

Three reports prepared by the Queensland Law Reform Commission — *Report Number 42: The Intestacy Rules*, *Report Number 43: The Bail Act* and *Report Number 44: De Facto Relationships* were all tabled on 15 July this year. The QLRC will be releasing these reports shortly but it has supplied *Reform* with the following summaries.

QLRC reports on wills de factos and bail laws

Reform of the intestacy rules

Intestacy rules apply when a deceased person fails to dispose of his or her estate. The QLRC found, during the course of its review of these rules, that reform was urgently needed to improve the position of a surviving spouse and to simplify court procedures.

The Report recommends that the surviving spouse should not have to share with any relatives other than children, grandchildren etc of the deceased and that the spouse's entitlement should be increased from its current level so as to prevent serious disruption to the surviving spouse's living arrangements. If there are no direct descendants, the report recommends that the spouse receive the entire estate. If there are direct descendants, the surviving spouse should receive the personal property of the intestate and a statutory legacy of \$100 000; the matrimonial home if there is one and, if not, a further statutory legacy of \$150 000 to enable the spouse to acquire a home. If the home is mortgaged the Commission recommends a statutory legacy not exceeding \$150 000 or the amount required to pay off the mortgage and one half of anything left. The other half would go to direct descendants.

Rights of de facto partners

The report recommends that a de facto partner who has lived with the intestate for five years until the death will qualify as a spouse. The five-year qualifying period is at present required of a de facto partner who wishes to make a family provision application. Giving rights to de facto partners on intestacy will reduce the need for applications. If a partner who lived with the deceased at the time of death is a parent of the

child of the deceased, no qualifying period is required. The recommendations are gender neutral.

In the case of both a married spouse and a de facto partner the married spouse will exclude the de facto spouse if the intestate and the married spouse have lived together for any period during five years before the death of the intestate. Otherwise the de facto partner will exclude the married spouse. The excluded spouse will be entitled to apply for family provision.

Issue and other relatives

The present intestacy rules will apply with minor changes to the issue of the deceased, although the effect of the increased entitlements of surviving spouses may be to significantly reduce the entitlement of issue. While more remote relatives will be excluded if there is a surviving spouse, in the absence of a surviving spouse or issue the order in which recognised relatives will take is retained. These relatives are parents, then brothers and sisters (and their children if these brothers and sisters die before the intestate), then grandparents, aunts and uncles (and the children of uncles or aunts who die before the intestate). No beneficiary under the new rules will have to bring into account benefits arising under a will of the deceased or from gifts or other arrangements made before death.

Simplifying procedures

The Commission recommends that the spouse or others entitled to share the estate should be given all the rights, powers and duties of executors and that the provisions of the intestacy rules should

operate as a *statutory will* of the intestate. Probate procedures, which are simpler and less costly than procedures to obtain a grant of letters of administration should apply. The estate will vest in the person as if he or she were appointed under a will. At the present time an intestate estate vests in the public trustee.

The consequence of this change would be that in many cases of intestacy, and in virtually every case where the estate is small or of modest size, it should become possible for it to be wound up and distributed with virtually no formality.

De facto relationships

This Report focuses on property and maintenance rights on the breakdown of de facto relationships. It recommends there be no discrimination for these purposes between heterosexual and homosexual relationships. It also deals with the ability of de facto couples to enter into cohabitation and separation agreements.

The Commission says legislation is necessary to ensure a fair property distribution on the breakdown of the de facto relationship. (Currently there is federal, New South Wales, Victorian and Northern Territory legislation for property disputes between married and de facto couples.) The legislation in New South Wales, Victoria and the Northern Territory provides some relief for de facto couples on separation but that relief is limited. The Commission proposes improvements on the law in these other jurisdictions.

The Report has pinpointed possible areas of injustice on the breakdown of a de facto relationship if one partner is not entitled to claim maintenance from the other, particularly if that partner has stayed at home to care for children.

Provided a partner is in need of financial assistance and that need arises as a result of the circumstances of the de facto relationship, the Commission recommends that the partner have maintenance rights.

The Commission recommends that de facto couples be able to enter into legally binding cohabitation and separation agreements. This would allow couples to plan their financial future with some certainty and to elect not to be covered by the proposed legislation so long as the agreement satisfied formal requirements set out in the proposed legislation.

Changes to the Queensland bail act

The Commission has proposed making bail more accessible by increasing the power of members of the police service, the magistrates court and the District Court to grant bail. Under the Commission's proposals it would be mandatory for a magistrate to consider bail at a person's first court appearance.

The Commission has also proposed implementing procedures to ensure that defendants are informed, in a way they are able to understand, of their rights concerning bail. Reasons for refusing bail must be given and refusal would be subject to a right of review by a higher ranking police officer (an inspector) or a higher court.

The recommendations include a set of criteria which would justify refusing bail if the welfare of the community or the administration of justice warrants a defendant's detention in custody. Some of the factors which the bail granting authority must consider are the nature and seriousness of the alleged offence, including whether the offence was of a violent or sexual nature, and whether the defendant has breached a domestic violence protection order.