

# **PROPERTY LAW AMENDMENT BILL 1999**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objectives of the Legislation**

The primary purposes of this Bill are—

- to facilitate the resolution of financial matters at the end of a de facto relationship; and
- to recognise de facto spouses should be allowed to plan their financial future, and resolve financial matters at the end of their relationship, by a cohabitation or separation agreement; and
- to facilitate a just and equitable property distribution at the end of a de facto relationship in relation to the de facto spouses and, in particular cases, any child of the de facto spouses; and
- to provide for declaratory relief to help persons ascertain their existing interests in property of de facto spouses; and
- to provide for injunctive relief to help persons protect their existing and adjusted interests in property of de facto spouses; and
- to provide for declaratory relief about the existence or non-existence of a de facto relationship and so help persons avoid the duplication of proceedings where the existence or non-existence of a de facto relationship is relevant in 2 or more proceedings; and
- to facilitate the resolution of matters concerning a de facto relationship by the Supreme Court, the District Court or a Magistrates Court.

Consequential amendments are also being made to the *Stamp Act 1894* to provide stamp duty concessions on certain transactions involving parties to a de facto relationship.

### **Reasons for the objectives and how they will be achieved**

The growth in the number of couples living together in de facto relationships has been one of the significant recent changes in the structure of Australian family life. In 1991 9.7% of all Queensland couples were de factos. The Queensland figures are 1.3% above the national average

No statute governs the respective rights of de facto couples. Relief must be sought under the law of contract, or trusts, or doctrines of unjust enrichment, or unconscionable conduct, estoppel or other (obscure) legal remedies. There is no predictable outcome and lawyers complain of difficulty advising clients, which results in a tendency to plead a case under every conceivable head of relief, longer court hearings and greater costs. There is a large range of possible remedies and consequent uncertainty as to which remedy to pursue. Settlement prospects are affected and many parties forego pursuing just claims

New South Wales (1984), Victoria (1987), the Northern Territory (1991), the ACT (1994) and South Australia (1996) have already enacted remedial legislation. Tasmania introduced a bill in early November 1999. Western Australia is considering the issue

There are several alternative methods available to enable de facto spouses to resolve financial and property disputes following the breakdown of their relationship

- referring power to the Commonwealth
- seeking uniform legislation
- enacting Queensland legislation

On the basis of an informal agreement between the then Queensland and Commonwealth governments, legislation to refer power to the Commonwealth (the *Commonwealth Powers Amendment Bill 1995*) was introduced into the Queensland Parliament on 19 October 1995 but lapsed with the prorogation of Parliament.

Neither uniform legislation nor a referral of power is possible at this time or in the foreseeable future. The Standing Committee of Attorneys-General (SCAG) recently rejected a Law Council of Australia proposal for uniform legislation. The Commonwealth Attorney General is now indicating that he may be prepared to accept a referral of power even though not all States refer. However at the 11 November 1999 SCAG meeting only the ACT and Tasmania indicated interest. In addition, the Commonwealth de facto legislation would not be developed for several years and would not cover same sex couples. Finally there are delays in the Family Court of up to two years for trials in Brisbane versus six months in the District Court.

The only option is for Queensland to enact its own legislation.

### **Amendments to the *Stamp Act 1894***

The *Stamp Act 1894* is being amended to provide stamp duty concessions for transfers of motor vehicle registrations and place of residence between de factos spouses in subsisting relationships. In applying the new exemptions, the definition of de facto relationships in the *Property Law Amendment Bill 1999* is being adopted. However, to provide certainty for administration of these new exemptions, their application is being limited to cases where the de facto relationship has existed for at least 2 years. This period of cohabitation is specified in the *Property Law Amendment Bill 1999* as one of conditions that must exist before the court may intervene.

The *Stamp Act 1894* is also being amended to provide an exemption in relation to a court order on the breakdown of a de facto relationship and instruments made under such an order.

### **Administrative cost to Government of implementation**

The proposed amendments to the *Property Law Act 1974* do not entail any significant cost to the State Government in terms of implementation. The revenue cost of providing the stamp duty exemptions is estimated to be \$700,000 per year.

## **Fundamental legislative principles**

The Bill applies to de facto couples that separate after the Bill comes into force. This allows the court to do justice at the end of a de facto relationship even though the relationship began before commencement of the Bill. Despite the implied retrospectivity, the policy is reasonable and allows a just and equitable resolution of financial matters. In addition, de facto spouses can contract out of the statutory provisions in Part 2 by entering cohabitation and separation agreements.

## **Consultation**

The Queensland Law Reform Commission (QLRC) produced a final report (No. 44) in June 1993 on de facto relationships including a draft Bill—the *De Facto Relationships Bill 1993*.

The QLRC issued two discussion papers. Approximately 1,000 copies of each paper were distributed to members of parliament, judges, magistrates, legal professional bodies, community organisations, governmental departments, law reform bodies here and abroad, academics, women's and ethnic groups, gay and lesbian organisations, major church groups and the public.

The QLRC also conducted 2 surveys - with the Family Law Practitioners Association (155 responses were received) and with 89 persons (93% de factos) who were seeking advice regarding property disputes at the Brisbane Legal Aid Office.

The *Property Law Amendment Bill 1999* reflects the provisions of the QLRC Bill with respect to adjustments in property.

Consultation on the *Property Law Amendment Bill 1999* occurred with:

- the judiciary and courts
- legal professional bodies
- community organisations
- academics
- Office of State Revenue
- Government Superannuation Office

- Office of Women’s Policy
- Department of Families, Youth and Community Care
- Legal Aid Commission of Queensland
- QLRC

The parties consulted were supportive of the proposed Bill and its underlying policy thrust—that is—to grant property rights to de facto couples.

Consultation on the amendments to the *Stamp Act 1894* occurred through the Taxation Consultative Committee, a committee with which the Office of State Revenue regularly liaises on technical issues. That Committee is comprised of representatives of—

- Institute of Chartered Accountants
- Queensland Law Society
- Taxation Institute of Australia (Queensland Division)
- Australian Society of Certified Practising Accountants
- a number of independent legal practitioners

In addition, the Office consulted with representatives of the Family Law Practitioners Association.

The amendments to the *Stamp Act 1894* were supported.

## **NOTES ON PROVISIONS**

The format to this statute follows the following format:

- There is a long and short title; and
- The Act is divided into Parts, each Part containing within it all the matters relevant to the purpose of implementing the objectives of the Bill.

## **Part 1—Preliminary**

*Clause 1* sets out the short title of the Act.

## **Part 2—Amendment of *Property Law Act 1974***

*Clause 2* provides for the amendment of the *Property Law Act 1974*.

*Clause 3* amends the long title of the *Property Law Act 1974*.

*Clause 4* amends and relocates section 3 (Definitions) to schedule 6.

*Clause 5* inserts a new section 3 referring to the location of the dictionary in schedule 6.

*Clause 6* renumbers Part 19 to Part 20 and renumbers sections 255 to 261 as sections 345 to 351.

*Clause 7* inserts a new Part 19 which is entitled ‘Part 19—Property (De facto Relationships)’.

**[In view of the insertion of the new Part 19, it should be noted that the following references to section numbers refer to the section numbers in the Bill. These will be the same section numbers in the new Part 19 of the Act.]**

*Section 255* sets out the primary purposes of this part.

*Section 256* sets out how the primary purposes are to be achieved

*Section 257* provides that Part 19 applies to all de facto relationships other than relationships that ended before the commencement of the section. It does not matter whether a de facto relationship started before or after the commencement of the section.

*Section 258* provides that Part 19 does not affect a de facto spouse’s right to apply for a remedy or relief under another law.

***Division 2—Interpretation******Subdivision 1—General***

*Section 259* inserts definitions for Part 19.

***Subdivision 2—De facto spouse and relationship concepts***

*Section 260* sets out the meaning of a “de facto spouse”.

*Section 261* sets out the meaning of a “de facto relationship”. A de facto relationship is the relationship between de facto spouses.

Not that under section 287, a court may make a property adjustment order only if:

- the de facto spouses have cohabited for at least two years, or
- there is a child of the de facto spouses under 18 years of age, or
- the applicant has made substantial contributions to the property, financial resources or family welfare and failure to make the order would result in serious injustice to the applicant.

Note also that under sections 316 and following, the Supreme and District Courts have the power to make declarations about the existence or non-existence of a de facto relationship. This is designed to help persons avoid the duplication of proceedings where the existence or non-existence of a de facto relationship is relevant in two or more unrelated proceedings. This will not preclude any of the courts, including the Magistrates Courts, from making a finding of fact on the evidence that a de facto relationship exists.

***Subdivision 3—Financial matters and financial resources concepts***

*Section 262* sets out the meaning of “financial matters”.

*Section 263* sets out the meaning of “financial resources”. Superannuation comes within the meaning of “financial resource”. It is not a divisible asset in and of itself but contribution to financial resources is taken into account. It is acknowledged that the Commonwealth regulates superannuation. This will ensure consistency with the Commonwealth law.

***Subdivision 4—Cohabitation, separation and recognised agreement concepts***

*Section 264* sets out the meaning of “cohabitation agreement”. Note that it must also be a recognised agreement within the meaning of section 266.

*Section 265* sets out the meaning of “separation agreement”.

*Section 266* sets out the meaning of “recognised agreement”.

***Subdivision 5—Publication and account of a de facto proceeding concepts***

*Section 267* sets out the meaning of the term “publish”. A restriction on the publication of proceedings is set out in sections 342 and following.

*Section 268* sets out the meaning of the term “account of a de facto proceeding”.

***Division 3—Resolution of financial matters by de facto spouses***

***Subdivision 1—Purpose of division and use of agreements***

*Section 269* provides that the purpose of division 3 is to allow de facto spouses to plan their financial future and resolve financial matters at the end of their relationship. This purpose is achieved by permitting de facto spouses to make cohabitation and separation agreements.

*Section 270* provides that de facto spouses may make cohabitation and separation agreements.

*Section 271* provides that the court's jurisdiction may not be excluded from a cohabitation or separation agreement.

*Section 272* reinforces that the law of contract applies to cohabitation and separation agreements and reinforces, by example, that the effect of mistake, fraud, duress, undue influence or unconscionability in relation to a cohabitation or separation agreement is decided by the law of contract. Note that cohabitation and separation agreements must also be recognised agreements within the meaning of section 266.

*Section 273* provides that if a de facto spouse dies before the provisions of a cohabitation or separation agreement have been carried out, the provisions may be enforced against the estate.

***Subdivision 2—Relationship between recognised agreements and proceedings***

*Section 274* prohibits a court from making a property order that is inconsistent with a recognised agreement, subject to sections 275 and 276.

*Section 275* requires the court to ignore a revoked provision in a recognised agreement.

*Section 276* permits the court to vary a recognised agreement if enforcement of the agreement would result in serious injustice or it is impracticable for the agreement or part of it to be carried out.

***Subdivision 3—Relationship between agreements other than recognised agreements and proceedings.***

*Section 277* sets out the relationship between agreements other than recognised agreements and proceedings.

*Section 278* provides that for the purposes of section 277 a court must ignore a revoked provision.

***Division 4—Resolution of financial matters by court******Subdivision 1—Declaration of property interests***

*Section 279* provides that the purpose of this subdivision is to help persons ascertain their existing rights in property of de facto spouses. This purpose is achieved by allowing a court to declare the title or rights of parties to a proceeding in property of de facto spouses.

*Section 280* provides that the court may make a declaration regarding property interests, regardless of whether the de facto relationship has ended.

*Section 281* provides that the court may make orders to give effect to a declaration.

***Subdivision 2—Adjustment of property interests******Subsubdivision 1—General***

*Section 282* provides that the purpose of subdivision 2 is to ensure a just and equitable property distribution at the end of a de facto relationship. This purpose is achieved by allowing the courts to adjust property interests.

*Section 283* permits a de facto spouse to apply to a court for an adjustment of property interests after a de facto relationship has ended.

*Section 284* provides that the application may be for the benefit of either or both of the de facto spouses or child of the de facto spouses.

*Section 285* permits an application to be made under this subdivision regardless of whether another remedy or relief has been made, or may be made, under Part 19 or another law.

*Section 286* permits the court to make any property adjustment order it considers just and equitable in favour of a de facto spouse or child of the de facto spouses, as set out in sections 291 and following. It does not matter whether the court has declared the title or rights in the property. The matters to be considered closely reflect the matters that may be considered by the Family Court under the *Family Law Act 1975* (Cwlth).

***Subdivision 2—Requirements for property adjustment proceedings***

*Section 287* sets out three prerequisites that must be met prior to the court being empowered to make a property adjustment order.

- The parties must have lived together in a de facto relationship for at least two years.
- There must be a child of the de facto spouses who is under 18 years.
- The de facto spouse who applied for the order must have made substantial contributions of the kind mentioned in sections 291 or 292 and failure to make the order would result in serious injustice to the de facto spouse.

*Section 288* sets out the time limit for making an application for a property adjustment order. The application must be made within two years after the day on which the de facto relationship ended unless the court has given the applicant leave to apply. Leave will only be given if the court is satisfied that hardship would result to the applicant or a child of the de facto spouses if leave were not given.

*Section 289* provides for the disclosure of financial circumstances in the way prescribed by the rules or a practice direction of the court.

*Section 290* provides for the disclosure of any child support orders or any other relevant orders made under a law of the State concerning de facto relationships. These orders must be considered by the court under sections 294 and 295 on an application for an adjustment of property. Under section 295 the court may consider an order under the *Domestic Violence (Family Protection) Act 1989*.

***Subsubdivision 3—Matters for consideration in deciding what is just and equitable***

*Section 291* provides that in deciding what is just and equitable, the court must consider both the financial and non-financial contributions made directly or indirectly by or for the de facto spouses or a child of the spouses to both property and financial resources. A non-financial contribution of a child must only be considered if the child's contributions were substantial.

As the Bill reflects the corresponding provisions of the *Family Law Act 1975* (Cwlth), any court in construing the provisions of the Bill should have regard to the case law and principles applicable to the *Family Law Act 1975* (Cwlth)—for example - domestic violence could be a relevant factor in assessing contributions for the purpose of adjusting property interests in the sense explained in *Kennon v Kennon* (1997) FLC 92-757, 84,294. In that case the Full Court of the Family Court held 2-1:

“Where there is a course of violent conduct by one party towards the other during the marriage which is demonstrated to have had a significant adverse impact upon that party’s contribution to the marriage, to put it the other way, to have made his or her contributions significantly more arduous than they ought to have been...this is a factor which a trial Judge is entitled to take into account in assessing the party’s respective contribution under s 79 (of the *Family Law Act 1975* (Cwlth)).”

*Section 292* provides that in deciding what is just and equitable, the court must consider the contributions, including any homemaking or parenting contributions, made by either of the de facto spouses or a child of the de facto spouses to the welfare of the de facto spouses or the family. A contribution of a child of the de facto spouses must only be considered if the child’s contribution is substantial.

As is noted under the explanatory note to section 291, as the Bill reflects the corresponding provisions of the *Family Law Act 1975* (Cwlth), any court in construing the provisions of the Bill should have regard to the case law and principles applicable to the *Family Law Act 1975* (Cwlth).

*Section 293* provides that in deciding what is just and equitable, the court must consider the effect of any proposed order on the earning capacity of either de facto spouses.

*Section 294* provides that in deciding what is just and equitable, the court must consider any child support.

*Section 295* provides that in deciding what is just and equitable, the court must consider any other orders made under a law of the State concerning de facto relationships that the court considers should be taken into account. Under this section, the court may consider an order under the *Domestic Violence (Family Protection) Act 1989*. *Section 290* places an obligation of the parties to a proceeding to inform the court of these orders.

*Section 296* provides that the court must consider the matters mentioned in subdivision 4 to the extent they are relevant in deciding what order adjusting interests in property is just and equitable.

***Subsubdivision 4—Additional matters for consideration to the relevant extent in deciding what is just and equitable***

*Section 297* provides that the court must consider the age and state of health of each of the de facto spouses.

*Section 298* provides that the court must consider the resources and employment capacity of each of the de facto spouses.

*Section 299* provides that the court must consider whether either de facto spouse is caring for children.

*Section 300* provides that the court must consider the necessary commitments of each of the de facto spouses to support either himself or herself and a child or another person whom the de facto spouse has a duty to maintain.

*Section 301* provides that the court must consider the responsibility of either de facto spouse to support another person.

*Section 302* provides that the court must consider the eligibility of either de facto spouse for government assistance other than an Australian pension, allowance or benefit that is income tested within the meaning of the *Family Law Act 1975* (Cwlth).

*Section 303* provides that the court must consider that if the de facto spouses have separated, what is an appropriate standard of living.

*Section 304* provides that the court must consider the extent to which the de facto spouse contributed to the income and earning capacity of the other de facto spouse.

*Section 305* provides that the court must consider the length of the de facto relationship.

*Section 306* provides that the court must consider the extent to which the de facto relationship has affected the earning capacity of each of the de facto spouses.

*Section 307* provides that the court must consider, if either de facto spouse is cohabiting with another person, the financial circumstances of the cohabitation.

*Section 308* provides that the court must consider any payments provided for the maintenance of a child in the care of either de facto spouse.

*Section 309* provides that the court must consider any other facts or circumstances that the court considers the justice of the case requires to be taken into account.

***Subsubdivision 5—Adjournment because of likely change in financial circumstances***

*Section 310* permits a court to adjourn an application to adjust interests in property if there is a likely change in financial circumstances that is significant.

*Section 311* sets out the matters for consideration by the court in determining whether there is likely to be a significant change in financial circumstances.

*Section 312* permits the court to make any orders it considers appropriate about the property before adjourning an application.

*Section 313* provides that section 310 does not limit the power of the court to adjourn a proceeding before it.

***Subsubdivision 6—Change in circumstances***

*Section 314* permits the court to delay the operation of a property adjustment order if there is a likelihood that a de facto spouse will, within a short time, become entitled to property that may be applied in satisfaction of the property adjustment order.

*Section 315* provides that if a party to a proceeding to a property adjustment order dies before a final order has been made, a court may make any order it would have made had the deceased party not died and it is still appropriated to adjust the interest despite the death of the deceased party.

***Division 5—Existence of a de facto relationship******Subdivision 1—Declaration about existence of de facto relationship***

*Section 316* sets out that the purpose of Division 5 is to help persons avoid the duplication of proceedings where the existence or non-existence of a de facto relationship is relevant in two or more unrelated proceedings. This purpose is achieved by allowing applications to a court for a declaration about the existence or non-existence of a de facto relationship.

The example set out under section 316 clarifies the types of proceedings that are contemplated and makes it clear that even when the existence or non-existence of a de facto relationship is declared by a court, additional requirements may apply for particular purposes. For example - sometimes a de facto relationship must exist for a minimum period that may or may not be shortened if there is a child of the relationship. Sometimes, the relationship must exist at a particular time, for example, when a de facto spouse in a relationship dies.

*Section 317* provides that a person may apply to the Supreme or District Court for a declaration that there is or has been a de facto relationship between a person and another named person or between two named persons at a particular time or for a particular period. In addition the court also has the power to declare that there was no relationship in existence between certain persons, at a particular time or for a particular period. *Section 329(1)* provides that the Supreme Court and District Court have jurisdiction under this division to make or revoke a declaration.

*Section 318* empowers the court to adjourn a hearing if there are other persons whose interests would be affected by the making of a declaration and who are not present or represented at the hearing and ought to be.

*Section 319* empowers the court to make a declaration about the existence of a de facto relationship.

*Section 320* empowers the court to make a declaration about the non-existence of a de facto relationship.

*Section 321* provides that the declaration must include either the date at which there was or was not a de facto relationship or the dates between which there was or was not a de facto relationship.

*Section 322* clarifies that a declaration may be made even if one of the de facto spouses is dead.

*Section 323* sets out the effect of a declaration. It has the same effect as if it were a judgment of the court. The persons named in the declaration are presumed to have had or not to have had a de facto relationships at the date stated in the declaration, between the dates stated in the declaration or both. The declaration applies for all purposes—see again, the example under section 316.

### ***Subdivision 2—Revocation of declaration***

*Section 324* provides that a party or an affected person may apply to the same court that made the declaration, for revocation.

*Section 325* permits the court to adjourn the hearing if affected persons are not present.

*Section 326* empowers the court to revoke a declaration if it is satisfied that a new fact or circumstance has arisen that has not previously been disclosed to the court and, if the applicant were a party to the original application, the fact or circumstance was not within the applicant's knowledge at the time when the original declaration was made.

*Section 327* empowers the court to make ancillary orders when revoking a declaration if it considers it would be just and equitable to do so. These ancillary orders are ones that are necessary to place a person affected by the revocation of the declaration in the same position, as far as practicable, as a person would have been in if the declaration had not been made. Subsection (2) clarifies that without limiting subsection (1) the court may make an order varying rights and property or the financial resources of de facto spouses or another person.

*Section 328* provides that if a court makes an order revoking a declaration, the original declaration ceases to have effect. However, the revocation does not affect anything done in reliance on the declaration before the order revoking the declaration was made.

***Division 6—Courts******Subdivision 1—Jurisdiction***

*Section 329* sets out the jurisdiction of the courts.

*Section 329(1)* provides that the Supreme and District court have jurisdiction under Division 5 (existence of a de facto relationship) to make or revoke a declaration about the existence or non-existence of a de facto relationship. However, this will not preclude any of the courts, including the Magistrates Court, from making a finding of fact on the evidence that a de facto relationship exists.

The Supreme, District and Magistrates Courts are given jurisdiction under section 329(2) to hear and determine matters according to their monetary jurisdiction (including a matter including concerning an interest in property) that is:

- up to \$50,000 for the Magistrates Court;
- \$50,000 - \$250,000 for the District Court; and
- above \$250,000 for the Supreme Court.

Under section 329(3), rule 35 (General rule) of the *Uniform Civil Procedure Rules 1999* does not apply. Rule 35 provides that a person must start a proceeding in one of the districts mentioned therein.

Under section 329(4) the parties can, by consent, confer unlimited jurisdiction on the District and Magistrates Court for both property proceedings. The consent provisions are set out in section 72 of the *District Court Act 1967* and section 4A of the *Magistrates Court Act 1921*.

*Section 330* permits a court to stay or dismiss a proceeding started by or in relation to the same person if there is a proceeding pending in more than one court.

*Section 331* permits a court to transfer proceedings to another court.

***Subdivision 2—Powers***

*Section 332* provides that the purpose of subdivision 2 is to ensure that the courts have adequate powers to make appropriate orders.

*Section 333* sets out the court's powers under Part 19.

*Section 334* permits the court to vary or set aside its orders.

*Section 335* permits the court to set aside or restrain the making of documents or dispositions that may defeat existing or anticipated orders.

*Section 336* requires the court to have regard to the interest of other parties in exercising its powers under Part 19—particularly a purchaser in good faith and other interested persons.

*Section 337* requires the court to make orders that, as far as possible, will end the financial relationship between the de facto spouses.

***Subdivision 3—Miscellaneous matters concerning proceedings******Subsubdivision 1—Intervention***

*Section 338* permits a person to apply for leave to intervene in a proceeding under Part 19.

*Section 339* permits a court to grant leave to intervene subject to any conditions it considers appropriate.

*Section 340* sets out the rights of interveners.

***Subsubdivision 2—Costs***

*Section 341* sets out the underlying principle that a party to a proceeding must bear their own costs. However, if the court is satisfied there are circumstances justifying it, the court may make any order for costs or security for costs it considers appropriate. Subsection (4) sets out the matters it must consider in deciding whether there are circumstances justifying the making of an order for costs.

***Subsubdivision 3—Publication of proceedings***

*Section 342* specifically authorised the publication of an account of a de facto proceeding in the way specified in the section.

*Section 343* permits the publication of the proceedings only if the publication does not identify certain persons set out in that section.

*Section 344* makes it an offence to publish an account of a de facto proceeding unless authorised under sections 342 or 343. The maximum penalty is 40 penalty units. A proceeding for an offence may only be started with the written consent of the Director of Public Prosecutions.

**Part 3—Consequential Amendments**

*Clause 8* provides for the Schedule that amends the Acts it mentions.

**MAGISTRATES COURTS ACT 1921**

*Section 1* is a consequential amendment to section 45 which permits an appeal to the District Court as prescribed by the rules, for any party who is dissatisfied with an order or judgement of a Magistrates Court.

Similar amendments were not needed for the District Court because section 118 of the *District Court Act 1967* already provides for appeals to the Court of Appeal and section 69 of the *Supreme Court Act 1991* provides for appeals in proceedings in that Court.

**STAMP ACT 1894**

*Section 1* inserts a new provision, section 72A, which provides that a de facto relationship instrument is exempt from stamp duty. This is an instrument to the extent that it is, or is made under, an order of the court under Part 19 of the *Property Law Amendment Act 1974*. See the explanatory note for section 5.

*Section 2* extends the exemption for transfer of motor vehicle registration to a transfer to a de facto spouse. This amendment will ensure that the exemption will also apply to a transfer from a de facto spouse to their child.

*Sections 3 and 4* extend extends the exemption for the transfer of an interest in a place of residence to de facto spouses.

*Section 5* inserts the definitions “de facto spouse” and “de facto relationship” into schedule 2 of the *Stamp Act 1894*. The definition of “de facto relationship” limits the entitlement to the modified exemptions in schedule 1 of the *Stamp Act 1894* to cases where the de facto spouses have lived together in a de facto relationship for at least 2 years. This is because the exemptions will be provided in the absence of court orders under the Part 19 of the *Property Law Amendment Bill 1999*.

Note however, that the definition of “de facto relationship” does not apply to the expression “de facto relationship instrument” in section 1 of this Schedule (which inserts the new section 72A). Section 72A does not impose any requirement that the relationship must have existed for any minimum period. This is because the making of the court order is contingent upon the existence of a de facto relationship—which is already defined in sections 260 and 280 of the *Property Law Amendment Bill 1999*.