

De Facto Relationships Bill

EXPLANATORY MEMORANDUM

Outline

The main objects of the Bill are:

- To provide a simpler and fairer mechanism for settling property disputes between de facto partners, which allows the courts to take into account a wide range of contributions to the property of the partners and the welfare of the family;
- To provide a limited form of maintenance for former de facto partners who are unable to support themselves either because of child care responsibilities or the effect of the relationship on earning capacity; and
- To allow de facto partners to enter enforceable cohabitation and separation agreements.

The Bill provides a means of resolving certain legal problems which arise following the breakdown of de facto relationships and which, under existing law, often cannot be satisfactorily and fairly resolved.

Notes on Clauses

PART 1—PRELIMINARY

Clause 1 states the purposes of the Act.

Clause 2 provides that the Act comes into operation on a day to be proclaimed.

Clause 3 sets out definitions that apply to the Act.

Clause 4 applies the Act to people who were de facto partners before the commencement of the Act but not to partners in a de facto relationship which ended before that commencement.

Clause 5 preserves the rights of de facto partners under any other laws.

Clause 6 empowers a court in proceedings between de facto partners with respect to property to declare existing title or rights partners have in the property without adjusting those rights and to grant consequential relief.

PART 2—PROCEEDINGS FOR FINANCIAL ADJUSTMENT

Division 1—Preliminary

Clause 7 allows a de facto partner to apply to a court for an order adjusting interests with respect to property or granting maintenance or both.

Clause 8 sets out residential and other prerequisites for making an order for financial adjustment.

Clause 9 provides that a court may not, except in specified circumstances, make an order for financial adjustment unless it is satisfied that the parties have lived together in a de facto relationship for at least two years.

Clause 10 provides that applications under the financial adjustment jurisdiction must be made within two years after the de facto relationship ended, except in specified circumstances.

Clause 11 allows a court to take into consideration facts and circumstances that occurred before the commencement of this Act or outside Victoria.

Clause 12 provides that the courts must as far as practicable make orders that will end the financial relationships between the de facto partners and avoid further proceedings between them.

Division 2—Adjustment of Interests with Respect to Property

Clause 13 empowers a court to make a just and equitable order adjusting the partners' property interests and specifies factors to which the Court must have regard.

Clause 14 allows a court to adjourn an application if there is a likelihood of a significant change in the circumstances of either of the de facto partners.

Clause 15 allows a court to adjourn an application if, before it has made a final order, certain proceedings relating to property are commenced in the Family Court of Australia.

Clause 16 allows a court to defer the operation of an order under clause 13 if a de facto partner is likely to become entitled to property which may be applied in satisfaction of the order.

Clause 17 sets out the effect on an application of the death of either party.

Clause 18 sets out the effect on an order of the death of the party against whom the order was made.

Division 3—Maintenance

Clause 19 states that, except as provided by this Division, a de facto partner is not liable to maintain the other de facto partner.

Clause 20 enables a court to award maintenance in specified circumstances.

Clause 21 enables interim maintenance orders to be made.

Clause 22 prevents a de facto partner who has subsequently married from applying for a maintenance order.

Clause 23 prevents an application for a maintenance order from continuing after the death of either party.

Clause 24 provides that a maintenance order ceases to have effect where either de facto partner dies or the partner in whose favour the order is made marries.

Clause 25 provides that a periodic maintenance order made on the basis of a de facto partner's child care responsibilities ceases to have effect in certain circumstances.

Clause 26 sets out the maximum duration of periodic maintenance orders in various circumstances.

Clause 27 sets out the court's powers to discharge, suspend, revive or vary periodic maintenance orders and factors which must be taken into account in exercising those powers.

Clause 29 allows recovery of arrears owing at the time a maintenance order ceased to have effect.

Division 4—General

Clause 30 sets out what a court may do in exercising its powers under the financial adjustment jurisdiction.

Clause 31 enables a court to appoint a person to execute a deed or instrument where a person has been directed by the court to execute the deed or instrument and refuses to do do.

Clause 32 provides that in urgent cases a court may make certain orders in the absence of a party.

Clause 33 sets out the circumstances in which a court may vary or set aside orders under clause 13 or 20.

Clause 34 gives the courts power to set aside or restrain transactions which are likely to defeat an order.

Clause 35 requires the courts, in the exercise of their financial adjustment jurisdiction, to have regard to the interests of and to protect third parties.

PART 3—COHABITATION AGREEMENTS AND SEPARATION AGREEMENTS

Clause 36 enables a man and a woman who are not married to each other to enter into a cohabitation agreement or a separation agreement.

Clause 37 specifies that if a relationship continues for 3 months or more after the couple have made a separation agreement, the agreement is to be treated as a cohabitation agreement.

Clause 38 provides that cohabitation and separation agreements are enforceable as contracts, unless Part 3 provides otherwise.

Clause 39 prevents a court from making an order under Part 2 in so far as it would be inconsistent with the agreement, if the agreement has been made in accordance with the clause.

Clause 40 denies the effect of certain exclusion provisions in agreements which have not been made in accordance with clause 39.

Clause 41 enables a court to vary or set aside the terms of a cohabitation agreement or a separation agreement which complies with the requirements of clause 39 in specified circumstances.

Clause 42 provides that a court need not enforce a cohabitation or separation agreement if the partners have cancelled the agreement or it is no longer effective for some other reason.

Clause 43 deals with the effect of a de facto partner's death on an obligation under a cohabitation or separation agreement to pay periodic maintenance.

Clause 44 deals with the effect of death of a de facto partner on an obligation under an agreement to transfer property or pay a lump sum.

PART 4—JURISDICTION

Clause 45 sets out that the Supreme Court and County Court and Magistrates' Courts have jurisdiction under the Act.

Clause 46 specifies the limits of the jurisdiction of the County Court and Magistrates' Courts under the Act.

Clause 47 specifies the circumstances for the transfer of proceedings.

Clause 48 enables a court to suspend or dismiss proceedings under the Act if other proceedings under the Act have been instituted in another court.

Clause 49 requires the courts to act in aid of each other.

PART 5—MISCELLAENOUS

Clause 50 gives the Courts power to make a declaration as to the existence of a de facto relationship.

Clause 51 deals with the enforcement of orders and injunctions granted under the Act.

Clause 52 gives power to make regulations.

Clause 53 amends the *Administration and Probate Act 1958* to enable the Supreme Court to order that provision be made out of an estate for the maintenance of a de facto partner in addition to those people already provided for under that Act.