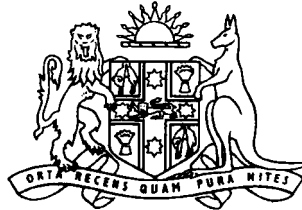


New South Wales

Property (Relationships) Legislation Amendment Act 1999 No 4

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New South Wales

Property (Relationships) Legislation Amendment Act 1999 No 4

Act No 4, 1999

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. [Assented to 7 June 1999]

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”.

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

Omit "de facto partners" wherever occurring.
Insert instead "parties to a domestic relationship".

[8] Section 3 (2)

Omit the subsection.

[9] Sections 4–5A

Omit section 5. Insert instead:

4 De facto relationships

- (1) For the purposes of this Act, a de facto relationship is a relationship between two adult persons:
 - (a) who live together as a couple, and
 - (b) who are not married to one another or related by family.
- (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:
 - (a) the duration of the relationship,
 - (b) the nature and extent of common residence,
 - (c) whether or not a sexual relationship exists,
 - (d) the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties,
 - (e) the ownership, use and acquisition of property,
 - (f) the degree of mutual commitment to a shared life,
 - (g) the care and support of children,
 - (h) the performance of household duties,
 - (i) the reputation and public aspects of the relationship.

- (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:

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

5A Family relationship

- (1) For the purposes of sections 4 and 5, persons are related by family if:
- (a) one is the parent, or another ancestor, of the other, or
 - (b) one is the child, or another descendant, of the other, or
 - (c) they have a parent in common.
- (2) For the purposes of this section:
- (a) a person is taken to be an ancestor or descendant of another person even if the relationship between them is traced through, or to, a person who is or was an adopted child, and
 - (b) the relationship of parent and child between an adoptive parent and an adopted child is taken to continue even though the order by which the adoption was effected has been annulled, cancelled or discharged or the adoption has otherwise ceased to be effective, and
 - (c) the relationship between an adopted child and the adoptive parent, or each of the adoptive parents, is taken to be or to have been the natural relationship of child and parent, and

(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.

(3) In subsection (2), *adopted* means adopted under the law of any place, whether in Australia or not, relating to the adoption of children.

[10] Section 6 Application of Act

Omit “partner in” from section 6 (b). Insert instead “party to”.

[11] Section 6

Insert at the end of section 6:

- (2) Without affecting subsection (1), this Act, as amended by the *Property (Relationships) Legislation Amendment Act 1999*, does not (except for Part 5) apply to or in respect of:
- (a) a domestic relationship that ceased before the commencement of this subsection, or
 - (b) a person in so far as he or she was a party to a relationship referred to in paragraph (a).

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

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

[13] Section 8 Declaration of interests in property

Omit “a de facto partner” from section 8 (1).
Insert instead “either party to the relationship”.

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

Omit “the de facto partners” wherever occurring.
Insert instead “the parties to the relationship”.

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

Omit “de facto relationship” wherever occurring.
Insert instead “domestic relationship”.

[16] Section 18 Time limit for making applications

Omit section 18 (1). Insert instead:

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

[17] Section 18 (3)

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

[18] Sections 20 (1) (b), 27 (2) and 35 (2)

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

[19] Sections 20 (1), 21 (1) and (3), 22 (1), 47 (1) (d) (i) and (2), 49 (1) and 52

Omit “the partners” wherever occurring. Insert instead “the parties”.

[20] Sections 21 (1) and 27 (2) (a)

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

[21] Sections 21 (1), 47 (1) (d) and 50

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

[22] Section 21 (3)

Omit “a partner”. Insert instead “a party”.

[23] Section 26

Omit the section. Insert instead:

26 No general right to maintenance between parties to relationship

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.

[24] Sections 27 (2) (a) and 47 (1) (d)

Omit “each partner” wherever occurring.

Insert instead “each party to the relationship”.

[25] Section 29

Omit the section. Insert instead:

29 Effect of subsequent relationship or marriage

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.

[26] 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,

[27] Sections 32, 33 and 37 (1)

Omit “de facto partner” wherever occurring. Insert instead “person”.

[28] Section 32 Cessation of order—generally

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

[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,

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.

- (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.
- (3) The application of this Part extends to an agreement made before the re-enactment of this section by the *Property (Relationships) Legislation Amendment Act 1999*.

[31] Sections 45–52

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

[32] Sections 45–52

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

[33] Section 45 Entering into agreements

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

[34] Section 47 Effect of agreements in certain proceedings

Omit “the partner” from section 47 (1) (c).
Insert instead “the party”.

[35] Section 47 (1) (d)

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

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

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

[37] Section 51 (2)

Omit “secondmentioned partner”.
Insert instead “party entitled to such payments”.

[38] Section 51 (3)

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

[39] Section 52 Effect of death of party to domestic relationship

Omit “deceased partner”. Insert instead “deceased party”.

[40] Section 53 Granting of injunctions

Omit “a de facto partner” where firstly occurring.
Insert instead “a party to a domestic relationship”.

[41] Section 53

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

[42] Section 53

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

[43] Section 53

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

[44] Section 56 Declaration as to existence of domestic relationship

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

[45] Section 62

Insert after section 61:

62 Effect of Property (Relationships) Legislation Amendment Act 1999

Nothing in the *Property (Relationships) Legislation Amendment Act 1999* is to be taken to approve, endorse or initiate any change in the marriage relationship, which by law must be between persons of the opposite sex, nor entitle any person to seek to adopt a child unless otherwise entitled to by law.

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)

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.

[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) and (1B)

Omit the subsections.

[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 *Property (Relationships) Act 1984*.

[6] Section 8

Insert after section 7:

8 Rights of action in respect of past events

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

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.

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:

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.

2.7 Dentists Act 1989 No 139

[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):

- (3) In subsection (2), *de facto partner* of a dentist means:
- (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
 - (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.

Explanatory note

The amendments are purely consequential and are made to preserve the substance of the affected provisions of the *Dentists Act 1989*, which relate to dentists' corporate practices.

2.8 District Court Act 1973 No 9

[1] Section 134 Jurisdiction in equity proceedings

Omit “*De Facto Relationships Act 1984*” from section 134 (1) (g).
Insert instead “*Property (Relationships) Act 1984*”.

[2] Section 134 (3)

Omit “*De Facto Relationships Act 1984*”.
Insert instead “*Property (Relationships) Act 1984*”.

Explanatory note

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

2.9 Duties Act 1997 No 123

[1] Section 68 Exemptions—break-up of marriages and domestic relationships

Omit “**de facto**” from the heading to section 68 (2).
Insert instead “**domestic**”.

[2] Section 68 (2), (3) (a) and (4) (a) (ii)

Omit “partnership property” wherever occurring.
Insert instead “relationship property”.

[3] Section 68 (2) (a) and (4) (a) (ii)

Omit “partners in a de facto relationship” wherever occurring.
Insert instead “parties to a domestic relationship”.

[4] Section 68 (2) (b)

Omit “*De Facto Relationships Act 1984*” wherever occurring.
Insert instead “*Property (Relationships) Act 1984*”.

[5] Section 68 (2) (b) (ii)

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

[6] Section 68 (3) (a) and (4) (b)

Omit “de facto relationship” wherever occurring.
Insert instead “domestic relationship”.

[7] Section 68 (5)

Omit the definition of *partnership property*. Insert instead:

relationship property of a domestic relationship means property of the parties to the relationship or of either of them.

[8] Section 119 Exemptions

Omit “partners in a de facto relationship” wherever occurring in section 119 (1) (f) and (2) (a) (ii).
Insert instead “parties to a domestic relationship”.

[9] Section 119 (1) (f)

Omit “*De Facto Relationships Act 1984*” wherever occurring.
Insert instead “*Property (Relationships) Act 1984*”.

[10] Section 119 (1) (f) (ii)

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

[11] Section 119 (1) (f), note

Omit the note at the end of the paragraph. Insert instead:

Note. “Domestic relationship” (defined in the Dictionary) has the same meaning as in the *Property (Relationships) Act 1984*.

[12] Section 119 (1) (g) (i) and (2) (a) (ii)

Omit “partnership property” wherever occurring.
Insert instead “relationship property”.

[13] Section 119 (1) (g) (i) and (2) (b)

Omit “de facto relationship” wherever occurring.
Insert instead “domestic relationship”.

[14] Section 119 (5)

Omit the definition of *partnership property*. Insert instead:

relationship property of a domestic relationship means property of the parties to the relationship or of either of them.

[15] Section 267 Exemptions

Omit “de facto relationship” wherever occurring in section 267 (7).
Insert instead “domestic relationship”.

[16] Section 267 (7)

Omit “partnership property”.
Insert instead “the property of the parties or of either of them”.

[17] Section 267 (7) (b)

Omit “*De Facto Relationships Act 1984*” wherever occurring.
Insert instead “*Property (Relationships) Act 1984*”.

[18] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Property (Relationships) Legislation Amendment Act 1999

[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
- (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).

2.10 Family Provision Act 1982 No 160

[1] Section 6 Definitions

Insert in alphabetical order in section 6 (1):

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

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

Omit paragraphs (a) and (b). Insert instead:

- (a) a person:
 - (i) who was the wife or husband of the deceased person at the time of the deceased person's death, or
 - (ii) with whom the deceased person was living in a domestic relationship at the time of the deceased person's death, or
- (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 *Property (Relationships) Act 1984*, a child of that relationship, or

[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

(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”.

[2] 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 *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 4 (2) (d)

Omit the paragraph.

[4] Section 22 De facto spouses

Omit the section.

Explanatory note

The amendments affect 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).

2.13 Inebriates Act 1912 No 24

[1] Section 2 Definitions

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.

[2] Section 3 Order for control of inebriates

Omit “husband, or wife” from section 3 (1) (b).

Insert instead “spouse”.

Explanatory note

The amendments vary the class of persons who may apply under section 3 of the *Inebriates Act 1912* to have a court declare a person to be an inebriate and to make other orders under that section.

2.14 Insurance Act 1902 No 49

[1] Section 3 Definitions

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*, 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 8 In insurances for benefit of family, moneys payable not to form part of estate

Omit “wife” wherever occurring. Insert instead “spouse”.

[3] Section 8

Omit “husband” wherever occurring. Insert instead “spouse”.

[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:

**Part 2 Provisions consequent on enactment of
Property (Relationships) Legislation
Amendment Act 1999**

3 Life policies

The amendments made to this Act by the *Property (Relationships) Legislation Amendment Act 1999* have no effect in relation to the estate of any person who died before those amendments took effect.

Explanatory note

The amendments affect 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 amendments, the immunity will hold as between “spouses” in the redefined sense. The amendment to section 10 of the Act is consequential.

2.15 Judges' Pensions Act 1953 No 41

Section 11

Insert after section 10:

11 Payment of pension to legal personal representative in certain cases

If a judge or former judge dies and the Minister is of the opinion that proceedings might be instituted under the *Family Provision Act 1982* 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.

Explanatory note

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 *Family Provision Act 1982*, pay a pension that would otherwise be payable to another person to the legal personal representative of the deceased.

2.16 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 “*Property (Relationships) Act 1984*”.

[2] Section 4 Extension of liability in certain cases

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)

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 *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 amendment to be 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.

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.

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

Omit section 172G (4). Insert instead:

- (4) In this section, the *spouse* of a solicitor includes:
 - (a) if the solicitor 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, and
 - (b) if the solicitor 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 amendments are purely consequential and are made to preserve the substance of the affected provisions of the *Legal Profession Act 1987*, which relate to the accounts and other affairs of a solicitor that may be investigated under the Act.

2.19 Local Government Act 1993 No 30

Dictionary, definition of “de facto partner”

Omit the definition and the note that follows. Insert instead:

de facto partner means:

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

Explanatory note

The amendment is purely consequential and is made so as to preserve the substance of the affected provisions of the *Local Government Act 1993*, which relate 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).

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

Insert after Part 7:

**Part 7A Provisions arising from the enactment
of the Property (Relationships)
Legislation Amendment Act 1999**

17A Damages for psychological or psychiatric injury

The amendments made by the *Property (Relationships) Legislation Amendment Act 1999* do not have effect so as to confer on any person a right that the person would 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*).

2.22 Protected Estates Act 1983 No 179

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 *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.

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 for their maintenance. The amendment affects the meaning of “spouse”.

2.23 Retirement Villages Act 1989 No 74

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (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.

[2] Section 3 (1), definitions of “resident” and “retired person”

Omit “(within the meaning of the *De Facto Relationships Act 1984*)” wherever occurring.

Explanatory note

The amendments are purely consequential and are made to preserve the substance of the affected provisions of the *Retirement Villages Act 1989*, 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.

2.24 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)

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 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 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”.

[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.

[Minister's second reading speech made in—
Legislative Council on 13 May 1999
Legislative Assembly on 26 May 1999]