

FACT SHEET
Law Reform Commission Relationships Report

The Report

The NSW Law Reform Commission was asked to review the *Property (Relationships) Act 1984*.

The Commission's report makes 59 recommendations, relating to:

- the definition of de facto and close personal relationships;
- financial adjustment on breakdown of such relationships; and
- jurisdictional and procedural issues relating to these.

The lemma Government has accepted 21 of these.

Nine of the remaining 38 recommendations are not relevant because they relate to the fact the Howard Government refused to take up a NSW referral on property matters relating to the breakdown of same sex relationships. The report makes recommendations to allow NSW to address same sex property matters in the absence of Commonwealth legislation, but as the Rudd Government has announced it will take up the referral, the nine recommendations are no longer relevant.

Another 10 recommendations have been noted or were not regarded as relevant in light of the lemma Government's response to other recommendations in the report.

Further consultation is taking place with regard to four recommendations.

The report recommended a registration system for domestic relationships, which include all de-facto relationships.

The lemma Government has not accepted the recommendation in this form.

The Government believes a registration system would best include all states and territories and be run by the Commonwealth.

The Government notes that the registers in the ACT, Tasmania and Victoria differ. The Government will, however, examine the functioning of the registers.

15 recommendations have not been accepted, they relate to such things as removing the co-habitation requirement for de facto relationships and changing the name of the Property (Relationships) Act to the Relationships Act.

Parentage presumptions for same sex female couples

The report recommends that same sex female partners be granted parentage rights for children conceived through in vitro fertilisation or artificial insemination.

The Government will change the parentage presumptions for children born using fertilisation procedures such as IVF to remove discrimination against lesbians.

This will not include children in same sex couples who were conceived through sex or who have been adopted, this is because to do so would extinguish the rights of a birth parent.

Currently, when a woman uses a fertilisation procedure to conceive a child, the sperm donor is presumed not to be the father, and there is a legal presumption that the husband or de facto male partner of the woman is the father.

The Government will extend this presumption to cover the female de facto partner of the mother if a same sex relationship exists.

The question of adoption and surrogacy is more complex and is currently under consideration of the health, community services and attorneys general ministerial councils.

Extending definition of de facto to other acts

The definition of de facto in the *Property (Relationships) Act* already includes same sex couples. The Government has previously extended this definition to a large range of other acts, and the Report identifies several more.

The Government has undertaken an audit and identified nearly fifty other acts where the de facto definition should also apply.

This will include Acts that confer benefits, such as:

Apprenticeship and Traineeship Act 2001

Industrial Relations Act 1996

Constitution (Disclosures by Members) Regulation

It will also include acts that place an obligation for disclosure in relation to de facto partners, such as the Local Government Act.

Anti-Discrimination Act – ‘domestic status’

The Government will amend the ‘marital’ ground of discrimination in the Anti-Discrimination Act which includes discrimination based on heterosexual married or de facto relationships only, to include discrimination arising out of a person’s domestic status.

This amendment will ensure that people who are discriminated against on the basis of their domestic status, including their status as living in a same-sex relationship, in the areas of work, education, provision of goods and services, accommodation and registered clubs have rights under the Anti-Discrimination Act.

This is a recommendation made by the report and will provide an avenue for redress of unlawful discrimination which may arise as a result of disclosure of a same-sex relationship under the new disclosure requirements.