

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN  
CAPITAL TERRITORY**

**FAMILY PROVISION (AMENDMENT) BILL 1996**

**EXPLANATORY MEMORANDUM**

**Circulated by the authority of  
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Attorney-General**

## **FAMILY PROVISION (AMENDMENT) BILL 1996**

### **Outline**

This Bill amends the *Family Provision Act 1969* (the Act). The Act provides that a person dissatisfied with the provision made for the person in the will of a member of his or her family (eg the will of a father or a spouse) the dissatisfied person may apply to the Supreme Court for greater provision from the estate of the deceased. Where the deceased person has died without leaving a valid will, a member of the family of the deceased may also apply to the Court for provision.

As the law now stands a person who has lived with the deceased as a member of a couple on a long-term and genuine domestic basis is not eligible to lodge an application under the Act. This situation is inconsistent with the principles of the *Domestic Relationships Act 1994*.

The Bill also spells out and extends the criteria to which the Court must have regard before making an order under the Act.

### **Formal clauses**

Clauses 1, 2 and 3 are formal clauses. They refer to the short title of the Bill, the commencement date and the name of the Principal Act.

### **Application**

Clause 4 provides that the amendments to the Act made by the Bill will apply to the estates of all persons including persons who die before the Act commences. This principle is modified by a provision that where probate or letters of administration have been granted before the amending Act comes into force, the provisions of this Bill will not apply.

### **Interpretation**

Clause 5 defines a number of terms used in the Bill. A spouse is a person who was either married to the deceased or was an eligible partner of the deceased. An eligible partner is a person who, whether or not of the same gender as the deceased, was not married to the deceased but had lived with the deceased as a member of a couple on a genuine domestic basis and had done so for at least two years continuously, or is the parent of a child of the deceased. A domestic partner is a person who lived with the deceased in a domestic relationship for two years continuously. A carer, for example could be a domestic partner.

## **Eligibility**

**Clause 6** amends section 7 of the Act which sets out the classes of persons who are eligible to bring an application under the Act. At present, a widow, a widower, a former wife or a former husband are among those who may apply. The Bill replaces these categories with a provision that a spouse (including an eligible partner) and a domestic partner as defined in clause 5 may apply for an order under the Act.

## **Family provision orders**

**Clause 7** amends section 8 of the Act which sets out the principles that the Court is required to apply in dealing with an application under the Act. Clause 7 specifies the criteria that the Court must consider. In particular, the Bill requires the Court to take into account any financial and non-financial contributions by the applicant to the deceased, or by the deceased to the applicant. The specified criteria are not exhaustive as clause 7 provides that the Court may take into account any other matter it considers relevant.

## **Formal amendments**

**Clause 8** makes a number of formal and technical amendments to the Act, including amendments to remove gender-specific terms and to reflect changes in drafting practice.