

THE COMMON LAW PRACTICE AND WORKERS' COMPENSATION AMENDMENT BILL 1994

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objectives of the Bill are to put de facto partners on the same footing as married spouses for the purpose of initiating and maintaining a "Lord Campbell's action" pursuant to section 13 of the *Common Law Practice Act 1867*. As a result of this Bill, de facto partners will be able to claim damages in an action for negligence arising out of the wrongful death of their partner in the same way as married spouses.

The legislation also amends the definition of "de facto spouse" under the *Workers' Compensation Act* (for both work-related injury and death) to be consistent with the amendments to the *Common Law Practice Act 1867*.

Reasons for the Bill

At Common Law, relatives of a deceased person who had been tortiously killed had no right of action. In Queensland, the law was changed by the *Common Law Practice Act 1867*. That Act creates a right to bring an action for negligence causing death. This could involve not only work-related negligence but motor vehicle accidents, medical malpractice and any other type of injury where death resulted. Under the current provisions of section 13 the wife, husband, parent or child of the person whose death has been wrongfully caused can benefit from an action. However, the Act does not define "wife". Prima facie, "wife" of a deceased person would be his surviving legal wife. A de facto spouse has no cause of action (even though the children of a de facto relationship do have a right of action). The only

way to put de facto partners on the same footing as marriage spouses is to enact this legislation.

The definition of “spouse” under the *Workers' Compensation Act* must be amended to be consistent with the *Common Law Practice Act* amendment.

Estimated Cost for Government Implementation

No direct cost. If insurance premiums increase for the Workers' Compensation Fund, compulsory third party and general liability insurance, there will be an indirect cost to the Government.

Consultation

- Workers' Compensation Board
- Queensland Law Reform Commission—Extensive consultation was undertaken on the basis of Draft Report No. M.P.8 on Claims by surviving de facto partners under the *Common Law Practice Act* for damages for wrongful death. Submissions were sought from over 100 interest groups in addition to press releases and advertisements calling for submissions from the general public.
- Public Trustee
- Crown Law
- Motor Accident Insurance Commission
- ACTU (Queensland)
- United Mine Workers' Federation of Australia

NOTES ON PROVISIONS**PART 1—PRELIMINARY**

Clause 1 Short title for this Bill.

Clause 2 Provides for the Act to commence on 17 October 1994. This is the date that Cabinet decided to amend the legislation and made a public announcement to this effect.

**PART 2—AMENDMENT OF COMMON LAW
PRACTICE ACT 1867**

Clause 3 Provides for the amendment of the *Common Law Practice Act 1867*.

Clause 4 Short title for the *Common Law Practice Act 1867*.

Clause 5 Amends section 13 to remove the reference to “wife and husband” and replace it with a reference to “spouse”. “Spouse” is defined to include a de facto spouse. A de facto spouse is a person who, although not legally married to the deceased person, has lived with the deceased as that person’s husband or wife. In addition, there must be a continuous period of cohabitation for at least one year immediately before the death unless the deceased person left a child of the relationship. In this latter case, there must be cohabitation immediately before the death.

A child of the relationship could include a child adopted by the de facto spouses.

It also does not matter when the child was born as long as the de facto relationship was in existence immediately before the death. A child born of the de facto spouses posthumously is also included.

Clause 6 Inserts a heading.

Clause 7 Clarifies that these amendments apply to a death that happens on or after 17 October 1994. This is the day that Cabinet decided to make these amendments. This is a transitional section only.

PART 3—AMENDMENT OF *WORKERS' COMPENSATION ACT 1990*

Clause 8 Provides for the amendment of the *Workers' Compensation Act 1990*.

Clause 9 Removes from sub-section 2.1 the definition of spouse as this definition is now included in new subsection 2.1B.

Clause 10 Inserts new subsection 2.1B which amends the definition of “spouse” in relation to both an injured worker and a deceased worker.

A defacto spouse is a person who, although not legally married to the injured worker or deceased worker, has lived with the worker as the worker's husband or wife for a continuous period of at least one year immediately before the injury happened or death occurred.

However, where there is a child of the relationship, the period of cohabitation required is reduced to immediately before the injury happened or death occurred. It does not matter when the child was born as long as the defacto relationship was in existence immediately before the death. A child born of the defacto spouses posthumously is also included.

A child of the relationship could include a child adopted by the de facto spouses.

Clause 11 Clarifies that these amendments apply to a death that happens on or after 17 October 1994. This is the day that Cabinet decided to make these amendments. This is a transitional section only.

PART 4—CONSEQUENTIAL AMENDMENTS

Clause 12 is a consequential amendment.