

**TESTATOR'S FAMILY MAINTENANCE AMENDMENT
ACT 1995**

No. 34 of 1995

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AN ACT to amend the *Testator's Family Maintenance Act 1912***[Royal Assent 1 September 1995]**

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title

1—This Act may be cited as the *Testator's Family Maintenance Amendment Act 1995*.

Commencement

2—This Act commences on the day on which it receives the Royal Assent.

Principal Act

3—In this Act, the *Testator's Family Maintenance Act 1912** is referred to as the Principal Act.

Section 2 amended (Interpretation)

4—(1) Section 2 (1) of the Principal Act is amended by inserting after the definition of “Court” the following definition:—

“*de facto* spouse” means a person—

- (a) who cohabited with another person of the opposite sex as the spouse of that other person, although not legally married to that other person, for at least 3 years immediately before the death of that other person; and
- (b) who was principally dependent on that other person for financial support at the time of the death of that other person—

and includes a person who is to be treated as having been a *de facto* spouse by virtue of an order of the Court made under subsection (5);

(2) Section 2 of the Principal Act is further amended by inserting after subsection (2) the following subsections:—

(3) A person may apply to the Court to be treated as having been the *de facto* spouse of a deceased person if that person would have been the *de facto* spouse of the deceased person but for the period during which the persons cohabited.

* 3 Geo. V No. 7. For this Act, as amended to 1959, see the Reprint of Statutes (1826-1959), Vol. 6, p. 271. Subsequently amended by No. 57 of 1970, No. 36 of 1974 and No. 46 of 1991.

(4) The executor or administrator of the estate of the deceased person may apply to the Court for a determination that a person referred to in subsection (3) is to be treated as having been the *de facto* spouse of the deceased person.

(5) The Court may determine that a person is to be treated as having been the *de facto* spouse of another person if satisfied that, taking into account the circumstances of the case, it is proper to do so.

Section 3A amended (Persons entitled to claim under this Act)

5—Section 3A of the Principal Act is amended by omitting paragraph (d) and substituting the following paragraphs:—

- (d) A person whose marriage to the deceased person has been dissolved or annulled and who at the date of the death of the deceased person was receiving or entitled to receive maintenance from the deceased person whether pursuant to an order of a court, or to an agreement or otherwise;
- (e) A person who was a *de facto* spouse of the deceased person at the date of the deceased person's death.

[Second reading presentation speech made in:—
House of Assembly on 29 November 1994
Legislative Council on 16 August 1995]

