

[Act 1999 No 4]



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

* Amended in committee—see table at end of volume.

- (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.