

**WILLS, PROBATE AND ADMINISTRATION (DE FACTO
RELATIONSHIPS) AMENDMENT BILL, 1984**

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the De Facto Relationships Bill, 1984.

The objects of this Bill are—

- (a) to enable the administration of the estate of a deceased person to be granted to a person who was living in a de facto relationship with the deceased at the time of his or her death (Schedule 1 (2)—proposed section 32G);
- (b) to provide that, where a person dies intestate and is survived by a spouse and a de facto partner, the de facto partner shall, if the de facto partner had lived with the deceased for a period of at least 2 years prior to his or her death and the deceased had not lived with his or her spouse during any part of that 2 year period, be entitled to the share on intestacy to which the spouse of the deceased would otherwise be entitled (Schedule 1 (4) (a)—proposed subsection (3A) of section 61B);
- (c) to provide that, where a person dies intestate and is survived by a de facto partner and also by children of another relationship, but not by a spouse, the de facto partner shall, if the de facto partner had lived with the deceased for a period of at least 2 years prior to his or her death, be entitled to the share on intestacy to which a spouse of the deceased would have been entitled (Schedule 1 (4) (a)—proposed subsection (3B) of section 61B);
- (d) to provide that, where a person dies intestate and is survived by a de facto partner, but not by a spouse or by children of any other relationship, the de facto partner shall, if the de facto partner was living with the deceased at the time of his or her death, be entitled to the share on intestacy to which a spouse of the deceased would have been entitled (Schedule 1 (4) (a)—proposed subsection (3B) of section 61B);

- (e) to provide that, where a person dies intestate and is survived by a de facto partner who is entitled to succeed on the intestacy in the circumstances referred to in paragraph (b), (c) or (d), and also by issue (such as children or grandchildren), the de facto partner shall be entitled to elect to take the interest of the deceased in the "matrimonial" home in substitution for his or her interest on the intestacy (Schedule 1 (5)); and
 - (f) to make other provisions of a minor, consequential or ancillary nature.
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**WILLS, PROBATE AND ADMINISTRATION (DE FACTO
RELATIONSHIPS) AMENDMENT BILL, 1984**

No. , 1984.

A BILL FOR

An Act to amend the Wills, Probate and Administration Act, 1898, with
respect to succession to real and personal property on intestacy.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 Short title.

1. This Act may be cited as the "Wills, Probate and Administration (De Facto Relationships) Amendment Act, 1984".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

10 (2) Except as provided by subsection (1), this Act shall commence on the day appointed and notified under section 2 (2) of the De Facto Relationships Act, 1984.

Amendment of Act No. 13, 1898.

3. The Wills, Probate and Administration Act, 1898, is amended in the 15 manner set forth in Schedule 1.

Application of Act.

4. The amendments made to the Wills, Probate and Administration Act, 1898, by this Act shall not apply to or in respect of the estate of a person who died wholly or partially intestate before the day appointed and notified 20 under section 2 (2) of the De Facto Relationships Act, 1984, and any such estate shall be distributed in accordance with the enactments and rules of law in force at the death of that person.

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE WILLS, PROBATE AND ADMINISTRATION ACT, 1898.

(1) Section 1—

5 Omit the section, insert instead:—

Short title.

1. This Act may be cited as the “Wills, Probate and Administration Act, 1898”.

(2) Part II, Division 1A—

10 Before Division 1, insert:—

DIVISION 1A.—*Preliminary.***Interpretation.**

32G. (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

15 “de facto husband”, in relation to a woman dying wholly or partially intestate, means a man who, at the time of death of the woman—

(a) was the sole partner in a de facto relationship with the woman; and

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

“de facto relationship” means the relationship of a man and a woman living together as husband and wife on a bona fide domestic basis although not married to each other;

25 “de facto wife”, in relation to a man dying wholly or partially intestate, means a woman who, at the time of death of the man—

(a) was the sole partner in a de facto relationship with the man; and

SCHEDULE 1—*continued.*AMENDMENTS TO THE WILLS, PROBATE AND ADMINISTRATION ACT, 1898—
continued.

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

5 (2) In this Part, except in so far as the context or subject-matter otherwise indicates or requires, a reference to a husband or wife of an intestate includes a reference to a person who, at the time of death of the intestate, was the de facto husband or de facto wife of the intestate.

10 (3) Section 61A (2), definitions of “interest”, “matrimonial home”—

After “the surviving husband or wife of the intestate” wherever occurring, insert “for whom part of the estate of the intestate is required to be held in trust under section 61B (3), (3A) or (3B)”.

(4) (a) Section 61B (3A), (3B)—

15 After section 61B (3), insert:—

20 (3A) Notwithstanding subsections (2) and (3), if the intestate leaves a husband or wife and a de facto husband or de facto wife, the whole or, as the case may be, such part of the estate of the intestate as is required to be held in trust for the husband or wife of the intestate shall be held in trust for—

25 (a) where the de facto husband or de facto wife was the de facto husband or de facto wife of the intestate for a continuous period of not less than 2 years prior to the death of the intestate and the intestate did not, during the whole or any part of that period, live with the person to whom he or she was married—the de facto husband or de facto wife; or

(b) in any other case—the husband or wife.

SCHEDULE 1—*continued.*AMENDMENTS TO THE WILLS, PROBATE AND ADMINISTRATION ACT, 1898—
continued.

- 5 (3B) Notwithstanding subsection (3), if the intestate leaves a de facto husband or de facto wife and also leaves issue but no husband or wife, the whole or, as the case may be, such part of the estate of the intestate as would, if the intestate had left a husband or wife, be required to be held in trust for the husband or wife of the intestate shall be held in trust for—
- 10 (a) where the de facto husband or de facto wife was the de facto husband or de facto wife of the intestate for a continuous period of not less than 2 years prior to the death of the intestate—the de facto husband or de facto wife; or
- 15 (b) in any other case—
- (i) except as provided by subparagraph (ii)—the issue as if the intestate left no husband or wife; or
- 20 (ii) where the intestate leaves no issue being children of the intestate or where such of the issue as are children of the intestate are issue also of the de facto husband or de facto wife—the de facto husband or de facto wife.
- (b) Section 61B (9)—
- 25 Omit “two”, insert instead “separate”.
- (c) Section 61B (12)—
- Omit “the husband or wife” where firstly occurring, insert instead “a husband or wife”.
- (d) Section 61B (13)—
- 30 Omit “the surviving husband or wife”, insert instead “a surviving husband or wife”.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE WILLS, PROBATE AND ADMINISTRATION ACT, 1898—
continued.

(5) Section 61D (2)—

5 At the end of section 61D, insert:—

10 (2) A reference in subsection (1) to the husband or wife of an
intestate is, where the intestate dies leaving a husband or wife and
a de facto husband or de facto wife, a reference to the husband or
wife or de facto husband or de facto wife for whom part of the
estate is required to be held in trust under section 61B (3), (3A) or
(3B).

**WILLS, PROBATE AND ADMINISTRATION (DE FACTO
RELATIONSHIPS) AMENDMENT ACT, 1984, No. 159**

New South Wales



ANNO TRICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 159, 1984.

An Act to amend the Wills, Probate and Administration Act, 1898, with respect to succession to real and personal property on intestacy. [Assented to, 12th December, 1984.]

Wills, Probate and Administration (De Facto Relationships) Amendment 1984

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Wills, Probate and Administration (De Facto Relationships) Amendment Act, 1984".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on the day appointed and notified under section 2 (2) of the De Facto Relationships Act, 1984.

Amendment of Act No. 13, 1898.

3. The Wills, Probate and Administration Act, 1898, is amended in the manner set forth in Schedule 1.

Application of Act.

4. The amendments made to the Wills, Probate and Administration Act, 1898, by this Act shall not apply to or in respect of the estate of a person who died wholly or partially intestate before the day appointed and notified under section 2 (2) of the De Facto Relationships Act, 1984, and any such estate shall be distributed in accordance with the enactments and rules of law in force at the death of that person.

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE WILLS, PROBATE AND ADMINISTRATION ACT, 1898.

(1) Section 1—

Omit the section, insert instead:—

Short title.

1. This Act may be cited as the “Wills, Probate and Administration Act, 1898”.

(2) Part II, Division 1A—

Before Division 1, insert:—

DIVISION 1A.—*Preliminary.***Interpretation.**

32G. (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

“de facto husband”, in relation to a woman dying wholly or partially intestate, means a man who, at the time of death of the woman—

- (a) was the sole partner in a de facto relationship with the woman; and
- (b) was not a partner in any other de facto relationship;

“de facto relationship” means the relationship of a man and a woman living together as husband and wife on a bona fide domestic basis although not married to each other;

“de facto wife”, in relation to a man dying wholly or partially intestate, means a woman who, at the time of death of the man—

- (a) was the sole partner in a de facto relationship with the man; and

SCHEDULE 1—*continued.*

AMENDMENTS TO THE WILLS, PROBATE AND ADMINISTRATION ACT, 1898—
continued.

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

(2) In this Part, except in so far as the context or subject-matter otherwise indicates or requires, a reference to a husband or wife of an intestate includes a reference to a person who, at the time of death of the intestate, was the de facto husband or de facto wife of the intestate.

(3) Section 61A (2), definitions of “interest”, “matrimonial home”—

After “the surviving husband or wife of the intestate” wherever occurring, insert “for whom part of the estate of the intestate is required to be held in trust under section 61B (3), (3A) or (3B)”.

(4) (a) Section 61B (3A), (3B)—

After section 61B (3), insert:—

(3A) Notwithstanding subsections (2) and (3), if the intestate leaves a husband or wife and a de facto husband or de facto wife, the whole or, as the case may be, such part of the estate of the intestate as is required to be held in trust for the husband or wife of the intestate shall be held in trust for—

(a) where the de facto husband or de facto wife was the de facto husband or de facto wife of the intestate for a continuous period of not less than 2 years prior to the death of the intestate and the intestate did not, during the whole or any part of that period, live with the person to whom he or she was married—the de facto husband or de facto wife; or

(b) in any other case—the husband or wife.

SCHEDULE 1—*continued.*AMENDMENTS TO THE WILLS, PROBATE AND ADMINISTRATION ACT, 1898—
continued.

(3B) Notwithstanding subsection (3), if the intestate leaves a de facto husband or de facto wife and also leaves issue but no husband or wife, the whole or, as the case may be, such part of the estate of the intestate as would, if the intestate had left a husband or wife, be required to be held in trust for the husband or wife of the intestate shall be held in trust for—

- (a) where the de facto husband or de facto wife was the de facto husband or de facto wife of the intestate for a continuous period of not less than 2 years prior to the death of the intestate—the de facto husband or de facto wife; or
- (b) in any other case—
 - (i) except as provided by subparagraph (ii)—the issue as if the intestate left no husband or wife; or
 - (ii) where the intestate leaves no issue being children of the intestate or where such of the issue as are children of the intestate are issue also of the de facto husband or de facto wife—the de facto husband or de facto wife.

(b) Section 61B (9)—

Omit “two”, insert instead “separate”.

(c) Section 61B (12)—

Omit “the husband or wife” where firstly occurring, insert instead “a husband or wife”.

(d) Section 61B (13)—

Omit “the surviving husband or wife”, insert instead “a surviving husband or wife”.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE WILLS, PROBATE AND ADMINISTRATION ACT, 1898—
continued.

(5) Section 61D (2)—

At the end of section 61D, insert:—

(2) A reference in subsection (1) to the husband or wife of an intestate is, where the intestate dies leaving a husband or wife and a de facto husband or de facto wife, a reference to the husband or wife or de facto husband or de facto wife for whom part of the estate is required to be held in trust under section 61B (3), (3A) or (3B).

In the name and on behalf of Her Majesty, I assent to this Act.

J. A. ROWLAND,
Governor.

*Government House,
Sydney, 12th December, 1984.*



