



New South Wales

Commonwealth Powers (De Facto Relationships) Bill 2003

Explanatory note

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

Overview of Bill

The object of this Bill is to refer certain financial matters arising out of the breakdown of de facto relationships to the Parliament of the Commonwealth in accordance with section 51 (xxxvii) of the Commonwealth Constitution so as to enable the Commonwealth Parliament to make laws about those matters.

Outline of provisions

Clause 1 sets out the name (also called the short title) and the purpose of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation of the Governor.

Clause 3 defines terms used in the proposed Act. In particular:

- (a) a *de facto relationship* is defined to mean a marriage-like relationship (other than a legal marriage) between two persons, and

- (b) *financial matters*, in relation to de facto partners, means any or all of the following matters:
- (i) the maintenance of de facto partners,
 - (ii) the distribution of the property of de facto partners,
 - (iii) the distribution of any other financial resources of de facto partners, including prospective superannuation entitlements or other valuable benefits of or relating to de facto partners.

Clause 4 refers the following matters to the Parliament of the Commonwealth:

- (a) financial matters relating to de facto partners arising out of the breakdown (other than by reason of death) of de facto relationships between persons of different sexes,
- (b) financial matters relating to de facto partners arising out of the breakdown (other than by reason of death) of de facto relationships between persons of the same sex.

Clause 5 enables the State to terminate the references with 3 months notice.

First print



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New South Wales

Commonwealth Powers (De Facto Relationships) Bill 2003

No. , 2003

A Bill for

An Act to refer certain financial matters arising out of the breakdown of de facto relationships to the Parliament of the Commonwealth for the purposes of section 51 (xxxvii) of the Constitution of the Commonwealth.

The Legislature of New South Wales enacts:**1 Name of Act and purpose**

(1) This Act is the *Commonwealth Powers (De Facto Relationships) Act 2003*.

(2) The purpose of this Act is to refer certain financial matters arising out of the breakdown of de facto relationships to the Parliament of the Commonwealth for the purposes of section 51 (xxxvii) of the Constitution of the Commonwealth.

2 Commencement

This Act commences on a day to be appointed by proclamation published in the Gazette.

3 Definitions

(1) In this Act:

de facto partner means a person who lives or has lived in a de facto relationship.

de facto relationship means a marriage-like relationship (other than a legal marriage) between two persons.

financial matters, in relation to de facto partners, means any or all of the following matters:

- (a) the maintenance of de facto partners,
- (b) the distribution of the property of de facto partners,
- (c) the distribution of any other financial resources of de facto partners, including prospective superannuation entitlements or other valuable benefits of or relating to de facto partners.

property means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and wherever situated, including money or choses in action.

(2) For the purposes of this Act, a de facto relationship exists even if a de facto partner is legally married to someone else or is in another de facto relationship.

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- (3) A reference in this Act: 1
- (a) to the property or other financial resources of de facto partners includes a reference to the property or other financial resources of either or both of them, and 2
 - (b) to the distribution of any such property or resources includes a reference to the conferral of rights or obligations in relation to the property or resources. 3
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- (4) This Act extends to de facto relationships that ended before the commencement of this Act. 8
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4 References 10

- (1) The following matters, to the extent to which they are not otherwise included in the legislative powers of the Parliament of the Commonwealth, are referred to the Parliament of the Commonwealth for a period commencing on the day on which this Act commences and ending on the day fixed, pursuant to section 5, as the day on which the references under this Act are to terminate, but no longer: 11
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- (a) financial matters relating to de facto partners arising out of the breakdown (other than by reason of death) of de facto relationships between persons of different sexes, 18
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 - (b) financial matters relating to de facto partners arising out of the breakdown (other than by reason of death) of de facto relationships between persons of the same sex. 21
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- (2) The operation of each paragraph of subsection (1) is not affected by the other paragraph. 24
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5 Termination of references 26

- (1) The Governor may, at any time, by proclamation published in the Gazette, fix a day as the day on which the references under this Act are to terminate. 27
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- (2) The day fixed under subsection (1) must be no earlier than the first day after the end of the period of 3 months beginning with the day on which the proclamation is published under that subsection. 30
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- (3) The Governor may, by proclamation published in the Gazette, revoke a proclamation published under subsection (1), in which case the revoked proclamation is taken (for the purposes of section 4) never to have been published. 33
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| (4) | A revoking proclamation has effect only if published before the day fixed under subsection (1). | 1
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| (5) | The revocation of a proclamation published under subsection (1) does not prevent publication of a further proclamation under that subsection. | 3
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