

# Acts Amendment (Equality of Status) Bill 2002

## Clause Notes

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### Meaning of “de facto partner”, "de facto relationship" and "spouse"

The phrases “de facto partner”, "de facto relationship" and "spouse" will be defined in the *Interpretation Act 1984*, when it is amended by the *Acts Amendment (Lesbian and Gay Law Reform) Act 2001*. (It is intended that the *Acts Amendment (Lesbian and Gay Law Reform) Act 2001* will be proclaimed at the same time as this Bill.) Those definitions will apply to all of the amendments made by this Bill.

### Part 1 – Preliminary

#### Clause 1. Short title

The Act may be cited as the *Acts Amendment (Equality of Status) Act 2002*.

#### Clause 2. Commencement

The Act comes into operation on a day to be fixed by proclamation. Different days may be fixed for different provisions of the Act.

### Part 2 – Anatomy Act 1930

#### Clause 3. *Anatomy Act 1930* amended

Amendments in this Part are to the *Anatomy Act 1930*.

#### Clause 4. Section 2 amended

Clause 4 inserts a definition of "senior next of kin" in relation to a deceased person. The effect of the amendment will be that for the purposes of deciding who is the senior next of kin, a de facto partner aged 18 or over, with whom the deceased was living at the time of death will have the same priority as a spouse with whom the deceased was living at the time of death.

**Clause 5. Section 8 amended**

The effect of this clause is that a de facto partner will have the same right as a spouse or other next of kin to prevent the anatomical examination of a person who has died in a public institution.

**Clause 6. Section 9 amended**

The effect of this clause is that a de facto partner will have the same right as a spouse or other next of kin to prevent the anatomical examination of a person who has died.

**Clause 7. Section 10 amended**

The effect of this clause is that a de facto partner will have the same right as a spouse or other next of kin to prevent the anatomical examination of a person who has died in circumstances where the deceased had directed that his/her body should undergo such examination.

**Clause 8. Section 10A amended**

The effect of this clause is that the wishes of a de facto partner in respect of the interment or cremation of the body of a person following an anatomical examination will be treated in the same way as the wishes of a spouse or other next of kin.

**Clause 9. Section 11 amended**

The effect of this clause will be that a de facto partner of a deceased will be treated in the same way as a spouse or other next of kin for the purposes of notification and consent to an anatomical examination.

**Clause 10. Section 16 amended**

The effect of this clause is that the wishes of a de facto partner in respect of the interment or cremation of the body of a person following an anatomical examination will be treated in the same way as the wishes of a spouse or other next of kin.

**Part 3 – *Anzac Day Act 1960***

**Clause 11. *Anzac Day Act 1960* amended**

Amendments in this Part are to the *Anzac Day Act 1960*.

**Clause 12. Section 3 amended**

Clause 12 inserts a definition of “dependant” (in relation to a deceased person) which includes a de facto partner, a spouse or a child (of a deceased person).

### **Clause 13. Section 10 amended**

Clause 13 amends section 10(3) by deleting the words “widows and children of deceased ex-servicemen” and inserting the gender neutral words “dependants of deceased ex-servicemen and ex-servicewomen”. The effect of the amendment will be that funds from the Anzac Day Trust Fund may be distributed for the purpose of the welfare of the "dependants" (as defined in clause 12 of the Bill) of deceased ex-servicemen and ex-servicewomen.

## **Part 4 – *Bush Fires Act 1954***

### **Clause 14. *Bush Fires Act 1954* amended**

Amendments in this Part are to the *Bush Fires Act 1954*.

### **Clause 15. Section 37 amended**

A local government that maintains a bush fire brigade must obtain a policy of insurance which insures volunteer fire fighters for compensation, payable in accordance with section 37(2), for injury caused to them while they are engaged in normal brigade activities. Section 37(5) provides that a volunteer fire fighter who suffers a "specified injury" (as defined in section 37(6)) while engaged in normal brigade activities is entitled to payment of an amount of compensation in addition to the amount payable in accordance with section 37(2). (That additional amount is paid out of moneys appropriated by Parliament for that purpose.) In most cases in which a volunteer fire fighter suffers a specified injury, the amounts payable under sections 37(2) and 37(5) are paid to the fire fighter. However, if the volunteer fire fighter dies while engaged in normal brigade activities, the effect of section 37(8) is that the amounts payable under sections 37(2) and 37(5) are payable to the fire fighter's spouse (section 37(8)(a)) or a dependent child of the fire fighter (section 37(8)(b)).

Clause 15 inserts paragraph (aa) in section 37(8). The effect of the amendment will be that, in the event of the death of a volunteer fire fighter (while engaged in normal brigade activities), the amounts payable under sections 37(2) and 37(5) are also payable to the fire fighter's de facto partner (provided that the de facto partner was living in a de facto relationship with the fire fighter immediately before the death of the fire fighter and had lived on that basis with the fire fighter for at least 2 years before his or her death). Consequently, a de facto partner of a deceased fire fighter and a spouse of a deceased fire fighter will be treated equally under the amended Act (provided that the de facto partner lived in a de facto relationship with the deceased fire fighter for at least 2 years before the time of death).

## **Part 5 – Commercial Tenancy (Retail Shops) Agreement Act 1985**

### **Clause 16. Commercial Tenancy (Retail Shops) Agreement Act 1985 amended**

Amendments in this Part are to the *Commercial Tenancy (Retail Shops) Agreement Act 1985*.

### **Clause 17. Section 13A amended**

Clause 17 inserts the words "or de facto partner" after "spouse" in section 13A(4)(a) and section 13A(4)(c)(iv). The effect of the amendment to paragraph (a) will be that, for the purposes of section 13A, the head lessor and the head lessee under a head lease for a retail shop are taken to be related if one of them is, or is the spouse or de facto partner of, a lineal descendant of a grandparent of the other. The effect of the amendment to paragraph (c)(iv) will be that, for the purposes of section 13A, the head lessor and the head lessee under a head lease for a retail shop are taken to be related if one of them is a corporation and the other is, or is the spouse or de facto partner of, a lineal descendent of a grandparent of a person described in paragraph (c)(i), (c)(ii) or (c)(iii). Consequently, de facto partners and spouses will be treated equally under the amended section 13A of the Act.

## **Part 6 – Companies (Co-operative) Act 1943**

### **Clause 18. Companies (Co-operative) Act 1943 amended**

Amendments in this Part are to the *Companies (Co-operative) Act 1943*.

### **Clause 19. Section 152 amended**

Clause 19 amends section 152(2)(b) by inserting the words "de facto partner" after "wife, husband". The effect of the amendment will be that, for the purposes of an appeal against the rate or amount of remuneration of a director, a vote shall be deemed to be given on behalf of the director if it is given in respect of any shares held by the de facto partner of the director. Consequently, a de facto partner of a director and a spouse of a director will be treated equally under the amended section 152 of the Act.

### **Clause 20. Section 187 amended**

Clause 20 amends section 187(3) by substituting the words "spouse or de facto partner" in place of "husband" and "wife" and by removing gender specific language. The effect of the amendment will be that, for the purpose of Part VII of the Act (which is entitled "Management and Administration"), a share held by, or registered in the name of, the de facto partner or spouse of a person who is a contributory or by, or in the name of, a trustee for that de facto partner or spouse is deemed to have been held and registered in the name of the person. Consequently, de facto partners and spouses of either gender will be treated equally under the amended section 187 of the Act.

**Clause 21. Section 421 amended**

Clause 21 amends the definition of “employee” in section 421 by inserting the words “husband, de facto partner” after “wife”. The inclusion of the words “de facto partner” will mean that the scope of the definition of "employee" is broadened to include the de facto partner or husband of a director or any person at any time in the employment of a company. Consequently, de facto partners and spouses of either gender will be treated equally for the purposes of the definition of "employee" in the amended section 421 of the Act.

**Part 7 – Construction Industry Portable Paid Long Service Leave Act 1985**

**Clause 22. Construction Industry Portable Paid Long Service Leave Act 1985 amended**

Amendments in this Part are to the *Construction Industry Portable Paid Long Service Leave Act 1985*.

**Clause 23. Section 22 amended**

Where an employee dies after completing at least 10 years of service in the construction industry, the Construction Industry Long Service Leave Payments Board was previously able to make a lump sum payment pursuant to section 22 of the Act to "the widower of the employee, or such other person as the Board thinks fit". The effect of the amendment made by clause 23 will be that the Board may make a lump sum payment to a person who was the spouse or de facto partner of the employee immediately before his or her death (if the Board is of the opinion that the spouse or de facto partner was financially dependent on the deceased employee at the time of death), or to the estate of the deceased employee. Consequently, a de facto partner of an employee and a spouse of an employee will be treated equally under the amended section 22 of the Act.

In the event that there is no spouse or de facto partner, the spouse or de facto partner were not financially dependent on the employee, or there are conflicting claims between a financially dependent spouse and a financially dependent de facto partner, the Board will have the ability to make the lump sum payment to the estate of the deceased employee to be dispersed according to the employee's will, or in the absence of a will, in accordance with the provisions of the appropriate legislation relating to intestacy.

**Part 8 – Co-operative and Provident Societies Act 1903**

**Clause 24. Co-operative and Provident Societies Act 1903 amended**

Amendments in this Part are to the *Co-operative and Provident Societies Act 1903*.

**Clause 25. Section 18 amended**

Clause 25 amends section 18(1) by deleting the words “father, mother” and substituting the gender neutral words “de facto partner, parent”. The effect of the inclusion of the words "de facto partner" will be that a member of a registered society may nominate a de facto partner as the person to whom his or her property

in the society (of no more than \$100) may be credited when he or she dies, even though that person is an officer or servant of the society. Consequently, a de facto partner of a member and a spouse of a member will be treated equally under the amended section 18 of the Act. The substitution of the term "parent" for "father, mother" reflects the terminology that will be used in the *Artificial Conception Act 1985*, when it is amended by the *Acts Amendment (Lesbian and Gay Law Reform) Act 2001*. The later Act, which is not yet proclaimed, inserts a new section 6A into the *Artificial Conception Act 1985*, pursuant to which the same sex de facto partner of a woman whose child was conceived as a consequence of an artificial fertilization procedure will be deemed to be the "parent" of the child, provided that she consented to the artificial fertilization procedure.

### **Part 9 – Coroners Act 1996**

#### **Clause 26. Coroners Act 1996 amended**

Amendments in this Part are to the *Coroners Act 1996*, as it will be when amended by Bill No 60 of 2001.

#### **Clause 27. Section 37 amended**

Section 37(5) sets out the priority of persons who may object to a post mortem examination being directed by the Coroner. The amended definition of "senior next of kin" (of a deceased person) includes a de facto partner (of a deceased person). The effect of the amendment will be that a de facto partner of a deceased person who is of or over the age of 18 years and was living with the deceased person at the time of death is given the same priority as a spouse of a deceased person who was living with the deceased person at the time of death. The amendment accords with the amendment made by clause 4 to the definition of "senior next of kin" in the *Anatomy Act 1930*.

### **Part 10 – Country Housing Act 1998**

#### **Clause 28. Coroners Act 1996 amended**

Amendments in this Part are to the *Country Housing Act 1998*.

#### **Clause 29. Section 3 amended**

Clause 29 is self explanatory.

## **Part 11 – Credit Act 1984**

### **Clause 30. Credit Act 1984 amended**

Amendments in this Part are to the *Credit Act 1984*.

### **Clause 31. Section 5 amended**

Clause 31 amends the definitions of "commission charge" and "guarantor" so that spouses and de facto partners will be treated equally under the Act as the definitions are applied.

## **Part 12 – The Criminal Code**

### **Clause 32. The Criminal Code amended**

Amendments in this Part are to the *Criminal Code*.

### **Clause 33. Section 531 amended**

Clause 33 inserts the words "de facto partner" after the words "husband, wife" in sections 531(1) and 531(2). The effect of the amendments will be that gifts given or offered to the de facto partner of an agent are deemed to have been given to the agent and gifts received or solicited by the de facto partner of an agent are deemed to have been received or solicited by the agent. Consequently, a de facto partner of an agent and a spouse of an agent will be treated equally under the amended section 531 of the Act.

### **Clause 34. Section 684 amended**

In sections 684(2), 684(5) and 684(7) the gender neutral words "prisoner" and "prisoner's" are substituted for "his", "him" and "he".

Section 684(3)(b) relates to the power of the curator of the estate of a prisoner to make payments out of the prisoner's estate. The amendments made to section 684(3)(b) substitute the word "spouse" for "wife" and include a de facto partner or reputed de facto partner of a prisoner as a person to whom allowances for support and maintenance may be made. Consequently, a de facto partner (or reputed de facto partner) of a prisoner and a spouse (or reputed spouse) of a prisoner will be treated equally under the amended section 684 of the Act.

## **Part 13 – Criminal Injuries Compensation Act 1985**

### **Clause 35. Criminal Injuries Compensation Act 1985 amended**

Amendments in this Part are to the *Criminal Injuries Compensation Act 1985*.

### **Clause 36. Section 3 amended**

The definition of "close relative" (in relation to a deceased person) is amended in paragraph (b) by substituting the gender neutral terms "parent, grandparent or

step-parent” for “father, mother, grandfather, grandmother, stepfather or stepmother.” This amendment is consistent with the terminology which will be used in the *Artificial Conception Act 1985* when it is amended by the *Acts Amendment (Lesbian and Gay Law Reform) Act 2001*.

The definition of "close relative" (in relation to a deceased person) is amended in paragraph (d) by substituting the words “living in a de facto relationship ... for at least the previous 2 years” in place of “lived ... as husband or wife ... on a permanent and bona fide domestic basis ... if the deceased left any dependant who is the child of that union; or lived ... as husband or wife ... on a permanent and bona fide basis for not less than 3 years ... if the deceased did not leave any dependant who is a child of that union”. The effect of this amendment will be that, for the purposes of the definition of "close relative", a de facto partner of a deceased person who has lived on that basis with the deceased for at least the 2 years preceding the time of death is treated the same as a spouse of a deceased person. The existence of a child of the union will no longer be relevant to the question of whether a de facto partner comes within the definition of "close relative". The amendment made to paragraph (d) accords with the amendment made by clause 133 to the definition of "relative" in the *Members of Parliament (Financial Interests) Act 1992* and with the amendment made by clause 56 to the definition of "relative" in Schedule 2 to the *Fatal Accidents Act 1959*.

Section 3(2)(b) and section 3(3) are amended by substituting general neutral language. The amendments are consistent with the amendments made to section 6(3) of the *Fatal Accidents Act 1959* by clause 55 of this Bill, the amendments made to section 31A(5) of the *Property Law Act 1969* by clause 159 of this Bill and the amendments made to section 31(2) of the *Wills Act 1970* by clause 211 of this Bill. (The amendments are also consistent with the terminology that will be used in the *Artificial Conception Act 1985* when it is amended by the *Acts Amendments (Lesbian and Gay Law Reform) Act 2001*.)

A new subsection 3(3a) is inserted which is self explanatory. The new subsection is nearly identical to section 12A(2a) of the *Administration Act 1903*, section 31A(5a) of the *Property Law Act 1969* and section 31(3) of the *Wills Act 1970*. It is also nearly identical to the section 6(3a) which will be inserted into the *Fatal Accidents Act 1959* by clause 55 of this Bill and the section 4(a) which will be inserted into the *Inheritance (Family and Dependants Provision) Act 1972* by clause 91 of this Bill.

## **Part 14 – *Criminal Investigation (Identifying People) Act 2002***

### **Clause 37. *Criminal Investigation (Identifying People) Act 2002* amended**

Amendments in this Part are to the *Criminal Investigation (Identifying People) Act 2002*.

### **Clause 38. Section 3 amended**

Clause 38 amends the definition of "responsible person" (in relation to an incapable person) by including a de facto partner (of an incapable person).



Consequently, a de facto partner of an incapable person and a spouse of an incapable person will be treated equally under the amended Act.

### **Part 15 – *Criminal Property Confiscation Act 2000***

#### **Clause 39. Criminal Property Confiscation Act 2000 amended**

Amendments in this Part are to the *Criminal Property Confiscation Act 2000*.

#### **Clause 40. Section 22 amended**

Clause 40 amends section 22(2)(b) by inserting the words “, a de facto partner” after “spouse”. The effect of the amendment will be that crime-used property is not available for confiscation where the property (which was or is frozen) was or is owned or effectively controlled by the respondent and the freezing notice or freezing order has been set aside under section 82(3) of the Act in favour of the respondent’s de facto partner. Consequently, a de facto partner of a respondent and a spouse of a respondent will be treated equally under the amended section 22(2) of the Act.

#### **Clause 41. Section 82 amended**

Clause 41 amends section 82(3)(a) by inserting the words “, a de facto partner” after “spouse”. The effect of the amendment will be that the court may set aside a freezing notice or freezing order for property if the objector establishes that the objector is a de facto partner of an owner of the property and also establishes each of the matters set out in paragraphs (b)-(g) of section 82(3) of the Act. Consequently, a de facto partner of an owner of property and a spouse of an owner of property will be treated equally under the amended section 82 of the Act.

#### **Clause 42. Glossary amended**

Clause 42 is self explanatory.

### **Part 16 – *Curtin University of Technology Act 1966***

#### **Clause 43. *Curtin University of Technology Act 1966* amended**

Amendments in this Part are to the *Curtin University of Technology Act 1966*.

#### **Clause 44. Section 34 amended**

The power of the Council of Curtin University of Technology to make a Statute about long service leave entitlements of University staff members will be amended by: deleting section 34(1b)(b)(ii), thereby removing the anachronistic reference to “female members of the staff”; and by amending section 34(1b)(b)(iv) so that, in the case of death of a member of staff, the long service leave entitlements of the deceased person will pass to “that person’s estate”, irrespective of whether the deceased person is survived by a widow or any other dependents.

## **Part 17 – *District Court of Western Australia Act 1969***

### **Clause 45. *District Court of Western Australia Act 1969* amended**

Amendments in this Part are to the *District Court of Western Australia Act 1969*.

### **Clause 46. Section 14 amended**

Clause 46 amends section 14 by extending the provisions of the *Judges' Salaries and Pensions Act 1950* (which is also amended by this Bill) to a surviving de facto partner of a deceased District Court Judge. Consequently, a surviving spouse of a deceased District Court Judge and a surviving de facto partner of a deceased District Court Judge will be treated equally under the amended section 14 of the Act.

## **Part 18 – *Electricity Corporation Act 1994***

### **Clause 47. *Electricity Corporation Act 1994* amended**

Amendments in this Part are to the *Electricity Corporation Act 1994*.

### **Clause 48. Schedule 2 amended**

Clause 48 amends Schedule 2 to the Act by inserting references to a de facto partner. The effect of the amendment will be that the prohibition on loans (etc) being made to a director or the spouse of a director or a relative of a director or spouse is extended to apply to a de facto partner of a director and his or her relatives. This amendment accords with the amendment made to Schedule 2 to the *Water Corporation Act 1995* by clause 203 of this Bill.

## **Part 19 – *Family Court Act 1997***

### **Clause 49. *Family Court Act 1997* amended**

Amendments in this Part are to the *Family Court Act 1997*.

### **Clause 50. Section 19 amended**

Clause 50 amends section 19 by extending the provisions of the *Judges' Salaries and Pensions Act 1950* (which is also amended by this Bill) to a surviving de facto partner of a deceased Family Court Judge. Consequently, a surviving spouse of a deceased Family Court Judge and a surviving de facto partner of a deceased Family Court Judge will be treated equally under the amended section 19 of the Act.

### **Clause 51. Section 24 amended**

Section 24 sets out, among other things, the pension entitlements under the *Judges' Pensions Act 1968* (Cth) and the *Judges' Salaries and Pensions Act 1950* of a person who is both a Judge of the Family Court of Australia and a Judge of the Family Court of Western Australia. The amendment includes a surviving de facto

partner of such a person. Consequently, a surviving spouse of such a person and a surviving de facto partner of such a person will be treated equally under the amended section 24 of the Act.

## **Part 20 – *Fatal Accidents Act 1959***

### **Clause 52. *Fatal Accidents Act 1959* amended**

Amendments in this Part are to the *Fatal Accidents Act 1959*.

### **Clause 53. Section 3 amended**

Clause 53 deletes the words “mother and reputed father” from section 3(2)(b) and substitutes “parents”. (This amendment is consistent with the terminology that will be used in the *Artificial Conception Act 1985* when it is as amended by the *Acts Amendments (Lesbian and Gay Law Reform Act 2001)*.)

### **Clause 54. Section 5 amended**

Clause 54 amends section 5(2)(c)(v) by substituting the words “a pension to the spouse or a de facto partner of the deceased” for the words “pensions and widows”. The effect of the amendment will be that a pension paid or payable to the de facto partner of a deceased person is not to be taken into account in the assessment of damages in an action brought under the Act. Consequently, a de facto partner of a deceased person and a spouse of a deceased person will be treated equally under the amended section 5 of the Act.

### **Clause 55. Section 6 amended**

Section 6(3) is amended by substituting gender neutral language. The amendments are consistent with the amendments made to section 3(3) of the *Criminal Injuries Compensation Act 1985* by clause 36 of this Bill, the amendments made to section 31A(5) of the *Property Law Act 1969* by clause 159 of this Bill and the amendments made to section 31(2) of the *Wills Act 1970* by clause 211 of this Bill. (The amendments are also consistent with the terminology that will be used in the *Artificial Conception Act 1985* when it is amended by the *Acts Amendments (Lesbian and Gay Law Reform) Act 2001*.)

A new subsection 6(3a) is inserted which is self explanatory. The new subsection is nearly identical to section 12A(2a) of the *Administration Act 1903*, section 31A(5a) of the *Property Law Act 1969* and section 31(3) of the *Wills Act 1970*. It is also nearly identical to the section 3(3a) which will be inserted into the *Criminal Injuries Compensation Act 1985* by clause 36 of this Bill and the section 4(a) which will be inserted into the *Inheritance (Family and Dependents Provision) Act 1972* by clause 91 of this Bill.

### **Clause 56. Schedule 2 amended**

Clause 56 deletes paragraph (a) of the definition of “relative” (in relation to a deceased person), which refers to the “husband or wife of the deceased”, and inserts a new paragraph (a), which refers to “the spouse of the deceased” and a “de facto partner of the deceased who was living in a de facto relationship with the

deceased and had been living on that basis with the deceased for at least 2 years immediately before the deceased died". The effect of this amendment will be that a de facto partner of a deceased person and a spouse of a deceased person are treated equally for the purposes of the definition of "relative", (provided that the de facto partner of the deceased person was living in a de facto relationship with the deceased and had been living on that basis with the deceased for at least 2 years immediately before the deceased died).

Clause 56 amends paragraph (b) of the definition of "relative" (in relation to a deceased person), by substituting "parent, grandparent or step parent" in place of "father, mother, grandfather, grandmother, stepfather or stepmother". This amendment reflects the terminology that will be used in the *Artificial Conception Act 1985* when it is amended by the *Acts Amendments (Lesbian and Gay Law Reform) Act 2001*.

Clause 56 deletes paragraphs (g) and (h) of the definition of "relative" (in relation to a deceased person), which refer to a former husband or wife of the deceased person and persons who "lived with the deceased person as husband or wife on a permanent and bona fide domestic basis" for a minimum of 2 or 3 years, depending upon whether or not there is a "child of that union" and inserts a new paragraph (g), which refers to a former spouse or former de facto partner of the deceased person whom the deceased was legally obliged to make provision for with respect to financial matters. The effect of this amendment will be that a former de facto partner of a deceased person is treated the same as a former spouse of a deceased person for the purposes of the definition of "relative", (provided that the deceased person was legally obliged, immediately before his or her death, to make provision for the former de facto partner or the former spouse with respect to financial matters). The existence of a child of the union and the duration of the de facto relationship are no longer relevant to the question of whether a de facto partner falls within the definition of "relative".

### **Part 21 – *Firearms Act 1973***

#### **Clause 57. *Firearms Act 1973* amended**

Amendments in this Part are to the *Firearms Act 1973*.

#### **Clause 58. Section 8 amended**

Clause 58 is self explanatory.

### **Part 22 – *First Home Owner Grant Act 2000***

#### **Clause 59. *First Home Owner Grant Act 2000* amended**

Amendments in this Part are to the *First Home Owner Grant Act 2000*.

#### **Clause 60. Section 3 amended**

Clause 60 amends section 3(1) by inserting a definition of "de facto partner" (in relation to an applicant for a first home owner grant) and changing the definition of

“spouse” to indicate that it is “affected” rather than “given” by section 7. The definition of "de facto partner" is linked to the "commencement date of the eligible transaction to which the application relates".

**Clause 61. Section 7 amended**

Clause 61 repeals section 7(1) and inserts a new definition of “spouse” (as it relates to an applicant for a first home owner grant). The definition of "spouse" is linked to the "commencement date of the eligible transaction to which the application relates". The reference to a person to whom the applicant is not legally married but with whom the applicant lives on a genuine domestic basis is no longer required in section 7 as it will be covered by the new definition of "de facto partner" in the *Interpretation Act 1984*, when it is amended by the *Acts Amendment (Lesbian and Gay Law Reform) Act 2001*.

**Clause 62. Section 11 amended**

Section 11 relates to eligibility for a first home owner grant where an earlier grant has been made under the Act. Clause 62 amends section 11 by inserting reference to a de facto partner, so that an applicant will be ineligible for a first home owner grant if the applicant’s de facto partner has been a party to another such application and a grant was paid on the application. Consequently, a de facto partner of an applicant (as defined in clause 60) and a spouse of an applicant (as defined in clause 60 of the Act) will be treated equally under the amended section 11 of the Act.

**Clause 63. Section 12 amended**

Section 12 relates to eligibility for a first home owner grant where there is "a relevant interest" in residential property. Clause 63 amends section 12 by inserting reference to a de facto partner, so that an applicant will be ineligible for a first home owner grant if the applicant’s de facto partner has held a relevant interest in specified residential property. Consequently, a de facto partner of an applicant (as defined in clause 60) and a spouse of an applicant (as defined in clause 61 of the Act) will be treated equally under the amended section 12 of the Act.

**Clause 64. Section 65 amended**

Clause 64 amends the definition of “confidential information” by inserting reference to a de facto partner. The effect of the amendment will be that information obtained in the course of the administration of the Act about a de facto partner of an applicant is confidential information. Consequently, a de facto partner of an applicant (as defined in clause 60) and a spouse of an applicant (as defined in clause 61) will be treated equally for the purposes of the amended definition of "confidential information".

**Part 23 – *Freedom of Information Act 1992***

**Clause 65. *Freedom of Information Act 1992* amended**

Amendments in this Part are to the *Freedom of Information Act 1992*.

**Clause 66. Glossary amended**

Clause 66 is self explanatory.

**Part 24 – *Gold Corporation Act 1987***

**Clause 67. *Gold Corporation Act 1987* amended**

Amendments in this Part are to the *Gold Corporation Act 1987*.

**Clause 68. Schedule 1 amended**

Clause 5 of Schedule 1 to the Act places restrictions on loans to directors. Subclause 5(1) is amended by inserting "or a de facto partner" after "spouse". The effect of the amendment will be that the Gold Corporation may not make a loan or provide financial accommodation to the de facto partner of a director except on terms no more favourable than those available to other customers. Consequently, a de facto partner of a director and a spouse of a director will be treated equally under the amended clause 5 of Schedule 1 to the Act. Subclause (2) is deleted, as it is no longer necessary.

**Part 25 – *Government Employees’ Housing Act 1964***

**Clause 69. *Government Employees’ Housing Act 1964* amended**

Amendments in this Part are to the *Government Employees’ Housing Act 1964*.

**Clause 70. Section 28 amended**

Clause 70 amends section 28(1)(d) by inserting “or de facto partner” after "spouse". The effect of the amendment will be that the Government Employees’ Housing Authority may determine the tenancy of any premises let under the Act if the de facto partner of the tenant owns land where the tenant might reasonably reside. Consequently, a de facto partner of a tenant and a spouse of a tenant will be treated equally under the amended section 28 of the Act.

**Part 26 – *Health Act 1911***

**Clause 71. *Health Act 1911* amended**

Amendments in this Part are to the *Health Act 1911*.

**Clause 72. Section 3 amended**

Clause 72 is self explanatory.

**Clause 73. Section 147 amended**

The effect of this clause is to give the de facto partner of the registered keeper of a lodging house the same right to keep the lodging house following the death of the registered keeper as any other member of the person's family.

**Clause 74. Section 159 amended**

The effect of this clause is that a de facto partner may be deemed to be a family member in proceedings for breach of provisions relating to lodging-houses.

**Clause 75. Section 168 amended**

The effect of this clause is that the de facto spouse will be treated in the same way as the spouse of the licensee of an eating house in the event that the licensee dies, becomes bankrupt or subject to an administration order under the *Guardianship and Administration Act 1900*.

**Clause 76. Section 302 amended and consequential amendment**

The effect of this clause is to repeal notification obligations (and related offence provisions) in respect of a medical practitioner whose patient is suffering from a venereal disease, to the extent that those obligations relate to an intended contract of marriage of the patient. The obligation on a medical practitioner to warn the patient of the contagious nature of the venereal disease are retained as is the offence provision in relation to this duty.

**Part 27 – *Health Services (Conciliation and Review) Act 1995***

**Clause 77. *Health Services (Conciliation and Review) Act 1995* amended**

Amendments in this Part are to the *Health Services (Conciliation and Review) Act 1995*.

**Clause 78. Section 20 amended**

Clause 78 is self explanatory.

**Part 28 – *Hospital Fund Act 1930***

**Clause 79. *Hospital Fund Act 1930* amended**

Amendments in this Part are to the *Hospital Fund Act 1930*.

**Clause 80. Section 2 amended**

The definition of “dependant” is amended to recognise a de facto partner of a person as a dependant of the person.

**Clause 81. Section 11 repealed**

Clause 81 is self explanatory.

## **Part 29 – *Housing Act 1980***

### **Clause 82. *Housing Act 1980* amended**

Amendments in this Part are to the *Housing Act 1980*.

### **Clause 83. Section 5 amended**

Clause 83 amends section 5(1)(c) by inserting “, de facto partner” after "spouse". The effect of the amendment will be that a reference in the Act to "the family of a person" includes a de facto partner of that person in the same way as it includes a spouse of that person. The definition of “spouse” in section 5(1)(a) is deleted, as it no longer applies.

### **Clause 84. Section 31 amended**

Section 31 currently provides that the Commission may credit rent paid by the purchaser of a house and land or by the spouse or deceased spouse of the purchaser towards the purchase price of the house and land. The amendment extends this provision to include rent paid by the de facto partner or deceased de facto partner of the purchaser.

## **Part 30 – *Housing Loan Guarantee Act 1957***

### **Clause 85. *Housing Loan Guarantee Act 1957* amended**

Amendments in this Part are to the *Housing Loan Guarantee Act 1957*.

### **Clause 86. Schedule amended**

The Schedule to the Act deals with approved housing schemes. Clause 1(1)(a) relates to eligibility for a loan under the “General loan scheme” and clause 2(1)(a) to eligibility under the “Deferred repayment loan scheme”. The amendment to each of these clauses inserts “, or de facto partner” after “spouse”. The effect of the amendments will be that, to be eligible for either of these loans, the applicant must make a satisfactory declaration that the house which is the subject of the application is intended to be used for the applicant and either the spouse or de facto partner and dependents of the applicant.

## **Part 31 – *Industrial Relations Act 1979***

### **Clause 87. *Industrial Relations Act 1979* amended**

Amendments in this Part are to the *Industrial Relations Act 1979*, as it will be when it is amended by the Labour Relations Reform Bill 2002.

### **Clause 88. Section 20 amended**

Section 20 deals with conditions of service of members of the Commission. Clause 88 amends section 20(12) by substituting “a surviving spouse, de facto partner or child” for “the widow or widower and children” in both places where



these words appear. The effect of the amendments will be that the provisions of the *Judges' Salaries and Pensions Act 1950* (which is also amended by this Bill) apply to a surviving de facto partner of the President of the Commission in the same way that they apply to a surviving spouse of the President of the Commission.

**Clause 89. Section 97WY amended**

Clause 89 amends section 97WY(1)(a) by deleting "of the person with a mental disability" and substituting "or de facto partner, of the person with a mental disability and has reached 18 years of age". The effect of the amendment will be that a de facto partner (who is 18 years or older) of a person with a mental disability may be approved as a representative of the person under the Act. Consequently, a de facto partner of a person with a mental disability and a spouse of a person with a mental disability will be treated equally under the amended section 97WY of the Act, (provided that the de facto partner is 18 years or older). (The age requirement being inserted into paragraph (a) of section 97WY(1) is consistent with the age requirement already included in paragraph (b) of section 97WY(1).)

**Part 32 – *Inheritance (Family and Dependants Provision) Act 1972***

**Clause 90. *Inheritance (Family and Dependants Provision) Act 1972* amended**

Amendments in this Part are to the *Inheritance (Family and Dependants Provision) Act 1972*, as it will be when it is amended by the *Acts Amendment (Lesbian and Gay Law Reform) Act 2001*.

**Clause 91. Section 4 amended**

A new subsection 4(4a) is inserted which is self explanatory. The new subsection is nearly identical to section 12A(2a) of the *Administration Act 1903*, section 31A(5a) of the *Property Law Act 1969* and section 31(3) of the *Wills Act 1970*. It is also nearly identical to the section 3(3a) which will be inserted into the *Criminal Injuries Compensation Act 1985* by clause 36 of this Bill and the section 6(3a) which will be inserted into the *Fatal Accidents Act 1959* by clause 55 of this Bill.

**Part 33 – *Judges' Salaries and Pensions Act 1950***

**Clause 92. *Judges' Salaries and Pensions Act 1950* amended**

Amendments in this Part are to the *Judges' Salaries and Pensions Act 1950*.

**Clause 93. Section 2 amended**

Clause 93 amends section 2 by deleting the definition of "Schedule" and inserting a definition of "spouse or de facto partner" in relation to a Judge or former Judge who has died.

#### **Clause 94. Section 7 amended**

Derivative pensions currently payable to “the widows and children of Judges and retired Judges” are set out in the Second Schedule to the Act. The amendment to section 7(1) extends the provisions of the Second Schedule to include de facto partners of Judges and retired Judges. The substitution of “spouses” for “widow” in the amendment to section 7(1) obviates the need for the existing section 7(3), which is deleted. The new section 7(3) provides that a pension is not payable to a de facto partner of a Judge or former Judge who died before the commencement of the subsection. (The repealed widows/widower arrangements still apply to Judges and former Judges who died before the commencement of the subsection.)

#### **Clause 95. Section 8A amended**

At present, a widow’s entitlement to a pension under the Act is reduced by an amount equivalent to the amount paid or payable to that widow under the *Superannuation and Family Benefits Act 1938* if the deceased Judge had previously contributed under the provisions of that Act. The amendments to section 8A extend the provisions of section 8A to include spouses and de facto partners of Judges and retired Judges.

#### **Clause 96. Section 8B amended**

Section 8B relates to the annual adjustment of Judges’ pensions. Currently, section 8B(6)(a) provides that the section does not apply to the pension of a Judge who retires on or after the commencement of the 1987 Act or a pension payable under the Second Schedule to his widow or any eligible child. Section 8B(6)(b) makes similar provision in respect of the widow and any eligible child of a Judge who dies prior to retirement and after the commencement of the 1987 Act. The amendments to these sections delete references to the “widow” of a Judge and substitute the surviving “spouse” or surviving “de facto partner” of a Judge. Consequently, for the purposes of the amended section 8B, a surviving de facto partner of a Judge is treated the same as a surviving spouse of a Judge. Section 8B(5) is deleted.

#### **Clause 97. Section 14 amended**

Pensions or allowances payable under the Act are not payable to a Judge or the widow or children of a Judge who has been removed from office, unless the Governor decides otherwise. Clause 97 deletes the reference to “widow” and substitutes “spouse, de facto partner”. The effect of the amendment will be that the amended section 14 equally applies to the spouse or de facto partner of such a Judge.

#### **Clause 98. Second Schedule amended**

Clause 98 repeals Part 1 of the Second Schedule to the Act and inserts a new Part 1 which is consistent with existing provisions, except that the words “spouse or de facto partner” are substituted for “widow”.

Part II of the Second Schedule deals with “Children's Allowances”. The amendments made to Division A of Part II of the Second Schedule by clause 98 are designed to make the language of that Division gender neutral. Division B of

Part II of the Second Schedule is amended by deleting "widow" and substituting "spouse or de facto partner".

Part III of the Second Schedule contains "General Provisions" relating to Judges' pensions. Clause 98 inserts Item 3 which provides for circumstances where more than one person is entitled to a pension as the spouse or de facto partner of a particular Judge or former Judge.

### **Part 34 – *Land Tax Assessment Act 1976***

#### **Clause 99. *Land Tax Assessment Act 1976* amended**

Amendments in this Part are to the *Land Tax Assessment Act 1976*.

#### **Clause 100. Schedule amended**

Clause 100 amends clause 8 of the Schedule to the Act by updating the references to relevant statutes in the clause and inserting a reference to war widowers in addition to war widows. Clause 100 also inserts paragraph (iiia) into clause 9(a) of the Schedule to the Act. The new paragraph refers to owners of land who have lived in a de facto relationship with each other for at least 2 years, (whether or not they still live on that basis), where at least one of them uses the land as his or her primary residence. The effect of the amendment will be that de facto partners are treated the same as spouses (who are referred to in the existing paragraph (iii)) for the purpose of clause 9(a) of the Schedule to the Act, (provided that the de facto partners have lived in a de facto relationship with each other for at least 2 years).

### **Part 35 – *Life Assurance Companies Act 1889***

#### **Clause 101. *Life Assurance Companies Act 1889* amended**

Amendments in this Part are to the *Life Assurance Companies Act 1889*.

#### **Clause 102. Section 70 amended**

Section 70 provides that, if the holder of a life assurance policy upon his or her own life for a sum of not more than 200 pounds dies, and probate or administration has not been taken out within 3 months after the person's death, the company may pay the amount of the policy. The amendment includes the de facto partner of the person as a person to whom the policy may be paid. Consequently, a de facto partner of such a person and a spouse of such a person will be treated equally for the purposes of the amended section 70 of the Act.

### **Part 36 – *Liquor Licensing Act 1988***

#### **Clause 103. *Liquor Licensing Act 1988* amended**

Amendments in this Part are to the *Liquor Licensing Act 1988*.

#### **Clause 104. Section 3 amended**

Clause 104 is self explanatory.

#### **Clause 105. Section 125 amended**

Section 125 relates to defences to a complaint for an offence relating to the sale or supply of liquor to a juvenile. The effect of the amendment to section 125(a)(ii) will be that it is a defence to such an offence to show that the juvenile was the de facto partner of a lodger of the premises. The amendment to section 125(2)(b) includes the de facto partner of the juvenile as a person who shall be taken to be a responsible adult for the purpose of proceedings under Division 9 of Part 4 of the Act (which is entitled "Juveniles"). The existing section 125(3) is repealed because the amendment to section 125(2)(b) makes it redundant. The new section 125(3) inserts a definition of "a member of the family" which includes a de facto partner.

### **Part 37 – *Local Courts Act 1904***

#### **Clause 106. *Local Courts Act 1904* amended**

Amendments in this Part are to the *Local Courts Act 1904*.

#### **Clause 107. Section 126 amended**

Currently, section 126 provides that a bailiff may not seize wearing apparel to the value of \$100 of the "wife" of a person named in a warrant of execution. Clause 107 amends section 126 by substituting "spouse or de facto partner" for "wife". Consequently, a de facto partner of a person named in a warrant of execution and a spouse of such a person will be treated equally under the amended section 126 of the Act. This amendment accords with the amendment made to section 118 of the *Supreme Court Act 1935* by clause 198 of this Bill.

### **Part 38 – *Local Government Act 1995***

#### **Clause 108. *Local Government Act 1995* amended**

Amendments in this Part are to the *Local Government Act 1995*.

#### **Clause 109. Section 5.62 amended**

The effect of the amendments made to section 5.62 by clause 109 will be that a person is to be treated as being "closely associated" with a relevant person if the person is the de facto partner of the relevant person (provided that the de facto partner is living with the relevant person) or the person has a relationship specified in the existing paragraphs (a) to (d) in respect of the relevant person's de facto partner. Consequently, de facto partners and spouses will be treated equally under the amended section 5.62 of the Act.

#### **Clause 110. Section 5.63 amended**

Clause 110 amends section 5.63 by inserting reference to a de facto partner. The effect of the amendment will be that a relevant person must disclose an interest relating to the pay, terms or conditions of an employee if the person's de facto partner is the employee and the de facto partner is living with the relevant person. Consequently, a de facto partner of a relevant person and a spouse of a relevant person will be treated equally for the purposes of the amended section 5.63 of the Act.

#### **Clause 111. Section 5.64 repealed**

Section 5.64 is repealed because the amendments contained in clauses 109 and 110 render it redundant.

#### **Clause 112. Section 5.74 amended**

Clause 112 amends the definition of "relative" (in relation to a relevant person) to include a de facto partner of the relevant person and a parent, grandparent, brother, sister, uncle, aunt, nephew, niece or lineal descendent of the relevant person's "de facto partner". Sections 5.74(4) and (5) are repealed because the amendments to the definition of "relative" mean that they are otiose.

#### **Clause 113. Section 9.44 amended**

Section 9.44 establishes a presumption that, unless the contrary is proved, spouses, are living with one another. Clause 113(1) extends the presumption to de facto partner's. This amendment makes section 9.44(2) redundant and it is therefore repealed.

### ***Part 39 – Married Women's Property Act 1892 and related amendments***

#### **Clause 114. *Married Women's Property Act 1892* repealed and *Married Women's Property Act 1895* repealed.**

According to the common law doctrine of unity of spouses, a husband and a wife became one person upon entering into marriage and a wife's property vested in her husband. A married woman lacked contractual capacity, because she had no legal personality separate from that of her husband, no property to dispose of or acquire, and no assets with which to satisfy contractual liabilities. This position was mitigated by equity's development of the doctrine of the married woman's separate estate; pursuant to which a husband was required to hold property as trustee for his wife if it was conveyed to his wife by words which indicated that it was for her sole and separate use. The contractual capacity of married women in Western Australia was further enlarged by the *Married Women's Property Act 1892* and the *Married Women's Property Act 1895*.

Clause 114 repeals the *Married Women's Property Act 1892* and the *Married Women's Property Act 1895*. The Acts are replaced (to the extent that replacement is necessary) by the provisions inserted into the *Law Reform (Miscellaneous Provisions) Act 1941* by clause 115 of this Bill.

### **Clause 115. Law Reform (Miscellaneous Provisions) Act 1941 amended**

Clause 115 amends the *Law Reform (Miscellaneous Provisions) Act 1941* by repealing section 2 (which is entitled “Abolition of husband’s liability for wife’s torts”) and section 3 (which is entitled “Abolition of action for loss of wife’s society or services”) and substituting two new sections which are self explanatory.

### **Clause 116. Companies Co-operative Act 1943 amended**

Clause 116 amends the *Companies Co-operative Act 1943* by repealing section 183 (which is entitled "Marriage of female contributory").

### **Clause 117. The Criminal Code amended**

Clause 117 amends the *Criminal Code*.

Section 32 (which is entitled "Compulsion of husband") is repealed. Consequently, the general rule of duress provided in section 31 of the *Criminal Code* will now apply to all accused persons, regardless of their gender or marital status.

Section 35 (which is entitled "Liability of husband and wife for offences committed by either with respect to the other’s property") is also repealed. That section currently provides that spouses who live together are not criminally responsible for offences committed with respect to the property of each other. After the repeal of section 35, such offences will be dealt with on the same basis as if the victim and the offender were not married.

Clause 117 also repeals section 377 (which is entitled "Husband and Wife") and subsection 584(7) (which relates to an indictment against a man for an offence committed by him against "his wife’s separate property").

### **Clause 118. Hospitals and Health Services Act 1927 amended**

Clause 118 amends the *Hospitals and Health Services Act 1927* by deleting the reference in section 33(2) to the cost of hospital service granted to a married woman living with her husband constituting a debt payable by her husband.

### **Clause 119. Limitation Act 1935 amended**

Clause 119 amends the *Limitation Act 1935*.

Section 16 of the Act currently refers to the "disability" of "coverture", which is a reference to the status of a woman during, and arising out of, marriage. The doctrine of coverture arose from the common law doctrine of unity of spouses. As a consequence of the amendments made by clause 115, clause 119 deletes the reference to "coverture" in section 16.

Section 47 of the Act currently refers to the doctrine of the married woman's separate estate. As a consequence of the amendments made by clause 115, clause 119 deletes the reference to that doctrine by removing the words "shall run against a married woman entitled in possession to her separate use, whether with or without a restraint upon anticipation; but" from section 47(1)(b).

#### **Clause 120. Local Courts Act 1904 amended**

Clause 120 amends the *Local Courts Act 1904* by deleting the reference to "coverture" in section 48(b)(ii) and by repealing section 130(5), which constrains the power to commit to prison a "married woman" who defaults in payment of a debt unless she has the means to pay out of her "separate estate".

#### **Clause 121. Motor Vehicle (Third Party Insurance) Act 1943 amended**

As a result of the common law doctrine of unity, spouses were precluded any claim for a tort committed by one against the other during marriage. Furthermore, all litigation between spouses was enjoined during their marriage, even if the litigation related to a pre-nuptial tort committed by one against the other. Sections 6A and 8A of the *Motor Vehicle (Third Party Insurance) Act 1943* lifted this immunity (in certain circumstances) with respect to motor vehicle accidents. As a consequence of the amendments made by clause 115 of this Bill, clause 121 amends the *Motor Vehicle (Third Party Insurance) Act 1943* by repealing section 6A (which is entitled "Spouse may sue in certain cases") and section 8A (which is entitled "Liability of Commission where spouse injured") and deleting the reference to section 6A from section 29A.

#### **Clause 122. Newspaper Libel and Registration Act 1884 amended**

Clause 122 amends the *Newspaper Libel and Registration Act 1884* by removing the reference to "coverture" in section 7.

#### **Clause 123. Parliament (Qualification of Women) Act 1920 repealed**

As a result of the common law doctrine of unity of spouses, married women were not considered to be persons in the eyes of the law. Consequently, common law courts consistently denied married women the opportunity to enter professional life unless they were expressly empowered to do so by the legislature. The *Parliament (Qualification of Women) Act 1920* was enacted to expressly allow women to be elected to (and sit and vote as) a Member of the Legislative Council or the Legislative Assembly. As a consequence of the amendments made by clause 115 of this Bill, the *Parliamentary (Qualification of Women) Act 1920* is no longer necessary, and it is therefore repealed by clause 123.

#### **Clause 124. Property Law Act 1969 amended and transitional provision**

At common law a person vesting property in a married woman could ensure that it would not be disposed of by the married woman under the influence of her husband by expressly imposing a "restraint upon anticipation or alienation". Such a restraint, which was co-extensive with the woman's status as a married woman, invalidated any transaction which would have the effect of disposing of the property. Section 31 of the *Property Law Act 1969* provided that any instrument executed on or after 6 December 1962 was invalid to the extent that it purported to create a restriction upon anticipation or alienation attached to the enjoyment of any property by a woman that could not have been attached to the enjoyment of that property by a man. Section 31 did not, however, invalidate restraints upon anticipation or alienation that existed prior to 6 December 1962. As a consequence of the amendments made by clause 115 of this Bill, clause 124 repeals section 31 of the *Property Law Act 1969* and expressly invalidates a restriction upon

anticipation or alienation attached to the enjoyment of any property by a woman which, at the time it was attached, could not have been attached to the enjoyment of that property by a man, and which continued to have effect after the commencement of section 31 of the *Property Law Act 1969*.

**Clause 125. Restraint of Debtors Act 1984 amended**

Clause 125 amends the *Restraint of Debtors Act 1984* by repealing section 4, which refers to the *Married Women's Property Act 1892* (which will be repealed by clause 114 of this Bill).

**Clause 126. Supreme Court Act 1935 amended**

Clause 126 amends the *Supreme Court Act 1935* by deleting the words "; and to take the acknowledgments of deeds executed by married women" from section 175(1) and by repealing section 175(3).

**Clause 127. Town Allotments (Boundaries) Act 1844 amended**

Clause 127 amends the *Town Allotments (Boundaries) Act 1844* by deleting the reference to "a *feme covert*" in section 21. (The phrase *feme covert* means a married woman, under the coverture of her husband.)

**Clause 128. Transfer of Land Act 1893 amended**

Clause 128 amends the *Transfer of Land Act 1893*.

Section 3(1) is amended by deleting the reference to the *Married Women's Property Act 1892* (which will be repealed by section 114 of this Bill).

Section 84 is amended by removing the reference to a proprietor of land transferring the land to his or her spouse, as it is discriminatory and is no longer required.

Section 85 is amended by removing the reference to married women acknowledging instruments which have been certified by the Registrar in the form of the Tenth Schedule to the Act, as it is discriminatory and no longer necessary.

Section 188 is amended by deleting the reference to "coverture".

The Tenth Schedule to the Act is repealed, as a consequence of the amendments made to section 85.

**Clause 129. Trustee Ordinance Act 1854 amended**

Clause 129 amends the *Trustee Ordinance Act 1854* by deleting the reference to married women in the definitions of "convey" and "conveyance" in section 2.

**Part 40 – Medical Act 1894**

**Clause 130. Medical Act 1894 amended**

Amendments in this Part are to the *Medical Act 1894*.



**Clause 131. Section 21B amended**

Clause 131 is self explanatory.

**Part 41 – *Members of Parliament (Financial Interests) Act 1992***

**Clause 132. *Members of Parliament (Financial Interests) Act 1992* amended**

Amendments in this Part are to the *Members of Parliament (Financial Interests) Act 1992*, as it will be when amended by the *Acts Amendment (Lesbian and Gay Law Reform) Act 2001*.

**Clause 133. Section 3 amended**

Subsection 3(1) contains a definition of "relative" (in relation to any Member) that includes the de facto partner of the Member or of any relative specified in paragraph (a) of the definition. Subsection 3(5) currently provides that, for the purposes of certain sections of the Act, the reference in the definition of "relative" to the de facto partner of the Member or of any relative specified in paragraph (a) of that definition means a person who was, at the relevant time, living with the Member or relative as a de facto spouse if either a child had been born of the union or the person has been so living during the whole of the 3 previous years. Clause 133 substitutes the phrase "de facto partner" for "de facto spouse", reduces the time requirement (in respect of living in the de facto relationship) to 2 years and removes the reference to a child of the union. The effect of the amendment will be that a de facto partner is treated the same as a spouse for the purposes of the definition of "relative", (provided that the de facto partner had been living in the de facto relationship for the 2 years immediately preceding the relevant time). The amendment accords with the amendment made by clause 36 to the definition of "close relative" in the *Criminal Injuries Compensation Act 1985*.

**Part 42 – *Mental Health Act 1996***

**Clause 134. *Mental Health Act 1996* amended**

Amendments in this Part are to the *Mental Health Act 1996*.

**Clause 135. Section 3 amended**

Clause 135 is self explanatory.

**Clause 136. Section 193 amended**

The effect of this clause is that restrictions on exercising of powers in respect of a related person that apply to a psychiatrist, medical practitioner or mental health practitioner extend to exercising powers in respect of a de facto partner of the practitioner.

### **Clause 137. Schedule 3 amended**

Schedule 3 sets out the circumstances in which an official visitor has an interest that disqualifies him or her from carrying out functions of an official visitor in relation to a person under the *Mental Health Act 1996*. The effect of this amendment is that a de facto partner will be treated in the same way as a spouse in determining if an official visitor has a disqualifying interest.

## **Part 43 – *Mine Workers’ Relief Act 1932***

### **Clause 138. *Mine Workers’ Relief Act 1932* amended**

Amendments in this Part are to the *Mine Workers’ Relief Act 1932*.

### **Clause 139. Schedule 2 amended**

Clause 139 amends the definition of "dependants" in paragraph 2 of Part I of Schedule 2 to the Act by substituting gender neutral language; adopting the terminology that will be used in the *Artificial Conception Act 1985* when it is amended by the *Acts Amendment (Lesbian and Gay Law Reform) Act 2001*; and including a "de facto partner" and a "surviving de facto partner" (until that partner subsequently marries or enters into a further de facto relationship). Clause 139 also inserts a definition of "surviving spouse or surviving de facto partner". Consequently, a de facto partner (and a surviving de facto partner) and a spouse (and a surviving spouse) will be treated equally for the purpose of the amended definition of "dependants" in clause 2 of Part I of Schedule 2 to the Act.

Clause 139 also amends paragraph 12(4) of Part III of Schedule 2 to the Act (which relates to offers to pay lump sums in redemption of weekly payments) by deleting references to "wife" and substituting the gender neutral "spouse" and "de facto partner".

### **Clause 140. Schedule 3 amended**

Clause 140 amends the clause in Schedule 3 to the Act which is now designated clause "1." by substituting the gender neutral terms "mine worker", "spouse" and "surviving spouse" for "single man", "wife" and "widow" and by inserting a de facto partner or surviving de facto partner of the mine worker as a person entitled to benefits under the Act. The amendments to the clause in Schedule 3 which is now designated clause "2." make the same substitutions in respect of the regulation of payments under the Act. The new clause "3." of Schedule 3 to the Act is self explanatory.

## **Part 44 – *Mine Workers’ Relief (Payments Authorisation) Act 1940***

### **Clause 141. *Mine Workers’ Relief (Payments Authorisation) Act 1940* repealed.**

Clause 141 repeals the *Mine Workers’ Relief (Payments Authorisation) Act 1940*, as it contains discriminatory provisions and it is redundant.

## **Part 45 – *Minimum Conditions of Employment Act 1993***

### **Clause 142. *Minimum Conditions of Employment Act 1993* amended**

Amendments in this Part are to the *Minimum Conditions of Employment Act 1993*, as it will be when it is amended by the Labour Relations Reform Bill 2002.

### **Clause 143. Section 3 amended**

The definition of "de facto spouse" is deleted, so as not to be inconsistent with the definition of "de facto partner" which will be included in the *Interpretation Act 1984* when it is amended by the *Acts Amendment (Lesbian and Gay Law Reform) Act 2001*.

### **Clause 144. Section 20A amended**

Clause 144 is self explanatory.

### **Clause 145. Section 27 amended**

Clause 145 is self explanatory.

### **Clause 146. Section 32 amended**

Clause 146 amends the definitions of "adoption" and "expected date of birth" by inserting "or de facto partner" after "spouse" in both cases. The effect of the amendments will be that de facto partners and spouses are treated equally for the purposes of the amended definitions of "adoption" and "expected date of birth" in section 32 of the Act. (The definition of "adoption" is also amended by deleting the word "natural" from "... the natural child ..." This amendment is made in order to avoid confusion in relation to a child born to an employee, or an employee's spouse or de facto partner, as a result of an assisted pregnancy such as an IVF program.) Clause 146 also deletes the definition of "spouse" in section 32 of the Act, as it is no longer necessary.

### **Clause 147. Section 33 amended**

Clause 147 amends section 33(3). (The amendments interrelate with the amendments made to section 33(1) and section 33(4) by clause 149 of this Bill.) The effect of the amendments made to section 33(3) will be that an employee will not be entitled to take parental leave at the same time as the employee's spouse or de facto partner (except for one week of parental leave taken immediately after the birth of the child, or the placement of a child for possible adoption.). Consequently, a de facto partner and a spouse will be treated equally under the amended section 33(3) of the Act.

### **Clause 148. Section 34 amended**

Section 34 currently provides that a female employee who has given notice of her intention to take parental leave, other than for adoption, is to start parental leave 6 weeks before the expected date of birth. Clause 148 amends section 34 so that it only applies to a female employee who is pregnant. This prevents section 34

applying to a female employee who has a same sex de facto partner who is pregnant.

#### **Clause 149. References to “de facto partner” inserted**

Clause 149 inserts references to “de facto partner” in: section 33(1)(a), to provide an entitlement to parental leave to an employee in respect to the birth of a child to the employee, or the spouse or de facto partner of the employee; section 33(4), to provide that the entitlement to parental leave is reduced by any period of parental leave taken by the employee’s de facto partner in the same way as in the case of the employee’s spouse; section 35, the effect of which will be that the requirement that an employee seeking to take parental leave provide the employer with a medical certificate in respect of the pregnancy and expected date of birth is the same irrespective of whether the expectant woman is the employee, or the employee’s spouse or de facto partner; and section 36, the effect of which will be that an employee who has taken or given notice of taking parental leave must notify the employer of particulars of parental leave taken or to be taken by the employee’s spouse or de facto partner in respect of the same child.

### **Part 46 – *Mining Act 1978***

#### **Clause 150. *Mining Act 1978* amended**

Amendments in this Part are to the *Mining Act 1978*, as it will be when amended by the *Mining Amendment Act 2002*.

#### **Clause 151. Section 8 amended**

Section 8(4)(a) will be inserted into the *Mining Act 1978* by the *Mining Amendment Act 2002*. (The later Act was assented to on 8 July 2002, but is not yet in operation.) Clause 151 substitutes the phrase “de facto partner” for the phrase “de facto spouse” in section 8(4)(a)(i). It also makes self explanatory amendments to paragraphs (ii) - (iv) of section 8(4)(a), in order to remove any uncertainty as to those persons that would be included within the descriptions contained in those paragraphs.

### **Part 47 – *The Partnership Act 1895***

#### **Clause 152. *The Partnership Act 1895* amended**

Amendments in this Part are to the *Partnership Act 1895*.

#### **Clause 153. Section 8 amended**

Section 8 prescribes the rules to be applied in determining whether a partnership exists. The effect of the amendment to section 8(3)(a) will be that a person who, immediately before the death of the deceased partner, was the spouse or de facto partner of the partner and receiving an annuity from the business in which the deceased person was a partner, is not by reason only of such receipt, a partner in the business.

## **Part 48 – *Police Act 1892***

### **Clause 154. *Police Act 1892* amended**

Amendments in this Part are to the *Police Act 1892*.

### **Clause 155. Section 27 repealed**

Clause 155 is self explanatory.

### **Clause 156. Section 66 amended**

Clause 156 is self explanatory. The repeal of section 66(10) is consistent with the recommendation of the 1992 report of the Western Australian Law Reform Commission on Police Act Offences.

### **Clause 157. Section 138 amended**

Clause 157 amends section 138 by inserting a definition of “close relative” which includes a de facto partner

## **Part 49 – *Property Law Act 1969***

### **Clause 158. *Property Law Act 1969* amended**

Amendments in this Part are to the *Property Law Act 1969*.

### **Clause 159. Section 31A amended**

Clause 159 amends section 31A(5) by substituting gender neutral language. The amendments are consistent with the amendments made to section 3(3) of the *Criminal Injuries Compensation Act 1985* by clause 36 of this Bill, the amendments made to section 6(3) of the *Fatal Accidents Act 1959* by clause 55 of this Bill and the amendments made to section 31(2) of the *Wills Act 1970* by clause 211 of this Bill. (The amendments are also consistent with the terminology that will be used in the *Artificial Conception Act 1985* when it is amended by the *Acts Amendments (Lesbian and Gay Law Reform) Act 2001*.)

### **Clause 160. Section 102 amended**

Section 102 applies in various cases (including the management or administration of a trust, estate or fund) where there is a question of whether a person is, was or will be capable of procreating, bearing, or adopting a child. Clause 160 amends section 102(4) by inserting the words “or de facto partner” after “spouse” where it appears. The effect of the amendment will be to ensure that, if a child is born or adopted, notwithstanding a ruling by the Court against this occurring, a de facto partner and a spouse of such a child are equal in status. A de facto partner and a spouse of any issue of that child are likewise on equal footing.

#### **Clause 161. Section 105 amended**

Section 105(3) applies where the absolute vesting of capital, income, property etc is contingent upon a person's marriage or any other event. The effect of the amendment made to section 105(3) by clause 161, will be to confirm that a condition that a person enter into a de facto relationship has the same effect as a condition that a person marry.

#### **Clause 162. Section 108 amended**

Section 108 states that the widow or widower of a person who is a life in being for the purpose of the rule against perpetuities shall be deemed to be a life in being for the purpose of (a) a limitation in favour of that widow or widower, and (b) a limitation in favour of a person/class who attains a vested interest on or after the death of the survivor of that person and his spouse. Clause 162 amends section 108 by making the above section 108(1). It then inserts a new section 108(2), which applies in the case of a de facto partner of a person and parallels the provisions of section 108(1).

#### **Clause 163. Section 115 amended**

Section 115(1)(a) states that the rule against perpetuities does not apply to a trust or fund established to make provision for employees, or their widows, widowers children etc. Section 115(1)(b) makes similar provision in respect of provision for persons (not being employees) engaged in lawful occupations. The effect of the amendments made to these two subsections by clause 163 will be to establish that the rule similarly does not apply to trusts or funds established for the benefit of de facto partners of the employees or persons.

### ***Part 50 – Rates and Charges (Rebates and Deferments) Act 1992***

#### **Clause 164. *Rates and Charges (Rebates and Deferments) Act 1992* amended**

Amendments in this Part are to the *Rates and Charges (Rebates and Deferments) Act 1992*.

#### **Clause 165. Section 3 amended**

Clause 165 inserts a definition of “de facto partner” which excludes certain persons from being classified as a “de facto partner” for the purposes of the Act on the same basis as certain married persons are excluded from being classified as a “spouse” for the purposes of the Act. The definition of “dependant” of a person is amended to include a de facto partner of that person. The definition of “spouse” is amended by deleting the reference to a “de facto spouse”.

#### **Clause 166. Section 4 repealed**

Section 4 currently sets out what is required to be established by a person claiming to be a “de facto spouse” of another person. It is repealed because of the definition of “de facto partner” that will be included in the *Interpretation Act 1984* when it is amended by the *Acts Amendment (Lesbian and Gay Law Reform) Act 2001*.

#### **Clause 167. Section 27 amended**

Clause 167 amends section 27(5) by inserting the words “or de facto partner” after “spouse”. The effect of the amendment will be that the de facto partner of a person is placed on an equal footing with the spouse of a person in respect of determining whether land belongs to that person.

#### **Clause 168. Section 28 amended**

Clause 168 amends section 28(3) by inserting the words “de facto partner” after “spouse”. The effect of the amendment will be that the de facto partner of a person is placed on an equal footing with the spouse of a person in respect of the basis of determining the proportionate interests of the person and the spouse or de facto partner of that person. Also, the maximum rebate on a prescribed charge is not affected by whether the eligibility arises from being the spouse or de facto partner of the person. Section 28(4)(b) is amended by inserting the words “de facto partner” after “spouse”. The subsection prescribes the proportionate rebate on prescribed charges when land belongs to “an eligible person” and some other person who is not the spouse of the person or, as a result of this amendment, the de facto partner of the person.

#### **Clause 169. Section 31 amended**

This clause updates the terminology used in section 31(2) so that the reference is to de facto partners, rather than de facto spouses.

#### **Clause 170. Section 43 amended**

Section 43 sets out circumstances in which a prescribed charge on land may be deferred. In part, the section provides for deferment where both the person and the person’s spouse have an entitlement to the same land. The effect of the amendment will be that deferment may also be allowed where both the person and the person’s de facto partner have an entitlement to the land.

#### **Clause 171. Section 44 amended**

Section 44(2) provides for deferred payment of prescribed charges on land to be recovered from the person liable for the payment if the person ceases to occupy the land as his or her ordinary place of residence, unless, among other things, the person’s spouse with whom the person is no longer living continues to live there. The effect of the amendment to section 44(2)(c)(iii) will be that the provision also applies where the former de facto partner of the person continues to live there.

#### **Clause 172. Section 45 amended**

Section 45 provides for circumstances where charges may remain deferred in favour of a spouse. Section 45(1) applies where the person liable for payment dies and the land continues to be the ordinary place of residence of the surviving spouse and section 45(2) applies where the person liable for payment ceases to occupy the land as their ordinary place of residence but the spouse of that person continues to do so. The amendment inserts references to the de facto partner of the person, so that the subsections apply equally where spouses and de facto partners are involved.

## **Part 51 – Real Estate and Business Agents Act 1978**

### **Clause 173. Real Estate and Business Agents Act 1978 amended**

Amendments in this Part are to the *Real Estate and Business Agents Act 1978*. The amendments in this Part accord with the amendments made to the *Settlements Agents Act 1981* by Part 52 of this Bill.

### **Clause 174. Section 72 amended**

Section 72(3) currently requires an auditor to disclose to the Real Estate and Business Agents Supervisory Board “any close relationship by blood or marriage” that he or she has with an agent whose trust accounts he or she has been appointed to audit. The amendment made to section 72(3) by clause 174 extends the obligation on an auditor to include the disclosure of “any de facto relationship” that he or she has with an agent.

### **Clause 175. Section 117(5) amended**

Section 117(5) currently provides, in part, that no right of action lies in relation to the Real Estate and Business Agents Fidelity Guarantee Fund in respect of any loss suffered by the spouse of a licensee by reason of any defalcation by that licensee. The amendment made to section 117(5) by clause 175 extends this provision to include any loss suffered by the de facto partner of the licensee. Consequently, a spouse of a licensee and a de facto partner of a licensee will be treated equally under the amended section 117 of the Act.

### **Clause 176. The Schedule amended**

Clause 1 of Schedule 1 to the Act deals with the qualifications for grant of a licence to carry on the business of an agent under the Act. Clause (1)(d) currently provides that the spouse or child of a deceased or incapacitated licensee who is seeking a licence to conduct the business until other arrangements can be made is qualified for the grant of a licence but not for any period exceeding 3 years. Clause 176 amends clause 1(1)(d) by providing that a person who has been the de facto partner of the licensee for not less than 2 years immediately before the death or incapacity of the licensee is also qualified for the grant of a licence under such circumstances. Consequently, a de facto partner of a deceased or incapacitated licensee and a spouse of a deceased or incapacitated licensee will be treated equally under the amended clause 1 of Schedule 1 to the Act.

Clause 182 also amends clause 4 of Schedule 1 to the Act. The effect of the amendment will be that a licence granted by reason of qualification under clauses 1(1)(d) and 2(1)(d) of Schedule 1 to the Act will be granted “at the discretion of the Board”. This will make it clear that in cases where more than one person may be qualified for the grant of a licence under these clauses the Board has a discretion as to which person should be granted the licence.

Clause 182 also amends clause 5 of Schedule 1 to the Act. Clause 5 provides that, with the written permission of the Registrar, a person may conduct the business of a licensee who is deceased or incapacitated for a period of no more than 3 months even though not otherwise qualified to hold a licence. Certain classes of person



including a spouse of the licensee are currently excluded as they are qualified under other clauses in the schedule. As a consequence of the amendments a “de facto partner” of a licensee is similarly excluded.

## **Part 52 – Retirement Villages Act 1992**

### **Clause 177. Retirement Villages Act 1992 amended**

Amendments in this Part are to the *Retirement Villages Act 1992*.

### **Clause 178. Section 3 amended**

Clause 178 amends the definitions of "resident" and "retired person" in section 3(1) by inserting "or de facto partner" after "spouse". The effect of the amendments will be that a de facto partner of a resident or retired person will be treated the same as a spouse of a resident or retired person for the purposes of the amended definitions of "resident" and "retired person". Clause 178 also deletes the definition of "spouse", as it is no longer necessary.

## **Part 53 – Settlement Agents Act 1981**

### **Clause 179. Settlement Agents Act 1981 amended**

Amendments in this Part are to the *Settlement Agents Act 1981*. The amendments in this Part accord with the amendments made to the *Real Estate and Business Agents Act 1978* by Part 50 of this Bill.

### **Clause 180. Section 53 amended**

Section 53(3) currently requires an auditor to disclose to the Settlement Agents Supervisory Board “any close relationship by blood or marriage” that he or she has with a settlement agent whose trust accounts he or she has been appointed to audit. The amendment made to section 53(3) by clause 180 extends the obligation on an auditor to include the disclosure of "any de facto relationship" that he or she has with an agent.

### **Clause 181. Section 95(5) amended**

Section 95(5) currently provides, in part, that no right of action lies in relation to the Settlement Agents Fidelity Guarantee Fund in respect of any loss suffered by the spouse of a licensee by reason of any defalcation by that licensee. The amendment made to section 95(5) by clause 181 extends this provision to include any loss suffered by the de facto partner of the licensee. Consequently, a spouse of a licensee and a de facto partner of a licensee will be treated equally under the amended section 95 of the Act.

### **Clause 182. Schedule 1 amended**

Clause 1 of Schedule 1 to the Act deals with the qualifications for grant of a licence to carry on the business of a real estate settlement agent under the Act. Clause (1)(d) currently provides that the spouse or child of a deceased or

incapacitated licensee who is seeking a licence to conduct the business until other arrangements can be made is qualified for the grant of a real estate settlement agent's licence (but not for any period exceeding 3 years). Clause 182 amends clause 1(1)(d) by providing that a person who has been the de facto partner of the licensee for not less than 2 years immediately before the death or incapacity of the licensee is also qualified for the grant of a licence under such circumstances. Consequently, a de facto partner of a deceased or incapacitated licensee and a spouse of a deceased or incapacitated licensee will be treated equally under the amended clause 1 of Schedule 1 to the Act.

Clause 2 of Schedule 1 to the Act deals with the qualifications for grant of a licence to carry on the business of a business settlement agent under the Act. The provisions of clause 2 of Schedule 1 mirror the provisions of clause 1 of Schedule 1. Clause 182 makes the same amendments to clause 2(1)(d) as it makes to clause 1(1)(d).

Clause 182 also amends clause 4 of Schedule 1 to the Act. The effect of the amendment will be that a licence granted by reason of qualification under clauses 1(1)(d) and 2(1)(d) of Schedule 1 to the Act will be granted "at the discretion of the Board". This makes it clear that in cases where more than one person is qualified for the grant of a licence under these clauses the Board has a discretion as to which person should be granted the licence.

Clause 182 also amends clause 5 of Schedule 1 to the Act. Clause 5 provides that, with the written permission of the Registrar, a person may conduct the business of a licensee who is deceased or incapacitated for a period of no more than 3 months even though not otherwise qualified to hold a licence. Certain classes of person including the spouses of the licensee are currently excluded, as they are qualified under other clauses in the Schedule. The amendment includes the "de facto partner" of the licensee among those who are excluded.

## **Part 54 – *Solicitor General Act 1969***

### **Clause 183. *Solicitor General Act 1969* amended**

Amendments in this Part are to the *Solicitor General Act 1969*.

### **Clause 184. Section 11 amended**

Clause 184 amends section 11 by extending the provisions of the *Judges' Salaries and Pensions Act 1950* (which is also amended by this Bill) to a surviving de facto partner of a deceased Solicitor-General. Consequently, a surviving spouse of a deceased Solicitor-General and a surviving de facto partner of a deceased Solicitor-General will be treated equally under the amended section 11 of the Act.

## **Part 55 – *Stamp Act 1921***

### **Clause 185. *Stamp Act 1921* amended**

Amendments in this Part are to the *Stamp Act 1921*.

#### **Clause 186. Section 4 amended**

For the purposes of the Act, the amendment inserts definitions of “de facto partner of 2 years”, “de facto partners of 2 years”, “former de facto partner of 2 years” and “surviving de facto partner of 2 years”. The definitions are self-explanatory.

#### **Clause 187. Section 63AB amended**

Section 63AB addresses the criteria for registration of a unit trust scheme. Subsection (5)(a) provides that natural persons who are spouses are related for the purposes of the section. The effect of the amendment to this subsection will be that de facto partners are also related for the purposes of the section. Similarly, subsection (6) is amended to include a de facto partner on an equal footing with a spouse of a person who is a relative for the purposes of subsection 4(c). The effect of the amendments to subsection (7) will be that, for the purposes of subsections (5) and (6), an illegitimate person is treated as the legitimate child of that person’s parents (paragraph (a)), and it is irrelevant whether a relationship is whole or half-blood or whether it is a natural relationship or a relationship established by written law (paragraph (b)). In subsection 7(a), the term “parents” is substituted for “mother and reputed father”. (This amendment is consistent with the terminology that will be used in the *Artificial Conception Act 1985* when it is amended by the *Acts Amendments (Lesbian and Gay Law Reform) Act 2001*.)

#### **Clause 188. Section 75AB amended**

Section 75AB deals with the power of the Commissioner to exempt instruments establishing certain funds or schemes from *ad valorem* duty. Currently, instruments establishing certain funds to make provision for a widow etc may be exempted. The amendment includes “widowers” and “surviving de facto partners of 2 years” among those for whom the funds may be established.

#### **Clause 189. Section 75C amended**

Section 75C deals with the power of the Commissioner to exempt certain conveyances between spouses. The amendments to 75C(1)(a), like those to section 75AB, ensure that “de facto partners of 2 years” and persons who are married are dealt with equally. Section 75C(1)(aa) is deleted, because it includes the more narrow term “*de facto* married couple”. The definition of “*de facto* married couple” in subsection 75C(4) is likewise deleted.

#### **Clause 190. Section 75D amended**

Section 75D relates to the interpretation of Part IIIBAA of the Act (which is entitled “*Certain transfers of farming property*”). The definition of “family member” in section 75D(1) is amended by deletion of paragraph (e) and the insertion of new paragraphs (e) and (f). The effect of these amendments will be to place the “de facto partner of 2 years” or the “former de facto partner of 2 years” of a person on an equal footing with the “spouse” or “former spouse” of a person, respectively. Section 75D(2) is amended so that an illegitimate person is to be treated as the legitimate child of that person’s parents (paragraph (a)), and it is irrelevant whether a relationship is of the whole or half-blood, or whether it is a natural relationship or a relationship established by written law (paragraph (b)). In subsection (2)(a) the term “parents” is substituted for “mother and reputed father”.

(This amendment is consistent with the terminology that will be used in the *Artificial Conception Act 1985* when it is amended by the *Acts Amendments (Lesbian and Gay Law Reform) Act 2001*.)

**Clause 191. Section 76 amended**

Section 76 relates to the interpretation of Part III BA of the Act (which is entitled "*Duty on change of control of certain land-owning corporations*"). Section 76(2)(b) currently includes the following as relatives of an individual — a child or remoter lineal descendant of the individual or the individual's spouse; a parent or remoter lineal ancestor of the individual or the individual's spouse; a brother or a sister of the individual or the individual's spouse; and the individual's spouse and a spouse of certain other persons. The effect of the amendments to section 76(2)(b) will be that a de facto partner has the same status as a spouse for the purpose of determining whether a person is a relative. The amendment to section 76(3) is similar in effect: de facto partners are related in the same way as spouses. Section 76(4) is amended so that an illegitimate person is to be treated as the legitimate child of that person's parents (paragraph (a)), and it is irrelevant whether a relationship is of the whole or half-blood, or whether it is a natural relationship or a relationship established by written law (paragraph (b)). In subsection 4(a), the term "parents" is substituted for "mother and reputed father". (This amendment is consistent with the terminology that will be used in the *Artificial Conception Act 1985* when it is amended by the *Acts Amendments (Lesbian and Gay Law Reform) Act 2001*.)

**Clause 192. Section 112Q amended**

Section 112Q relates to exemption from stamp duty where an agreement exists between a charitable or similar body and a "qualified person" for the purpose of granting the qualified person the right to occupy residential accommodation that is not available to a non-qualified person. To ensure that spouses and de facto partners are treated on the same basis, section 112Q(2)(b) is amended so that a person of 55 years or over, or who is the spouse of such a person or who "is a de facto partner of 2 years, a former de facto partner of 2 years, or is a surviving de facto partner of 2 years of the person" is a qualified person under the Act.

**Part 56 – *Strata Titles Act 1985***

**Clause 193. *Strata Titles Act 1985* amended**

Amendments in this Part are to the *Strata Titles Act 1985*.

**Clause 194. Section 6A amended**

Clause 194 amends the definition of "retired person" in section 6A(3), by including a person who is or was the de facto partner of a retired person. The effect of the amendment will be that a de facto partner (or former de facto partner) of a retired person and a spouse (or former spouse) of a retired person will be treated equally for the purposes of the amended definition of "retired person". Clause 194 also deletes the definition of "spouse" in section 6A(3), as it is no longer required.

#### **Clause 195. Section 50A amended**

Section 50A disqualifies a person from voting as a proxy at a meeting of a strata company or a council of a strata company on a motion relating to a management contract or arrangement with the strata company if the person has a financial interest in the contract or arrangement. Section 50A(4) currently provides that a proxy has a financial interest in a contract or arrangement if the proxy or his or her spouse own shares in a company, is a member of a firm, or is a director or employee of a company or of a firm that benefits or will benefit directly from the contract or arrangement to which the motion relates. Clause 195 includes a de facto partner of the proxy in section 50A(4). Consequently, a de facto partner of a proxy and a spouse of a proxy will be treated equally under the amended section 50A of the Act.

### **Part 57 – *Supreme Court Act 1935***

#### **Clause 196. *Supreme Court Act 1935* amended**

Amendments in this Part are to the *Supreme Court Act 1935*.

#### **Clause 197. Section 11B amended**

Clause 197 amends section 11B(3) by extending the provisions of the *Judges' Salaries and Pensions Act 1950* (which is also amended by this Bill) to a surviving de facto partner of a deceased Master of the Supreme Court. The effect of the amendment will be that a surviving spouse of a deceased Master and a surviving de facto partner of a deceased Master will be treated equally under the amended section 11B of the Act.

#### **Clause 198. Section 118 amended**

Currently, section 118(2) provides that the sheriff may not seize wearing apparel (to a specified value) of the "wife" of the defendant named in a writ of *feri facias* (or a similar process of execution). Clause 118 substitutes "spouse or de facto partner" for "wife". Consequently, a de facto partner of a defendant named in a writ of *feri facias* and a spouse of such a person will be treated equally under the amended section 118 of the Act. This amendment accords with the amendment made to section 126 of the *Local Courts Act 1904* by clause 107 of this Bill.

#### **Clause 199. Section 141 amended**

Clause 199 repeals paragraph (b) of section 141(2), which currently provides that leave is required to issue execution where a husband is entitled to execution upon a judgment in favour of his wife or where a husband is liable to execution upon a judgment against his wife.

### **Part 58 – *Trustees Act 1962***

#### **Clause 200. *Trustees Act 1962* amended**

Amendments in this Part are to the *Trustees Act 1962*.

**Clause 201. Section 61 amended**

Clause 201 amends section 61(3) by substituting the words "spouse" and "de facto partner" for the words "wife" and "husband". The effect of the amendments will be that spouses and de facto partners will be treated equally for the purposes of the amended section 61(3) of the Act.

**Part 59 – *Water Corporation Act 1995***

**Clause 202. *Water Corporation Act 1995* amended**

Amendments in this Part are to the *Water Corporation Act 1995*.

**Clause 203. Schedule 2 amended**

Clause 203 amends Schedule 2 to the Act by inserting references to a de facto partner. The effect of the amendment will be that the prohibition on loans (etc) being made to a director or the spouse of a director or a relative of a director or spouse is extended to apply to a de facto partner of a director and his or her relatives. This amendment accords with the amendment made to Schedule 2 to the *Electricity Corporation Act 1994* by clause 48 of this Bill.

**Part 60 – *Western Australian Aged Sailors, Soldiers and Airmen’s Relief Fund Act 1932***

**Clause 204. *Western Australian Aged Sailors, Soldiers and Airmen’s Relief Fund Act 1932* amended**

Amendments in this Part are to the *Western Australian Aged Sailors, Soldiers and Airmen’s Relief Fund Act 1932*.

**Clause 205. Section 5 amended**

Under section 5, moneys in the credit of the Western Australian Aged Sailors, Soldiers and Airmen’s Relief Fund may be applied for the benefit of eligible aged and invalid sailors, soldiers, airmen and nurses and for the widows of such persons. The amendment includes a person who was the de facto partner of such a person immediately before that person's death. The effect of the amendment will be that surviving spouses of deceased eligible aged and invalid sailors, soldiers, airmen and nurses, and de facto partners of such persons, will be treated equally under the amended Act.

**Part 61 – *Western Australian Land Authority Act 1992***

**Clause 206. *Western Australian Land Authority Act 1992* amended**

Amendments in this Part are to the *Western Australian Land Authority Act 1992*.

#### **Clause 207. Schedule 1 amended**

Clause 207 amends the definition of "near relative" (in relation to a director) by including a de facto partner of the director.

### **Part 62 – *Wills Act 1970***

#### **Clause 208. *Wills Act 1970* amended**

Amendments in this Part are to the *Wills Act 1970*.

#### **Clause 209. Section 12 amended**

Under section 12, a person to whom a disposition is made in a will, or the spouse of such a person, is not, on that account, incompetent as a witness to prove the execution of the will or its validity. The amendment provides that the de facto partner of such a person is similarly not incompetent as a witness.

#### **Clause 210. Section 13 repealed and application provision**

At present, section 13 provides that a disposition, other than a charge for payment of a debt, to a person or the spouse of a person who is an attesting witness to the will is void. This rule can have the effect of excluding persons who may, as a result of an innocent mistake or oversight, witness a will which includes them or their spouse as an intended beneficiary. This could result in the testator's obvious intention being thwarted. Clause 210 repeals this section, rather than extending it to include the de facto partner of a person who is an attesting witness. Clause 210(2) of the Bill provides that only the wills of those who have died on or after the date of the commencement of the amendment to section 13 are affected by the repeal.

#### **Clause 211. Section 31 amended**

Clause 211 amends section 31 by substituting gender neutral language. The amendments are consistent with the amendments made to section 3(2)(b) and section 3(3) of the *Criminal Injuries Compensation Act 1985* by clause 36 of this Bill, the amendments made to section 6(3) of the *Fatal Accidents Act 1959* by clause 55 of this Bill of the amendments made to section 31A(5) of the *Property Law Act 1969* by clause 159 of this Bill. (The amendments are also consistent with the terminology that will be used in the *Artificial Conception Act 1985* when it is amended by the *Acts Amendments (Lesbian and Gay Law Reform) Act 2001*.)

### **Part 63 – *Workers' Compensation and Rehabilitation Act 1981***

#### **Clause 212. *Workers' Compensation and Rehabilitation Act 1981* amended**

Amendments in this Part are to the *Workers' Compensation and Rehabilitation Act 1981*.

### **Clause 213. Section 5 amended**

Clause 213 inserts a definition of “de facto partner” (in relation to compensation payable in respect of the death of a worker). The definition is consistent with paragraphs (a) and (g) of the definition of “relative” (in relation to a deceased person) in the *Fatal Accidents Act 1959* (which were inserted into the Act by clause 56 of this Bill). Clause 213 also amends the definition of “member of the family” so that the words “father, mother, grandfather, grandmother, step-father, step-mother” with “de facto partner, parent, grandparent, step-parent” and by generally making the terminology used in the definition consistent with the terminology that will be used in the *Artificial Conception Act 1985* when it is amended by the *Acts Amendment (Lesbian and Gay Law Reform) Act 2001*. Clause 213 also replaces the definition of spouse (in relation to compensation payable in respect of the death of a worker) with a new definition which is consistent with the definition of “de facto partner” (in relation to compensation payable in respect of the death of a worker). Both definitions include former de facto partners/spouses if the worker was legally obliged immediately before his or her death to make provision for that former de facto partner/spouse with respect to financial matters.

### **Clause 214. Schedule 1 amended**

Clause 1 of Schedule 1 to the Act sets out how compensation entitlements are to be determined where the death of a worker results from a disability (as defined) and the worker leaves dependants who are wholly dependent. The amendment to clause 1(1)(b) includes, in addition to the spouse or parent of the deceased worker, that person’s de facto partner as a person or persons to whom payments are to be made. Clause 5 of Schedule 1 to the Act deals with the situation where a worker has been in receipt of, or was entitled to, payments and then dies (but not as a result of the disability). Clause 5(1), which currently applies where the worker leaves a spouse, child or step-child who is wholly dependent upon his or her earnings, is amended to also include a wholly dependent de facto partner. Clause 5(2), which currently applies where the worker leaves a spouse, child or step-child partly dependent upon his or her earnings, is also amended to include a partly dependent de facto partner.

### **Clause 215. Schedule 5 amended**

Schedule 5 to the Act sets out exceptions to cessation of weekly payments by reason of age. Clause 215 amends the definition of “supplementary amount” in clause 1 of Schedule 5 to include reference to a de facto partner of a worker. Clause 7(b) of Schedule 5 currently applies where a worker who was receiving a supplementary benefit dies and is survived by a dependent spouse. This clause is amended by including a surviving dependent de facto partner of the worker as a person entitled to receive a supplementary amount; and by making provision for the apportionment of a supplementary amount where there is more than one dependent spouse or dependent de facto partner.



**Part 64 – *Power to amend certain regulations and rules***

**Clause 216. Power to amend certain regulations and rules**

Clause 216 is self explanatory.