

COMMONWEALTH POWERS (DE FACTO RELATIONSHIPS) BILL 2005

EXPLANTORY MEMORANDUM

The purpose of the Bill is to refer legislative power to the Commonwealth Parliament under section 51(xxxvii) of the Commonwealth *Constitution* in relation to the superannuation interests of de facto partners whose relationship has broken down. The Bill has been drafted having regard to option 3 in the draft model *Commonwealth Powers (De Facto Relationships) Bill* prepared by the Parliamentary Counsel's Committee and referred to the Standing Committee of Attorneys General on 29 October 2002. However the Bill only refers power in relation to the matter of the superannuation interests of de facto couples and not other financial matters, as these are already dealt with in amendments to the *Family Court Act 1997* (WA) inserted by Act No.25 of 2002.

The aim is to give the Commonwealth Parliament power to legislate so as to give the Family Court of Western Australia the same jurisdiction and powers in relation to the superannuation interests of de facto couples as it has in relation to married couples under the superannuation splitting arrangements contained in the *Family Law Act 1975* (Cth), as complemented by certain provisions of the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Retirement Savings Account Act 1997* (Cth). The Family Court of Western Australia would be invested with jurisdiction pursuant to the power in section 77(iii) of the Commonwealth *Constitution*.

The Bill provides for two separate referrals, one in respect of heterosexual de facto relationships and the other in respect of same sex de facto relationships. The Commonwealth government has made it clear that it will only legislate in respect of heterosexual couples. The separate referral in respect of same sex de facto couples is to enable a future Commonwealth government to extend the operation of the legislation if so minded.

Title

The title of the Act is to be the *Commonwealth Powers (De Facto Relationships) Act*.

Purpose

The stated purpose of the Bill is to refer legislative power in relation to the matter of the distribution of superannuation benefits or prospective superannuation entitlements of de facto partners whose relationship has broken down to the Commonwealth Parliament for the purposes of section 51(xxxvii) of the Commonwealth *Constitution* with a view to jurisdiction to deal with such matters being invested in the Family Court of Western Australia pursuant to section 77(iii) of the Commonwealth *Constitution*. (Clause 1(2)).

Commencement

The Act is to commence on a date to be proclaimed. (Clause 2)

Definitions

The Bill contains the following definitions:

De facto partner: a person who lives or who has lived in a de facto relationship

De facto relationship: a marriage like relationship (other than a legal marriage) between two persons.

Superannuation matters: the distribution of superannuation benefits and prospective entitlements of de facto partners. (Clause 3(1))

For the purposes of the Act, a de facto relationship exists even if a de facto partner is legally married to someone else or is in another de facto relationship. (Clause 3(2))

A reference in the Act:

- (a) to the superannuation interests of de facto partners includes a reference to superannuation interests of either or both of them, and
- (b) to the distribution of superannuation interests includes a reference to the conferral of rights and obligations in relation to those superannuation interests. (Clause 3(3))

The Act is to extend to de facto relationships that broke down before the commencement of the Act. (Clause 3(4))

Reference of Powers

There are separate references of power to the extent to which they are not otherwise included in the legislative powers of the Commonwealth Parliament for a period commencing on the day on which the Act commences and ending on the day fixed pursuant to Clause 5 as the day on which the references are to terminate, but no longer:

- (a) superannuation matters relating to de facto partners arising out of the breakdown (other than by reason of death) of de facto relationships between persons of different sexes,
- (b) superannuation matters relating to to be de facto partners arising out of the breakdown (other than by reason of death) of de facto relationships between persons of the same sex.

The operation of one reference is not affected by the other. (Clause 4)

Termination of References

The Governor is to have the power to terminate the references by proclamation published in the Government Gazette. The termination date is to be no less than 3 months after publication. The proclamation terminating the references may be revoked provided it is published before the termination date. The revocation of a proclamation does not prevent further proclamations being published. (Clause 5)