

Western Australia

**Acts Amendment (Lesbian and Gay Law  
Reform) Act 2002**

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As at 17 Apr 2002

No. 3 of 2002

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## **Acts Amendment (Lesbian and Gay Law Reform) Act 2002**

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Western Australia

## **Acts Amendment (Lesbian and Gay Law Reform) Act 2002**

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No. 3 of 2002

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**An Act —**

- **to amend *The Criminal Code* and repeal the *Law Reform (Decriminalization of Sodomy) Act 1989*; and**
- **to amend —**
  - **the *Administration Act 1903*;**
  - **the *Adoption Act 1994*;**
  - **the *Artificial Conception Act 1985*;**
  - **the *Equal Opportunity Act 1984*;**
  - **the *Human Reproductive Technology Act 1991*;**
  - **the *Interpretation Act 1984*;**
  - **the *Parliamentary Superannuation Act 1970*;**
  - **the *State Superannuation Act 2000*; and**
  - **various other Acts,**

**in order to provide for the reform of the law relating to same sex relationships, access to artificial fertilisation procedures and for related purposes.**

[Assented to 17 April 2002]

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

This Act may be cited as the *Acts Amendment (Lesbian and Gay Law Reform) Act 2002*.

**2. Commencement**

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

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**Part 2 — Administration Act 1903**

**3. Administration Act 1903 amended**

The amendments in this Part are to the *Administration Act 1903*\*.

[\* Reprinted as at 1 July 1999.]

**4. Section 12A amended**

- (1) Section 12A(1) is amended by deleting “father and mother” in both places where it occurs and inserting instead —  
“ parents ”.
- (2) Section 12A(2)(b) is amended as follows:
  - (a) by deleting “father and mother” and inserting instead —  
“ parents ”;
  - (b) by deleting “father” and inserting instead —  
“ parent ”;
  - (c) in subparagraph (i) —
    - (i) by deleting “paternity” and inserting instead —  
“ parentage ”;
    - (ii) by deleting “father” and inserting instead —  
“ parent ”;
  - (d) in subparagraph (ii) by deleting “father, if paternity” and inserting instead —  
“ parent, if parentage ”.
- (3) Section 12A is amended by inserting after subsection (3) the following subsection —  
“
  - (4) The estates of all persons who have died intestate as to the whole or any part thereof before the coming into operation of Part 2 of the *Acts Amendment (Lesbian and Gay Law Reform) Act 2002* shall be distributed in

**s. 4**

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accordance with the enactments and rules of law which would have applied to them if that Act had not been passed.

”.

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**Part 3 — Adoption Act 1994**

**5. Adoption Act 1994 amended**

The amendments in this Part are to the *Adoption Act 1994*\*.

[\* Reprinted as at 2 January 2001.]

**6. Section 4 amended**

(1) Section 4(1) is amended as follows:

- (a) by deleting the definition of “birth parents” and inserting instead —

“

“**birth parent**” means, in relation to a child or adoptee —

- (a) the mother of the child or adoptee; and  
(b) the father or parent of the child or adoptee under section 6A of the *Artificial Conception Act 1985*;

”;

- (b) in the definition of “step-parent” in paragraph (b) by inserting after “married to” —

“ , or the de facto partner of, ”.

(2) Section 4(2) is amended as follows:

- (a) in paragraph (a) by deleting “actually”;  
(b) after paragraph (a) by inserting “or”;  
(c) by deleting paragraph (b) and “or” after that paragraph.

**7. Section 17 amended**

(1) Section 17(1)(a)(ii) is amended by inserting after “father” —

“

or parent under section 6A of the *Artificial Conception Act 1985*

”.

**s. 8**

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- (2) Section 17(2) is amended by inserting after “married” —  
“ , or in a de facto relationship with, ”.

**8. Section 18 amended**

Section 18(8) is amended by deleting “actually”.

**9. Section 21 amended**

After section 21(2b) the following subsection is inserted —

“

- (2c) A person who has been named as or has claimed to be a child’s parent under section 6A of the *Artificial Conception Act 1985* is to be notified by the relevant person in accordance with subsection (1) and for that purpose, subsections (2), (2a) and (2b) apply to and in respect of that notification as if a reference in those subsections to “man” was a reference to “person”.

”.

**10. Section 26C amended**

Section 26C(1) is amended as follows:

- (a) by inserting after paragraph (a) the following paragraph —

“

- (aa) by any person who might be a parent of the child under the *Artificial Conception Act 1985*;

”;

- (b) in paragraph (b) by deleting “man” and inserting instead —

“ person ”.

**11. Section 27 amended**

Section 27(2) is amended by inserting after “married to” —

“ , or in a de facto relationship with, ”.

**12. Section 39 amended**

(1) Section 39(1)(d) is amended by inserting after “married to” —  
“ , or in a de facto relationship with, ”.

(2) Section 39(3) is repealed and the following subsection is inserted instead —

“

(3) For the purposes of subsection (1)(d) if the joint applicants are married and before the marriage were living as de facto partners, the period of living as de facto partners may be included when calculating the period mentioned in subsection (1)(d).

”.

**13. Section 40 amended**

(1) Section 40(2)(d) is amended by inserting after “marriage” —  
“ or de facto relationship ”.

(2) Section 40(2) is amended by inserting after paragraph (d) the following paragraph —

“

(da) shows a desire and ability to provide a suitable family environment for the child;

”.

**14. Section 52 amended**

Section 52(1)(a)(iv) is amended by deleting “, can show that the marriage” and inserting instead —

“

or in a de facto relationship, can show that the marriage or de facto

”.

**s. 15**

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**15. Section 66 amended**

Section 66(1)(b) is amended by inserting after “married” —  
“ or in a de facto relationship, for at least 3 years ”.

**16. Section 67 amended**

Section 67(2) is amended by deleting “each other” and inserting instead —

“  
 , or in a de facto relationship with, each other and have  
been so for at least 3 years  
”.

**17. Section 68 amended**

Section 68(2) is amended as follows:

- (a) in paragraph (a) —
  - (i) in subparagraph (i) by inserting after “marriage” —  
“ , or de facto relationship, ”;
  - (ii) in subparagraph (ii) by inserting after “marriage” —  
“ , or de facto relationship, ”;
- (b) in paragraph (c) by inserting after “marriage” —  
“ , or de facto relationship, ”.

**18. Section 75 amended**

- (1) Section 75(2) is amended by inserting after “married to” —  
“ , or in a de facto relationship with, ”.
- (2) Section 75(3) is amended by inserting after “married to” —  
“ , or in a de facto relationship with, ”.



**19. Section 81 amended**

Section 81(1) is amended by deleting “actually”.

**20. Section 83 amended**

Section 83(2) is amended by inserting after “married” —  
“ , or in a de facto relationship with, ”.

**21. Section 95 amended**

Section 95 is amended as follows:

- (a) by inserting after “married” in the first place where it occurs —  
“ or in a de facto relationship with ”;
- (b) by deleting “actually”.

**22. Section 120 amended**

Section 120(1) is amended as follows:

- (a) in the definition of “relative” by inserting after “married” in the first place where it occurs —  
“ or in a de facto relationship with ”;
- (b) by deleting “actually”.

### **Part 4 — Artificial Conception Act 1985**

#### **23. Artificial Conception Act 1985 amended**

The amendments in this Part are to the *Artificial Conception Act 1985*\*.

[\* *Act No. 14 of 1985.*

*For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 27-8.]*

#### **24. Section 3 amended**

- (1) Section 3(1) is amended by deleting “wife on a genuine domestic basis although not married to him” and inserting instead —

“ de facto partner ”.

- (2) Section 3(2) is amended by deleting paragraph (a) and “and” after it and inserting instead —

“

- (a) is, in a case where the person is in a de facto relationship with a person of the opposite sex, a reference to the person’s de facto partner; and

”.

- (3) Section 3(3) is repealed and the following subsection is inserted instead —

“

- (3) In this Act —

“**artificial fertilisation procedure**” has the meaning given by the *Human Reproductive Technology Act 1991*.

”.

#### **25. Section 5 amended**

- (1) Section 5(1) is amended as follows:

- (a) by deleting “married” in the first place where it occurs;

- (b) by deleting “, with the consent of her husband,”;
- (c) by deleting “married woman” in the second place where it occurs and inserting instead —  
“ pregnant woman ”.

(2) Section 5(2) is repealed.

**26. Section 6A inserted**

After section 6 the following section is inserted —

“

**6A. Rule relating to parentage — same sex de facto relationships**

- (1) Where a woman who is in a de facto relationship with another woman undergoes, with the consent of her de facto partner, an artificial fertilisation procedure in consequence of which she becomes pregnant, then for the purposes of the law of the State, the de facto partner of the pregnant woman —
  - (a) shall be conclusively presumed to be a parent of the unborn child; and
  - (b) is a parent of any child born as a result of the pregnancy.
- (2) In every case in which it is necessary to determine for the purposes of this section whether a de facto partner consented to her de facto partner undergoing an artificial fertilisation procedure, that consent shall be presumed, but the presumption is rebuttable.

”.

**27. Section 7 amended**

- (1) Section 7(1) is amended by deleting “, in a case to which section 5 applies,”.
- (2) Section 7(2) is amended by deleting “in a case to which section 6 applies,”.

**28. References to “fertilization procedure” amended**

The provisions referred to in the Table to this section are amended by deleting “a fertilization procedure” in each place where it occurs and inserting instead —

“ an artificial fertilisation procedure ”.

**Table**

s. 4(1)(a)	s. 6(2)
s. 5(1)	s. 7(1)(a)
s. 6(1)	s. 7(2)(a)

**Part 5 — *Births, Deaths and Marriages Registration Act 1998***

**29. *Births, Deaths and Marriages Registration Act 1998* amended**

The amendments in this Part are to the *Births, Deaths and Marriages Registration Act 1998*\*.

[\* *Act No. 39 of 1998.*]

**30. Section 18 amended**

Section 18(1)(a) is amended by deleting “the father and the mother” and inserting instead —

“ both parents ”.

**31. Section 19 amended**

- (1) Section 19(3)(a) is amended by deleting “the child’s father and mother” and inserting instead —

“ both parents of the child ”.

- (2) Section 19(3)(b) is amended by deleting “the child’s father and mother” and inserting instead —

“ both parents of the child ”.

**Part 6 — *Cremation Act 1929***

**32. *Cremation Act 1929* amended**

The amendments in this Part are to the *Cremation Act 1929*\*.

[\* *Reprinted as at 16 February 2001.*]

**33. **Section 13** amended**

Section 13(1) is amended by deleting “the husband, widow” and inserting instead —

“

a person who was married to, or in a de facto  
relationship with, the deceased immediately before the  
death of the deceased

”.

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## Part 7 — *The Criminal Code*

### 34. *The Criminal Code* amended

The amendments in this Part are to *The Criminal Code*\*, unless otherwise indicated.

[\* Reprinted as at 9 February 2001.]

### 35. Section 184 repealed and consequential amendment to the *Evidence Act 1906*

- (1) Section 184 is repealed.
- (2) Schedule 7 Part B to the *Evidence Act 1906*\* is amended by deleting “184 Indecent practices between males in public”.

[\* Reprinted as at 4 January 2001.]

### 36. Section 186 amended

- (1) Section 186(1) is amended by deleting “person of” and inserting instead —  
“ child of ”.
- (2) Section 186(1) is amended by deleting “man” where appearing and inserting instead —  
“ person ”.
- (3) Section 186(1)(a) is deleted and the following paragraph is inserted instead —  
“  
(a) if the child is under the age of 16 years, is liable to imprisonment for 2 years;  
”.
- (4) Section 186(1)(b) is amended by deleting “person” and inserting instead —  
“ child ”.

**s. 37**

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- (5) Section 186(2) is repealed and the following subsection is inserted instead —

“

- (2) It is a defence to a charge under subsection (1) to prove the accused person believed on reasonable grounds that the child was of or above the age of 16 years.

”.

**37. Section 204A amended**

Section 204A(4) is repealed and the following subsection is inserted instead —

“

- (4) It is a defence to a charge under subsection (2) to prove the accused person —
- (a) believed on reasonable grounds that the child was of or over the age of 16 years; and
  - (b) was not more than 3 years older than the child.

”.

**38. Section 321 amended**

Section 321(9) is repealed and the following subsections are inserted instead —

“

- (9) Subject to subsection (9a) it is a defence to a charge under this section to prove the accused person —
- (a) believed on reasonable grounds that the child was of or over the age of 16 years; and
  - (b) was not more than 3 years older than the child.



- (9a) Where the child is under the care, supervision, or authority of the accused person it is immaterial that the accused person —
  - (a) believed on reasonable grounds that the child was of or over the age of 16 years; and
  - (b) was not more than 3 years older than the child.

”.

**39. Section 321A amended**

Section 321A(7) is repealed and the following subsection is inserted instead —

“

- (7) It is a defence to a charge under subsection (3) to prove the accused person —
  - (a) believed on reasonable grounds that the child was of or over the age of 16 years; and
  - (b) was not more than 3 years older than the child.

”.

**40. Section 322 amended**

Section 322(7) is amended by deleting “a” and inserting instead —

“ no ”.

**41. Section 322A repealed and consequential amendments to *The Criminal Code and the Evidence Act 1906***

- (1) Section 322A is repealed.
- (2) Section 596 is amended as follows:
  - (a) in column 2 of the Table by deleting “322A(2)” in each place where it occurs (14 times);
  - (b) in column 2 of the Table by deleting “322A(3)” in each place where it occurs (20 times).

**s. 42**

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- (3) The Second Schedule Part 1 to the *Evidence Act 1906*\* is amended by deleting “s. 322A    Juvenile male: Sexual offences against”.

[\* *Reprinted as at 4 January 2001.*]

**42.      Section 329 amended**

Section 329(1) is amended in the definition of “de facto child” by deleting “person (whether or not of the same sex as the offender) who lives with the offender as if they are married” and inserting instead —

“    de facto partner of the offender    ”.

**43.      Section 343 amended**

Section 343 is amended by inserting after “father” —

“

        or parent under section 6A of the *Artificial Conception Act 1985*

”.

**44.      Section 716 amended**

Section 716(b) is amended by deleting “her father or mother” and inserting instead —

“    one of her parents    ”.

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**Part 8 — *Equal Opportunity Act 1984***

**45. *Equal Opportunity Act 1984* amended**

The amendments in this Part are to the *Equal Opportunity Act 1984*\*, unless otherwise indicated.

[\* *Reprinted as at 21 July 2000.*

*For subsequent amendments see Act No. 12 of 2001.*]

**46. Long title amended**

The long title is amended by inserting after “pregnancy,” —  
“ **sexual orientation,** ”.

**47. Section 3 amended**

Section 3 is amended as follows:

- (a) in paragraph (a) by inserting after “family responsibility or family status,” —  
“ **sexual orientation,** ”;
- (b) in paragraph (d) by inserting after “regardless of their” —  
“ **sexual orientation,** ”.

**48. Section 4 amended**

- (1) Section 4(1) is amended by deleting the definition of “de facto spouse”.
- (2) Section 4(1) is amended in paragraph (f) of the definition of “marital status” by deleting “de facto spouse” and inserting instead —  
“ **de facto partner** ”.
- (3) Section 4(1) is amended in paragraph (b) of the definition of “near relative” by deleting “de facto spouse” and inserting instead —  
“ **de facto partner** ”.

**s. 49**

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- (4) Section 4(1) is amended in paragraph (a) of the definition of “services” by inserting after “insurance” —

“ , superannuation ”.

- (5) Section 4(1) is amended in paragraph (e) of the definition of “services” by inserting after “government” in the first place where it occurs —

“

(other than the assessment of an application for suitability for adoptive parenthood, or the placement of a child for adoption or with a view to the child’s adoption, under the *Adoption Act 1994*)

”.

- (6) Section 4(1) is amended by inserting, in the appropriate alphabetical position, the following definition —

“

**“sexual orientation”**, in relation to a person, means heterosexuality, homosexuality, lesbianism or bisexuality and includes heterosexuality, homosexuality, lesbianism or bisexuality imputed to the person;

”.

**49. Section 5 amended**

Section 5 is amended by inserting after “IIA,” —

“ IIB, ”.

**50. Section 29 replaced**

Section 29 is repealed and the following section is inserted instead —

“

**29. Employment of married couple or partners in a de facto relationship**

Nothing in Division 2 or 3 renders unlawful discrimination against a person on the ground of the person's marital status in relation to a job which is one of 2 to be held by a married couple or partners in a de facto relationship.

”.

**51. Section 34 amended and transitional provision**

- (1) Section 34(1), (2), and (3) are repealed.
- (2) Section 34(4) is amended by inserting after “person's sex” —  
“ or marital status ”.
- (3) Despite the repeal of section 34(1) by this section, that subsection continues to have effect for 12 months from the date of that repeal.

**52. Part IIB inserted**

After Part IIA the following Part is inserted —

“

**Part IIB — Discrimination on ground of sexual orientation**

**Division 1 — General**

**350. Discrimination on the ground of sexual orientation**

- (1) For the purposes of this Act, a person (in this subsection referred to as the “**discriminator**”)

discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of the sexual orientation of the aggrieved person if, on the ground of —

- (a) the sexual orientation of the aggrieved person;
- (b) a characteristic that appertains generally to persons of the sexual orientation of the aggrieved person; or
- (c) a characteristic that is generally imputed to persons of the sexual orientation of the aggrieved person,

the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person who is not of that sexual orientation.

- (2) For the purposes of this Act, a person (in this subsection referred to as the “**discriminator**”) discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of sexual orientation if, on the ground of —

- (a) the sexual orientation of;
- (b) a characteristic that appertains generally to persons of the same sexual orientation as; or
- (c) a characteristic that is generally imputed to persons of the same sexual orientation as,

any relative or associate of the aggrieved person, the discriminator treats the aggrieved person less favourably than in the same circumstances, or in circumstances that are not materially different, the discriminator treats or would treat a person who is not of that sexual orientation.

- (3) For the purposes of this Act, a person (in this subsection referred to as the “**discriminator**”) discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of the sexual orientation of the aggrieved person if the discriminator requires the aggrieved person to comply with a requirement or condition —
- (a) with which a substantially higher proportion of persons who are not of the sexual orientation of the aggrieved person comply or are able to comply;
  - (b) which is not reasonable having regard to the circumstances of the case; and
  - (c) with which the aggrieved person does not or is not able to comply.

## **Division 2 — Discrimination in work**

### **35P. Discrimination against applicants and employees**

- (1) It is unlawful for an employer to discriminate against a person on the ground of the person’s sexual orientation —
- (a) in the arrangements made for the purpose of determining who should be offered employment;
  - (b) in determining who should be offered employment; or
  - (c) in the terms or conditions on which employment is offered.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of the employee’s sexual orientation —
- (a) in the terms or conditions of employment that the employer affords the employee;

- (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;
  - (c) by dismissing the employee; or
  - (d) by subjecting the employee to any other detriment.
- (3) Nothing in subsection (1)(a) and (b) renders it unlawful for a person to discriminate against another person, on the ground of the other person's sexual orientation, in connection with employment to perform domestic duties on the premises on which the first-mentioned person resides.

**35Q. Discrimination against commission agents**

- (1) It is unlawful for a principal to discriminate against a person on the ground of the person's sexual orientation —
- (a) in the arrangements the principal makes for the purpose of determining who should be engaged as a commission agent;
  - (b) in determining who should be engaged as a commission agent; or
  - (c) in the terms or conditions on which the person is engaged as a commission agent.
- (2) It is unlawful for a principal to discriminate against a commission agent on the ground of the commission agent's sexual orientation —
- (a) in the terms or conditions that the principal affords the commission agent as a commission agent;



- (b) by denying the commission agent access, or limiting the commission agent's access, to opportunities for promotion, transfer or training, or to any other benefits associated with the position as a commission agent;
- (c) by terminating the engagement; or
- (d) by subjecting the commission agent to any other detriment.

**35R. Discrimination against contract workers**

- (1) It is unlawful for a principal to discriminate against a contract worker on the ground of the contract worker's sexual orientation —
  - (a) in the terms or conditions on which the principal allows the contract worker to work;
  - (b) by not allowing the contract worker to work or continue to work;
  - (c) by denying the contract worker access, or limiting the contract worker's access, to any benefit associated with the work in respect of which the contract with the employer is made; or
  - (d) by subjecting the contract worker to any other detriment.
- (2) Nothing in subsection (1) renders it unlawful for a person to discriminate against another person, on the ground of the other person's sexual orientation, in connection with work to perform domestic duties on the premises on which the first-mentioned person resides.

**35S. Partnerships**

- (1) It is unlawful for 6 or more persons being persons who are proposing to form themselves into a partnership to discriminate against a person on the ground of the person's sexual orientation —
  - (a) in determining who should be invited to become a partner in the partnership; or
  - (b) in the terms or conditions on which the person is invited to become a partner in the partnership.
- (2) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a person on the ground of the person's sexual orientation —
  - (a) in determining who should be invited to become a partner in the partnership; or
  - (b) in the terms or conditions on which the person is invited to become a partner in the partnership.
- (3) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a partner in the partnership on the ground of the partner's sexual orientation —
  - (a) by denying the partner access, or limiting the partner's access, to any benefit arising from being a partner in the partnership;
  - (b) by expelling the partner from the partnership; or
  - (c) by subjecting the partner to any other detriment.

**35T. Professional or trade organisations, etc.**

- (1) This section applies to an organisation of employees and to an organisation of employers.
- (2) It is unlawful for an organisation to which this section applies or for the committee of management of such an organisation or for a member of such a committee of management to discriminate against a person who is not a member of the organisation on the ground of the person's sexual orientation —
  - (a) by refusing or failing to accept the person's application for membership; or
  - (b) in the terms or conditions on which the organisation is prepared to admit the person to membership.
- (3) It is unlawful for an organisation to which this section applies or for the committee of management of such an organisation or for a member of such a committee of management to discriminate against a person who is a member of the organisation on the ground of the person's sexual orientation —
  - (a) by denying the person access, or limiting the person's access, to any benefit provided by the organisation;
  - (b) by depriving the person of membership or varying the terms of the person's membership; or
  - (c) by subjecting the person to any other detriment.

**35U. Qualifying bodies**

It is unlawful for an authority or body that is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practice of a profession, the

carrying on of a trade or business or the engaging in of an occupation to discriminate against a person on the ground of the person's sexual orientation —

- (a) by refusing or failing to confer, renew or extend the authorisation or qualification;
- (b) in the terms or conditions on which it is prepared to confer the authorisation or qualification or to renew or extend the authorisation or qualification; or
- (c) by revoking or withdrawing the authorisation or qualification or varying the terms or conditions upon which it is held.

**35V. Employment agencies**

It is unlawful for an employment agency to discriminate against a person on the ground of the person's sexual orientation —

- (a) by refusing to provide the person with any of its services;
- (b) in the terms or conditions on which it offers to provide the person with any of its services; or
- (c) in the manner in which it provides the person with any of its services.

**Division 3 — Discrimination in other areas**

**35W. Education**

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of the person's sexual orientation —
  - (a) by refusing or failing to accept the person's application for admission as a student; or

- (b) in the terms or conditions on which it is prepared to admit the person as a student.
- (2) It is unlawful for an educational authority to discriminate against a student on the ground of the student's sexual orientation —
- (a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority;
  - (b) by expelling the student; or
  - (c) by subjecting the student to any other detriment.

**35X. Access to places and vehicles**

It is unlawful for a person (in this section referred to as the “**discriminator**”) to discriminate against another person (in this section referred to as the “**aggrieved person**”) on the ground of the aggrieved person's sexual orientation —

- (a) by refusing to allow the aggrieved person access to or the use of any place or vehicle that the public or a section of the public is entitled or allowed to enter or use, for payment or not;
- (b) in the terms on which the discriminator is prepared to allow the aggrieved person access to or the use of any such place or vehicle;
- (c) by refusing to allow the aggrieved person the use of any facilities in any such place or vehicle that the public or a section of the public is entitled or allowed to use, for payment or not;
- (d) in the terms on which the discriminator is prepared to allow the aggrieved person the use of any such facilities; or

- (e) by requiring the aggrieved person to leave or cease to use any such place or vehicle or any such facilities.

**35Y. Goods, services and facilities**

It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to discriminate against another person on the ground of the other person's sexual orientation —

- (a) by refusing to provide the other person with those goods or services or to make those facilities available to the other person;
- (b) in the terms or conditions on which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person; or
- (c) in the manner in which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person.

**35Z. Accommodation**

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's sexual orientation —
  - (a) by refusing the other person's application for accommodation;
  - (b) in the terms or conditions on which accommodation is offered to the other person; or
  - (c) by deferring the other person's application for accommodation or according to the other person a lower order of precedence in any list of applicants for that accommodation.

- (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's sexual orientation —
- (a) by denying the other person access, or limiting the other person's access, to any benefit associated with accommodation occupied by the other person;
  - (b) by evicting the other person from accommodation occupied by the other person; or
  - (c) by subjecting the other person to any other detriment in relation to accommodation occupied by the other person.
- (3) Nothing in this section applies to or in respect of —
- (a) the provision of accommodation in premises if —
    - (i) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and
    - (ii) the accommodation provided in those premises is for no more than 3 persons other than a person referred to in subparagraph (i) or near relatives of such a person; or
  - (b) accommodation provided by a religious body.

**35ZA. Land**

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the sexual orientation of the other person —
  - (a) by refusing or failing to dispose of an estate or interest in land to the other person; or
  - (b) in the terms or conditions on which an estate or interest in land is offered to the other person.
- (2) Without limiting the generality of section 70(1), this section does not apply in relation to a disposal of an estate or interest in land by will or by way of gift.

**35ZB. Clubs**

- (1) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a person who is not a member of the club on the ground of the person's sexual orientation —
  - (a) by refusing or failing to accept the person's application for membership; or
  - (b) in the terms or conditions on which the club is prepared to admit the person to membership.
- (2) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a person who is a member of the club on the ground of the member's sexual orientation —
  - (a) in the terms or conditions of membership that are afforded to the member;
  - (b) by refusing or failing to accept the member's application for a particular class or type of membership;



- (c) by denying the member access, or limiting the member's access, to any benefit provided by the club;
- (d) by depriving the member of membership or varying the terms of membership; or
- (e) by subjecting the member to any other detriment.

**35ZC. Application forms, etc.**

Where, by virtue of a provision of Division 2 or this Division, it would be unlawful, in particular circumstances, for a person to discriminate against another person, on the ground of the other person's sexual orientation, in doing a particular act, it is unlawful for the first-mentioned person to request or require the other person to provide, in connection with or for the purposes of the doing of the act, information (whether by way of completing a form or otherwise) that persons who are not of the other person's sexual orientation would not, in circumstances that are the same or not materially different, be requested or required to provide.

**Division 4 — Exceptions to Part IIB**

**35ZD. Measures intended to achieve equality**

Nothing in Division 2 or 3 renders it unlawful to do an act a purpose of which is —

- (a) to ensure that persons of a particular sexual orientation have equal opportunities with other persons in circumstances in relation to which provision is made by this Act; or
- (b) to afford persons of a particular sexual orientation access to facilities, services or opportunities to meet their special needs in

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relation to employment, education, training or welfare.

”.

**53. Section 67 amended**

Section 67(1)(f) is amended by inserting after “IIA,” —

“ IIB, ”.

**54. Section 80 amended**

Section 80 is amended as follows:

(a) by inserting after “family responsibility or family status,” where it first occurs —

“ sexual orientation, ”;

(b) in paragraph (b)(i), by inserting after “family responsibility or family status,” —

“ sexual orientation, ”;

(c) in paragraph (e), by inserting after “family responsibility or family status,” —

“ sexual orientation, ”.

**55. Section 135 amended**

(1) Section 135(1) is amended by inserting after “IIA,” —

“ IIB, ”.

(2) Section 135(2) is amended by inserting after “IIA,” —

“ IIB, ”.

**56. Section 137 amended**

Section 137 is amended by inserting after “IIA,” —

“ IIB, ”.

**57. Section 140 amended**

Section 140(a) is amended by inserting after “family responsibility or family status,” —

“ sexual orientation, ”.

**58. Section 146 amended**

Section 146(2)(a)(i) is amended by inserting after “family responsibility or family status,” —

“ sexual orientation, ”.

**59. Consequential amendment to the *Perth International Centre for Application of Solar Energy Act 1994***

Schedule 1 Part B to the *Perth International Centre for Application of Solar Energy Act 1994*\* is amended by repealing clause 1(1) and inserting instead —

“

(1) In this Part —

“**near relative**”, in relation to a director, means spouse, de facto partner, parent or child of the director.

”.

[\* *Act No. 36 of 1994.*

*For subsequent amendments see Act No. 10 of 2001.]*

**Part 9 — Family Court Act 1997**

**60. Family Court Act 1997 amended**

The amendments in this Part are to the *Family Court Act 1997*.\*.

[\* Act No. 40 of 1997.

For subsequent amendments see Act No. 43 of 2000.]

**61. Section 7 amended**

Section 7(a) is deleted and the following paragraph is inserted instead —

“

- (a) a parent, grandparent or step-parent of the person;

”.

**62. Section 133 amended**

Section 133(a) is amended by inserting after “father” —

“

, or a person who is the parent of a child under section 6A of the *Artificial Conception Act 1985*,

”.

**63. Heading to Part 5 Division 8 Subdivision 2 amended**

The heading to Part 5 Division 8 Subdivision 2 is amended by deleting “Father’s liability to contribute towards child bearing expenses if not married to mother” and inserting instead —

“

**Liability of parent not married to child’s mother to contribute towards child bearing expenses**

”.

**64. Section 135 amended**

Section 135 is amended by inserting after “mother” —

“

, or a person who is the parent of the child under section 6A of the *Artificial Conception Act 1985*,

”.

**65. Section 136 amended**

Section 136(1) is amended as follows:

(a) by inserting after “father of the child” —

“

, or the person who is the parent of the child under section 6A of the *Artificial Conception Act 1985*

”;

(b) in paragraph (a) by deleting “and the father of the child;” and inserting instead —

“

and —

(i) the father of the child; or

(ii) the person who is the parent of the child under section 6A of the *Artificial Conception Act 1985*;

”.

**66. Section 141 amended**

(1) Section 141(1) is amended as follows:

(a) in paragraph (a) by inserting after “child” —

“

, or the person named in the order is the parent of the woman’s unborn child under section 6A of the *Artificial Conception Act 1985*

”;

- (b) in paragraph (b) —
    - (i) by deleting “man” and inserting instead —  
“ person ”;
    - (ii) by inserting after “father” —  
“  
    , or the parent under section 6A of the *Artificial  
    Conception Act 1985*  
”;
  - (c) by deleting “father is a reference to the man” and  
inserting instead —  
“ other parent is a reference to the person ”.
- (2) Section 141(2) is amended as follows:
- (a) in paragraph (e) by deleting “father” and inserting  
instead —  
“ other parent ”;
  - (b) in paragraph (f) by deleting “father” and inserting  
instead —  
“ other parent ”.

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**Part 10 — Guardianship and Administration Act 1990**

**67. Guardianship and Administration Act 1990 amended**

The amendments in this Part are to the *Guardianship and Administration Act 1990*\*.

[\* Reprinted as at 21 April 1997.

*For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 189.]*

**68. Section 3 amended**

Section 3(1) is amended in the definition of “nearest relative” as follows:

- (a) by deleting “relatives of the person, being a relative who has attained the age of 18 years and is reasonably available at the relevant time —” and paragraph (a) and inserting instead —

“

persons, who has attained the age of 18 years and is reasonably available at the relevant time —

- (a) a spouse or de facto partner;

”;

- (b) by deleting paragraph (h).

**69. Section 119 amended**

- (1) Section 119(3)(b) is deleted and the following paragraph is inserted instead —

“

- (b) the spouse or de facto partner of the person needing the treatment;

”.

- (2) Section 119(3)(d) is amended by inserting after “spouse” —

“ or de facto partner ”.

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**70. Schedule 2 amended**

Schedule 2 is amended as follows:

- (a) in clause 21 by inserting after “wife” —  
“ or de facto partner ”;
- (b) in clause 22 by inserting after “husband” —  
“ , de facto partner ”.



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**Part 11 — *Human Reproductive Technology Act 1991***

**71. *Human Reproductive Technology Act 1991* amended**

The amendments in this Part are to the *Human Reproductive Technology Act 1991*\*.

[\* *Act No. 22 of 1991.*

*For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 206-7, and Act No. 10 of 2001.]*

**72. **Preamble** amended**

The preamble is amended as follows:

- (a) in paragraph A by deleting “couples who are unable to conceive children naturally or whose children may be affected by a genetic disease.” and inserting instead —  
“ persons who wish to be parents. ”;
- (b) in paragraph B by deleting “so assist these couples” and inserting instead —

“

assist persons who are unable to conceive children naturally due to medical reasons or whose children are otherwise likely to be affected by a genetic abnormality or disease,

”.

**73. **Section 21** amended**

Section 21 is amended by inserting after paragraph (h) the following paragraph —

“

- (i) the means of identifying, for the purposes of sections 24 and 26, the person or persons on behalf of whom any gametes, egg in the process of fertilisation or embryo are stored, kept for

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implantation or developed which, in accordance with consents given, may be —

- (i) a woman or man; or
- (ii) a couple who are married, or in a de facto relationship with each other whether they are different sexes or both female;

”.

**74. Section 23 amended**

(1) Section 23(a) is amended as follows:

- (a) by deleting subparagraph (i) and “or” after it and inserting instead —

“

- (i) persons who, as a couple, are unable to conceive a child due to medical reasons;
- (ia) a woman who is unable to conceive a child due to medical reasons; or

”;

- (b) in subparagraph (ii) by inserting after “couple” —  
“ or a woman ”.

(2) Section 23(c)(ii) is deleted and the following subparagraph is inserted instead —

“

- (ii) in a de facto relationship with each other and are of the opposite sex to each other;

”.

**75. Section 24 amended**

Section 24(2) is amended by inserting before “persons” —

“ person or ”.

**76. Section 26 amended**

Section 26(1) is amended as follows:

- (a) in paragraph (c) by deleting “developed;” and inserting instead —

“

developed, or vest in the woman on whose behalf that egg or embryo was developed;

”.

- (b) in paragraph (d) by inserting after “couple” —  
“ or a woman ”.

**Part 12 — *Human Tissue and Transplant Act 1982***

**77. *Human Tissue and Transplant Act 1982* amended**

The amendments in this Part are to the *Human Tissue and Transplant Act 1982*\*.

[\* Reprinted as at 29 October 1999.]

**78. Section 3 amended**

- (1) Section 3(1) is amended in the definition of “next of kin” as follows:

- (a) in paragraph (a) by inserting after “(i),” —  
“ (ia), ”;
- (b) in paragraph (b) by inserting after “(i),” —  
“ (ia), ”.

- (2) Section 3(1) is amended in the definition of “senior available next of kin” as follows:

- (a) by deleting paragraph (a)(i) and inserting the following subparagraphs instead —

“

- (i) if the child has both a spouse, and a de facto partner who has attained the age of 18 years, the spouse or de facto partner with whom the child is living as a spouse or de facto partner;
- (ia) the spouse, or de facto partner who has attained the age of 18 years, of the child;

”;

- (b) by deleting paragraph (b)(i) and inserting the following subparagraphs instead —

“

- (i) if the person has both a spouse, and a de facto partner who has attained the age of 18 years, the spouse or de facto partner with whom the person is living as a spouse or de facto partner;
- (ia) the spouse, or de facto partner who has attained the age of 18 years, of the person;

”.

**Part 13 — *Inheritance (Family and Dependants Provision) Act 1972***

**79. *Inheritance (Family and Dependants Provision) Act 1972*  
amended**

The amendments in this Part are to the *Inheritance (Family and Dependants Provision) Act 1972*\*.

[\* Act No. 57 of 1972.

*For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 214.]*

**80. Section 4 amended**

(1) Section 4(1) is amended as follows:

- (a) in the definition of “child” by deleting “or adopted”;
- (b) in the definition of “grandchild” by deleting “or adopted”.

(2) Section 4(4) is amended by deleting “father and his illegitimate child, and any other relationship traced in any degree through that relationship, shall be recognized only if paternity is admitted by or established against the father in his” and inserting instead —

“

parent and a child and any other relationship traced in any degree through that relationship, shall be recognised only if parentage is admitted by or established against the parent’s

”.

**81. Section 7 amended**

Section 7(1) is amended as follows:

- (a) by deleting paragraph (a) and inserting the following paragraph instead —

“

- (a) a person who was married to, or living as the de facto partner of, the deceased person immediately before the death of the deceased person;

”;

- (b) in paragraph (b) —

- (i) by deleting “whose marriage to the deceased has been dissolved or annulled and”;

- (ii) by deleting “deceased,” and inserting instead —

“

deceased as a former spouse or former de facto partner of the deceased

”;

- (c) in paragraph (e) —

- (i) by deleting “or adoption,”; and

- (ii) by deleting the semicolon and inserting instead a full stop;

- (d) by deleting paragraph (f).

**82. Applications regarding the estates of persons who died before the commencement of this Part**

An application under the *Inheritance (Family and Dependants Provision) Act 1972* for provision out of the estate of a person who died before the commencement of this Part is to be dealt with under that Act as if this Part had not commenced.

**Part 14 — Interpretation Act 1984**

**83. Interpretation Act 1984 amended**

The amendments in this Part are to the *Interpretation Act 1984*\*.

[\* Reprinted as at 1 January 1999.

*For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 216.]*

**84. Section 5 amended**

Section 5 is amended by inserting in the appropriate alphabetical positions the following definitions —

“

“**de facto partner**” and “**de facto relationship**” have the meanings given in section 13A;

“**parent**” includes the following —

- (a) a person who is a parent within the meaning of the *Artificial Conception Act 1985*;
- (b) a person who is an adoptive parent under the *Adoption Act 1994*;

“**spouse**”, in relation to a person, means a person who is lawfully married to that person;

”.

**85. Section 13A inserted**

After section 13 the following section is inserted —

“

**13A. References to de facto relationship and de facto partner**

- (1) A reference in a written law to a de facto relationship shall be construed as a reference to a relationship (other than a legal marriage) between 2 persons who live together in a marriage-like relationship.



- (2) The following factors are indicators of whether or not a de facto relationship exists between 2 persons, but are not essential —
- (a) the length of the relationship between them;
  - (b) whether the 2 persons have resided together;
  - (c) the nature and extent of common residence;
  - (d) whether there is, or has been, a sexual relationship between them;
  - (e) the degree of financial dependence or interdependence, and any arrangements for financial support, between them;
  - (f) the ownership, use and acquisition of their property (including property they own individually);
  - (g) the degree of mutual commitment by them to a shared life;
  - (h) whether they care for and support children;
  - (i) the reputation, and public aspects, of the relationship between them.
- (3) It does not matter whether —
- (a) the persons are different sexes or the same sex;  
or
  - (b) either of the persons is legally married to someone else or in another de facto relationship.
- (4) A reference in a written law to a de facto partner shall be construed as a reference to a person who lives, or where the context requires, has lived, in a de facto relationship.
- (5) The de facto partner of a person (the **“first person”**) is the person who lives, or lived, in the de facto relationship with the first person.

”.

**Part 15 — *Law Reform (Decriminalization of Sodomy)*  
*Act 1989***

**86. *Law Reform (Decriminalization of Sodomy) Act 1989*  
**repealed****

The *Law Reform (Decriminalization of Sodomy) Act 1989* is repealed.

**Part 16 — *Members of Parliament (Financial Interests)*  
Act 1992**

**87. *Members of Parliament (Financial Interests) Act 1992*  
amended**

The amendments in this Part are to the *Members of Parliament (Financial Interests) Act 1992*\*.

[\* Act No. 44 of 1992.

*For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 276, and Act No. 10 of 2001.]*

**88. Section 3 amended**

- (1) Section 3(1) is amended in the definition of “relative” as follows:
  - (a) in paragraph (a) by inserting after “spouse” —  
“ or de facto partner ”;
  - (b) in paragraph (b) by inserting after “spouse” —  
“ or de facto partner ”;
  - (c) in paragraph (d) by deleting “mother and reputed father” and inserting instead —  
“ parents ”.
- (2) Section 3(1) is amended by inserting in the appropriate alphabetical position the following definition —  
“  
    **“de facto partner”** has a meaning affected by subsection (5);  
”.
- (3) Section 3(5) is amended as follows:
  - (a) by deleting “spouse” in the first place where it occurs and inserting instead —  
“ de facto partner ”;

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- (b) by deleting “includes a reference to a person” and inserting instead —  
“ means a person ”;
- (c) by deleting “with the Member or relative as a *de facto* spouse if either —” and paragraph (a) and “or” after it and inserting instead —

“

as a de facto partner of the Member or relative if either —

- (a) the Member or relative and the person are both parents of the same child; or

”.

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**Part 17 — *Parliamentary Superannuation Act 1970***

**89. *Parliamentary Superannuation Act 1970* amended**

The amendments in this Part are to *Parliamentary Superannuation Act 1970*\*.

[\* *Reprinted as at 25 September 1991.*

*For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 325-6.]*

**90. *Section 5* amended**

- (1) Section 5(1) is amended by inserting in the appropriate alphabetical position the following definition —

“

“**spouse or de facto partner**”, in relation to a member or former member, means —

- (a) the widow or widower of the member or former member; or
- (b) a person who, at the time of the member’s or former member’s death, was a de facto partner of the member;

”.

- (2) Section 5(4) is repealed.

- (3) Section 5(5) is amended as follows:

- (a) by deleting “relationship of the kind referred to in subsection (4)” and inserting instead —  
“ de facto relationship ”;
- (b) by deleting “*de facto* spouse” and inserting instead —  
“ de facto partner ”;
- (c) by inserting after “another person” —  
“ or in another de facto relationship ”.

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**91. References to “widow” and “widows” replaced in certain provisions**

- (1) In each provision referred to in the Table to this subsection “widow” is deleted and the following is inserted instead —

“ spouse or de facto partner ”.

**Table**

s. 14(1a)(a)(ii) and (b)(iv)	s. 19B(1) and (2)(a) (twice)
s. 18(1), (2), (3) and (4)	and (b) (three times)
s. 18A	s. 23(1)(c) and (d)
s. 19(1)	s. 23A
s. 19(1a), (1b)(a) and (b), (2), (3), (4)(a), (b), (c) and (d), (5) (5 times) and (6)	s. 30 (4 times)

- (2) In each provision referred to in the Table to this subsection “widows” is deleted and the following is inserted instead —

“ spouses or de facto partners ”.

**Table**

s. 15B(6)	s. 18(4)
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**92. Section 18 amended**

Section 18(2) is amended by deleting “her husband” and inserting instead —

“ the former member ”.

**93. Section 18A amended**

Section 18A is amended by deleting “her husband” and inserting instead —

“ the member or former member ”.

**94. Section 19 amended**

- (1) Section 19(1) is amended as follows:
  - (a) in paragraph (a) by deleting “her husband” and inserting instead —  
“ the former member ”;
  - (b) in paragraph (b) by deleting “her husband” and inserting instead —  
“ the former member ”.
- (2) Section 19(2) is amended by deleting “her husband” and inserting instead —  
“ the member ”.
- (3) Section 19(3) is amended as follows:
  - (a) in paragraph (a) by deleting “her husband” and inserting instead —  
“ the member ”;
  - (b) in paragraph (b) by deleting “her husband” and inserting instead —  
“ the member ”.
- (4) Section 19(6) is amended by deleting “, as a result of section 5(4),”.

**95. Section 19A repealed**

Section 19A is repealed.

**96. Section 23A amended**

Section 23A is amended by deleting “widow’s”.

## Part 18 — *Public Trustee Act 1941*

### 97. *Public Trustee Act 1941* amended

The amendments in this Part are to the *Public Trustee Act 1941*\*.

[\* *Reprinted as at 4 May 2001.*]

### 98. Section 10 amended

Section 10(1)(e) is amended by deleting “widow, husband” and inserting instead —

“  
a person who was married to, or living as the  
de facto partner of, the deceased immediately  
before the death of the deceased  
”.

### 99. Section 18 amended

Section 18 is amended by deleting “the widow” and inserting instead —

“ a parent of the infant ”.

### 100. Section 49 amended

Section 49(1)(n) is amended as follows:

- (a) by deleting “his wife” and inserting instead —  
“ the person’s spouse, de facto partner ”;
- (b) by deleting “him, and for the education of his” and inserting instead —  
“ the person, and for the education of the person’s ”.



**Part 19 — *State Superannuation Act 2000***

**101. *State Superannuation Act 2000* amended**

The amendments in this Part are to the *State Superannuation Act 2000*\*.

[\* *Act No. 42 of 2000.*

*For subsequent amendments see Act No. 10 of 2001.]*

**102. **Section 28** amended**

Section 28(3) is amended by deleting “another person living with that person in a bona fide domestic arrangement as if they were husband and wife” and inserting instead —

“ a de facto partner of that person ”.

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