances, 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
- (c) to amend:
 - (i) the *Bail Act 1978*, the *Duties Act 1997* and the *Family Provision Act 1982* so that certain provisions of those Acts conferring rights or privileges, affording concessions or imposing obligations with respect to married persons or persons in a de facto relationship will extend to apply to the parties in a domestic relationship, and

- (ii) other Acts whose provisions deal with such rights, privileges, concessions or obligations so that those provisions will extend to apply to persons who are in a de facto relationship as redefined by the Bill, and
- (d) to amend certain other Acts whose provisions also deal with rights, privileges, concessions or obligations affecting married persons or persons in a de facto relationship, so that those provisions will not be inadvertently extended, in any manner referred to in paragraph (c) above, as a consequence of the redefinition of *de facto relationship* in the *De Facto Relationships Act 1984*.

The Bill also proposes to re-name the amended *De Facto Relationships Act 1984* as the *Property (Relationships) Act 1984*, and to amend other Acts that make reference to it as a consequence.

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 specified in Schedule 2.

Clause 5 provides that explanatory notes (which occur in Schedule 2) do not form part of the proposed Act.

Schedule 1 Amendment of De Facto Relationships Act 1984

De facto relationships

Schedule 1 [4] omits the definition of *de facto relationship* from section 3 and **Schedule 1 [9]** inserts a new section 4, which redefines the expression for the purposes of the Act. The new section specifies the essential criteria of a de facto relationship to be that the two persons involved live together as a couple and are not married to one another or related by family. In order to determine whether or not two persons are in a de facto relationship, it is necessary to look at all the circumstances of the relationship, including the matters particularly specified in the proposed section. A new section 5A is inserted also, to explain what is meant by "related by family".

Domestic relationships

Schedule 1 [9] inserts a new section 5 which defines a *domestic relationship* for the purposes of the Act. Domestic relationships, in the sense defined, will become the main subject-matter of the Act instead of de facto relationships. A domestic relationship must be of one of two kinds, namely:

- (a) a de facto relationship (in the redefined sense), or
- (b) a close personal relationship in which one or each of the parties to the relationship provides the other with domestic support and personal care.

A daughter who cares for an aged parent in her home would be an example of the kind of close personal relationship described in paragraph (b) above. It is not the intention of the Bill to create rights and obligations between persons who merely share accommodation or in circumstances where one person is providing care to another by way of employment or in the course of acting on behalf of a charitable organisation.

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 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. The amendments are of three kinds, namely:

- (a) amendments having 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 redefined by the new section 4 inserted by **Schedule 1 [9]**), and
- (b) amendments having the effect of extending the provisions of the amended Act to persons who are parties to a domestic relationship (the Acts so affected are the *Bail Act 1978*, the *Duties Act 1997* and the *Family Provision Act 1982*), and
- (c) purely consequential amendments whose effect is merely to preserve the current effect of provisions of the amended Act or to reflect the change of name of the *De Facto Relationships Act 1984*.

An explanatory note briefly describing the effect of the amendments made to each Act is given in the Schedule at the end of those amendments.

First print



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New South Wales

Property (Relationships) Legislation Amendment Bill 1999

No , 1999

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 relationships of a more widely-defined class; to amend certain Acts that confer rights or impose obligations with respect to married persons or persons in a de facto relationship; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Property (Relationships) Legislation Amendment Act 1999*.

2 Commencement

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

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

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

5 Notes

Notes appearing under the heading "Explanatory note" do not form part of this Act.

**Schedule 1 Amendment of De Facto Relationships Act
1984**

(Section 3)

[1] Long title

Omit “de facto partners”.

Insert instead “the rights and obligations of persons in certain domestic relationships”.

[2] Section 1 Name of Act

Omit “*De Facto Relationships*”.

Insert instead “*Property (Relationships)*”.

[3] Section 3 Definitions

Insert in alphabetical order:

adult person means a person of or above the age of 18 years.

[4] Section 3 (1), definitions of “de facto partner” and “de facto relationship”

Omit the definitions. Insert instead:

de facto relationship—see section 4.

domestic relationship—see section 5.

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

Omit “de facto partners” where firstly occurring.

Insert instead “parties to a 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”.

Property (Relationships) Legislation Amendment Bill 1999

Schedule 1

Amendment of De Facto Relationships Act 1984

[7] Sections 3 (1) (definition of "property"), 8 (1), 19, 22 (1) and 52	1
Omit "de facto partners" wherever occurring.	2
Insert instead "parties to a domestic relationship".	3
	4
[8] Section 3 (2)	5
Omit the subsection.	6
	7
[9] Sections 4–5A	8
Omit section 5. Insert instead:	9
	10
4 De facto relationships	11
(1) For the purposes of this Act, a de facto relationship is a relationship between two adult persons:	12
(a) who live together as a couple, and	13
(b) who are not married to one another or related by family.	14
	15
	16
(2) In determining whether two persons are in a de facto relationship, all the circumstances of the relationship are to be taken into account, including such of the following matters as may be relevant in a particular case:	17
(a) the duration of the relationship,	18
(b) the nature and extent of common residence,	19
(c) whether or not a sexual relationship exists,	20
(d) the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties,	21
(e) the ownership, use and acquisition of property,	22
(f) the degree of mutual commitment to a shared life,	23
(g) the care and support of children,	24
(h) the performance of household duties,	25
(i) the reputation and public aspects of the relationship.	26
	27
	28
	29
	30
	31

- (3) No finding in respect of any of the matters mentioned in subsection (2) (a)–(i), or in respect of any combination of them, is to be regarded as necessary for the existence of a de facto relationship, and a court determining whether such a relationship exists is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.
- (4) Except as provided by section 6, a reference in this Act to a party to a de facto relationship includes a reference to a person who, whether before or after the commencement of this subsection, was a party to such a relationship.

5 Domestic relationships

- (1) For the purposes of this Act, a domestic relationship is:
 - (a) a de facto relationship, or
 - (b) a close personal relationship (other than a marriage or a de facto relationship) between two adult persons, whether or not related by family, who are living together, one or each of whom provides the other with domestic support and personal care.
- (2) For the purposes of subsection (1) (b), a close personal relationship is taken not to exist between two persons where one of them provides the other with domestic support and personal care:
 - (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).
- (3) A reference in this Act to a child of the parties to a domestic relationship is a reference to any of the following:
 - (a) a child born as a result of sexual relations between the parties,
 - (b) a child adopted by both parties,
 - (c) where the domestic relationship is a de facto relationship between a man and a woman, a child of the woman:

Property (Relationships) Legislation Amendment Bill 1999

Schedule 1

Amendment of De Facto Relationships Act 1984

-
- (i) of whom the man is the father, or 1
- (ii) of whom the man is presumed, by virtue of 2
the *Status of Children Act 1996*, to be the 3
father, except where such a presumption is 4
rebutted, 5
- (d) a child for whose long-term welfare both parties have 6
parental responsibility (within the meaning of the 7
Children and Young Persons (Care and Protection) 8
Act 1998). 9
- (4) Except as provided by section 6, a reference in this Act to 10
a party to a domestic relationship includes a reference to a 11
person who, whether before or after the commencement of 12
this subsection, was a party to such a relationship. 13

5A Family relationship 14

- (1) For the purposes of sections 4 and 5, persons are related by 15
family if: 16
- (a) one is the parent, or another ancestor, of the other, or 17
- (b) one is the child, or another descendant, of the other, 18
or 19
- (c) they have a parent in common. 20
- (2) For the purposes of this section: 21
- (a) a person is taken to be an ancestor or descendant of 22
another person even if the relationship between them 23
is traced through, or to, a person who is or was an 24
adopted child, and 25
- (b) the relationship of parent and child between an 26
adoptive parent and an adopted child is taken to 27
continue even though the order by which the 28
adoption was effected has been annulled, cancelled 29
or discharged or the adoption has otherwise ceased to 30
be effective, and 31
- (c) the relationship between an adopted child and the 32
adoptive parent, or each of the adoptive parents, is 33
taken to be or to have been the natural relationship of 34
child and parent, and 35

(d)	a person who has been adopted more than once is taken to be the child of each person by whom he or she has been adopted.	1 2 3
(3)	In subsection (2), <i>adopted</i> means adopted under the law of any place, whether in Australia or not, relating to the adoption of children.	4 5 6
[10]	Section 6 Application of Act	7
	Omit "partner in" from section 6 (b). Insert instead "party to".	8 9
[11]	Section 6	10
	Insert at the end of section 6:	11 12
(2)	Without affecting subsection (1), this Act, as amended by the <i>Property (Relationships) Legislation Amendment Act 1999</i> , does not (except for Part 5) apply to or in respect of:	13 14 15
(a)	a domestic relationship that ceased before the commencement of this subsection, or	16 17
(b)	a person in so far as he or she was a party to a relationship referred to in paragraph (a).	18 19
[12]	Sections 7, 14, 18, 20, 21 (1), 23, 27 (1), 28, 35 (1), 47, 49 (1), 50 and 51 (1)	20 21 22
	Omit "a de facto partner" wherever occurring.	23
	Insert instead "a party to a domestic relationship".	24
[13]	Section 8 Declaration of interests in property	25
	Omit "a de facto partner" from section 8 (1).	26 27
	Insert instead "either party to the relationship".	28
[14]	Sections 8 (3), 14 (1), 20 (1), 21, 27, 47, 49 (1) and 50 (a)	29
	Omit "the de facto partners" wherever occurring.	30 31
	Insert instead "the parties to the relationship".	32

Property (Relationships) Legislation Amendment Bill 1999

Schedule 1

Amendment of De Facto Relationships Act 1984

[15] Sections 15, 17 (1) and 56	1
Omit "de facto relationship" wherever occurring.	2
Insert instead "domestic relationship".	3
	4
[16] Section 18 Time limit for making applications	5
Omit section 18 (1). Insert instead:	6
	7
(1) If a domestic relationship has ceased, an application to a	8
court for an order under this Part can only be made within	9
the period of 2 years after the date on which the relationship	10
ceased, except as otherwise provided by this section.	11
[17] Section 18 (3)	12
Omit "the de facto partner". Insert instead "the party".	13
	14
[18] Sections 20 (1) (b), 27 (2) and 35 (2)	15
Omit "de facto partner" wherever occurring.	16
Insert instead "party to the relationship".	17
	18
[19] Sections 20 (1), 21 (1) and (3), 22 (1), 47 (1) (d) (i) and (2), 49 (1) and 52	19
Omit "the partners" wherever occurring. Insert instead "the parties".	20
	21
	22
[20] Sections 21 (1) and 27 (2) (a)	23
Omit "either partner" wherever occurring.	24
Insert instead "either party to the relationship".	25
	26
[21] Sections 21 (1), 47 (1) (d) and 50	27
Omit "that partner" wherever occurring. Insert instead "that party".	28
	29
[22] Section 21 (3)	30
Omit "a partner". Insert instead "a party".	31
	32

[23] Section 26	1
Omit the section. Insert instead:	2
	3
26 No general right to maintenance between parties to relationship	4
	5
A party to a 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.	6
	7
	8
	9
[24] Sections 27 (2) (a) and 47 (1) (d)	10
Omit "each partner" wherever occurring.	11
Insert instead "each party to the relationship".	12
	13
[25] Section 29	14
Omit the section. Insert instead:	15
	16
29 Effect of subsequent relationship or marriage	17
If the parties to a domestic relationship have ceased to live together, 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 relationship with another person or who, at that time, has married or remarried.	18
	19
	20
	21
	22
	23
[26] Section 30 Duration of orders for periodic maintenance	24
Omit section 30 (2) (b). Insert instead:	25
	26
(b) 4 years after the day on which the relationship ceased, or last ceased,	27
	28
[27] Sections 32, 33 and 37 (1)	29
Omit "de facto partner" wherever occurring. Insert instead "person".	30
	31
[28] Section 32 Cessation of order—generally	32
Omit "the partner" from section 32 (2). Insert instead "that person".	33
	34

[29] **Part 4, heading**

Omit the heading.

Insert instead "**Part 4 Domestic relationship agreements and termination agreements**".

[30] **Section 44**

Omit the section. Insert instead:

44 Definitions

(1) In this Part:

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

- (a) that is made in contemplation of their entering into a domestic relationship, or while they are in one, and
- (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 domestic relationship agreement and any agreement to which subsection (2) applies.

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

- (a) the maintenance of either or both of the parties,
- (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 agreement:

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

(b)	that makes provision with respect to financial matters, whether or not it also makes provision with respect to other matters,	1
		2
		3
	and includes such an agreement that varies an earlier domestic relationship agreement or termination agreement, but does not include an agreement to which subsection (2) applies.	4
		5
		6
		7
(2)	An agreement made in contemplation of the termination of a domestic relationship is taken to be a domestic relationship agreement if the relationship is not terminated within 3 months after the agreement was made.	8
		9
		10
		11
(3)	The application of this Part extends to an agreement made before the re-enactment of this section by the <i>Property (Relationships) Legislation Amendment Act 1999</i> .	12
		13
		14
[31]	Sections 45–52	15
	Omit “cohabitation agreement” wherever occurring.	16
	Insert instead “domestic relationship agreement”.	17
		18
[32]	Sections 45–52	19
	Omit “separation agreement” wherever occurring.	20
	Insert instead “termination agreement”.	21
		22
[33]	Section 45 Entering into agreements	23
	Omit “a man and a woman” from section 45 (1).	24
	Insert instead “two persons”.	25
		26
[34]	Section 47 Effect of agreements in certain proceedings	27
	Omit “the partner” from section 47 (1) (c).	28
	Insert instead “the party”.	29
		30
[35]	Section 47 (1) (d)	31
	Omit “the other partner”.	32
	Insert instead “the other party to the relationship”.	33
		34

Property (Relationships) Legislation Amendment Bill 1999

Schedule 1 Amendment of De Facto Relationships Act 1984

[36]	Section 51 Effect of death of party to relationship—periodic maintenance	1
		2
	Omit “de facto partner” wherever (except where firstly) occurring.	3
	Insert instead “party to the relationship”.	4
		5
[37]	Section 51 (2)	6
		7
	Omit “secondmentioned partner”.	8
	Insert instead “party entitled to such payments”.	9
[38]	Section 51 (3)	10
		11
	Omit “the partner”. Insert instead “either party”.	12
[39]	Section 52 Effect of death of party to domestic relationship	13
		14
	Omit “deceased partner”. Insert instead “deceased party”.	15
[40]	Section 53 Granting of injunctions	16
		17
	Omit “a de facto partner” where firstly occurring.	18
	Insert instead “a party to a domestic relationship”.	19
[41]	Section 53	20
		21
	Omit “de facto partners” where firstly occurring.	22
	Insert instead “parties to a domestic relationship”.	23
[42]	Section 53	24
		25
	Omit “de facto partner” wherever (except where firstly) occurring.	26
	Insert instead “party to the relationship”.	27
[43]	Section 53	28
		29
	Omit “de facto partners” where secondly and thirdly occurring.	30
	Insert instead “parties to the relationship”.	31
[44]	Section 56 Declaration as to existence of domestic relationship	32
		33
	Omit “partner or partners” from section 56 (5).	34
	Insert instead “party or parties”.	35

Schedule 2 Amendment of other Acts

(Section 4)

2.1 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).

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:

- (i) the person's husband or wife, or
- (ii) the other party to a de facto relationship
within the meaning of the *Property*
(Relationships) Act 1984,

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.

2.2 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:

- (a) a mother, father, wife, husband, daughter, son, step-daughter, step-son, sister, brother, half-sister or half-brother of the person, or the other party to a domestic relationship to which the person is a party, or
- (b) if the person is a party to a 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)

Insert in alphabetical order:

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

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.

2.3 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".

[2] Section 4 (2)	1
Omit the subsection. Insert instead:	2
(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.	3
[3] Section 7 Construction of Act	4
Omit "the word 'wife' shall include de facto wife; and the word 'husband' shall include de facto husband; and" from section 7 (1).	5
[4] Section 7 (1A) and (1B)	6
Omit the subsections.	7
[5] Section 7 (4)	8
Insert after section 7 (3):	9
(4) In this Act, <i>spouse</i> means:	10
(a) a husband or wife, or	11
(b) the other party to a de facto relationship within the meaning of the <i>Property (Relationships) Act 1984</i> .	12
[6] Section 8	13
Insert after section 7:	14
8 Rights of action in respect of past events	15
The amendments made to this Act by the <i>Property (Relationships) Legislation Amendment Act 1999</i> do not operate to confer on any person a right of action in relation to any act, neglect or default that took place before those amendments took effect.	16
Explanatory note	17
The <i>Compensation to Relatives Act 1897</i> 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.	18

2.4 Conveyancers Licensing Act 1995 No 57

Section 41 Associate

Omit section 41 (2) (b). Insert instead:

- (b) a de facto partner, that is:
 - (i) if the licensee or other person is a man—a woman who is living or has lived with him as his wife on a bona fide domestic basis although not married to him, or
 - (ii) if the licensee or other person is a woman—a man who is living or has lived with her as her husband on a bona fide domestic basis although not married to her.

Explanatory note

The amendment is purely consequential and is made to preserve the substance of the affected provisions of the *Conveyancers Licensing Act 1995*, relating to associates of licensees under that Act.

2.5 Coroners Act 1980 No 27

[1] Section 4 Definitions

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

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

Omit all words appearing after paragraph (e) (ii).

[3] Section 4 (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 *Property (Relationships) Act 1984*, but where more than one person would so qualify as a spouse, means only the last person so to qualify.

[4] 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 domestic relationship within the meaning of the *Property (Relationships) Act 1984*, a reference to a person who was, by virtue of section 5 of that Act, a child of the parties to the relationship, and
 - (b) a reference in that paragraph to a parent includes a reference to a party to such a domestic relationship of which the deceased, or suspected deceased, was by virtue of section 5 of the *Property (Relationships) Act 1984*, a child.

Explanatory note

The amendments vary the definitions of *relative* and *senior next of kin* 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:

- (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
- (d) objecting to the carrying out of an autopsy (section 48A), and
- (e) obtaining copies of certain medical reports (section 51).

2.6 Criminal Assets Recovery Act 1990 No 23

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

de facto partner of a person means:

- (a) if the person is a man—a woman who is living or has lived with him as his wife on a bona fide domestic basis although not married to him, or
- (b) if the person is a woman—a man who is living or has lived with her as her husband on a bona fide domestic basis although not married to her.

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Schedule 2 Amendment of other Acts

[2]	Section 12 Supreme Court may make further orders	1
	Omit "(as defined in the <i>De Facto Relationships Act 1984</i>)" from section 12 (1) (b1).	2 3 4
[3]	Section 24 Relief from hardship—spouses and dependants	5
	Omit paragraph (a) of the definition of <i>dependant</i> in section 24 (4).	6
	Insert instead:	7
	(a) a spouse of the person or the other party to a de facto relationship (within the meaning of the <i>Property (Relationships) Act 1984</i>) with the person, or	8 9 10 11
	Explanatory note	12
	The amendments are of two kinds. Items [1] and [2] are purely consequential and are made to preserve the substance of the affected provisions of the <i>Criminal Assets Recovery Act 1990</i> , which relate to 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. 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.	13 14 15 16 17 18 19 20 21
2.7	Dentists Act 1989 No 139	22 23
[1]	Section 53 Incorporated practices	24
	Omit "(within the meaning of the <i>De Facto Relationships Act 1984</i>)" from section 53 (2).	25 26 27
[2]	Section 53 (3)	28
	Insert after section 53 (2):	29 30
	(3) In subsection (2), <i>de facto partner</i> of a dentist means:	31
	(a) if the dentist is a man—a woman who is living or has lived with the dentist as his wife on a bona fide domestic basis although not married to him, or	32 33 34

	(b) if the dentist is a woman—a man who is living or has lived with the dentist as her husband on a bona fide domestic basis although not married to her.	1 2 3
	Explanatory note	4
	The amendments are purely consequential and are made to preserve the substance of the affected provisions of the <i>Dentists Act 1989</i> , which relate to dentists' corporate practices.	5 6 7
2.8	District Court Act 1973 No 9	8 9
[1]	Section 134 Jurisdiction in equity proceedings	10
	Omit " <i>De Facto Relationships Act 1984</i> " from section 134 (1) (g).	11
	Insert instead " <i>Property (Relationships) Act 1984</i> ".	12 13
[2]	Section 134 (3)	14
	Omit " <i>De Facto Relationships Act 1984</i> ".	15
	Insert instead " <i>Property (Relationships) Act 1984</i> ".	16 17
	Explanatory note	18
	The amendments are purely consequential and reflect the change of name of the <i>De Facto Relationships Act 1984</i> .	19 20
2.9	Duties Act 1997 No 123	21 22
[1]	Section 68 Exemptions—break-up of marriages and domestic relationships	23 24
	Omit " de facto " from the heading to section 68 (2).	25
	Insert instead " domestic ".	26 27
[2]	Section 68 (2), (3) (a) and (4) (a) (ii)	28
	Omit "partnership property" wherever occurring.	29
	Insert instead "relationship property".	30 31
[3]	Section 68 (2) (a) and (4) (a) (ii)	32
	Omit "partners in a de facto relationship" wherever occurring.	33
	Insert instead "parties to a domestic relationship".	34 35

Property (Relationships) Legislation Amendment Bill 1999

Schedule 2 Amendment of other Acts

[4]	Section 68 (2) (b)	1
	Omit " <i>De Facto Relationships Act 1984</i> " wherever occurring.	2
	Insert instead " <i>Property (Relationships) Act 1984</i> ".	3
		4
[5]	Section 68 (2) (b) (ii)	5
	Omit "separation agreement". Insert instead "termination agreement".	6
		7
[6]	Section 68 (3) (a) and (4) (b)	8
	Omit "de facto relationship" wherever occurring.	9
	Insert instead "domestic relationship".	10
		11
[7]	Section 68 (5)	12
	Omit the definition of <i>partnership property</i> . Insert instead:	13
	<i>relationship property</i> of a domestic relationship means	14
	property of the parties to the relationship or of either of	15
	them.	16
		17
[8]	Section 119 Exemptions	18
	Omit "partners in a de facto relationship" wherever occurring in section	19
	119 (1) (f) and (2) (a) (ii).	20
	Insert instead "parties to a domestic relationship".	21
		22
[9]	Section 119 (1) (f)	23
	Omit " <i>De Facto Relationships Act 1984</i> " wherever occurring.	24
	Insert instead " <i>Property (Relationships) Act 1984</i> ".	25
		26
[10]	Section 119 (1) (f) (ii)	27
	Omit "separation agreement". Insert instead "termination agreement".	28
		29
[11]	Section 119 (1) (f), note	30
	Omit the note at the end of the paragraph. Insert instead:	31
	Note. "Domestic relationship" (defined in the Dictionary) has the	32
	same meaning as in the <i>Property (Relationships) Act 1984</i> .	33
		34

[12]	Section 119 (1) (g) (i) and (2) (a) (ii)	1
	Omit "partnership property" wherever occurring.	2
	Insert instead "relationship property".	3
		4
[13]	Section 119 (1) (g) (i) and (2) (b)	5
	Omit "de facto relationship" wherever occurring.	6
	Insert instead "domestic relationship".	7
		8
[14]	Section 119 (5)	9
	Omit the definition of <i>partnership property</i> . Insert instead:	10
	<i>relationship property</i> of a domestic relationship means	11
	property of the parties to the relationship or of either of	12
	them.	13
		14
[15]	Section 267 Exemptions	15
	Omit "de facto relationship" wherever occurring in section 267 (7).	16
	Insert instead "domestic relationship".	17
		18
[16]	Section 267 (7)	19
	Omit "partnership property".	20
	Insert instead "the property of the parties or of either of them".	21
		22
[17]	Section 267 (7) (b)	23
	Omit " <i>De Facto Relationships Act 1984</i> " wherever occurring.	24
	Insert instead " <i>Property (Relationships) Act 1984</i> ".	25
		26
[18]	Schedule 1 Savings, transitional and other provisions	27
	Insert at the end of clause 1 (1):	28
	<i>Property (Relationships) Legislation Amendment Act 1999</i>	29
		30

[19] **Schedule 1, Part 3**

Insert after Part 2:

**Part 3 Provisions consequent on enactment of
Property (Relationships) Legislation
Amendment Act 1999**

15 Saving of certain transactions and acquisitions

An amendment made to this Act by the *Property (Relationships) Legislation Amendment Act 1999* does not apply to or in respect of a transaction entered into, or an interest acquired, before the amendment took effect.

[20] **Dictionary**

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

de facto partner means a person who has been a party to a de facto relationship for a period of not less than 2 years, and includes a person who was for such a period a party to such a relationship that has ceased, whether the cessation took place in Australia or elsewhere.

[21] **Dictionary, definition of "de facto relationship"**

Omit "*De Facto Relationships Act 1984*".

Insert instead "*Property (Relationships) Act 1984*".

[22] **Dictionary, definition of "domestic relationship"**

Insert in alphabetical order:

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

Explanatory note

The amendments:

- (a) redefine "de facto partner" and extend to de facto partners in the redefined sense the exemption from duty on conveyances of residential property between parties to a de facto relationship (section 67 of the Act), and

(b) extend to the parties to a domestic relationship the exemption from duty on conveyances of land, or transfer of vehicle registration, between parties to a de facto relationship where the conveyance or transfer is effected solely as a result of the dissolution of the relationship (sections 68 and 267 of the Act), and	1 2 3 4
(c) extend to de facto partners, in the redefined sense, the duty concessions relating to acquisitions of certain corporate holdings that are taxable as transfers of interests in land (section 119 of the Act).	5 6 7
2.10 Family Provision Act 1982 No 160	8 9
[1] Section 6 Definitions	10
Insert in alphabetical order in section 6 (1):	11 12
<i>domestic relationship</i> has the same meaning as in the <i>Property (Relationships) Act 1984</i> .	13 14
[2] Section 6 (1), definition of "eligible person"	15
Omit paragraphs (a) and (b). Insert instead:	16 17
(a) a person:	18
(i) who was the wife or husband of the deceased person at the time of the deceased person's death, or	19 20 21
(ii) with whom the deceased person was living in a domestic relationship at the time of the deceased person's death, or	22 23 24
(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 domestic relationship, a person who is, for the purposes of the <i>Property (Relationships) Act 1984</i> , a child of that relationship, or	25 26 27 28 29
[3] Section 37 and Schedule 1	30
Insert after section 36:	31 32
37 Savings and transitional provisions	33
Schedule 1 has effect.	34

Schedule 1 Savings and transitional provisions

(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:

Property (Relationships) Legislation Amendment Act 1999.

- (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
- (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.

2 Estates the subject of proceedings

The amendments made to this Act by the *Property (Relationships) Legislation Amendment Act 1999* 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.

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.

2.11 Guardianship Act 1987 No 257

Section 3 Definitions

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 *Property (Relationships) Act 1984*,

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

Explanatory note

By altering the meaning of "spouse", the amendment enlarges the scope of the class of persons who may be parties to proceedings under the *Guardianship Act 1987* in respect of guardianship and the appointment of guardians.

The amendment also alters the meaning of "person responsible" for another person (not being a child) for the purposes of Part 5 of the Act (the meaning of which depends on the meaning of "spouse"). It has the effect of varying the class of persons who may consent to medical and dental treatment of another person in certain circumstances (section 36) and exercise other rights under that Part of the Act.

2.12 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).

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

Property (Relationships) Legislation Amendment Bill 1999

Schedule 2 Amendment of other Acts

[2]	Section 4 (1), definition of "spouse"	1
	Omit the definition. Insert instead:	2
	<i>spouse</i> means:	3
	(a) a husband or wife, or	4
	(b) the other party to a de facto relationship within the	5
	meaning of the <i>Property (Relationships) Act 1984</i> ,	6
	but where more than one person would so qualify as a	7
	spouse, means only the last person so to qualify.	8
[3]	Section 4 (2) (d)	9
	Omit the paragraph.	10
[4]	Section 22 De facto spouses	11
	Omit the section.	12
	Explanatory note	13
	The amendments affect the meaning of "senior available next of kin" in the <i>Human</i>	14
	<i>Tissue Act 1983</i> . This affects the class of persons who may authorise, or object to,	15
	the removal of body tissues from the body of a deceased person, or a post-mortem	16
	examination, under the Act (sections 23, 24, 28 and 29).	17
2.13	Inebriates Act 1912 No 24	18
		19
[1]	Section 2 Definitions	20
	Insert in alphabetical order:	21
	<i>Spouse</i> means:	22
	(a) a husband or wife, or	23
	(b) the other party to a de facto relationship within the	24
	meaning of the <i>Property (Relationships) Act 1984</i> ,	25
	but where more than one person would so qualify as a	26
	spouse, means only the last person so to qualify.	27

[2]	Section 3 Order for control of inebriates	1
	Omit "husband, or wife" from section 3 (1) (b).	2
	Insert instead "spouse".	3
	Explanatory note	4
	The amendments vary the class of persons who may apply under section 3 of the <i>Inebriates Act 1912</i> to have a court declare a person to be an inebriate and to make other orders under that section.	5
		6
		7
		8
2.14	Insurance Act 1902 No 49	9
		10
[1]	Section 3 Definitions	11
	Insert in alphabetical order:	12
	<i>Spouse</i> means:	13
	(a) a husband or wife, or	14
	(b) the other party to a de facto relationship within the	15
	meaning of the <i>Property (Relationships) Act 1984</i> , in	16
	which the parties have cohabited for a period of not	17
	less than 2 years,	18
	but where more than one person would so qualify as a	19
	spouse, means only the last person so to qualify.	20
		21
[2]	Section 8 In insurances for benefit of family, moneys payable not to form part of estate	22
	Omit "wife" wherever occurring. Insert instead "spouse".	23
		24
		25
[3]	Section 8	26
	Omit "husband" wherever occurring. Insert instead "spouse".	27
		28
[4]	Section 10 Shares in insurance money, how settled	29
	Omit "wife or husband" wherever occurring.	30
	Insert instead "spouse".	31
		32

[5]	Schedule 2 Savings and transitional provisions	1
	Insert after Part 1:	2
		3
	Part 2 Provisions consequent on enactment of Property (Relationships) Legislation Amendment Act 1999	4
		5
		6
	3 Life policies	7
		8
	The amendments made to this Act by the <i>Property (Relationships) Legislation Amendment Act 1999</i> have no effect in relation to the estate of any person who died before those amendments took effect.	9
		10
		11
		12
	Explanatory note	13
	The amendments affect section 8 of the <i>Insurance Act 1902</i> , 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 amendments, the immunity will hold as between "spouses" in the redefined sense. The amendment to section 10 of the Act is consequential.	14
		15
		16
		17
		18
		19
2.15	Judges' Pensions Act 1953 No 41	20
		21
	Section 11	22
	Insert after section 10:	23
		24
11	Payment of pension to legal personal representative in certain cases	25
		26
	If a judge or former judge dies and the Minister is of the opinion that proceedings might be instituted under the <i>Family Provision Act 1982</i> in relation to the estate, or notional estate, of the deceased, the Minister may, despite any other provision of this Act, pay to the personal representatives of the deceased any benefit that, but for this section, would have to be paid to some other person.	27
		28
		29
		30
		31
		32
		33

Explanatory note	1
The amendment provides that the Minister responsible for judges' pensions may, if it appears that the estate of a deceased judge or former judge may be the subject of litigation under the <i>Family Provision Act 1982</i> , pay a pension that would otherwise be payable to another person to the legal personal representative of the deceased.	2 3 4 5
2.16 Law Reform (Miscellaneous Provisions) Act 1944 No 28	6 7
[1] Section 2 Effect of death on certain causes of action	8
Omit " <i>De Facto Relationships Act 1984</i> " from section 2 (1).	9 10
Insert instead " <i>Property (Relationships) Act 1984</i> ".	11
[2] Section 4 Extension of liability in certain cases	12
Omit "husband or wife" from section 4 (1) (a).	13 14
Insert instead "spouse".	15
[3] Section 4 (5), definition of "Member of the family"	16
Omit "husband, wife". Insert instead "spouse".	17 18
[4] Section 4 (5)	19
Omit the definitions of <i>Husband</i> and <i>Wife</i> .	20 21
[5] Section 4 (5), definition of "Spouse"	22
Insert at the end of the subsection:	23 24
<i>Spouse</i> means:	25
(a) a husband or wife, or	26
(b) the other party to a de facto relationship within the meaning of the <i>Property (Relationships) Act 1984</i> ,	27 28
but where more than one person would so qualify as a spouse, means only the last person so to qualify.	29 30
Explanatory note	31
The amendment to be made by item [1] reflects the change of name of the <i>De Facto Relationships Act 1984</i> . The other amendments affect the class of persons who may bring an action for nervous shock in accordance with the <i>Law Reform (Miscellaneous Provisions) Act 1944</i> arising from the death or injury or peril of another person. The class was previously confined to husbands, wives and members of the family.	32 33 34 35 36 37

2.17 Legal Aid Commission Act 1979 No 78

Section 35 Means test

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

- (a) the applicant's spouse, or a de facto partner of the applicant, that is:
 - (i) if the applicant is a man—a woman who is living or has lived with the applicant as his wife on a bona fide domestic basis although not married to him, or
 - (ii) if the applicant is a woman—a man who is living or has lived with the applicant as her husband on a bona fide domestic basis although not married to her.

Explanatory note

The amendment is purely consequential and is made to preserve the substance of the affected provision of the *Legal Aid Commission Act 1979*, which deals with the means test for legal aid.

2.18 Legal Profession Act 1987 No 109

[1] Section 60 Definitions

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

- (b) a de facto partner, that is:
 - (i) if the solicitor or other person is a man—a woman who is living or has lived with him as his wife on a bona fide domestic basis although not married to him, or
 - (ii) if the solicitor or other person is a woman—a man who is living or has lived with her as her husband on a bona fide domestic basis although not married to her.

[2] Section 172G Non-voting shareholders must be certain approved persons	1
	2
	3
Omit section 172G (4). Insert instead:	4
(4) In this section, the <i>spouse</i> of a solicitor includes:	5
(a) if the solicitor is a man—a woman who is living or	6
has lived with him as his wife on a bona fide	7
domestic basis although not married to him, and	8
(b) if the solicitor is a woman—a man who is living or	9
has lived with her as her husband on a bona fide	10
domestic basis although not married to her.	11
Explanatory note	12
The amendments are purely consequential and are made to preserve the substance	13
of the affected provisions of the <i>Legal Profession Act 1987</i> , which relate to the	14
accounts and other affairs of a solicitor that may be investigated under the Act.	15
 2.19 Local Government Act 1993 No 30	16
	17
 Dictionary, definition of “de facto partner”	18
	19
Omit the definition and the note that follows. Insert instead:	20
<i>de facto partner</i> means:	21
(a) in relation to a man—a woman who is living or has	22
lived with the man as his wife on a bona fide	23
domestic basis although not married to him, and	24
(b) in relation to a woman—a man who is living or has	25
lived with the woman as her husband on a bona fide	26
domestic basis although not married to her.	27
Explanatory note	28
The amendment is purely consequential and is made so as to preserve the	29
substance of the affected provisions of the <i>Local Government Act 1993</i> , which relate	30
to disclosures by council members (Part 2 of Chapter 14, which requires interests	31
of “spouses” to be disclosed) and misuse of information for the benefit of a “spouse”	32
(section 664).	33

2.20 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".

[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).

[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:

(a) a husband or wife, or

(b) the other party to a de facto relationship within the meaning of the *Property (Relationships) Act 1984*,

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

[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:

spouse means:

(a) a husband or wife, or

- (b) the other party to a de facto relationship within the meaning of the *Property (Relationships) Act 1984*,
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).

2.21 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:

spouse means:

- (a) a husband or wife, or
(b) the other party to a de facto relationship within the meaning of the *Property (Relationships) Act 1984*,
but where more than one person would so qualify as a spouse, means only the last person so to qualify.

[3] Section 148 Payment of short-fall levy at time of registration of motor vehicle

Omit "or de facto partner" from section 148 (6) (b).

[4]	Schedule 4 Savings, transitional and other provisions	1
	Insert after Part 7:	2
		3
	Part 7A Provisions arising from the enactment of the Property (Relationships) Legislation Amendment Act 1999	4
		5
		6
	17A Damages for psychological or psychiatric injury	7
		8
	The amendments made by the <i>Property (Relationships) Legislation Amendment Act 1999</i> do not have effect so as to	9
	confer on any person a right that the person would not	10
	otherwise have had to recover damages of the kind referred	11
	to in section 77 in respect of a motor accident that occurred	12
	before those amendments took effect.	13
		14
	Explanatory note	15
	The amendments affect the class of persons to whom damages may be awarded	16
	in respect of psychological or psychiatric injury arising from the death or injury of a	17
	person in a motor accident (section 77 of the <i>Motor Accidents Act 1988</i>).	18
2.22	Protected Estates Act 1983 No 179	19
		20
	Section 4 Definitions	21
	Insert in alphabetical order in section 4 (1):	22
		23
	<i>spouse</i> means:	24
	(a) a husband or wife, or	25
	(b) the other party to a de facto relationship within the	26
	meaning of the <i>Property (Relationships) Act 1984</i> , in	27
	which the parties have cohabited for a period of not	28
	less than 2 years,	29
	but where more than one person would so qualify as a	30
	spouse, means only the last person so to qualify.	31

Explanatory note	1
Section 28 of the <i>Protected Estates Act 1983</i> provides for the disposition of money in the hands of the Protective Commissioner to (among others) the spouse of a protected person for their maintenance. The amendment affects the meaning of "spouse".	2 3 4 5
2.23 Retirement Villages Act 1989 No 74	6 7
[1] Section 3 Definitions	8 9
Insert in alphabetical order in section 3 (1):	10
<i>de facto partner</i> of a person means:	11
(a) if the person is a man—a woman who is living or has lived with him as his wife on a bona fide domestic basis although not married to him, or	12 13 14
(b) if the person is a woman—a man who is living or has lived with her as her husband on a bona fide domestic basis although not married to her.	15 16 17
[2] Section 3 (1), definitions of "resident" and "retired person"	18 19
Omit "(within the meaning of the <i>De Facto Relationships Act 1984</i>)" wherever occurring.	20 21
Explanatory note	22
The amendments are purely consequential and are made to preserve the substance of the affected provisions of the <i>Retirement Villages Act 1989</i> , which have to do with determining, by reference to the character of its residents, whether a particular residential complex is a retirement village for the purposes of the Act.	23 24 25 26
2.24 Trustee Act 1925 No 14	27 28
[1] Section 45 Protective trusts	29 30
Omit "wife or husband" from section 45 (6) (a).	31
Insert instead "spouse".	32
[2] Section 45 (6) (b)	33 34
Omit "wife husband". Insert instead "spouse".	35

Property (Relationships) Legislation Amendment Bill 1999

Schedule 2

Amendment of other Acts

[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 domestic relationship within the meaning of the *Property (Relationships) Act 1984*, a child who, by virtue of section 5 of that Act, is regarded as a child of the parties to that relationship.

spouse means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship within the meaning of the *Property (Relationships) Act 1984*, in which the parties have cohabited for a period of not less than 2 years,

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

(12) Subsection (11) does not apply in relation to a trust created before the commencement of the amendments made to this Act by the *Property (Relationships) Legislation Amendment Act 1999*.

Explanatory note

The amendment affects 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**.

2.25 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:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship within the meaning of the *Property (Relationships) Act 1984*, in which the parties have cohabited for a period of not less than 2 years.

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 "spouse" where secondly occurring in the definition of *former spouse* in section 15A (4).

Insert instead "husband or wife".

[3] Part 2, Division 1A

Omit the Division.

[4] Sections 53, 61A (2) (definition of "interest"), 61B (2), (3), (4)–(6), (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

Omit "husband or wife" wherever occurring.

Insert instead "spouse".

[5] Sections 61A (2) (definitions of "interest" and "value"), 61B (13) and 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".

Property (Relationships) Legislation Amendment Bill 1999

Schedule 2 Amendment of other Acts

[6]	Section 61A Application and interpretation	1
	Omit "section 61B (3), (3A) or (3B)" from the definition of <i>interest</i> in section 61A (2).	2
	Insert instead "section 61B (3)".	3
		4
		5
[7]	Section 61A (2)	6
	Omit the definition of <i>matrimonial home</i> .	7
		8
[8]	Section 61A (2), definition of "shared home"	9
	Insert in alphabetical order:	10
		11
	<i>shared home</i> , 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.	12
		13
		14
		15
		16
		17
[9]	Section 61B Succession to real and personal property on intestacy	18
	Omit section 61B (3A) and (3B).	19
		20
[10]	Section 61B (9)	21
	Omit "A husband and wife". Insert instead "Spouses".	22
		23
[11]	Section 61D Rights of surviving spouse with respect to shared home	24
		25
	Omit "husband's or wife's" from section 61D (1) (d).	26
	Insert instead "spouse's".	27
		28
[12]	Section 61D (2)	29
	Omit the subsection.	30
		31

[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 proposed in relation 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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