

NORTHERN TERRITORY OF AUSTRALIA

ADMINISTRATION AND PROBATE AMENDMENT
(DE FACTO RELATIONSHIPS) BILL 1991

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Administration and Probate Act*

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Administration and Probate Amendment (De Facto Relationships) Act 1991*.

2. COMMENCEMENT AND APPLICATION

(1) This Act shall come into operation on 1 January 1992.

(2) The amendments made by this Act shall not apply to or in respect of the estate of a person who died before its commencement.

3. PRINCIPAL ACT

The *Administration and Probate Act* is in this Act referred to as the Principal Act.

4. INTERPRETATION

Section 6(1) of the Principal Act is amended -

(a) by inserting after the definition of "deceased person" the following:

"'de facto partner', in relation to a deceased person, means -

(a) where the deceased was a man - a woman who, immediately before the man's death, was living with him as his wife on a bona fide domestic basis although not married to him; and

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(b) where the deceased was a woman - a man who, immediately before the woman's death, was living with her as her husband on a bona fide domestic basis although not married to her;"; and

(b) by omitting from the definition of "next of kin" the words "the spouse (if any)" and substituting "a spouse or de facto partner".

5. TO WHOM ADMINISTRATION MAY BE GRANTED

Section 22 of the Principal Act is amended -

(a) in subsections (1) and (2), by inserting after "spouse" (wherever occurring) the words "or de facto partner"; and

(b) by inserting after subsection (2) the following:

"(2A) References in subsections (1) and (2) to a spouse or de facto partner of a deceased are references only to a spouse or de facto partner who is entitled to an interest in the deceased's intestate estate.".

6. REPEAL AND SUBSTITUTION

Section 67 of the Principal Act is repealed and the following substituted:

"67. RIGHT OF SPOUSE OR DE FACTO PARTNER TO PERSONAL CHATTELS

"(1) This section applies to the personal chattels of an intestate so far as not effectively disposed of by his will (if any), and has effect subject to section 67A.

"(2) Where the intestate is survived either by a spouse or by a de facto partner, but not by both, the surviving spouse or de facto partner, as the case may be, is entitled to the personal chattels absolutely.

"(3) Where the intestate is survived by both a spouse and a de facto partner -

(a) the de facto partner is entitled to the personal chattels absolutely if -

(i) he or she was the de facto partner of the intestate for a continuous period of not less than 2 years immediately preceding the intestate's death, and the intestate did not at any time during that period live with the person to whom he or she was married; or

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- (ii) the intestate is also survived by issue of the intestate and the de facto partner; and
- (b) except where paragraph (a) applies, the spouse is entitled to the personal chattels absolutely."

7. PARTIAL INTESTACIES

Section 70 of the Principal Act is amended -

- (a) by omitting subsection (1) and substituting the following:

"(1) Where a beneficial interest in the real or personal property (other than personal chattels) of an intestate is acquired under a will of the intestate by a spouse or de facto partner of the intestate who, but for this section, would be entitled to an interest in the intestate's intestate estate by virtue of Schedule 6, then -

- (a) the person or persons entitled to take an interest in the intestate estate; and
- (b) the interest in that estate which that person or those persons is or are entitled to take,

shall be ascertained by reference to this section, with Schedule 6 applying only to the extent that this section so provides.";

- (b) by inserting in subsection (2) after "spouse" the words "or de facto partner";
- (c) by omitting subsection (3)(a) and substituting the following:

"(a) if the value of the beneficial interest that is acquired by the spouse or de facto partner under the will does not exceed the amount prescribed for the purposes of item 2 in Part I of Schedule 6 - that item (including that item as applied by Part II or III of Schedule 6) has effect as if references in it to the prescribed amount or the prescribed sum were references to the prescribed amount or the prescribed sum, as the case may be, reduced by the value of that beneficial interest; or";

- (d) by omitting from subsection (3)(b) "spouse under the will exceeds \$10,000 -" and substituting "spouse or de facto partner under the will exceeds the amount prescribed for the purposes of item 2 in Part I of Schedule 6 -";

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- (e) by inserting in subsection (3)(b)(i) and (ii) after "spouse" (wherever occurring) the words "or de facto partner";
 - (f) by omitting subsection (4)(a) and substituting the following:
 - "(a) if the value of the beneficial interest that is acquired by the spouse or de facto partner under the will does not exceed the amount prescribed for the purposes of item 3 in Part I of Schedule 6 - that item (including that item as applied by Part II or III of Schedule 6) has effect as if references in it to the prescribed amount or the prescribed sum were references to the prescribed amount or the prescribed sum, as the case may be, reduced by the value of that beneficial interest; or";
 - (g) by omitting from subsection (4)(b) "spouse under the will exceeds \$50,000 -" and substituting "spouse or de facto partner under the will exceeds the amount prescribed for the purposes of item 3 in Part I of Schedule 6 -"; and
 - (h) by inserting in subsection (4)(b)(i), (ii) and (iii) after "spouse" (wherever occurring) the words "or de facto partner".
8. RIGHT OF SPOUSE OR DE FACTO PARTNER TO HAVE MATRIMONIAL HOME APPROPRIATED
- Section 73 of the Principal Act is amended by inserting after "spouse" (wherever occurring) the words "or de facto partner".
9. SURVIVING SPOUSE OR DE FACTO PARTNER UNDER LEGAL DISABILITY
- Section 79 of the Principal Act is amended by inserting after "spouse" (wherever occurring) the words "or de facto partner".
10. DISTRIBUTION OF INTESTATE ESTATE UPON INTESTACY
- Schedule 6 to the Principal Act is amended -
- (a) by adding to the heading to Part I after "INTESTATE IS SURVIVED BY A SPOUSE" the words "AND NOT BY ANY DE FACTO PARTNER"; and

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- (b) by omitting the heading "PART II - MANNER OF DISTRIBUTION WHERE INTESTATE IS NOT SURVIVED BY A SPOUSE" and substituting the following:

"PART II - MANNER OF DISTRIBUTION WHERE INTESTATE
IS SURVIVED BY A DE FACTO PARTNER
BUT NOT BY A SPOUSE

"Where the intestate is survived by a de facto partner, but not by a spouse -

- (a) if the intestate is not survived by issue, item 1 or (as the case requires) 3 in Part I shall apply as if references to the spouse of the intestate were references to the de facto partner; and
 - (b) if the intestate is survived by issue, item 2 in Part I shall apply similarly where -
 - (i) the issue are, or include, issue of the intestate and the de facto partner; or
 - (ii) the de facto partner was the de facto partner of the intestate for a continuous period of not less than 2 years immediately preceding the intestate's death,
- but in any other case the issue shall be entitled to the whole of the intestate estate.
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"PART III - MANNER OF DISTRIBUTION WHERE INTESTATE
IS SURVIVED BY BOTH A SPOUSE AND A
DE FACTO PARTNER

"1. Where the intestate is survived by both a spouse and a de facto partner, and -

- (a) the de facto partner was the de facto partner of the intestate for a continuous period of not less than 2 years immediately preceding the intestate's death, and the intestate did not at any time during that period live with the person to whom he or she was married; or
- (b) the intestate is also survived by issue of the intestate and the de facto partner,

items 1 to 3 (inclusive) in Part I shall apply as if references to the spouse of the intestate were references to the de facto partner.

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"2. Where the intestate is survived by both a spouse and a de facto partner and clause 1 does not apply, the intestate shall be treated as having been survived by the spouse and not by the de facto partner, and Part I shall have effect accordingly.

"PART IV - MANNER OF DISTRIBUTION WHERE INTESTATE
IS SURVIVED BY NEITHER A SPOUSE NOR
A DE FACTO PARTNER".

11. FURTHER AMENDMENTS

The Principal Act is further amended as set out in the Schedule.

SCHEDULE
FURTHER AMENDMENTS

Section 11

Provision	Amendment	
	omit	substitute
Section 31(1)	"spouse or the next of kin"	"spouse, de facto partner or next of kin"
Section 64	"spouse" (twice occurring)	"spouse or de facto partner"
Section 66(2)	"his spouse,"	"his spouse or a de facto partner,"
Heading to Division 5 of Part III	" <u>Matrimonial Home</u> "	" <u>Matrimonial Home (including Home of De Facto Partner)</u> "
Section 76	"spouse" (twice occurring)	"spouse or de facto partner"
Section 77	"spouse" (wherever occurring)	"spouse or de facto partner"
Section 78	"spouse" (twice occurring)	"spouse or de facto partner"

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SCHEDULE - continued

Provision	Amendment	
	omit	substitute
Section 80(1)(d)	"spouse"	"spouse or de facto partner"
Section 152A(a) and (c)	"spouse"	"spouse or de facto partner"

