



Queensland

Property Law and Another Act Amendment Bill 2008



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2008

A Bill

for

An Act to amend the *Property Law Act 1974* and the *Duties Act 2001* for particular purposes

[s 1]

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *Property Law and Another Act Amendment Act 2008*. 4
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Clause 2 Commencement 6

This Act commences on a day to be fixed by proclamation. 7

Part 2 Amendment of Property Law Act 1974 8
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Clause 3 Act amended 10

This part amends the *Property Law Act 1974*. 11

Clause 4 Insertion of new s 255A 12

After section 255— 13

insert— 14

‘255A Relationship of this part with the Family Law Act in relation to particular financial matters 15
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‘(1) The State, by the *Commonwealth Powers (De Facto Relationships) Act 2003*, referred the following matters (to the extent that they are not otherwise included in the legislative powers of the Parliament of the Commonwealth) to the Parliament of the Commonwealth— 17
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- (a) financial matters relating to de facto partners arising out of the breakdown (other than by reason of death) of de facto relationships between persons of different sexes; 1
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- (b) financial matters relating to de facto partners arising out of the breakdown (other than by reason of death) of de facto relationships between persons of the same sex. 4
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- ‘(2) Consequently, this part does not apply in relation to financial matters relating to de facto partners arising out of the breakdown of their de facto relationship if the Commonwealth Act applies in relation to the matters. 7
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- Note—* 11
- In most cases de facto partners seeking resolution of financial matters arising out of the breakdown of their relationship should now proceed under the Commonwealth Act. 12
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- ‘(3) However, this part continues to apply in relation to financial matters relating to de facto partners if the Commonwealth Act does not apply. 15
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- Examples—* 18
- 1 The Commonwealth Act, section 90SK provides that particular requirements must be satisfied before a court may make a declaration under section 90SL of that Act. If, in the particular circumstances of a case, those requirements are not satisfied, this part may apply. 19
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- 2 This part applies to de facto relationships that break down after 21 December 1999 and before the commencement of the *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008* (Cwlth) (the **Commonwealth amending Act**). However, section 86A of the Commonwealth amending Act provides that de facto partners whose relationship broke down before the commencement of that amending Act may choose to agree to the application of particular provisions of the Commonwealth Act to the de facto relationship in particular circumstances.’. 24
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- Clause 5 Amendment of s 257 (Application of pt 19)** 33
- Section 257— 34
- insert—* 35

[s 6]

- ‘(3) Despite subsection (1), this part does not apply in relation to a de facto relationship to the extent the Commonwealth Act applies in relation to the relationship. 1
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- ‘(4) Also if, in relation to a de facto relationship— 4
- (a) a de facto partner in the relationship makes an application about a matter to a court having jurisdiction under this part (the *State proceeding*); and 5
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- (b) the other de facto partner in the relationship makes an application about the same matter or a related matter to a court having jurisdiction under the Commonwealth Act (the *Commonwealth proceeding*); and 8
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- (c) neither of the applications has been finally dealt with; 12
the court mentioned in paragraph (a) must stay the State proceeding until the Commonwealth proceeding is finally dealt with.’. 13
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Clause 6 Amendment of s 259 (Definitions for pt 19) 16

Section 259— 17

insert— 18

‘*Commonwealth Act* means the *Family Law Act 1975* (Cwlth).’ 19
20

Clause 7 Amendment of s 285 (Not affected by other rights) 21

Section 285(2), definition *law*, after ‘Commonwealth’— 22

insert— 23

‘, other than the Commonwealth Act,’ 24

Clause 8 Amendment of sch 6 (Dictionary) 25

Schedule 6— 26

insert— 27

‘*Commonwealth Act*, for part 19, see section 259. 28

Part 3	Amendment of Duties Act 2001	1
Clause 9	Act amended	2
	This part amends the <i>Duties Act 2001</i> .	3
Clause 10	Amendment of s 424 (Exemption—matrimonial and de facto relationship instruments)	4
	Section 424, note—	5
	<i>omit, insert—</i>	6
	<i>Notes—</i>	7
	1 Exemptions for duty for particular instruments and maintenance agreements are provided in the <i>Family Law Act 1975</i> (Cwlth), section 90.	8
	2 Exemptions for duty for particular instruments and agreements relating to financial matters, in the event of a breakdown in a marriage, are provided in the <i>Family Law Act 1975</i> (Cwlth), section 90L.	9
	3 Exemptions for duty for particular instruments and agreements relating to financial matters, in the event of a breakdown of a de facto relationship, are provided in the <i>Family Law Act 1975</i> (Cwlth), section 90WA.’.	10
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