

# **DISCRIMINATION LAW AMENDMENT BILL 2002**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

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

There are three objectives of this Bill, namely:

1. To amend a range of Queensland laws to ensure that de facto partners (regardless of their sexual orientation) have rights and obligations consistent with those of married spouses where possible.
2. To amend the *Anti-Discrimination Act 1991* (ADA) to improve its operation and achieve greater consistency with similar laws in other States; and
3. To amend the *Registration of Births, Deaths and Marriages Act 1962* to allow post-operative transgenders to obtain new birth certificates in their reassigned sex.

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

##### **Relationships law reform**

###### Reasons for the objectives

The nature of the Australian family unit is dynamic with people choosing a variety of life-partnering options such as marriage and de facto relationships. The Australian Bureau of Statistics has reported that marriage rates are declining and that the number of de facto relationships is increasing.

Historically, legal recognition of partner relationships focussed on marriage. However, with the increase in de facto relationships, laws need updating to acknowledge and recognise de facto relationships, given that de facto relationships raise similar issues to marriage. Both types of relationships are based on financial and emotional interdependence.

The recognition of de facto relationships upholds the principle of equality before the law. Australia is a signatory to the United Nations Convention on Civil and Political Rights. Under the Convention, all people have the right to equal treatment under the law. Consequently, Queensland laws should not discriminate against people in de facto relationships.

Further, society can only benefit socially and economically through supporting stable and mutually dependent adult relationships. The proposed comprehensive law reform package will reduce discrimination against people in de facto relationships and give them the same rights and obligations as people in a marriage relationship where possible. Particularly, these reforms increase the human rights of gay and lesbian people living in de facto relationships so that they will be treated before the law in the same way as opposite sex couples and married people.

New South Wales, Victoria, Tasmania and Western Australia have already comprehensively updated their statute books to recognise de facto relationships, regardless of sexual orientation. Tasmania and South Australia have announced a similar reform package.

#### How objectives will be achieved

The Bill amends or affects most Acts that confer rights or obligations on spouses. The amendments to specific Acts extend the statutory benefits, entitlements, powers, or protection that currently arise from a person's status as a spouse in a marriage to people in a de facto relationship, regardless of their sexual orientation. Amendments to specific Acts set out in the Bill largely adjust provisions so that they are consistent with the broader definition of spouse that includes de facto partners.

To streamline the reform process, the Bill inserts a definition of "spouse" and "de facto partner" in section 32DA of the *Acts Interpretation Act 1954* (AIA) to be applied in any Act where "spouse" is mentioned. The definition is of general application and will apply to all references to "spouse" in existing and future legislation, unless the Act or subordinate legislation has a contrary intention. The definition of "spouse" includes "de facto partner." "De facto Partner" means either one of 2 persons living together as a couple on a genuine domestic basis but who are not married to each other or related by family. The gender of the persons in the relationship is not relevant. The definition further provides that in deciding whether two persons are living together as de facto partners, any of their circumstances can be taken into account, including:

- the length of their relationship;
- the degree of financial dependence or interdependence;

- the degree of mutual commitment to a shared life, including care and support of each other and children;
- the reputation and public aspects of their relationship.

#### Minimum cohabitation periods

Cohabitation is a key factor in the definition. People who have an intimate relationship but who choose not to cohabit will not be included in the definition of de facto partner. The reform package (on a general basis) does not include a minimum cohabitation period before de facto partners are entitled to receive benefits or be responsible for obligations under legislation. The principle is that a particular right or benefit is conferred on a de facto partner by virtue of being in a relationship and not because of its particular length.

There are some exceptions to the above rule where an Act confers a potentially large financial reward or obligation. In these cases, a minimum two year cohabitation period applies for de facto partners to be eligible for large financial benefits or obligations. This gives de facto partners and their families certainty as to when they are eligible for such benefits consistently across the statute book. Also, it seems just that where a large financial benefit is to be awarded to a person due to their status as a de facto partner, there should be some evidence of the partner's intention to have a continuing committed relationship. The two year period demonstrates that commitment.

The two year cohabitation period is consistent with the current prerequisites under Part 19 of the *Property Law Act 1974*, the *Duties Act 2001* and the *First Home Owner Grant Act 2000*. These Acts confer a financial benefit or obligation on one or both of the de facto partners of the relationship.

The Queensland Government's position is that for the purposes of consistency across the statute book, it is essential that large financial rewards or obligations should only be conferred on de facto partners if they have cohabited for two years. Further, it is undesirable that statutory decision makers can confer benefits on de facto partners who have not demonstrated the intention that the relationship is to be long term and committed.

The Queensland Government appreciates that in taking this position, it may be argued that the rights of citizens have been reduced by increasing the cohabitation period under existing statutory schemes. To accommodate this concern but to ensure a general consistency across the statute book, the following approach in the reform package has been taken:

- all present and future statutory schemes that confer a large financial benefits or obligations are to provide for a two year cohabitation period;
- under Lord Campbell's actions, WorkCover and government superannuation legislation, the two year minimum cohabitation period will apply except where:
  - the deceased left a child of the relationship (this will not apply to the superannuation schemes); or
  - there is evidence that the de facto partners intended that relationship to be long term and committed.

These exceptions to the two year cohabitation rule for financial benefits and obligations will continue to provide the WorkCover Board, the Government Superannuation Office and the courts with an ability to accept claims from de facto partners who have not cohabited for the minimum two year period where the facts of the case warrant the acceptance of the claim.

A transitional provision for WorkCover and Lord Campbell's actions will allow people currently in de facto relationships over one year but less than two years to continue to be eligible as of right under the two schemes so that their rights have not been reduced under the amendments.

### Commencement

The amendments will commence on proclamation. The delayed commencement allows all Departments to amend subordinate legislation and forms so that they are consistent with the broad definition of spouse in the AIA.

### **Amendment of the *Anti-Discrimination Act 1991* (ADA)**

The ADA has been in operation for more than 10 years. During that time community attitudes and social structures have undergone significant change. While there has been a number of amendments to the ADA, it has become clear that further reform is required if the ADA is to continue to fulfil its objectives and keep pace with anti-discrimination legislation in other Australian jurisdictions.

The ADA was enacted to promote equality of opportunity by providing protection from unlawful discrimination, sexual harassment and associated objectionable conduct. It achieves this by identifying a range of attributes and prohibiting direct and indirect discrimination on the basis of these attributes in a range of areas. In addition, it prohibits certain other conduct

which promotes prejudice and unfair treatment and undermines fundamental human rights. In a number of areas, the coverage provided by the ADA no longer meets community expectations. The Bill will overcome these deficiencies by:

- Introducing a new attribute of “family responsibilities” to achieve consistency with the *Industrial Relations Act 1999* and ensure that people are able to fulfil family responsibilities not already covered by the ADA (for example, care of aged parent) without fear of discrimination;
- Introducing a new attribute of “sexuality” which will provide more comprehensive protection for the general community, and in particular for the gay and lesbian community;
- Introducing a new attribute of “gender identity” to protect people of transgender identity and intersex people from discrimination and bring Queensland into line with other Australian States and Territories,
- Clarifying that the existing ground of “religion” includes protection for “holding or not holding a religious belief” and “engaging in, not engaging in or refusing to engage in a lawful religious activity” to ensure protection for people with no religious belief, such as atheists;
- Prohibiting discrimination on the basis of “breastfeeding” in all areas covered by the ADA;
- Introducing new vilification laws to prohibit vilification on the basis of sexuality and gender identity;
- Removing anomalous exemptions for religious bodies and non-state school authorities which permit discrimination against groups that the ADA was designed to protect; and
- Amending the prohibition on victimisation so that people will no longer have to demonstrate an intention to bring an actual complaint before the Anti- Discrimination Commission Queensland (ADCQ) to gain protection.

In addition, the Bill will implement a number of reforms to improve ADCQ and Anti Discrimination Tribunal (ADT) procedures. This is to ensure the ADA continues to meet its original objectives of providing a cheap and speedy process for resolving complaints. Existing ADCQ investigation and conciliation processes have been criticised as being

unnecessarily protracted and, accordingly, expensive and frustrating for parties.

- Streamlining ADCQ investigation/conciliation processes by giving respondents the option of seeking an early conciliation conference without providing an initial written response to the ADCQ;
- Expediting referral of unconciliable complaints to the ADT by giving complainants the right to require referral following a conciliation conference. (At present, the complainant only has this right when the Commissioner has determined a complaint cannot be resolved by conciliation.)
- Ensuring greater certainty and fairness for parties by setting the ADT scale of costs at the District Court scale. (At present, the lack of any set standard creates inconsistency and uncertainty for parties who cannot make any meaningful cost/benefit assessment in deciding whether to proceed with a matter in which they may suffer an adverse judgment);
- Encouraging the speedy resolution of disputes by allowing offers of settlement to be taken into account by the ADT in the making of costs orders; and
- Extending the remedies that the ADT may order by specifically providing that the ADT has the power to order apologies and retractions (both private and public) and to order the respondent to implement programs to eliminate unlawful discrimination.

### ***Amendment of the Registration of Births Deaths and Marriages Act 1962***

The transgender community has lobbied for many years for Queensland to introduce legislation allowing people of transgender identity to obtain new birth certificates in their reassigned sex. All other Australian States and Territories except Victoria currently have such legislation.

Transgenders experience prejudice and discrimination in many areas of daily life, including forms of identification. For people who have undergone sexual reassignment surgery, there is a certain irrevocability and finality in relation to the gender transfer process. It is appropriate that such people be recognised in law as being of their reassigned sex.

The Bill will address this by amending the *Registration of Births Deaths and Marriages Act 1962* to allow post-operative transgenders who

currently have their births registered under Queensland law to obtain new birth certificates in their reassigned sex. The legislative scheme will be modelled on provisions in the New South Wales *Births, Deaths and Marriages Registration Act 1995*.

The key features of the amendments will be that a person may apply to the registrar-general to have a change of sex entered into the birth register if:—

1. the person is 18 or above;
2. the birth was registered in Queensland;
3. the person has undergone sexual reassignment surgery;
4. the person is not married.

The parents or guardian of a child may also apply to the registrar-general to have a change of a child's sex entered into the birth register.

The application must be accompanied by either statutory declarations of two doctors verifying that the person has undergone the surgery, or a recognition certificate. The registrar-general may also require the applicant to provide further information as required.

After the record of a person's sex is altered, a birth certificate issued by the registrar-general will show the person's sex in accordance with the altered record. The certificate will not include a statement that the person has changed sex.

Registration in the reassigned sex will operate in a similar way to the process of re-registration after a change of name.

The birth will be re-registered with a new number and a notation referencing the former registration number. This will indicate that re-registration has taken place, but will not highlight that it is as the result of a change of sex.

Consistent with other jurisdictions, the legislation will provide that a certificate issued from the new registration can be used, where lawful, for other purposes and that the transgendered person will be taken to be of the reassigned sex for the purpose of the laws of Queensland.

When a birth is re-registered, no further certificates will be issued from the original entry without the consent of the registrar-general, and only on the application of a prescribed list of persons. It is intended that, consistent with other jurisdictions, the prescribed list will be extremely limited eg the child of the person.

Amendments will also be made to the *Adoption of Children Act 1964*, which will provide for the issue of certificates, showing the changed sex, from the adopted children register. The amendments will also provide that an adopted person who has changed sex may also have a change of name by deed poll entered into the adopted children register. These change of name provisions will apply to all adult adopted people who wish to have a change of name entered into the adopted children register.

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

The amendments contained in the Bill are not expected to have significant financial implications for government.

### **Consistency with Fundamental Legislative Principles**

#### **Relationships Law Reform**

The amendments are consistent with fundamental legislative principles. The purpose of the proposed Bill is to confer on people in de facto relationships the same rights as people in a marriage relationship so that people in a cohabiting relationship are equal under the law. Overall, the rights of de facto partners are strengthened under the reform package.

However, in providing rights to de facto partners, the rights of married spouses and children under the intestacy laws and under some superannuation schemes may be reduced. This raises an issue regarding consistency with fundamental legislative principles contained in section 4 of the *Legislative Standards Act 1992*. Section 4(2) requires that legislation has sufficient regard to, *inter alia*, the rights and liberties of individuals.

#### Succession

Under the *Succession Act 1981*, de facto partners are currently entitled to claim part of their partner's estate (if the partner died without a will) only if the relationship was at least five years duration ending on the partner's death. In addition, a de facto partner may seek provision out of their deceased partner's estate if adequate provision has not been made for their support or maintenance whether or not the deceased person left a will. The surviving married spouse, children or next of kin would be entitled to the entire estate if the de facto relationship were less than five years duration.

Under the proposed amendments, a de facto partner is entitled to claim part of the estate if the relationship was of at least two years duration

ending on the death of the partner. Such a claim will reduce the balance of the estate available to be paid to a surviving spouse, children or next of kin.

Although the rights of some beneficiaries have effectively been reduced through this amendment, this is a consequence of providing rights to de facto partners who have cohabited with the deceased for at least two years. It is no longer reasonable or justifiable in terms of current community values towards de facto partners to have a minimum five year cohabitation period requirement.

### Superannuation

The above issues also apply to superannuation. Although the largest superannuation scheme has recognised de facto partners (in opposite sex relationships) from approximately 1980, the Judges scheme does not currently recognise de facto partners. Under this scheme, a pension is payable to the judge. On the judge's death, currently a pension is paid to the surviving spouse and eligible children. The benefits available to these individuals may be reduced if benefits are also payable to the judge's de facto partner, and eligible children. Again, this is a consequence of recognising de facto partners. The superannuation asset must be divided among more beneficiaries.

The issue for policy makers is to ensure that the apportionment is fair. Under the Judges' pension scheme, the Attorney-General is to decide the apportionment between these beneficiaries.

It may also be argued there has been insufficient regard to the rights and liberties of individuals in the increase in the minimum cohabitation periods for de facto partners to be eligible for benefits under Queensland government superannuation schemes, WorkCover and Lord Campbell's actions. This can be justified because it is important to have a consistent cohabitation period in all legislation that confers a significant financial benefit on a de facto partner to provide certainty to the de facto partners and their families. Because the Bill provides eligibility for de facto partners who have cohabited for a lesser period under these schemes, de facto partners' rights have not in fact been reduced. For a de facto partner who has cohabited with the deceased for a period less than two years to be eligible under these schemes, there must be evidence that the partners intended that the relationship be long term and committed. It is just that the de facto partners should be able to prove this intention given that the benefits under the schemes may be large and are intended to compensate a surviving spouse for the loss of their life partner.

A transitional provision for WorkCover and Lord Campbell's actions will allow people currently in de facto relationships over one year but less than two years to continue to be eligible as of right under the two schemes so that their rights have not been reduced under the amendments.

### **Amendments to the ADA**

The ADA amendments raise one issue regarding consistency with fundamental legislative principles contained in section 4 of the *Legislative Standards Act 1992*. Section 4(2) requires that legislation has sufficient regard to, *inter alia*, the rights and liberties of individuals.

The Bill extends the new anti-vilification provisions to sexuality and gender identity. This will arguably limit some rights to freedom of speech.

It is considered that the restriction is justifiable in that it serves a legitimate purpose in ensuring that people are able to live peaceful and dignified lives free from vilification. The new provisions are limited in scope and are a response to problems of violence and anti-social behaviour directed towards the homosexual and transgender communities.

The proposed restriction is reasonable and proportionate in that:

- (a) it applies only to public, not private acts;
- (b) it will be subject to exemptions which strike a balance between freedom of expression and freedom from vilification because of sexuality or gender identity; and
- (c) the offence of serious vilification requires proof to the criminal standard that the incitement was done knowingly or recklessly.

Article 19 of the *International Covenant on Civil and Political Rights* recognises that the right to freedom of expression may be subject to certain restrictions if these are provided by law and are necessary for respect of the rights or reputations of others or for the protection of national security or of public safety.

The new anti-vilification laws fulfil these criteria in that their purpose is to protect people from vilification that promotes hatred on the basis of a person's sexuality or gender identity and creates social disharmony in the wider community.

## **CONSULTATION**

### **Community**

There has been no consultation with the community on the Bill. However, individuals and organisations affected by the proposed reforms have made continuing submissions to government supporting such changes to the current law.

### **Government**

All Departments have been consulted on the Relationships Law Reform package. Each Department approved the amendments made to Acts under their responsibility.

WorkCover, the Motor Accident Insurance Commission and Local Government Association of Queensland have also been consulted on the Relationships Law Reform Package. The Office of the Public Trustee was consulted about the amendments to the *Public Trustee Act 1978*.

The ADA amendments have been developed in consultation with the ADCQ and ADT. The *Registration of Births, Deaths and Marriages Act 1962* and *Adoption of Children Act 1964* amendments have been developed in consultation with the Department of Families.

## **NOTES ON PROVISIONS**

### **PART 1—PRELIMINARY**

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

*Clause 2* Provides that the Act commences on a day to be fixed by Proclamation.

## **PART 2—AMENDMENT OF ACTS INTERPRETATION ACT 1954**

*Clause 3* Provides that this part amends the *Acts Interpretation Act 1954*.

*Clause 4* Inserts a new section 32DA definition of “de facto partner” into the Act. “De facto partner” means a person with whom another person is living as a couple on a genuine domestic basis. The person and the other person must not be married or related by family. The gender of the two people is not relevant. Subsection 2 sets out a non-exhaustive list of factors to be considered when deciding whether 2 people are living together as a couple on a genuine domestic basis. These include things such as the length of the relationship, the degree of financial dependence or interdependence and the reputation and public aspects of the relationship.

The section also makes it clear that two persons are not to be regarded as de facto partners of each other merely because they share a residence. Subsection 6 provides that the definition of “de facto partner” as defined in section 32DA is to be read into all Acts whether or not the Act commenced prior to the commencement of this Bill or after the commencement of this Bill unless a specific exemption to the contrary is included in the Act.

*Clause 5* Inserts definitions of “de facto partner”, “de facto relationship” and “spouse” into section 36 of the Act. “De facto partner” is defined by reference to new section 32DA. “De facto relationship” is defined as the relationship existing between two persons as a couple because they are the de facto partners of each other. “Spouse” is defined to include a de facto partner.

## **PART 3—AMENDMENT OF ADOPTION OF CHILDREN ACT 1964**

*Clause 6* Provides that this Part amends the *Adoption of Children Act 1964*.

*Clause 7* Amends section 6 by inserting a definition of “adoption entry.”

*Clause 8* Amends section 39C of the *Adoption of Children Act 1964*, so that if the adopted person’s adoption has been reregistered under the *Registration of Births Deaths and Marriages Act 1962*, a birth parent or

relative under section 39C(b) will also be entitled to obtain a certified copy of the reregistered adoption entry, if one or more changes of the person's name have been entered into the adopted children register after the reregistration.

This clause also amends section 39C by providing that subsection (1)(b)(i) applies even if the adoption entry is closed under the *Registration of Births, Deaths and Marriages Act 1962* section 29B(2)(b)(i) or (4)(b) or 29C(6)(a) and access to it is restricted under section 55A of this Act.

*Clause 9* This clause inserts a new section 47A which provides for the use of a certified copy or extract. If a person's adoption has been reregistered as the result of a change of sex, a person, whether or not the person is the reregistered person, who is aware of the reregistration, must not produce to another person, for a purpose of a law of another State or the Commonwealth, a certified copy or extract obtained under the *Adoption of Children Act 1964* showing the changed sex, unless the laws of the other State or the Commonwealth expressly allow it to be produced, or the person, when producing the certified copy or extract informs the person to whom it is produced about registration of the change of sex.

In addition, the reregistered person must not, with intent to deceive, produce to another person a certified copy or extract obtained under the *Adoption of Children Act 1964* showing the sex as it was recorded in the adopted children register prior to reregistration.

*Clause 10* Inserts a new section 55A, which provides that when the reregistration of an adopted person has occurred under section 29B(4) of the *Registration of Births, Deaths and Marriages Act 1962*, a certified copy or extract obtained under this Act from the registrar-general must show the person's sex in accordance with the reregistration, and must not include a statement or other clear indication to the effect that a change of the person's sex has been entered in to the adopted children register.

A person may ask the registrar-general for a certified copy from the adoption entry that was closed on the reregistration if the applicant is:- the relevant person; a child of the relevant person; the parent of the relevant person, if the relevant person is a child; or a person prescribed under a regulation.

## **PART 4—AMENDMENT OF ANTI-DISCRIMINATION ACT 1991**

*Clause 11* Provides that this Part amends the *Anti-Discrimination Act 1991*.

*Clause 12* Amends section 4 by inserting a range of new definitions. These include “family responsibilities”, “lawful sexual activity”, “religious activity”, “religious belief”, “sexuality”, and “gender identity” which relate to attributes listed in section 7. The clause also defines “de facto partner” and “immediate family” by reference to new sections 4B and 4C respectively. These definitions are incorporated into the general definition of “family responsibilities”.

*Clause 13* Inserts the new sections 4B and 4C which define “de facto partner” and “immediate family” for the purposes of the new attribute of “family responsibilities”.

*Clause 14* Amends section 7 by repealing the current attribute “religion” and replacing it with the new attribute “religious belief or religious activity”. It also inserts new attributes of “gender identity”, “sexuality” and “family responsibilities”. The clause also repeals section 7 (2) to remove the current restriction on the application of the attribute “breast feeding”. The effect is that discrimination on the basis of “breast feeding” will now be prohibited in all areas covered by the Act.

*Clause 15* Amends section 25 by inserting a further example of what would constitute a genuine occupational requirement for the purposes of the exemption. It provides that “*employing persons of a particular religion to teach in a school established for students of the particular religion*” would be an example of a genuine occupational requirement.

*Clause 16* Amends section 28 to provide that the exemption applies to both the new attributes of “gender identity” and “lawful sexual activity” (which is now specifically defined to mean a person’s status as a lawful sex worker). As a result the exemption will no longer apply to a range of activity currently caught by “lawful sexual activity”, for example homosexual activity.

The clause also inserts a new subsection 28(2) which makes it clear that there is nothing in the Act to prohibit discrimination against people who have been convicted in Queensland or elsewhere of an offence of a sexual nature involving a child, or disqualified from working with children under any State or Commonwealth legislation. The purpose of this new

subsection is to reinforce the protection of children currently provided by other specific legislation.

*Clause 17* Repeals section 29. This exemption presently allows educational or health related institutions under the direction or control of religious bodies to discriminate on any ground except age, race, or impairment in the work area if it is in accordance with the doctrine of the religion concerned and necessary to avoid offending the religious sensitivities of the people of the religion. This exemption is contrary to the spirit of the Act in that it has the effect of sanctioning and perpetuating discrimination against groups which the Act was designed to protect.

*Clause 18* Repeals section 42 which currently allows non-State school authorities to discriminate in the education area on any ground other than race or impairment. The exemption is considered unjustifiable in that it would allow non-State schools to refuse to admit or teach a student because he or she was, for example, homosexual, pregnant or in a de facto relationship. The Act already provides a specific exemption for educational authorities under section 41 which allows educational authorities to operate institutions wholly or mainly for children of a particular sex or religion or who have a general or specific impairment. Any further exemption is considered unjustifiable.

*Clause 19* Inserts a new section 45A which expressly states that section 46 does not apply to the provision of assisted reproductive technology services if the discrimination is on the basis of marital status or sexuality (for example, if a person is in a same sex relationship). The purpose of this amendment is to maintain the existing situation by ensuring that State legislation does not prevent medical practitioners making decisions about access to ART in accordance with clinical and ethical standards. Section 45A will remove any risk that a medical practitioner who declines to provide fertility treatment to a person on this basis may be subject to a complaint under the ADA.

*Clause 20* Amends section 109 by limiting the application of the general exemption in section 109(d) to areas other than work and education. This is to ensure that the purpose of repealing sections 29 and 42 is not circumvented by recourse to section 109(d).

*Clause 21* Amends section 111 to provide an exemption in relation to competitive sporting activity for discrimination on the basis of gender identity if the restriction is reasonable having regard to the strength, stamina, or physique requirements of the activity.

*Clause 22* Amends section 124A by introducing new prohibitions on vilification on the basis of sexuality or gender identity. As with racial and religious vilification, the prohibition is subject to a range of exemptions.

*Clause 23* Amends section 130(1)(a)(ii) by removing the words “*for the purposes of a proceeding under the Act*”. These words have limited the scope of the protection that the Act provides against victimisation. This amendment will make it clear that the protection is not limited to situations where a complainant makes an allegation about another person’s conduct for the purposes of making an actual complaint to ADCQ. Victimisation will be found to occur when a respondent does something to the detriment of the complainant because the complainant (or the complainant’s associate) alleges or intends to allege that another person committed an act that would amount to a contravention of the Act, whether or not the complainant intends to actually complain to the ADCQ.

*Clause 24* Amends section 131A by creating new offences of serious sexuality or gender identity vilification. The amendment will mean that person who by a public act knowingly or recklessly incites hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of sexuality, or gender identity of the person or members of the group by threats of physical harm or inciting others to threaten physical harm will commit an offence. The maximum penalty is 70 penalty units or six months imprisonment (for an individual) or 350 penalty units (for a corporation).

*Clause 25* Amends section 134 by enabling an organisation to make a complaint of vilification. This will overcome current restrictions in the Act which allow complaints to be made only by a person subjected to the alleged contravention (or the person’s agent) and representative complaints (ie a complaint by an individual who has a common complaint with and seeks to represent all other individuals in a particular group who have been similarly affected by the alleged contravention). In relation to complaints of vilification these restrictions are unsatisfactory as many vilifying acts are directed at a group rather than an individual. In such cases individuals within an affected group may be reluctant to make a complaint for fear of being singled out for victimisation or retribution. The amendment will enable appropriate organisations (relevant entities) to make a complaint by conferring on the Commissioner a discretion to accept a complaint if the Commissioner is satisfied it is made in good faith, the relevant alleged contravention is about conduct that has affected or is likely to affect relevant persons for the relevant entity (as defined) and that it is in the interests of justice that the complaint be accepted. The section defines a relevant entity as a body corporate or an unincorporated body, a primary

purpose of which is the promotion of the interests or welfare of a particular race, religion, sexuality or gender identity. It is not intended that only an entity which expressly includes in its objects of association the promotion of the welfare or interests of a relevant group will have a right to complain. In determining whether an entity is eligible, it is intended that the Commissioner will be able to take a wide variety of factors into account such as objects of association, past conduct, community profile, past representative activity etc

*Clause 26* Amends section 136 by extending the criteria for an eligible complaint. The clause inserts a new subsection (c) which requires a complaint to state the complainant's address for service and renumbers the existing subsection (c) as (d).

*Clause 27* Amends section 143 by requiring the Commissioner to notify a respondent of a range of matters if a complaint is accepted. The purpose is to expedite existing ADCQ investigation and conciliation processes by giving the respondent the option of providing a written response. The amendments to the section provide that if there is no written response from the respondent within 28 days, the Commissioner will be able to order a compulsory conference under section 159.

*Clause 28* Amends section 153 to overcome current problems in the construction of the section. The section has been construed to mean that if a worker is dismissed in circumstances entitling the worker to both lodge a complaint under the Act and file a complaint with the Industrial Relations Commission (IRC), the worker cannot apply to the IRC for relief, if the worker has not applied for such relief before lodging a complaint under the ADA, whether or not the Commissioner has accepted the complaint. This can have harsh consequences for an applicant who has made a complaint under section 136 only to have it rejected under section 141. The amendments make it clear that the worker will only lose his/her right to apply for industrial relief if:

- the worker is dismissed in circumstances entitling the worker to both lodge a complaint under the Act and apply for industrial relief;
- the worker does not apply for industrial relief before lodging the complaint and being notified under section 141 that the complaint has been accepted.

*Clause 29* Inserts a new section 154A which provides that the Commissioner may investigate complaints accepted under section 141.

This is to offset the repeal of section 155(1) which requires the Commissioner to investigate such complaints.

*Clause 30* Amends section 155(1) to remove the obligation on the Commissioner to conduct an investigation into complaints accepted under section 141. The obligation is inappropriate and unnecessary. This is offset by the new section 154A which gives the Commissioner a discretion as to whether he or she investigates such complaints.

The clause also repeals section 155(4). The subsection has given rise to problems in interpretation. The repeal of the subsection will ensure that there can be no argument about the degree of satisfaction the Commissioner must have as to whether a contravention has occurred in order to try to resolve the matter by conciliation. The existing sections 155(5) and (6) are renumbered to account for the repeal of section 155(4).

*Clause 31* Inserts a new section 164A which gives a complainant a new right to elect to have a complaint referred to the Anti-Discrimination Tribunal following a conciliation conference. At present a complainant only has a right to require referral if the Commissioner has decided that the complaint cannot be resolved by conciliation and notified the complainant accordingly. The amendment will not affect this right but will simply provide for a further right to ensure that a complainant does not have to wait until the Commissioner has made a decision that a matter is unconciliable before requiring referral. The purpose is to expedite the dispute resolution process and to ensure that parties are not required to attend exhaustive conciliation conferences. The section makes it clear that this will not affect the power of the Commissioner to lapse a complaint if the Commissioner is of the reasonable opinion that the complaint is frivolous or vexatious or misconceived or lacking in substance.

*Clause 32* Amends section 188 to make it clear that either before or during a hearing the Tribunal has the power to attempt to conciliate a complaint, refer a complaint to the registrar for conciliation or refer a complaint to the Commissioner for conciliation if the Tribunal considers the complaint could be resolved this way. At present the section does not make it clear that the Tribunal has the power to refer a complaint to the registrar.

*Clause 33* Amends section 201 to empower the Tribunal to order any person to attend a hearing, give evidence on oath or affirmation or give the Tribunal documents whether or not a party to the hearing has required the person as a witness.

*Clause 34* Amends section 208 by clarifying the powers of the Tribunal in the evaluation of evidence. The clause inserts new subsection (a) which provides that the Tribunal must have regard to the reasons for the enactment of this Act as stated in its preamble. It also inserts a new subsection (d) which provides that the Tribunal must conduct itself in a way which will enable costs or delay to be reduced and will help to achieve a prompt hearing of the matters at issue between the parties. The clause renumbers existing subsections to take account of the changes.

*Clause 35* Amends section 209 by providing a number of additional remedies that can be ordered by the Tribunal if a complaint is proven. The section provides that the Tribunal may order the respondent to make a private apology or retraction, to make a public apology or retraction (including the way and form of publication) or to implement programs to eliminate unlawful discrimination. It also provides that the Tribunal may order any party to pay interest on an amount of compensation.

*Clause 36* Amends section 213 by providing that the Tribunal must assess costs using the scale of costs for the District Court under the *Uniform Civil Procedures Rules 1999*, unless the Tribunal is satisfied that because of the complexity of the matter or for some other reason costs should be assessed using a higher scale. The purpose is to ensure greater fairness and certainty for parties by allowing them to make a more meaningful costs/risk assessment of litigating an issue before the Tribunal. The section also sets out criteria the Tribunal may take into account in deciding whether to order a party to pay costs. These are the reasons for the enactment of the Act as stated in the preamble and a range of factors which may affect the fairness of the order. The new subsection (4) specifically provides that this does not limit the overriding discretion of the Tribunal to make such orders as it considers reasonable.

*Clause 37* Inserts a new chapter 7, part 2, division 3A which establishes a new scheme for the making of offers to settle which may be taken into account by the Tribunal in ordering costs. The purpose is to encourage a speedy resolution of disputes. The new section 213A provides that if a party to a proceeding (the offeror) makes an offer to settle which is not accepted within the relevant time, the Tribunal may make an order requiring the other party (the offeree) to pay all costs incurred by the offeror after the offer was made if the Tribunal considers that the orders it makes are not more favourable to the offeree than the offer. The new section 213B provides that an offer to settle cannot be revealed to the Tribunal until it has made its orders, that a party may make more than one offer to settle and that if an offer to settle provides for the payment of money the offer must state when the money is to be paid. Section 213C

provides that an offer to settle must be open for acceptance until immediately before the Tribunal makes any order under section 209 or 210 or until the expiry of a stated period, whichever happens first. An offer to settle cannot be withdrawn while it is open for acceptance without the permission of the Tribunal. Section 213D sets out the orders that the Tribunal may make if a party who makes an offer does not comply with its terms.

*Clause 38* Inserts a new section 215A which empowers the Tribunal to dismiss complaints that are frivolous, vexatious, misconceived or lacking in substance or that for any other reason should not be further considered.

*Clause 39* Replaces the existing section 216 with a new section which clarifies the procedures by which a matter is brought to the Supreme Court for a decision. The section provides that the Tribunal may, at any stage of the proceeding and on the terms it considers appropriate state a written case for the opinion of the Supreme Court on a question of law relevant to the proceedings. The court may hear and decide the matter raised by the case stated and remit the case with its opinion to the Tribunal. The Tribunal must give effect to the court's opinion.

*Clause 40* Amends section 236 by clarifying the powers of the Commissioner. It specifically provides in relation to requests for a person to give the Commissioner a document or other material, the Commissioner may require the document or other material be provided within a specified time.

*Clause 41* Amends chapter 10 by inserting a new "Part 1- Service". The new Part sets out a number of matters relating to the provision of an address for service including the use that may be made of an address for service and provision for a deemed address for service if no address for service is known.

*Clause 42* Inserts new Chapter and Part headings – "Chapter 11 – Transitional Provisions" and "Chapter 11, Part 1- Transitional Provision for Act No 29 of 1994"

*Clause 43* Inserts "Chapter 11, Part 2- Transitional Provisions for the Discrimination Law Amendment Act 2002" which contains transitional provisions. It also inserts the heading for the Schedule which contains the dictionary of defined terms currently contained in the existing section 4.

## **PART 5—AMENDMENT OF THE GUARDIANSHIP AND ADMINISTRATION ACT 2000**

*Clause 44* Provides that that this part amends the *Guardianship and Administration Act 2000*.

*Clause 45* Inserts a new section 262B into the *Guardianship and Administration Act 2000*. Section 262B is a transitional provision. Section 231 prevents a person from holding office as a community visitor if the person or the person’s spouse has a direct pecuniary interest in a relevant contract or visitable site. Section 262B will enable a community visitor appointed prior to the commencement of the amendments, whose de facto spouse has a direct pecuniary interest in a relevant contract or visitable site, to continue to hold office as a community visitor until their term of office expires. The community visitor is only protected for the term of office current at the time of commencement of the section so any renewal or extension of the term will not be covered.

## **PART 6—AMENDMENT OF JUDGES (PENSION AND LONG LEAVE) ACT 1957**

*Clause 46* Provides that this Part amends the *Judges (Pension and Long Leave) Act 1957*.

*Clause 47* Inserts a new definition of “live together as a couple” into section 2 which means “live together as a couple” as provided for in section 32DA of the *Acts Interpretation Act 1954*.

*Clause 48* Amends section 7 of the *Judges (Pension and Long Leave) Act 1957*, which sets out the pension entitlements of a spouse of a judge who dies before retirement.

Subsection 2 provides that a spouse who is a de facto partner of the judge is only entitled to a pension if the judge and spouse had lived together as a couple for a continuous period of 2 years prior to the judge’s death or for a shorter period if the circumstances of the relationship show a clear intention that the relationship be a long term, committed one.

Subsection 2(b) provides what happens if the judge is survived by more than one spouse. In this case the pension payable is the pension that would

have been paid had only one spouse survived the judge. This pension is to be apportioned between the spouses by the Minister in the shares that the Minister considers appropriate.

*Clause 49* Amends section 8 of the *Judges (Pensions and Long Leave) Act 1957* which sets out the pension entitlements of a spouse of a judge who dies after retiring.

Subsection (2)(a) provides that a husband or wife of a deceased retired judge is entitled to a pension only if they were married to the judge prior to retirement. The marriage relationship would also need to exist at the time of death of the judge.

Subsection (2)(b) provides that a de facto partner of a judge is only entitled to a pension if they were the judge's spouse when the judge retired and when the judge died. In addition, a de facto partner must have lived with the judge as a couple for a period of 2 years prior to the judge's death. A shorter cohabitation period ending on the death of the judge is acceptable if the circumstances of the de facto relationship show a clear intention that the relationship be a long term, committed one.

Subsection (2)(c) sets out what happens if the judge is survived by more than one spouse. In this case the pension payable is the pension that would have been paid had only one spouse survived the judge. This pension is to be apportioned between the spouses by the Minister in the shares that the Minister considers appropriate.

*Clause 50* Amends section 8A of the *Judges (Pensions and Long Leave) Act 1957* which sets out the pension entitlements of children. The new section 8A inserts a new definition of "eligible child" into the Act. Under the definition an eligible child is entitled to a pension as set out in section 8A of the Act. A child of a judge who is under 16 or who is under 25 if they are receiving full time education at a school, college or university is an eligible child.

For a judge who dies before retirement, a child of a judge's husband or wife is also an eligible child. A child of a de facto partner will also be an eligible child if the child was a child of the de facto partner at the date of the judge's death and the de facto partner is a spouse who is eligible for a pension under the amended section 7.

For a judge who dies after retirement, a child of a judge's husband or wife is an eligible child if the judge was married to the husband or wife at the date of retirement and at the date of death. The child must also have been a child of the judge's husband or wife at the date the judge retired. A child of a de facto partner of a judge who dies after retirement will also be

an eligible child in certain circumstances. The child must have been a child of the de facto partner at the date the judge retired. The de facto partner must also be a person who is eligible for a pension under the amended section 8 of the Act.

## **PART 7—AMENDMENT OF LAND TAX ACT 1915**

*Clause 51* Provides that this part amends the *Land Tax Act 1915*.

*Clause 52* Amends section 3 of the *Land Tax Act 1915* to insert a reference to the new definition of “spouse”. “Spouse” is defined by reference to a new section 3BA.

*Clause 53* Inserts a new section 3BA into the *Land Tax Act 1915* to provide a definition of “spouse”. Under this definition, a person will be another person’s spouse if they are married or if the person is a de facto partner of the other person. New subsection (2) sets out when a person will be a de facto partner. This provision incorporates the meaning of “de facto partner” under section 32DA on the *Acts Interpretation Act 1954* with the addition of a requirement for a minimum cohabitation period of 2 years.

The new subsection (3) ensures that the definition of “spouse” applies for the purposes of the Act, despite section 32DA(6) of the *Acts Interpretation Act 1954*.

*Clause 54* Amends section 11(6F) of the *Land Tax Act 1915* to replace the references to “husband” and “wife” with “spouse”.

*Clause 55* Amends section 11B(3B) of the *Land Tax Act 1915* to replace the references to “husband” and “wife” with “spouse”.

*Clause 56* Amends section 11BA(5) of the *Land Tax Act 1915* to replace the references to “husband” and “wife” with “spouse”.

*Clause 57* Amends sections 11C(2A) and 11C(2B) of the *Land Tax Act 1915* to replace the references to “husband” and “wife” with “spouse”.

As the new definition of “spouse” in new section 3BA includes de facto partners, the sections amended by clauses 54 to 57 will now apply also where a de facto relationship exists between beneficiaries of the trusts referred to in the sections.

## **PART 8—AMENDMENT OF PROPERTY LAW ACT 1974**

*Clause 58* Provides that this part amends the *Property Law Act 1974*.

*Clause 59* Inserts a new definition of de facto partner in section 260 in the *Property Law Act 1974*. It provides that a person is a de facto partner of another person if they are or have been a de facto partner of the other person under section 32DA of the *Acts Interpretation Act 1954*. In addition, a person will be a de facto partner of another person if they would have been a de facto partner of the person had section 32DA of the *Acts Interpretation Act 1954* been in operation when they were in their de facto relationship with the other person.

*Clause 60* Amends section 323 of the Act which provides that a declaration made under Division 5 of Part 19 of the *Property Law Act 1974* has effect as a judgement of the court. Declarations made under this Division are intended to avoid duplication of proceedings by allowing a person to make an application to a court for a declaration about the existence or non-existence of the de facto relationship.

The amendment provides that the persons named in a declaration may also be taken to have been or not to have been de facto partners for Part 19 and the new definition of de facto partners in section 32DA of the *Acts Interpretation Act 1954*.

The amendment also provides that a declaration only has effect for another Act to establish whether the persons named in it were on the stated date or during the relevant periods, de facto partners of each other as defined in the *Acts Interpretation Act 1954*.

## **PART 9—AMENDMENT OF THE PUBLIC TRUSTEE ACT 1978**

*Clause 61* Provides that this part amends the *Public Trustee Act 1978*.

*Clause 62* Amends section 54 of the *Public Trustee Act 1978*. Section 54 enables the Public Trustee to pay the residue of the estate of an intestate person to a spouse who survives the deceased person if the residue does not exceed \$20,000. The amendments incorporate the new definition of “de facto partner” in section 32DA of the *Acts Interpretation Act 1954* with the

addition of a requirement for a 2 year minimum cohabitation period ending on the death of the intestate.

This makes the provision consistent with those provisions of the *Succession Act 1981*, which deal with the entitlement of a de facto partner to estate of their intestate partner.

*Clause 63* Amends section 88 to enable the Public Trustee to pay out the estate of a deceased incapacitated person to a spouse of the incapacitated person without requiring a grant of administration. The amendment to section 88 provides that a de facto partner will only be a spouse of an incapacitated person if the incapacitated person and the de facto partner lived together as a couple on a genuine domestic basis within the meaning of section 32DA of the *Acts Interpretation Act 1954* for a period of 2 years ending on the death of the incapacitated person. This makes the provision consistent with those provisions of the *Succession Act 1981*, which deal with the entitlement of a de facto partner to the estate of their intestate partner.

*Clause 64* Amends section 94 to clarify that a person who was the de facto partner of a prisoner immediately before the imprisonment occurred is not prevented from being a spouse of the prisoner during their imprisonment even though the imprisonment prevents them from cohabiting.

*Clause 65* Amends section 107 to make it clear that a de facto partner of the owner of unclaimed property who was the de facto partner of the owner immediately before the last known contact with the owner of the property may be a spouse.

*Clause 66* Inserts a new part 10, Division 3, which contains transitional provisions for the amendments effected to the *Public Trustee Act 1978*. Those amendments do not apply in relation to a will executed before the commencement of the amendments effected by this Bill or in relation to the estate of a person who died before the commencement of these amendments.

## **PART 10—AMENDMENT OF REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES ACT 1962**

*Clause 67* Provides that this Part amends the *Registration of Births, Deaths and Marriages Act 1962*.

*Clause 68* Provides for definitions of “adopted children register”, “recognition certificate” and “sexual reassignment surgery.”

*Clause 69* Amends section 22 of the Act. It provides that after the reregistration of the birth of a person under section 29B(4), a certificate or extract obtained from the registrar-general under subsection (1) must show the relevant person’s sex in accordance with the reregistration, and must not include a statement or other clear indication to the effect that a change of the relevant person’s sex has been entered into the register of births.

A person may ask the registrar-general for a certificate from the entry that was closed on the reregistration if the applicant is the relevant person; a child of the relevant person; a parent of the relevant person (if the relevant person is a child); or a person prescribed by regulation.

*Clause 70* Amends section 28(3) so that even if a change of a child’s name may have been entered into a register under subsection (1), an additional entry may be made in conjunction with the entering of a change of sex under section 28D.

The clause also amends section 28(4), so that an adult adopted person may apply to the registrar-general to enter a change of name by deed poll into the relevant entry in the adopted children register.

*Clause 71* Corrects a drafting omission to section 28A(1)(a).

*Clause 72* Inserts new sections which provide the procedure for an application to change sex in either the register of births or the adopted children register. A person whose birth has been registered under the *Registration of Births Deaths and Marriages Act 1962*, or whose adoption has been registered under the *Adoption of Children Act 1964*, may apply to the registrar-general to enter a change of the person’s sex in the register of births or the adopted children register.

A person may make an application to have the change of sex recorded if the person is 18 years or more, has undergone sexual reassignment surgery and is not married.

Also, the parents or guardian of a child whose birth or adoption have been registered under this Act or the *Adoption of Children Act 1964*, may

apply to the registrar-general to have the change of the child's sex entered into the appropriate register, and for reregistration of the birth or adoption.

An application may be made by only one parent if the applicant is the sole parent named in the registration of the child's birth or adoption, if the other parent is dead, the other parent's whereabouts are unknown, the other parent cannot sign the application, or there is some other reason that justifies the making of the application by only one parent.

New section 28C provides that the application must be accompanied by either statutory declarations by 2 doctors verifying that the person has undergone sexual reassignment surgery or a recognition certificate, and any other documents or information.

New section 28D provides that the registrar-general must decide an application by entering the change of sex in the register of births or the adopted children register or refusing to enter the change. The registrar-general must refuse to enter a change of sex if the person who is the subject of the application is married.

*Clause 73* Amends section 29B by providing a procedure for entering a change of sex in either the register of births or the adopted children register. After the registrar-general enters a change of sex in the appropriate register, the registrar-general must note the change by making a marginal note in the relevant entry. The entry must then be closed and reregistered.

*Clause 74* Amends section 29C to provide a process for an application for reregistration of a person's adoption.

*Clause 75* Extends the application of section 29D to adoptions.

*Clause 76* This clause makes a consequential amendment to section 29E(2) because of the insertion of the definition of "adopted children register."

*Clause 77* This clause inserts a new section 43A which provides for the use of a certificate or extract if a birth has been reregistered under section 29B(4). If a person's birth has been reregistered as the result of a change of sex, a person, whether or not the person is the reregistered person, must not produce to another person, for a purpose of a law of another State or the Commonwealth, a birth certificate or extract showing the changed sex, unless the laws of the other State or the Commonwealth expressly allow it to be produced or the person, when producing the certificate informs the person to whom it is produced about registration of the change of sex.

In addition, the reregistered person must not, with intent to deceive, produce to another person a certificate or extract showing the sex as it was

before the change of sex was recorded in the register of births before the reregistration.

The clause also inserts a new section 43B which provides for the effect of reregistration of change of sex. When a person's birth or adoption has been reregistered under section 29B(4), the person is taken to be, for the purposes of the law of Queensland to be the sex as recorded in the register of births or the adopted children register after the reregistration.

A person who, under the law of another State, has had a change of sex recorded in a corresponding register of births or adoptions, is taken, for the purposes of the law of Queensland, to be the sex as recorded in the corresponding register after the entry is changed.

New section 43C provides that a person who is the subject of a recognition certificate is taken to be, for the purposes of the law of Queensland, a person of the sex as stated in the certificate.

Despite this, the requirements of section 28B to 28D must be complied with if a recognised person wishes to have the sex as stated in the recognition certificate registered in the register of births or the adopted children register.

## **PART 11—AMENDMENT OF THE SUCCESSION ACT 1981**

*Clause 78* Provides that this part amends the *Succession Act 1981*.

*Clause 79* Inserts a new section 5AA, which contains a new definition of “spouse” and “spouse of a deceased person”. Under this definition a person will generally be another person's spouse if they are married or if the person is a de facto partner of the other person as defined in section 32DA of the *Acts Interpretation Act 1954*.

The new subsection 5AA(2) also sets out when a person will be the spouse of a deceased person. Under this provision a person will be the spouse of a deceased person if they were married to the deceased person or if they were the deceased person's de facto partner at the date of death. This incorporates the definition of de facto partner in section 32DA of the *Acts Interpretation Act 1954* with an additional requirement that the

deceased and de facto partner must have cohabited for a minimum period of 2 years ending on the death of the deceased.

The new subsection 2 also includes a definition of spouse that applies for part 4 of the Act which deals with Family Provision. It includes a person who was dependant on their deceased former husband or wife as an additional category of person who is a spouse of a deceased person for the purposes of Part 4.

*Clause 80* Inserts a new Part 7 Division 2, section 74 into the *Succession Act 1981*. This section provides that the amendments effected by this Bill do not apply to a will executed before the Bill commences or for the estate of a person who dies before the Bill commences.

*Clause 81* Inserts a new Part 1 into Schedule 2. This sets out the way in which the estate of an intestate is to be divided if they are survived by a spouse. If the intestate is not survived by issue but is survived by a spouse the spouse takes the entire residuary estate. If the intestate is survived by more than one spouse, the residuary estate is to be divided in accordance with section 36 of the *Succession Act 1981*.

If the intestate is survived by issue, and there is only one surviving spouse the spouse is entitled to the household chattels, \$150,000 and 1/2 of the residue if there is one child of the intestate (1/3 if there is more than one child) and the issue take the balance. If there is more than one spouse who survives the intestate the residuary estate they are entitled to the household chattels, \$150,000 and 1/2 of the residue if there is one child of the intestate (1/3 if there is more than one child). This is to be divided between the spouses in accordance with section 36 of the *Succession Act 1981*.

## **PART 12—AMENDMENT OF THE SUPREME COURT ACT 1995**

*Clause 82* Provides that this part amends the *Supreme Court Act 1995*.

*Clause 83* Amends section 18 to define spouse of a deceased person for the purposes of section 18(1). New Subsection 2 sets out when a person will be a de facto partner of a deceased person. This provision incorporates the meaning of “de facto partner” under section 32DA of the *Acts Interpretation Act 1954*. It includes an additional requirement of a minimum cohabitation period of 2 years or a shorter period ending on the

death if the circumstances of the de facto relationship between the deceased person and the de facto partner showed a clear intention that the relationship be a long term, committed one. However, if there is a dependent who is a child of the relationship, it is sufficient that the de facto relationship existed immediately before the death occurred.

*Clause 84* Amends section 81 by omitting husband and wife from the section and inserting in its place “spouse”. This makes it clear that the section applies to people who are married and de facto partners.

*Clause 85* Inserts a new section 303 into the *Supreme Court Act 1995*. This is a transitional provision that applies where a person dies in the 1 year period following the commencement of the section. It provides that a spouse of a deceased person for section 18(1) includes a person who was living with the deceased as the deceased’s husband or wife for at least 1 year immediately prior to commencement of section 303 and who continued to live with the deceased as their husband or wife until the death.

## **PART 13—AMENDMENT OF WORKCOVER QUEENSLAND ACT 1996**

*Clause 86* Provides that this part amends the *WorkCover Queensland Act 1996*.

*Clause 87* Amends section 31 of the *WorkCover Queensland Act 1996* to clarify when a de facto partner may be a “spouse of a deceased worker”. Subsection 1 incorporates the meaning of “de facto partner” under section 32DA of the *Acts Interpretation Act 2002*. It includes an additional requirement of a minimum period of cohabitation of at least 2 years immediately before the worker’s death or a shorter period if the circumstances of the de facto relationship between the deceased worker and the de facto partner showed an intention that the relationship be a long term, committed one. However, if there is a child of the relationship, it is sufficient if the de facto relationship existed immediately before the death occurred. It does not matter when the child was born as long as the relationship was in existence immediately before the death. A child born of the spouses posthumously is also included. Subsection 3 also inserts a new definition of “child of the relationship” and “dependant”.

*Clause 88* Inserts a new Chapter 15, section 591 into the *WorkCover Queensland Act 1996*. This is a transitional provision that applies where a worker dies in the 1 year period following the commencement of the section. It provides that a spouse of the worker includes a person who was living with the worker as the worker's husband or wife for at least 1 year immediately prior to commencement of section 303 and who continued to live with the worker until the worker's death.

*Clause 89* Inserts a new definition of spouse into the dictionary which refers to the new definition of "spouse of a deceased worker" by reference to section 31 of the *WorkCover Act 1996*.

## **PART 14—AMENDMENT OF OTHER ACTS**

*Clause 90* Provides that the Schedule amends the Acts it mentions.

The amendments to the *Aboriginal Land Act 1991* clarify that the *Acts Interpretation Act 1954* definition of "spouse" does not apply to sections 39(3) and 76(3)(a). In those sections "spouse or former spouse" has been replaced with "husband or wife, or former husband or wife" of the person referred to in the section.

The amendments to the *Adoption of Children Act 1964* clarify that the *Acts Interpretation Act 1954* definitions of "spouse" and "de facto partner" do not apply to a reference to spouse in that Act.

The amendments to the *Agricultural Chemicals Distribution Control Act 1966* clarify that a "spouse" is included within the meaning of "relative" in section 6. The amendments update the terminology used in the Act so that it is consistent with the *Acts Interpretation Act 1954* definitions of "spouse" and "de facto partner".

The amendments to the *Ambulance Service Act 1991* clarify that a person's spouse may consent to the release of information where the next of kin of the person could do so. In addition, the provision makes it clear that communication of information to the next of kin or relative of a person under section 49(2)(c)(iv) includes communicating that information to the person's spouse.

The amendments to the *Anti-Discrimination Act 1991* omit the definitions of "de facto partner" and "immediate family" inserted by Section 4B and 4C. When the *Acts Interpretation Act 1954* definition of de

facto partner commences the definition of de facto partner in section 4B will be obsolete. The amendment to sections 7(1)(b), 31(1), 45A, 59 and 91 replaces the references in those sections to “marital status” with “relationship status”.

The amendment to section 31(1)(f) of the *Anti-Discrimination Act 1991* updates the terminology in the section to refer to de facto partners.

The amendments delete the definitions of “de facto partner” and “de facto spouse” from the schedule and insert new definitions of “immediate family” and “relationship status” into the schedule containing the definitions for the Act. “Relationship status” replaces the previous term “marital status”. “Marital status” is not reflective of the types of relationships encompassed by the definition, which includes whether a person is a de facto partner of another person.

The amendments to the *Burials Assistance Act 1965* remove the terms “husband or wife” from section 4 and replaces them with “spouse”. This means that the *Acts Interpretation Act 1954* meaning of “spouse” which is inclusive of de facto partners applies.

The amendments to the *Child Care Act 2002* remove the definitions of “spouse” and “de facto spouse” from schedule 2 of the Act. These definitions will be obsolete when the *Acts Interpretation Act 1954* definitions of “spouse” and “de facto spouse” commence.

The amendments to the *Child Protection Act 1999* remove the references to “husband and wife” from section 131(3) of the Act and replace them with “spouse”. Spouse will then be inclusive of “de facto partners” under the new definition of “spouse” in the *Acts Interpretation Act 1954*.

The amendment to the *Corrective Services Act 2000* inserts a new definition of “relative” in schedule 3 (Dictionary). Relative was previously undefined for sections 59 and the definition of “personal visitor” in schedule 3. The new definition of relative includes de facto partners and recognises that a de facto partnership between two people may exist in spite of the circumstances of imprisonment preventing them from cohabiting. Accordingly, “relative”, of a prisoner, includes a person who was the prisoner’s de facto partner immediately before the person was imprisoned.

The amendments to the *Criminal Code* omit references to “de facto partner” from section 119A. Section 119A refers to “spouse” and the references to “de facto partner” are unnecessary, as the definition of “spouse” in the *Acts Interpretation Act 1954* which includes de facto partners, will apply to the section. Section 219 is also amended to clarify

that the *Acts Interpretation Act 1954* definition of “spouse” does not apply to section 219 of the *Criminal Code*. In that section “spouse” means “husband or wife”. The amendments also replace references to “husband or wife” in section 442 with “spouse” making it clear that the provisions apply to de facto partners as defined in the *Acts Interpretation Act 1954*.

The amendments to the *Domestic and Family Violence Protection Act 1989* update the definition of “spouse” in section 12 of the Act to make it consistent with the definition in the *Acts Interpretation Act 1954*. It also makes it clear that for the purposes of section 12 and the schedule definition, “spouse” includes a former spouse and people who are the biological parents of a child are included within the meaning of spouse for the Act.

The amendments to the *Duties Act 2001* ensure that the definition of “spouse” contained in the dictionary in schedule 6 of the Act applies for the purposes of the Act despite section 32DA(6) of the *Acts Interpretation Act 1954*. Clauses 2 and 3 amend sections 423 and 425 of the *Duties Act 2001* to take into account the replacement of the definition of “de facto spouse” with the new definition of “de facto partner”. The definitions of “de facto relationship”, “de facto spouse” and “spouse” are omitted from the dictionary in schedule 6 of the *Duties Act 2001*. The amendments insert new definitions of “de facto partner”, “de facto relationship” and “spouse” into the dictionary in schedule 6 of the *Duties Act 2001*. The new definition of “de facto partner” incorporates the meaning of “de facto partner” under section 32DA of the *Acts Interpretation Act 1954* with the addition of a requirement for a minimum cohabitation period of 2 years.

The amendments to the *Education (Teacher Registration) Act 1988* remove references to the terms “widow” and “widower”, replacing them with “surviving spouse”. The amendments are designed to update the terminology used in the section so that the new, broader definition of “spouse” will apply to the section. The amendment will provide rights to the broader category of persons now included within the definition of “spouse”.

The amendment to the *Fire and Rescue Service Act 1990* updates the terminology used in schedule 4 of the Act by removing a reference to “living in a de facto relationship” which will be unnecessary following the commencement of the *Acts Interpretation Act 1954* definition of “spouse” which is inclusive of de facto partners.

The amendments to the *First Home Owner Grant Act 2000* amend section 9(1) of the Act to ensure that the provision operates subject to subsections (2) to (6). The amendments to section 9(1)(b) of the *First*

*Home Owner Grant Act 2000* replace the reference to “de facto spouse” with “de facto partner” to take into account the new expression. A new subsection 9(2) is inserted into the Act to provide a new meaning of “de facto partner”. This definition incorporates the meaning of “de facto partner” under section 32DA of the *Acts Interpretation Act 1954* with the addition of a requirement for a minimum cohabitation period of 2 years. The amendments make also consequential amendments to section 9 of the *First Home Owner Grant Act 2000*.

The amendments to section 9(6)(a) of the *First Home Owner Grant Act 2000* take into account the replacement of the expression “de facto spouse” with the new expression “de facto partner”.

The amendments also replace subsection 9(6)(b) of the *First Home Owner Grant Act 2000* to ensure that the meaning of “live together on a genuine domestic basis in a personal relationship as a couple” is derived from the *Acts Interpretation Act 1954*, section 32DA.

The amendments insert new subsection 9(8) into the *First Home Owner Grant Act 2000* to ensure that the definition of “spouse” applies for the purposes of the Act, despite section 32DA(6) of the *Acts Interpretation Act 1954*.

The amendments to the *Fossicking Act 1994* allow the definition “de facto partner” in the *Acts Interpretation Act* to apply for the purposes of section 6(4)(a) of the *Fossicking Act 1994*.

The amendments to the *Health Services Act 1991* clarify that, if a person has died, the person’s spouse may consent to the giving of information that would enable the person to be identified as having received a public health service. Currently, section 63(2)(b) of the *Health Services Act 1991* enables a person’s next of kin to give consent for the giving of information. However, “next of kin” is not defined for the purposes of that Act.

The amendments also clarify that information concerning the condition of a person who is a patient in, or is receiving health services from, a public sector health service may be communicated by a member of the medical staff of a public sector health service to the person’s spouse.

The amendments to the *Industrial Relations Act 1999* amend the definition of “spouse” in the dictionary contained in schedule 5 of the Act and provide that for the purposes of the Act “spouse” of an employee includes a former spouse.

The amendments to the *Interactive Gambling (Player Protection) Act 1998* omit the definition of “spouse” from the dictionary in schedule 3 of

the Act as the term is obsolete as it will now be defined in section 36 of the *Acts Interpretation Act 1954*.

The amendments to the *Law Reform Act 1995* clarify that the *Acts Interpretation Act 1954* definition of “spouse” does not apply to sections 2(2) and section 18. The amendments also removes references to “spouse” in the headings to Parts 4 and 7 of the Act and section 18, making it clear that those parts and section of the Act apply to people who are married. The amendments also insert a new definition of spouse into the *Law Reform Act 1995* for the purposes of section 8 of that Act. Under the amendments “spouse” is defined by reference to the meaning of spouse in sections 18 and 303 of the *Supreme Court Act 1995*.

The amendments to the *Maintenance Act 1965* clarify that the *Acts Interpretation Act 1954* definition of “spouse” does not apply to section 112 of the Act. The amendment makes it clear that the section only applies to people who are married.

The amendments to the *Mental Health Act 2000* omit the definition of “spouse” from the dictionary in schedule 2 of the Act. The term no longer needs to be defined in the Act, as it will be defined in the *Acts Interpretation Act 1954*.

The amendments to the *Mobile Homes Act 1989* omit the definition of “spouse” in section 3 of the Act. The definition of spouse is no longer required as it will be contained in the *Acts Interpretation Act 1954* and will include a de facto partner. The amendments also omit “step-child” from section 7(2)(b) of the Act and insert an additional subsection (c) to include a child of the spouse of the occupier.

The amendments to the *Parliamentary Contributory Superannuation Act 1970* omit the definition of “widow”, and insert a new definition of “widow” to recognise the extended definition of “spouse” contained in s.32DA of the *Acts Interpretation Act 1954*. The amendments also provide that the term “widow” includes persons of both genders. The amendments also insert a provision providing that a de facto partner and the member or former member must live together as a couple on a genuine domestic basis for a period of at least 2 years ending at the time of death. The time period can be shorter if the circumstances indicate a clear intention that the relationship be long term and committed.

Section 21(4) of the *Parliamentary Contributory Superannuation Act 1970* is also amended to make it clear that children from a de facto relationship entered into following the cessation of the member’s membership of the Fund are not to be recognised for benefit payment

purposes. This is consistent with the treatment of children from a marriage.

The amendments to the *Partnership Act 1891* remove references to “widow” and “widower”, replacing them with a reference to “a deceased person’s spouse”. The amendments update the terminology used in the section so that the new, broader definition of “spouse” used in the *Acts Interpretation Act 1954* will apply to the section.

The amendments to the *Powers of Attorney Act 1998* remove the references to “spouse” and “de facto spouse” from the dictionary in schedule 3 of the Act as these definitions are no longer required as the terms will be defined in the *Acts Interpretation Act 1954*. In addition, the amendments clarify that section 52 of the *Powers of Attorney Act 1998* only applies to people who are married.

The amendments to the *Property Agents And Motor Dealers Act 2000* inserts a new definition of “associate” into the dictionary in schedule 3 of the Act which omits references to “de facto spouse”. The reference will not be required as the term “spouse” will be defined to include a de facto partner in the *Acts Interpretation Act 1954*. In addition, the reference in the definition of relative to “step-child” is also omitted.

The amendments to the *Property Law Act 1974* remove references to “de facto spouse or spouses” in Part 19 of the Act and replaces them with “de facto partner”. This ensures that the Part 19 of the *Property Law Act 1974* uses terminology, which is consistent with the terminology used in the *Acts Interpretation Act 1954*.

The amendments to the *Queensland Investment Corporation Act 1991* omit the definition of “spouse” from the definitions contained in section 3 of the Act. This term does not need to be defined as it will be defined to include a “de facto spouse” in the *Acts Interpretation Act 1954*.

The amendments to the *Registration of Births, Deaths and Marriages Act 1962* clarify that in section 30 a “relative of a deceased person” includes a spouse. This will mean that de facto partners and married spouses have the same obligations to report the death of their spouse.

The amendments to the *Reprints Act 1992* omit examples 2 and 3 from section 24. The examples contain references to husband and wife, which will be obsolete following the amendments made by this Bill.

The amendments to the *Residential Tenancies Act 1994* omit the definition of “spouse” from the dictionary in schedule 3 of the Act. The

term does not need to be defined in the *Residential Tenancies Act 1994* as it will be defined in the *Acts Interpretation Act 1954*.

The amendments to the *Retirement Villages Act 1999* amend the reference to “relatives” of scheme operators in section 89 so that the term includes the scheme operator’s spouse. The amendments update the terminology used in section 89 so that the new *Acts Interpretation Act 1954* definition of “spouse” will apply to the section.

The amendments to the *South Bank Corporation Act 1989* makes it clear that an “associated adult” of a child for the purposes of section 37I (3)(b) includes a child’s spouse. Under the *Acts Interpretation Act 1954*, spouse will include the child’s husband, wife, or their de facto partner

The amendments to the *State Development and Public Works Organisation Act 1971* omit the reference to “de facto relationship” in section 119(4)(d). Section 119(4)(d) provides that a member has an indirect financial interest in a matter if they have a spouse or live in a de facto relationship with a person who has an indirect financial interest. The reference to “de facto relationship” will not be required, as the *Acts Interpretation Act 1954* definition of “spouse” will include de facto partners.

The amendments to the *State Housing Act 1945* replaces references to “husband and wife” and “widow and widower” in sections 23(2)(c), 24(2)(b), 26(1A)(b), 25(2), 25B(3), 26(3)(b), 30A and 33 (10) with references to “spouse” as defined in the *Acts Interpretation Act 1954*. The amendments also include a transitional provision so that the amendments to section 25B made by this Bill to not apply to insurance cover that was provided under section 25B before commencement of this Bill.

The amendments to the *Status of Children Act 1978* clarify that the *Acts Interpretation Act 1954* definition of “spouse” does not apply to section 14A(2). In that section “spouse” means husband or wife of the person referred to in the section.

The amendments to the *Succession Act 1981* omit the definition of “de facto spouse” from section 5. The definition is obsolete as the new definition of “spouse” included in section 5AA and this definition includes “de facto partners”. The amendments also amend section 5 to insert a reference to the new definition of spouse in section 5AA. The amendments also replace the references in the Act to “matrimonial home” with “shared home”. Section 18(1) of the *Succession Act 1981* is amended to clarify that the new *Acts Interpretation Act 1954* definition of “spouse” does not apply for the purposes of that section and the reference to “spouse” is replaced

with a reference to “former husband or wife”. Section 36 replaces the reference to a deceased person being survived by a “spouse and a de facto spouse” with a reference to “more than one spouse”. The Bill also effects consequential amendments to section 36(3) taking into account that a deceased person may be survived by more than one spouse. The amendments remove references throughout the Act to “de facto spouses” which are unnecessary as a result of the insertion of the new section 5AA in the *Succession Act 1981*.

The amendment to the *Superannuation (State Public Employees Portability) Act 1985* omits the definition of “relict”. This term is obsolete.

The amendments to the *Superannuation (State Public Sector) Act 1990* insert a new subsection 6A in section 13, which provides the Minister with discretion to limit the application of the section to particular classes of spouses as stated in the QSuper Membership Notice. It is anticipated that a complementary amendment to the QSuper Membership Notice will be made to ensure eligible spouse contributions cannot be made in respect of same sex spouses. This is required to ensure the QSuper fund complies with Commonwealth legislation, which does not currently allow spouse contributions to be made in respect of same sex partners. The amendments to section 13 also provide that subsection 6A does not limit the operation of the *Statutory Instruments Act 1992*. The amendments also omit the definition of “spouse” from section 13 so that the definition of “spouse” in section 32DA of the *Acts Interpretation Act 1954* applies.

The amendments to the *Torres Strait Islander Land Act 1991* clarify that the *Acts Interpretation Act 1954* definition of “spouse” does not apply to section 39(3)(a) and 76(3)(a). In those sections “spouse” means “husband or wife or former husband or wife”.

The amendment to the *Tourism Queensland Act 1979* replaces the reference to “widow or widower” in section 17(2)(b) of the Act with “spouse”. This clarifies the entitlement of a surviving spouse of a public service officer, who was part of the public service before becoming an officer of Tourism Queensland, to benefits such as superannuation.

The amendment to the *Training and Employment Act 2000* replaces the reference in section 121(6) of that Act to the definition of impairment in section 4 of the *Anti-Discrimination Act 1991* (ADA) with a reference to the definition of impairment in the schedule. This Bill moves the definitions in section 4 of the ADA to a schedule. This amendment reflects this.

The amendment to the *Transplant and Anatomy Act 1979* removes doubt that, where a deceased person has more than one spouse, only the person who most recently became the person's spouse is defined as the "senior available next of kin" for the purposes of that Act. "Spouse" will be defined in the *Acts Interpretation Act 1954*.

The amendments to the *Water Act 2000* remove the definition of "spouse" and "de facto partner" from the dictionary in schedule 4 of the Act. These definitions are no longer required as the *Acts Interpretation Act 1954* will define spouse to include a de facto partner. The amendments also omit "partner" from the definition of "indirect financial or personal interest" in schedule 4 as this will no longer be necessary because of the expanded definition of "spouse" in the *Acts Interpretation Act 1954*.