

Copyright is retained by the Queensland Law
Reform Commission.

DE FACTO RELATIONSHIPS:

**Claims by surviving de facto
partners under the Common Law Practice Act 1867
for damages for wrongful death**

DRAFT REPORT No. M.P. 8

**Queensland Law Reform Commission
October 1994**

The short citation for this Report is Q.L.R.C.M.P.8.
Published by the Queensland Law Reform Commission, October 1994.
Copyright is retained by the Queensland Law Reform Commission.

(i)

COMMISSIONERS

Chairman:	The Hon Mr Justice G N Williams
Deputy Chairperson:	Ms R G Atkinson
Members:	Mr W G Briscoe Ms P A Cooper Dr J A Devereux Mr W A Lee

SECRETARIAT

Secretary:	Ms S P Fleming
Principal Legal Officer:	Ms C Riethmuller
Project and Research Consultants:	Ms J Douglas Mr A Keyes
Administrative Officer:	Ms S Dillon

Previous Queensland Law Reform Commission publications on this Reference:

Shared Property, Queensland Law Reform Commission, Discussion Paper No 36, October 1991.

De Facto Relationships, Queensland Law Reform Commission Working Paper No 40, September 1992.

De Facto Relationships, Queensland Law Reform Commission Report No 44, June 1993.

The Commission's premises are located on the 13th floor, 179 North Quay, Brisbane. The postal address is PO Box 312, Roma Street, Q 4003. Telephone (07) 227 4544. Facsimile (07) 227 9045.

TABLE OF CONTENTS

CHAPTER 1	INTRODUCTION	1
1.	TERMS OF REFERENCE	1
2.	THE COMMISSION'S APPROACH AND PRELIMINARY RECOMMENDATIONS	3
	(a) Approach	3
	(b) Preliminary Recommendations	3
	(c) Alternative Recommendation: "de facto partner" definition	4
CHAPTER 2	ACTIONS FOR WRONGFUL DEATH	5
1.	COMMON LAW AND LEGISLATIVE INTERVENTION	5
2.	THE <i>LORD CAMPBELL'S</i> ACTION	7
CHAPTER 3	THE LAW AND EXPERIENCE IN QUEENSLAND	9
1.	LIABILITY FOR DEATH CAUSED WRONGFULLY	9
2.	PERSONS WHO MAY BENEFIT FROM SUCH AN ACTION	9
3.	NUMBER OF ACTIONS WHICH CAN BE BROUGHT	10
4.	DEDUCTIONS FROM THE ASSESSMENT OF DAMAGES	10
5.	WORKERS' COMPENSATION	12
6.	PAYMENTS AND COMPENSATION FOLLOWING DEATH	13
7.	FREQUENCY OF <i>LORD CAMPBELL'S</i> CLAIMS	15

CHAPTER 4	THE RIGHTS OF DE FACTO PARTNERS IN OTHER JURISDICTIONS	17
1.	THE UNITED KINGDOM	17
2.	NEW SOUTH WALES	17
3.	TASMANIA	18
4.	SOUTH AUSTRALIA	18
5.	WESTERN AUSTRALIA	19
6.	NORTHERN TERRITORY	20
7.	AUSTRALIAN CAPITAL TERRITORY	20
8.	VICTORIA	21
9.	INCONSISTENCIES BETWEEN JURISDICTIONS	21
10.	SUMMARY OF WRONGFUL DEATH LEGISLATION REQUIREMENTS FOR DE FACTO PARTNERS TO TAKE ACTION	22
CHAPTER 5	THE NEED FOR REFORM	23
1.	INTRODUCTION	23
2.	CONSULTATION	23
3.	QUEENSLAND LAWS RECOGNISING DE FACTO RELATIONSHIPS	25
	(a) Succession and Intestacy Rules	25
	(b) Workers' Compensation Legislation	26
	(c) Property and Maintenance Disputes	27
4.	CONCLUSIONS	27

CHAPTER 6	OPTIONS FOR REFORM	30
1.	THE DEFINITION OF A "DE FACTO RELATIONSHIP"	30
2.	QUALIFYING PERIODS OR CIRCUMSTANCES	30
3.	PRELIMINARY RECOMMENDATIONS	33
4.	ALTERNATIVE RECOMMENDATION: "DE FACTO PARTNER"	34
APPENDIX	WRITTEN SUBMISSIONS	

CHAPTER 1

INTRODUCTION

1. TERMS OF REFERENCE

In September 1990, the Queensland Law Reform Commission was asked by the Attorney-General to review matters impacting on de facto relationships. As part of its review the Commission has published three papers - a discussion paper on Shared Property¹, a working paper on De Facto Relationships² and a report on De Facto Relationships³. In each of those papers the Commission concentrated on the law governing issues arising on the break down of de facto relationships and in particular, the law relating to property distribution.

In its Report on Intestacy Rules⁴ the Commission also dealt with the issue of whether a surviving de facto partner of a person who died without leaving a will or an effective will, should be entitled to any part of the intestate's estate.

The Commission is aware of a number of other issues affecting de facto relationships in Queensland which need to be considered with a view to eliminating circumstances of injustice or discrimination.

One of these issues was highlighted by the Moura underground mine disaster on 7 August 1994. The de facto partners of men killed in the disaster are unable to institute a common law claim for damages for the wrongful death of their partners because "de facto partner" does not fall within the list of persons entitled to make such a claim under the *Common Law Practice Act 1867* (Qld).

The need to update the *Common Law Practice Act 1867* in this and other respects has been recognised in general terms for some time.⁵ Although the Commission examined section 15C of that Act in 1993 pursuant to a specific request of the Attorney-General, we had not been requested to report on any other specific issue to do with the Act.

¹ Discussion Paper No. 36.

² Working Paper No. 40.

³ Report No. 44.

⁴ Report No. 42.

⁵ For example see Queensland Law Reform Commission Report No. 45 at 106 "it has become apparent during the course of this Reference that there may be a need for a general review of Lord Campbell's actions in Queensland". See also, that Report at footnote 251.

The Commission in consultation with the Attorney-General's office determined to report on the following specific matters:

- (a) Whether section 13 of the *Common Law Practice Act 1867* (Qld) should be amended to allow de facto partners of persons wrongfully killed to institute claims for damages against the tortfeasor?
- (b) If the answer to the first question is in the affirmative, what are the options for an appropriate definition of de facto partner?

The Attorney-General's office requested a Draft Report on these questions relating to section 13 of the *Common Law Practice Act 1867* by the close of business on 13 October 1994.

The Commission has not been asked to address other more political issues which could be seen to be specifically related to the Moura disaster. For example, the Commission will not be examining the question whether the proposed amendments to the *Common Law Practice Act 1867* should operate retrospectively so as to apply to the surviving de facto partners of the Moura victims. That is very much a political decision. It is probably more important to ensure by way of legislative reform that any past injustices are not repeated in the future. Past injustices could be rectified by an ex gratia payment by the Government or by the alleged wrongdoer.

The Commission has not been asked to review aspects of section 13 of the *Common Law Practice Act 1867* such as for example:

- * what should happen if the deceased person is survived by a legal spouse and by a defacto partner either or both of whom might have had children by the deceased;
- * whether people in addition to de facto partners of the deceased person, should be added to the list of those entitled to commence an action.

There are other problems with the *Common Law Practice Act* which are in need of attention.⁶ However, the Commission has not been asked to undertake a review of the entire Act.

⁶ See Queensland Law Reform Commission. *The Assessment of Damage in Personal Injury and Wrongful Death Litigation: Griffiths v Kerkemeyer; Section 15C Common Law Practice Act 1867*. Report No. 45, October 1993 at 106.

2. THE COMMISSION'S APPROACH AND PRELIMINARY RECOMMENDATIONS

(a) Approach

Given the very short period of time within which the Commission has had to report on this matter, it has been unable to consult widely. We have contacted a limited number of organisations, including government and private insurers, unions and law bodies as well as relevant organisations in other Australian jurisdictions.

We have relied heavily on recent investigations conducted by the Commission in relation to wrongful death litigation⁷ and property distribution upon the breakdown of de facto relationships.⁸ Ideally the Commission's preliminary proposals for reform, set out below, should be the subject of widespread public discussion and debate before the Commission makes its final recommendations. It is the desire of the Commission, therefore, that our preliminary recommendations be open for public comment for a period of one month before a final report is prepared.

(b) Preliminary recommendations

The Commission invites comment on the following recommendations:

1. that section 13 of the *Common Law Practice Act 1867* be amended to include the term "de facto partner" in the list of persons to benefit from an action for wrongful death;
2. that "de facto partner" be defined as—
 - (a) where the deceased left a dependant who is a child of the relationship—a person who was in a "de facto relationship" with the deceased person immediately before the deceased person's death;⁹ or
 - (b) where the deceased did not leave a dependant who is a child of the relationship—a person who was in a "de facto

⁷ Report No. 45.

⁸ Report No. 44.

⁹ Compare *Wrongs Act 1936* (SA) ss 20(1) & 3A (definition "spouse") and *Family Relations Act 1975* (SA) s 11(1)(b); *Fatal Accidents Act 1959* (WA) s 6(1)(c) and Schedule 2 para (h)(i).

relationship" with the deceased person for a continuous period of **one year** immediately before the deceased person's death;¹⁰

3. that "de facto relationship" be defined as the relationship between two persons (whether of a different or the same gender) who, although they are not legally married to each other, live in a relationship like the relationship between a married couple.¹¹

(c) Alternative Recommendation: "de facto partner" definition

An alternative to Recommendation 2 above which found some support within the Commission, and upon which the Commission also invites comment, is as follows:

4. that "de facto partner" be defined as—
 - (a) where the deceased left a dependant who is a child of the relationship—a person who was in a "de facto relationship" with the deceased person immediately before the deceased person's death; or
 - (b) where the deceased did not leave a dependant who is a child of the relationship—a person who was in a "de facto relationship" with the deceased person for a continuous period of **two years** immediately before the deceased person's death; or
 - (c) a person who was in a "de facto relationship" with the deceased person at some time during the **two years** before the deceased person's death, and in respect of whom the court considers that obvious injustice would result if that person were not treated as a "de facto partner" of the deceased for the purposes of section 13 of the Act.¹²

¹⁰ Compare *Wrongs Act 1936* (SA) ss 20(1) & 3A (definition "spouse") and *Family Relations Act 1975* (SA) s 11(1)(a); *Fatal Accidents Act 1959* (WA) s 6(1)(c) and Schedule 2 para (h)(ii).

¹¹ Clause 5, *De Facto Relationships Bill* (Appendix to Report No. 44).

¹² Compare *Fatal Accidents Act 1934* (Tas) s 3A.

CHAPTER 2

ACTIONS FOR WRONGFUL DEATH

1. COMMON LAW AND LEGISLATIVE INTERVENTION

At common law "[i]n a civil court, the death of a human being could not be complained of as an injury".¹³ The result is that until a statute says otherwise, anyone who suffers loss as a result of the death of another cannot sue the wrongdoer who caused the death.

Before the enactment of wrongful death statutes, dependants could not sue the wrongdoer when they lost the support of a breadwinner. The origin of this rule appears to be in the felony-merger doctrine.¹⁴ The policy behind that doctrine was that misconduct resulting in the death of another involved the commission of a public wrong, which extinguished all private remedies arising as a result of the death. The public interest was given more importance than that of the individuals. It could also be seen that the King's desire to obtain the felon's goods and lands (which in those days was forfeited to the Crown when the felon was convicted) exhausted the estate of the deceased felon so that there were no assets left to compensate the felon's victim.¹⁵

The Alberta Law Reform Institute has described the history of the felony-merger doctrine as follows:¹⁶

¹³ *Baker v Bolton* (1808) 1 Camp 493, 170 E.R. 1033 (Nisi Prius) per Lord Ellenborough; *Woolworths Ltd v Crotty* (1942) 66 CLR 663. See for general discussion H Luntz *Assessment of Damages for Personal Injury and Death* (3rd ed 1990) Ch.9.

¹⁴ See Holdsworth WS *The Origin of the Rule in Baker v Bolton* (1916) 32 Law Q. Rev. 431. The doctrine was first described by Tanfield J in *Higgins v Butcher* (1607), Yelv. 89 (80 E R 61):
If a man beats the servant of J.S. so that he dies of the battery, the master shall not have an action against the other for the battery and loss of the service, because the servant dying of the extremity of the battery, it is now become an offence to the Crown, being converted into felony, and that drowns the particular offence and private wrong offered to the master before, and his action is thereby lost.*

¹⁵ A mechanism did develop however, to provide the deceased's family with some funds. Any property involved in a person's death (referred to as a "deodand") was forfeited to the King's Almoner for charity. The funds generated from the sale of deodands were often used to assist the deceased's family. As the practice developed, the owner, rather than let the goods be sold, would ordinarily pay an amount assessed by the coroner's jury that investigated the death. The money so raised would be given to the deceased's family. For a brief history of deodands, see Law Reform Commission of British Columbia, Working Paper on *Pecuniary Loss and the Family Compensation Act*, 1992.

¹⁶ *Non-Pecuniary Damages in Wrongful Death Actions - A Review of Section 8 of the Fatal Accidents Act*, Report for Discussion No 12, June 1992.

At first, the felony-merger doctrine established in *Higgins v Butcher* met with strong approval. However, beginning in 1625 there were cases that held that a conviction of felony did not extinguish a cause of action in trespass. By 1873 it was clear that the fact that the conduct complained of amounted to a felony did not stop civil proceedings for damages. At most, the felony was only a defence if the action was brought against the supposed criminal before prosecution. The felony only suspended the right to sue for the wrong to the person, it did not take away the right.

Logic would dictate that if the conduct complained of did not amount to a felony, the felony-merger doctrine would not apply. Also, if the felony-merger doctrine was never the law of the country or if the doctrine was discarded, it would seem that *Baker v Bolton* should not be followed. Yet, logic did not prevail in this area of the law. The result is that the rule in *Baker v Bolton* applies even though the felony-merger doctrine was never the law in a particular country or was discarded.

In the United Kingdom, the right to claim compensation for the death of another was introduced by *An Act for Compensating the Families of Persons killed by Accidents 1846*¹⁷ (commonly referred to as *Lord Campbell's Act*¹⁸) in a time when fatal accidents were becoming frequent in England with the development of factories and railways. Prior to that time wrongful death usually referred to death by violence. The wrongdoer was most often the thief or highwayman. Even if found and arrested, the murderer was more often than not impecunious and not worth suing. With the industrial revolution and deaths resulting from machines, the wrongdoer was often a wealthy family or corporation.

All Australian jurisdictions re-enacted the United Kingdom provisions¹⁹ although they have been subsequently varied in a number of respects, including allowing for the deduction from the assessment of damages any other benefits received by dependants as a result of the breadwinner's death (such as workers' compensation payments). The action based on the legislation is often referred to as a *Lord Campbell's* action or a *Fatal Accidents Act* action, irrespective of the title of the legislation.

¹⁷ 9 & 10 Vict. Cap. XCIII. The preamble to the Act read:

"Whereas no Action at Law is now maintainable against a Person who by his wrongful Act, Neglect, or Default may have caused the Death of another Person, and it is oftentimes right and expedient that the wrongdoer in such case should be answerable in Damages for the Injury so caused by him."

¹⁸ One of a number of important reforming Acts promoted or supported by Lord Campbell after he had become a member of the House of Lords. See Sir W. Holdsworth, *A History of English Law* Vol. xv pp.220, 421.

¹⁹ Ss.12-15C *Common Law Practice Act 1867* (Qld); *Compensation to Relatives Act 1897* (NSW); Part II, *Wrongs Act 1936* (SA); *Fatal Accidents Act 1934* (Tas); Part III, *Wrongs Act 1958* (Vic); *Fatal Accidents Act 1959* (WA); *Compensation (Fatal Injuries) Ordinance 1968* (ACT); *Compensation (Fatal Injuries) Act 1974* (NT). The UK provision is now in the *Fatal Accidents Act 1976*. Deaths in commercial airline accidents are covered by different provisions in ss.12 and 35 of the *Civil Aviation (Carrier's Liability) Act 1959* (Cth).

In some jurisdictions and in respect of deaths resulting from certain types of accidents, claims for damages have been abolished entirely²⁰ or have been abolished against particular defendants.²¹

In Queensland the *Lord Campbell's Act* provisions are found in sections 12-15C of the *Common Law Practice Act 1867*.

2. THE LORD CAMPBELL'S ACTION

The *Lord Campbell's* action brought by family members of a deceased person has been described in the following way by Lord Wright in *Davies v Powell Duffryn Associated Collieries Ltd.*²²

[The Fatal Accidents Acts] provided a new cause of action and did not merely regulate or enlarge an "old one," as Lord Sumner observed in *Admiralty Commissioners v S.S. Amerika*.²³ The claim is, in the words of Bowen L.J., in *The Vera Cruz (No. 2)*²⁴ for injuriously affecting the family of the deceased. It is not a claim which the deceased could have pursued in his own lifetime, because it is for damages suffered not by himself, but by his family after his death. The Act of 1846, s. 2, provides that the action is to be for the benefit of the wife or other members of the family, and the jury (or judge) are to give such damages as may be thought proportioned to the injury resulting to such parties from the death.

The legislation restricts the action to family members of the deceased. The jury (or judge) could give such damages as may be thought proportioned to the injury resulting to such family members from the death.

The nature of the damages suffered by the family of the deceased which can be claimed under this action was not set out in the legislation although the courts have subsequently adopted the view that damages recoverable are restricted to pecuniary loss²⁵ and may not include anything by way of consolation for the dependants for grief or sorrow.²⁶

²⁰ For example, *Motor Accidents (Compensation) Act 1979* (NT) s.5.

²¹ For example, *Workers' Compensation Act 1987* (NSW) s. 149(2).

²² [1942] AC 601 at 611-612.

²³ [1917] A C 38 at 52.

²⁴ (1884) 9 P D 96 at 101.

²⁵ *Blake v Midland Railway* (1852) 18 QBD 93.

²⁶ Note, in South Australia in 1940, ss 23a-23c were introduced to the *Wrongs Act 1936* providing for the payment of a sum of money "as the court thinks just by way of solatium for the suffering caused" to the parents of an infant and to the spouse of an adult who has been killed. The provisions prescribed upper limits for awards. The

Balkin and Davis describe the calculation of the loss suffered by family members as a result of the death of a breadwinner as follows:²⁷

If the deceased was the breadwinner for the family, the loss suffered by the surviving members is calculated by reference to the lost earning capacity [after taking account of possible beneficial or adverse contingencies] of the deceased, after deducting income tax and the proportion of the product of that capacity which he would have spent on his own maintenance. The amount to be awarded to each member of the family also depends upon the length of time for which each had a reasonable expectation of receiving a benefit, so that each child's share will be assessed on the basis that he or she will in due course achieve financial independence. In assessing the widow's share, no account is taken of the fact that she has taken up employment after her husband's death, since that fact does not diminish her expectation of financial support from her husband; if she had been earning prior to his death, the amount of her income is of relevance only in determining what proportion of the deceased's earning capacity might have been spent solely for his own benefit [If] the deceased had devoted the whole (or a large part) of her time to caring for the family, it has been recognised that the loss of the remainder of the family is the value of the services of which they have been deprived of by death. That value may be assessed by reference to the cost of providing substitute services, but such a cost is no more than a guide.

The value of the dependency can include not only that part of the deceased's earnings which he or she would have expended annually in maintaining his or her dependants but also that part of his or her earnings which he or she would have saved and which would have come to the dependants by inheritance on his or her death. There may also be included a sum in respect of loss attributable to the cessation of contributions which the deceased, and his or her employers, had made to a superannuation or other fund of which the dependants were the nominated beneficiaries. A de facto partner may be less likely than a lawful spouse to be a nominated beneficiary. The Law Reform Commission of Western Australia has observed:²⁸

"A de facto spouse is less likely than a lawful spouse to receive certain of the collateral benefits which are ignored in the calculation of damages under [the Western Australian equivalent of the *Common Law Practice Act 1867*]. For example, it is unlikely that a de facto spouse will have taken out a policy of insurance on the deceased's life. Under some superannuation schemes, only a lawful spouse can benefit from the scheme on the death of a member."

Northern Territory *Compensation (Fatal Injuries) Act 1974* provides in s.10(3)(f) that the "damages in an action may include ... solatium." It may be awarded to any of the persons for whose benefit the action is brought and is not subject to an upper limit.

²⁷ Balkin RP and Davis JLR *Law of Torts* 1991 at 391-392.

²⁸ Law Reform Commission of Western Australia *Report on Fatal Accidents 1978* at 18-19.

CHAPTER 3

THE LAW AND EXPERIENCE IN QUEENSLAND

1. LIABILITY FOR DEATH CAUSED WRONGFULLY

The *Lord Campbell's* action for damages resulting from wrongful death was introduced in Queensland by section 12 of the *Common Law Practice Act 1867* which states:

Whensoever the death of a person shall be caused by a wrongful act neglect or default and the act neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as amount in law to felony.

2. PERSONS WHO MAY BENEFIT FROM SUCH AN ACTION

Only the husband, wife, parent or child of the deceased person are entitled to benefit from such an action. Section 13 of the *Common Law Practice Act 1867* states:

Every such action shall be for the benefit of the wife husband parent and child of the person whose death shall have been so caused and shall be brought by and in the name of the executor or administrator of the person deceased and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought and the amount so recovered after deducting the costs not recovered from the defendant shall be divided amongst the before mentioned parties in such shares as the jury by their verdict shall find and direct.

The de facto partner of the deceased person has no right to commence an action. Nor has any dependant of the deceased person who does not fall within the categories of: "husband, wife, parent or child".

3. NUMBER OF ACTIONS WHICH CAN BE BROUGHT

Consistent with similar provisions in other jurisdictions, section 14 of the *Common Law Practice Act 1867* states:

Provided that not more than one action shall lie for and in respect of the same subject-matter of complaint.

4. DEDUCTIONS FROM THE ASSESSMENT OF DAMAGES

The amount to be awarded to a particular claimant pursuant to an action under the *Common Law Practice Act 1867* can be reduced by a number of factors. For example:

- (a) If one of the claimants was partly responsible for the death, and he or she is the only person who can be sued for that death - that person is unable to claim under the Act. However, where one of the claimants was partly responsible and there are others outside the family who are also responsible for the death - the share which would otherwise have gone to that claimant is to be reduced in proportion to the degree to which he or she was responsible for the death.²⁹ Where the deceased had been contributorily negligent, damages will be reduced to a degree which is just and equitable having regard to his or her share in the responsibility for his or her own death.³⁰
- (b) Against the losses flowing from the death must be offset some of the pecuniary advantages which accrue to the dependants by reason of the death.³¹ The most common pecuniary advantage which must be brought into account, in all jurisdictions except Tasmania and the Northern Territory,³² is the acceleration of a testamentary benefaction resulting from the early death.

²⁹ Even if a Lord Campbell's action settles prior to trial, it appears from the Commission's review of files held at the Workers' Compensation Board of Queensland that, in general, any contributory negligence of the employee is taken into account in the settlement negotiations.

³⁰ *Law Reform (Tortfeasors' Contribution, Contributory Negligence, and Division of Chattels) Act 1951*. Where the damages are to be reduced for the deceased's contributory negligence, the reduction must be effected after there have been deducted from the prima facie loss any benefits accruing to the dependants, otherwise the dependants would be excessively penalised. See Luntz H *Assessment of Damages for Personal Injury and Death* (3rd ed) 1990 para 9.8.4.

³¹ For discussion see Balkin RP and Davis JLR *Law of Torts* 1991 at 393.

³² *Fatal Accidents Act 1934* (Tas) s.10(1)(b) precludes consideration of up to \$10,000 of the value of the deceased's estate which passes to the family. *Compensation (Fatal Injuries) Act 1974* (NT) s.10(4)(g) prohibits the consideration of any gains or benefits consequent upon the death.

The acceleration of the benefit to a surviving spouse of owning the matrimonial home is disregarded on the basis that (in relation to a claim by a widow) she "merely continues to enjoy as owner what she previously enjoyed as wife".³³

In all Australian jurisdictions other than the Northern Territory the prospect that a claimant will replace the pecuniary advantage provided by his or her deceased spouse with the same benefit from another person must also be taken into account.³⁴ That is, regard must be had to the possibility of a dependency being replaced.³⁵

The legislation in all Australian jurisdictions now also precludes account being taken in the assessment of damages of the proceeds of a life insurance policy, superannuation payments or pensions or benefits payable under social security or similar legislation.³⁶ In all jurisdictions either by reason of legislation or judicial decisions charitable gifts are also excluded.³⁷ Section 15C of the *Common Law Practice Act 1867* in Queensland lists each of these exclusions.

In October 1993 the Commission recommended that there should be no amendment to section 15C.³⁸

³³ *Zordan v Metropolitan (Perth) Passenger Transport Trust* [1963] ALR 513 at 516 (HCA); *Tripodi v Leonello* (1982) 31 SASR 9 at 12-13 (FC); *McCullagh v Lawrence* [1989] 1 Qd R 163 at 165-6 (FC); Balkin and Davis note 23 at page 393 note also: "The same principle applies in relation to chattels such as a motor car: *Worden v Yeats* [1964] SASR 381 at 390 per Hogarth J; *Lamb v Southern Tablelands County Council* [1988] *Aust Torts Reports* 80-220 at 68, 198-9 per Campbell J (NSW SC)." The ACT (s.10(4)(e)) and NT (s.10(4)) have given this approach legislative sanction.

³⁴ In *Carroll v Purcell* (1961) 107 CLR 73 at 79 the rule was regarded as so well established as no longer to require justification.

³⁵ In the Northern Territory the legislation prevents the court from taking account of "The remarriage or prospects of remarriage of the surviving spouse" (NT s.10(4)(h)). This is also now the position in the United Kingdom.

³⁶ The names of the statutes appear in footnote 19 above. The specific provisions are: Qld. s.15C; NSW s.3(3); SA s.20(2aa); Tas s.10(1); Vic s.19; WA s.5(2); ACT s.10(4); NT s.10(4). Note, in the United Kingdom s.4 of the *Fatal Accidents Act 1976* has been substituted by the following provision (introduced by the *Administration of Justice Act 1982*):

In assessing damages in respect of a person's death in an action under this Act, benefits which have accrued or will or may accrue to any person from his estate or otherwise as a result of his death shall be disregarded.

³⁷ The names of the statutes appear in footnote 19 above. The specific provisions are: Qld s.15C(e); SA s.20(2aa)(ii); Vic s.19(d); ACT s.10(4)(d); NT s.10(4)(d). *Papowski v Commonwealth* [1958] SASR 293; *Mockridge v Watson* [1960] VR 405. Both cases were decided prior to the enactment of the relevant provision and are therefore relevant to those jurisdictions without such statutory provision (WA, NSW, Tas).

³⁸ Queensland Law Reform Commission. *The Assessment of Damages in Personal Injury and Wrongful Death Litigation: Griffiths v Kerkemeyer; Section 15C Common Law Practice Act 1867*. Report No. 45, October 1993.

5. WORKERS' COMPENSATION

All Australian jurisdictions have established legislative schemes to provide compensation for industrial injuries and diseases. In Queensland, the scheme is found in the *Workers' Compensation Act 1990*.³⁹ For an injury or death to be compensated it must have arisen "out of or in the course of the worker's employment".⁴⁰ That is, there must be either a causal or temporal link between the injury and the employment. The employer does not have to have been negligent towards the employee for compensation to be payable. In Queensland and in all other Australian jurisdictions de facto partners are included in the class of persons eligible to be compensated in the event of the death of a worker.⁴¹

Every employer in Queensland is legally liable to pay the compensation which the Act prescribes that the worker employed by it shall be entitled to receive (out of the Workers' Compensation Fund).⁴²

The Act directs every employer to insure itself and keep itself insured with the Workers' Compensation Board of Queensland against all sums for which, in respect of injury to or death of any employee employed by it, it may become legally liable to pay (i) by way of compensation under the Act (ii) independently of the Act (such as through negligence by the employer resulting in the worker's injury or death), by way of damages in respect of that injury or death.⁴³ The Board is the sole insurer for the purposes of workers' compensation in Queensland.

The amount of premium payable by an employer is assessed by the Board and is calculated on payments estimated by the employer to be made to all employees in respect of wages, salaries and other earnings during the period of insurance. Currently, Queensland employers pay to the Board a premium of 1.6% of such earnings.⁴⁴ For an employee's average earnings of \$450 per week, an employer might expect to pay an extra \$7 to the Board by way of workers' compensation premium.

³⁹ In 1978 the administration of the Workers' Compensation Fund was placed with the newly constituted Workers' Compensation Board.

⁴⁰ S.5.1 of the Act.

⁴¹ See Chapter 5.

⁴² S.4.9 of the Act.

⁴³ S.4.9(2) of the Act.

⁴⁴ Until 1 July 1993 premiums were set at 1.4%. The net premiums received by the Board for the 1991/92 assessment was \$299,711,623.00.

Death benefits are payable to an employee's (total and partial) dependants under the Queensland legislation.⁴⁵ The maximum amount which can be awarded is \$89,000 and a weekly amount (10% of a prescribed base rate) for young dependants and an additional amount of up to \$5,000 for each dependant as well as reasonable expenses of medical treatment or attendance on the employee, and reasonable expenses for the funeral of the employee.⁴⁶ There are provisions for the reduction in the amounts paid to dependants in certain circumstances.⁴⁷

Although the deceased employee's dependants may be entitled to benefits under the *Workers' Compensation Act 1990*, they are not prevented from pursuing a *Lord Campbell's* action against the employer for the wrongful death. However, the workers' compensation paid or payable to the dependants will have to be either deducted at the time of judgment or paid over to the employer.⁴⁸ Even in the absence of a statutory direction the court will allow the workers' compensation payments to be taken into account in the assessment of damages unless it is clear that the beneficiary will have to repay the employer or insurer when successful in recovering damages.

6. PAYMENTS AND COMPENSATION FOLLOWING DEATH

If a worker dies as a result of the negligence of his or her employer his or her dependants may be entitled to the following payments and compensation:

- (a) Death benefits pursuant to the *Workers' Compensation Act 1990*. This compensation is paid by the Workers' Compensation Board from the Workers' Compensation Fund. The deceased's employer would normally have made premium payments into the Fund over the time the deceased was employed by the employer.

⁴⁵ S.7.9 and 7.10.

⁴⁶ S.8.13.

⁴⁷ S.8.14 and 8.15.

⁴⁸ S.10.1 of the *Workers' Compensation Act 1990* states:

- (1) If an injury in respect of which compensation under this Act is payable is suffered by a worker in circumstances creating, independently of this Act, a legal liability in the worker's employer who is -
 - (a) indemnified by the Board under a policy in respect of the injury; or
 - (b) required by this Act to be so indemnified;to pay damages in respect of the injury, then -
 - (c) the amount of such damages that the employer is legally liable to pay is reduced by the total amount paid or payable from the Fund, by way of compensation under this Act in respect of the injury; and
 - (d) subject to this Part, the worker is, or the worker's dependants are, to receive from the Fund such reduced amount....

- (b) A benefit from a superannuation policy held in the name of the deceased or his or her nominated beneficiaries. Contributions to the superannuation fund may have been made by the deceased during the period of his or her employment. Contributions would also have been made by the employer including compulsory contributions. However, as noted above it may be less likely that a de facto partner will be the nominated beneficiary than it would be for a lawful spouse to have been nominated.⁴⁹
- (c) Other benefits, such as payments from any life insurance policy taken out on the life of the deceased which falls to the benefit of his or her dependants. Again, a de facto partner may not have been the nominated beneficiary - particularly if the insurance was taken out at the commencement of the deceased's employment and before entering into the de facto relationship.
- (d) The dependants may also be entitled to bring a *Lord Campbell's* action against the employer for damages resulting from the death of the deceased pursuant to the *Common Law Practice Act 1867*. A de facto partner cannot bring such an action in Queensland.

If the dependants are successful in their *Lord Campbell's* action against the employer, at least the following deductions would have to be made from the assessment of damages, thus reducing the amount of the damages recoverable from the negligent employer's insurer, the Workers' Compensation Board:

- (i) The workers' compensation benefits (deduction made pursuant to section 10.1 of the *Workers' Compensation Act 1990* which would probably have been deducted under the common law in any event);⁵⁰

⁴⁹ See p.8 above.

⁵⁰ In *Mataic v Milinga* ([1970] VR 862) it was argued that a certain workers' compensation benefit came within the Victorian equivalent to section 15C(d) of the *Common Law Practice Act 1864* (the Victorian phrase was "a sum paid or payable by way of pension, benefit or allowance under any law of the Commonwealth or the State."). The argument was rejected. Luntz (at para 9.5.15) notes, however, that:

The reasons that led to that conclusion may have been weakened by subsequent legislation in a number of States which establishes a public fund out of which workers' compensation is paid, which does not place liability on the employer to make the payments, except in limited circumstances, or which provides for periodical payment of benefits. Nevertheless, the view would probably still be taken that it would be startling to find workers' compensation among the types of State benefit envisaged by that particular exclusion. In most instances the question will be comprehensively dealt with in the relevant workers' compensation legislation.

- (ii) Any other benefits paid or payable to the dependants as a result of the death of the deceased not referred to in section 15C of the *Common Law Practice Act 1867*. Other benefits which may be excluded, such as the matrimonial home and the family car, are referred to above.⁵¹

The benefits referred to in section 15C of the *Common Law Practice Act 1867*, including life insurance and superannuation benefits paid or payable to the dependants upon the death of the deceased, must be ignored by the court in the assessment of damages.

7. FREQUENCY OF LORD CAMPBELL'S CLAIMS

For the period from 1 July 1989 to 30 June 1993 there were 35⁵² *Lord Campbell's* claims for damages resulting from the death of an employee. The claims were made on the Workers' Compensation Board of Queensland in its role as the compulsory insurer of employers. Seven of these 35 claims have been finalised (either by settlement or judgment). Three of those seven cases were finalised for nil payment to the dependants. During the same period, 470 claims other than *Lord Campbell's* claims were made on the Board for fatal injuries occurring on or after 1 July 1989. These figures do not include fatalities occurring outside the worker's compensation scheme (for example, as a result of motor vehicle accidents and medical negligence).

For the period 1 July 1989 to 30 April 1993, *Lord Campbell's* claims only make up 6.9% of the claims for compensation at the Workers' Compensation Board which arose when an employee died as a result of injuries sustained "out of or in the course of the worker's employment".⁵³ In most *Lord Campbell's* claims there would be a substantial delay between the date of injury causing death and the date the claim is settled or goes to trial. Factors which may contribute to the time delay include:

⁵¹ See p. 11 above.

⁵² These statistics have been provided by the Workers' Compensation Board of Queensland. Existing claims comprise claims where the injury causing death was on or after 1 July 1989, up to and including 30 June 1993. The total number of common law claims (injuries and death) made on the Board, including *Lord Campbell's* claims between 1 July 1989 and 30 June 1990 was 5,595 (at a steadily increasing rate each year). The number of statutory claims for workers' compensation benefits over the same period totals 323,586. The percentage of statutory claims which proceeded to common law has risen steadily over that period:

1989-1990	...	1.36%
1990-1991	...	1.63%
1991-1992	...	1.94%
1992-1993	...	1.97%

⁵³ S.5.1 of the *Workers' Compensation Act 1990*.

- * awaiting the findings of the Coroner's inquiry;

- * the injury causing death may have taken place in an isolated part of Queensland (for example, a mining site) thus causing delays in taking statements from witnesses, etc;

- * the procedural delays involved in litigation.

The Commission understands that very few *Lord Campbell's* claims are decided judicially.⁵⁴ Most claims settle. Some are not pursued by the dependants.

⁵⁴ In recent years, there have only been two cases where the Workers' Compensation Board has been the insurer where judgments have been handed down in relation to Lord Campbell's claims. This information was provided by the Workers' Compensation Board of Queensland.

CHAPTER 4

THE RIGHTS OF DE FACTO PARTNERS IN OTHER JURISDICTIONS

The position of de facto partners in Queensland stands in stark contrast to the position in all other Australian jurisdictions, and in other common law jurisdictions, such as the United Kingdom, in which de facto spouses of people killed as a result of another's wrongdoing, are entitled to take action against the wrongdoer for damages. The following is a summary of the position in each of those jurisdictions.

1. UNITED KINGDOM

The current United Kingdom legislation provides that the action available under that Act shall be for the benefit of the "dependants" of the deceased.⁵⁵

"Dependants" is defined to include any person who—

- (i) was living with the deceased in the same household immediately before the date of the death; and
- (ii) had been living with the deceased in the same household for at least two years before that date; and
- (iii) was living during the whole of that period as the husband or wife of the deceased.⁵⁶

2. NEW SOUTH WALES

Section 4(1) of the *Compensation to Relatives Act 1897* provides that every action under that Act may be for the benefit of the wife or husband of the deceased, and wife or husband are defined to include de facto wife or de facto husband.⁵⁷

De facto wife and de facto husband are further defined to mean a woman or man, as the case may be, who immediately before the date of death of the deceased

⁵⁵ *Fatal Accidents Act 1976* (UK) section (2).

⁵⁶ Section 1(3).

⁵⁷ *Compensation to Relatives Act 1897* (NSW), section 4(1) and section 7.

(who must be the opposite sex to the de facto) lived with the deceased as his wife or her husband, as the case may be, on a bone fide domestic basis, although not married to him or her.⁵⁸

3. TASMANIA

Under the Tasmanian *Fatal Accidents Act 1934*, any member of the family of the deceased (which includes a de facto spouse) may benefit from an action taken under the Act.⁵⁹

A "de facto spouse" is defined as a person:

- (a) who co-habited 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 three 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 when a wrongful act, neglect or default occurred in respect of that other person.⁶⁰

Notably, the Court has a discretion to treat a person as a de facto spouse for the purposes of the Act, if it is satisfied, taking all the circumstances of the case into account, that it is proper to do so.⁶¹ In this regard, a person may apply to the Court to be treated as 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 co-habited.⁶² The executor or administrator of the deceased person may also apply for a determination in this regard.⁶³

⁵⁸ *Compensation to Relatives Act 1897* (NSW), section 7.

⁵⁹ *Fatal Accidents Act 1934* (Tas), sections 3 and 5.

⁶⁰ See section 3.

⁶¹ See section 3A(4).

⁶² See section 3A(2).

⁶³ See section 3A(3).

4. SOUTH AUSTRALIA

An action under the South Australian *Wrongs Act 1936* may be for the benefit of a spouse of the deceased.⁶⁴

A "spouse" is defined to include any person to have been a "putative spouse" on the day on which the cause of action arose, as defined in the *Family Relationships Act 1975*.

"Putative spouse" is defined in the *Family Relationships Act 1975* as follows:

A person is, on a certain date, the putative spouse of another if he is, on that date, co-habiting with that person as the husband or wife de facto of that other person and—

- (a) he—
 - (i) has so co-habited with the other person continuously for the period of five years immediately preceding that date; or
 - (ii) has during the period of six years immediately preceding that date so co-habited with that other person for periods aggregated not less than five years; or
- (b) a child, of which he and that other person are the parents, has been born (whether or not the child is still living at the date referred to above).

5. WESTERN AUSTRALIA

The Western Australian *Fatal Accidents Act 1959* states that every action brought under the Act shall be for the benefit of the "relatives of the deceased".

"Relative" is defined in the Act to include:

any person who, although not married to the deceased person—

- (i) lived with the deceased person as husband or wife of the deceased person on a permanent and bone fide domestic basis

⁶⁴ *Wrongs Act 1936* (SA), subsections 3(1), 20(1).

immediately before his or her death, if the deceased person left any dependant who is the child of that union; or

- (ii) lived with the deceased person as husband or wife of the deceased on a permanent and bone fide domestic basis for not less than three years, if the deceased person did not leave any dependant who is a child of that union.⁶⁵

6. NORTHERN TERRITORY

An action may be brought under the Northern Territory's *Compensation (Fatal Injuries) Act 1974* for the benefit of those members of the deceased person's family who sustained damage by reason of the death.⁶⁶ For the purposes of the Act, a member of the deceased person's family includes the surviving wife or husband of the deceased person and the following persons are to be treated as the wife or husband of a deceased. A person who:

- (i) although not legally married to the deceased person, was, immediately before the death of the deceased person, living with the deceased person as wife or husband, as the case may be, on a permanent and bone fide domestic basis; or
- (ii) being an Aboriginal, has entered into a relationship with another Aboriginal that is recognised as a traditional marriage by the community or group to which either Aboriginal belongs.⁶⁷

7. AUSTRALIAN CAPITAL TERRITORY

In the Australian Capital Territory, the *Compensation (Fatal Injuries) Act 1968* provides that an action shall be for the benefit of those members of the deceased person's family who sustained damage by reason of his or her death, which is defined to include:

A person who, although not legally married to the deceased person, was immediately before the death of the deceased person living with the deceased person as wife or husband, as the case may be, on a permanent and bone fide domestic basis.⁶⁸

⁶⁵ *Fatal Accidents Act 1959* (WA), section 6(1)(c) referring to Schedule 2 of the Act.

⁶⁶ *Compensation (Fatal Injuries) Act 1967* (NT), section 8(2).

⁶⁷ See section 4(3)(c).

⁶⁸ *Compensation (Fatal Injuries) Act 1968* (ACT), section 2(h).

8. VICTORIA

The Victorian *Wrongs Act 1958* provides that an action under the Act shall be for the benefit of the "dependants" of the person whose death has been caused. "Dependants" is defined to mean—

such persons as were wholly, mainly or in part dependent on the person deceased at the time of his death or who would but for the incapacity due to the injury which led to the death have been so dependent.⁶⁹

9. INCONSISTENCIES BETWEEN JURISDICTIONS

As described above, there is no consistency between other Australian jurisdictions and the United Kingdom regarding the definition of a "de facto spouse". For example, in some jurisdictions, a period of cohabitation with a partner of the opposite sex is required for a person to be considered that other person's de facto partner, whilst in other jurisdictions, "dependency" on the deceased, whether financial or otherwise, at the time of death is all that must be shown.

These differences are highlighted in the following summary of the requirements to be satisfied for a de facto partner to take action under the relevant legislation.

⁶⁹ *Wrongs Act 1958* (Vic), section 17(2).

10. SUMMARY OF WRONGFUL DEATH LEGISLATION
REQUIREMENTS FOR DE FACTO PARTNERS TO TAKE ACTION

	Act	Gender	Cohabitation	Dependence	Other
NSW	Compensation to Relatives Act 1897	De facto must be opposite gender to deceased	Cohabitation immediately prior to death	Not required	Nil
Vic	Wrongs Act 1958	De facto may be any gender	Not required	De facto must be wholly, mainly or in part dependent on deceased at time of death, or would have been but for preceding incapacity	Nil
SA	Wrongs Act 1936	De facto arguably must be opposite gender to deceased*	Cohabitation when cause of action arose and if no child either (a) 5 years continuous cohabitation prior to cause of action or (b) 5 years aggregate cohabitation during 6 years prior to cause of action	Not required	De facto may claim if there is a child of the union
WA	Fatal Accidents Act 1959	De facto arguably must be opposite gender to deceased*	Cohabitation immediately prior to death and if no dependent child for at least 3 years	Not required	De facto may claim if there is a dependent child of the union
Tas	Fatal Accidents Act 1934	De facto must be opposite gender to deceased	Cohabitation for at least 3 years prior to death (subject to general discretion of court)	De facto must have been principally dependent on deceased for financial support at time of wrongful act	Court has general discretion to determine a person to be a de facto partner
NT	Compensation (Fatal Injuries) Act 1974	De facto arguably must be opposite gender to deceased*	Cohabitation immediately prior to death unless traditional aboriginal marriage	Not required	De facto may claim if in a traditional aboriginal marriage
ACT	Compensation (Fatal Injuries) Act 1968	De facto arguably must be opposite gender to deceased*	Cohabitation immediately prior to death	Not required	Nil
UK	Fatal Accidents Act 1976	De facto arguably must be opposite gender to deceased*	Cohabitation for at least 2 years immediately prior to death	Not required	Nil

* Use of the terms "wife" and "husband" in the legislation have been taken arguably to connote that the de facto partner must be of a particular gender to be able to claim.

CHAPTER 5

THE NEED FOR REFORM

1. INTRODUCTION

The aftermath of the Moura mining disaster in August 1994 highlighted a potentially serious injustice to surviving partners of de facto relationships in Queensland. Four of the eleven men killed in the disaster had been in a de facto relationship at the time of the disaster. In one case the de facto relationship had lasted fourteen years and the couple had four children.⁷⁰

Married wives of victims of the disaster are automatically entitled to institute common law proceedings pursuant to the *Common Law Practice Act 1867*⁷¹ for damages irrespective of the duration of the marriage, irrespective of whether husband and wife had been co-habiting at the time of the disaster and irrespective of whether there were children of the marriage. There is a growing body of opinion in Australia that people who were in genuine de facto relationships with victims of fatal accidents should be in no worse position than the widows or widowers of victims of fatal accidents. Both groups of surviving partners have suffered a catastrophic change in their family circumstances and - apart from the legal recognition afforded to their respective relationships - are in no different situation to the other.

2. CONSULTATION

The opinions expressed during the limited consultation undertaken by the Commission were supportive of the inclusion of de facto partners in section 13 of the Act.

The Law Society of Queensland, whose members represent both plaintiffs and defendants in personal injury and wrongful death litigation, has submitted to the Commission that the current situation is anomalous and unjust.⁷² The Bar Association of Queensland also sees no good reason for excluding de facto partners.⁷³

⁷⁰ See "Mines walk-out threat" Courier Mail 11 October 1994 at 1.

⁷¹ Section 13.

⁷² See submission included in the Appendix.

⁷³ See submission included in the Appendix.

The Australian Council of Trade Unions has also emphasised the injustice of the current law.⁷⁴

Insurance bodies which are primarily interested in claims resulting from motor vehicle accidents⁷⁵ have presented the Commission with differing opinions as to the effect of a change in the law allowing surviving de facto partners to make a wrongful death claim. One organisation informed the Commission that such a reform would be unlikely to result in very many potential claims. Another organisation, however, indicated that they foresee a massive increase in claims - particularly given the fact that most motor vehicle accidents are in the 18 to 25 year age group and that many of those people would have been in some form of relationship. The fear was expressed that no matter how permanent partners considered their relationship to be prior to the accident, the surviving partner would have a great incentive to exaggerate the length and the level of commitment involved in the relationship. Nevertheless, the surviving partner would have to establish that he or she was dependent on the deceased and suffered pecuniary damages as a result of the death.

Our consultation with interstate insurance bodies indicates that at least in relation to fatal accidents occurring in the work place, no other Australian jurisdiction has experienced serious problems with the inclusion of de facto partners in the category of persons entitled to institute a claim for wrongful death. Authorities concerned with the payment of compensation to relatives or dependants of victims of workplace fatal accidents also noted the low number of fatal accidents now occurring throughout Australia. Of more concern may be the inclusion of de facto spouses of the victims of fatal motor vehicle accidents in the list of possible claimants. Although this is the case in all other Australian jurisdictions, either under the equivalent of Queensland's *Common Law Practice Act 1867*, or under a compulsory third party insurance scheme, it is unclear without more research what proportion of the total number of claimants for death benefits are de facto partners.⁷⁶

Queensland is the only jurisdiction in Australia which denies de facto partners of people killed as the result of the wrongful actions of another the opportunity to commence an action for damages.

⁷⁴ See submission included in the Appendix.

⁷⁵ And, to a far less extent, claims resulting from public liability.

⁷⁶ It is known however, that at least 9.6 per cent of couples in Queensland live in a de facto relationship and that there is no obvious reason why wrongful deaths in Queensland should not reflect that proportion. Australian Bureau of Statistics 1991 Census of Population and Housing: ABS Catalogue No. 2722.3.

3. QUEENSLAND LAWS RECOGNISING DE FACTO RELATIONSHIPS

Although a wrongful death claim cannot be brought for the benefit of the surviving partner of a de facto relationship,⁷⁷ there are a number of other laws in Queensland which do recognise de facto relationships and afford rights similar to de facto partners as those afforded to married persons.

(a) Succession and Intestacy Rules

Section 41 of the *Succession Act 1981* provides for the Court, on the application by the spouse, child or dependant of a deceased person, to order provision be made out of the estate of the deceased person for such a spouse, child or dependant. The definition of "dependant" includes -

- (b) the parent of a surviving child under the age of eighteen years of that deceased person; ...

- (d) a person who -
 - (i) has lived in a connubial relationship with the deceased person for a continuous period of five years at least terminating on the death of that deceased person; or
 - (ii) within the period of six years terminating on the death of that deceased person, has lived in a connubial relationship with that deceased person for periods aggregating five years at least including a period terminating on the death of that deceased person⁷⁸.

At present, Queensland Intestacy Rules⁷⁹ do not provide an entitlement for the de facto partner of the deceased person. However, in its report on Intestacy Rules⁸⁰, the Commission recommended that de facto partners also be able to share in the estate of a person who dies intestate. The Commission suggested the following

⁷⁷ Section 13 of the *Common Law Practice Act 1867*.

⁷⁸ Section 40 of the *Succession Act 1981*.

⁷⁹ *Succession Act 1981* (Qld).

⁸⁰ Queensland Law Reform Commission Report No. 42 *Intestacy Rules*, July 1993.

definition of "de facto partner" for the purposes of the Intestacy Rules.⁸¹

An intestate's 'de facto partner' is a person, whether or not of the same gender as the intestate, who at the intestate's death -

- (a) lived with the intestate as a member of a couple on a genuine domestic basis and either -
 - (i) in the 6 years before the intestate's death, lived with the intestate as a member of a couple on a genuine domestic basis for period of, or periods totalling, at least 5 years; or
 - (ii) is the parent of the child of the intestate who is less than eighteen years old; but
- (b) was not legally married to the intestate.

(b) Workers' Compensation Legislation

The *Workers' Compensation Act 1990* provides for compensation in respect of the death of a worker to be paid to the worker's legal personal representative, who is to pay or apply the same to or for the benefit of the worker's dependants or other persons entitled to compensation under that Act.⁸²

"Dependants" is defined in section 2.1 of the Act to mean such members of the family of a worker as -

- (a) in the case of the deceased worker - were wholly or partially dependent on the earnings of the worker at the time of the worker's death, or, but for the worker's incapacity due to injury would have been so dependent;...

"Member of the family" is then defined in section 2.1 of the Act to include a "spouse". The Act provides the following definition of spouse-

"Spouse", in relation to any injured or deceased worker, includes a person who has lived in a connubial relationship with the worker for a continuous period of 1 year at the least immediately preceding the time of the injury to, or the death of, the worker, and who, in the case of an injured worker, continues in that relationship.⁸³

⁸¹ Queensland Law Reform Commission Report No. 42, *Intestacy Rules*, July 1993 at page 21.

⁸² Section 7.9 of the *Workers' Compensation Act 1990*.

⁸³ Section 2.1 of the *Workers' Compensation Act 1990*.

De facto partners were first included as persons eligible to be compensated in respect of the death of a deceased person as a result of the *Workers' Compensation Act Amendment Act 1982*⁸⁴ which amended the *Workers' Compensation Act 1916* to include a more extensive definition of "dependant". That Act was repealed by the *Workers' Compensation Act 1990*. Under the earlier Act, there was a three year qualifying period rather than the one year period provided for under the current Act. It is not apparent from the second reading speech⁸⁵ why that period was reduced.

De facto partners are also provided for in the workers' compensation legislation applicable in all other Australian States and Territories.⁸⁶

(c) Property and Maintenance Disputes

Although there is currently no legislation in Queensland equivalent to the Commonwealth *Family Law Act, 1974* (Cwth) to assist de facto couples in resolving property and maintenance disputes, the Commission recommended in its Report on de facto relationships⁸⁷ that there was a need to enact legislation to clarify the law and facilitate a more just and equitable regime for resolving disputes which could arise on the breakdown of de facto relationships.

The Attorney-General has recently announced the Government's intention to refer this matter to the Commonwealth Government.

4. CONCLUSIONS

The Commission has recognised as a result of work undertaken in relation to other references that there is no longer any proper justification for drawing a distinction between the rights and obligations of de facto partners and the rights and obligations of married persons.⁸⁸ Clearly, the present distinction in relation to the eligibility of a person to benefit by the bringing of a wrongful death claim is one

⁸⁴ Section 3.

⁸⁵ Hansard 29 November 1990 page 5606.

⁸⁶ See the *Workers' Compensation Act 1987* (NSW), the *Accident Compensation Act 1985* (Vic), the *Workers Rehabilitation and Compensation Act 1986* (SA), the *Workers' Compensation and Rehabilitation Act 1981* (WA), the *Workers Compensation Act 1988* (Tas), the *Work Health Act 1986* (NT), the *Workers Compensation Act 1951* (ACT) and the *Safety Rehabilitation and Compensation Act 1988* (Cwth).

⁸⁷ Law Reform Commission Report No. 44, *De Facto Relationships*.

⁸⁸ See Queensland Law Reform Commission Report No 44, *De Facto Relationships*, June 1993 pages 50-53 and Queensland Law Reform Commission Report No 42, *Intestacy Rules*, June 1993 page 20.

which causes grave injustice and economic hardship to de facto partners who suffer the death of their partner.

Further, the Commission is of the view that there is a strong argument based on consistency for including de facto partners as beneficiaries of wrongful death actions having regard to-

- the current payment of compensation for the benefit of a de facto partner under the *Workers' Compensation Act 1990* (and under the equivalent legislation in all other Australian States and Territories);
- the enactment of legislation in all other jurisdictions in Australia to enable de facto partners to benefit from actions brought for the wrongful death of their partners;
- the fact that in a number of significant respects de facto relationships are already recognised under Queensland laws.

The main argument against the inclusion of de facto partners as persons for whom a wrongful death action can be brought is that it could result in an increase in unmeritorious claims. However, the Commission has been informed by a representative of an interstate motor vehicle insurer that organisation has not experienced any significant increase in the number of wrongful death actions since the introduction in that state of legislation enabling a de facto partner to bring such a claim.

Other factors in support of the inclusion of de facto partners in section 13 of the *Common Law Practice Act 1867* have been identified by other Australian law reform agencies⁸⁹ which have considered this matter in the context of their particular state's relevant legislation. All agencies strongly recommended the inclusion of de facto partners in their respective State's equivalent to the *Common Law Practice Act 1867* - and each of those States have subsequently implemented the recommendation. The factors identified by other law reform agencies are set out below. This Commission wholly endorses the relevance of each to the current situation in Queensland:

- (a) The purpose of the legislation is to protect the family unit. The legislation enables members of the family to obtain compensation from a wrongdoer (in

⁸⁹ The Law Reform Commission of Western Australia *Report on Fatal Accidents December 1978*; New South Wales *Report on De Facto Relationships 1983*; Law Reform Commission of Tasmania, *Compensation of Personal Injuries Arising out of Tort 1980*. See also Law Reform Committee of South Australia *Report relating to the Fatal Accidents Provisions of the Wrongs Act 1936, 1981*.

practice, in most cases, the wrongdoer's insurer) for loss of support of a breadwinner.

- (b) A surviving de facto partner is liable to suffer the same financial loss as a surviving spouse.
- (c) The entitlement to compensation should not be confined to a de jure or legitimate family, but should also include de facto family units. It is the existence of the family unit and the effect which the death of the breadwinner can have upon it, which is most important.
- (d) The policy to include de facto partners is consistent with the policy of all Australian workers' compensation schemes which allow a dependent de facto partner compensation for the loss of a breadwinner in a work-related accident.
- (e) If de facto partners are to be permitted to claim compensation for wrongful death, some of the compensation which would otherwise have been paid to any children of the de facto relationship would be included in the compensation paid to the de facto partner on the basis of the parent's legal duty to provide reasonable maintenance to the children. Permitting the de facto partner to claim would result, at least to some extent, merely in the de facto partner being compensated directly instead of indirectly through the application by the Public Trustee of damages recovered for the benefit of children.

CHAPTER 6

OPTIONS FOR REFORM

The Commission has found no convincing argument against the inclusion of the surviving partner of a de facto relationship in the list of those who are able to commence an action for damages for wrongful death. Not to include such people would be to perpetuate a grave injustice.

1. THE DEFINITION OF A "DE FACTO RELATIONSHIP"

The Commission's preferred definition of "de facto relationship" is the definition adopted for the purposes of the Commission's *Report on De Facto Relationships*⁹⁰ and for the draft legislation included in that Report:

"A 'de facto relationship' is the relationship between 2 persons (whether of a different or the same gender) who, although they are not legally married to each other, live in a relationship like the relationship between a married couple."

"De facto partner" is defined to mean a person who lives or lived in a de facto relationship.

2. QUALIFYING PERIODS OR CIRCUMSTANCES

De facto relationships have been given legal recognition or have been recommended for legal recognition in a variety of contexts. The duration of the relationship or other factors which must be taken into account before the de facto relationship becomes relevant for various purposes differ according to the context. Thus, for property settlements in relation to de facto relationships which have broken down, the Commission's De Facto Relationships Report recommended that a Court could make orders under the proposed legislation only if:

- (a) the de facto partners have lived together in a de facto relationship for at least 2 years; or

⁹⁰ Report No. 44, June 1993. See clause 5 of the De Facto Relationships Bill in Appendix B of the Report.

- (b) there is a child of the de facto partners under 18; or
- (c) the de facto partner who applied for the order had made substantial relevant contributions and that failure to make the order would result in serious injustice to the de facto partner.

The Commission considered arguments supporting a 2 year, 3 year and 5 year qualifying period. The majority of the Commission favoured a 2 year period because:

- * The 2 year period applies in the de facto relationships legislation in the other jurisdictions;⁹¹
- * The 2 year period which is the relevant period in the New South Wales, Northern Territory and Victorian legislation⁹² appears to be working satisfactorily. The Commission is not aware of any criticism of the 2 year period used in the legislation, nor has it been suggested in any of the published material that the 2 year period has led to the institution of unmeritorious claims;
- * If the period were different in Queensland from the existing de facto relationships legislation in other jurisdictions, parties would be encouraged to forum shop;
- * If the requisite period were 5 years, people who were living in de facto relationships for 2 to 5 years may not have access to the legislation. The benefits of the proposed legislation would, therefore, be available to fewer people in the community. Such people would be restricted to their rights at common law which, on the breakdown of a de facto relationship, are inadequate;
- * An argument used in support of a 5 year period is that this is the period now used in Part IV - Family Provision, of the *Succession Act 1981 (Qld)*, and that uniformity in legislation should be maintained. While uniformity of legislation is certainly a desirable objective, uniformity on this point does not

⁹¹ Section 17 *De Facto Relationships Act 1984 (NSW)*, section 16 *De Facto Relationships Act 1991 (NT)* and section 281 *Property Law Act 1958 (Vic)*.

⁹² Section 17 *De Facto Relationships Act 1984 (NSW)*, section 16 *De Facto Relationships Act 1991 (NT)* and section 281 *Property Law Act 1958 (Vic)*.

currently exist in the legislation in Queensland.⁹³ Under the *Workers' Compensation Act 1990* (Qld), for example, the relevant period to satisfy the term "spouse" is 1 year;⁹⁴

- * Although the 2 year period would allow a person to claim an interest in property or maintenance, the court would take into account the length of the relationship in deciding whether or not to make a property or maintenance order.

In the context of a person having died without having made a will or an effective will its Report on *Intestacy Rules*⁹⁵ the Commission recommended that a de facto partner should not have an entitlement under the intestacy unless, he or she had been in a de facto relationship with the deceased for at least 5 years.

The Commission justified the different qualifying periods recommended by the *De Facto Relationships Report* and the *Intestacy Report* as follows:⁹⁶

"De facto relationships legislation in other jurisdictions is concerned with the resolution of property claims between partners to a de facto relationship who separate whilst alive. Intestacy rules are less flexible and cannot take account of any suggested wishes of the deceased person.... It is particularly difficult after the death of one partner to prove a de facto relationship which has endured only for a brief period."

Whilst the fact that the wishes of the deceased cannot be taken into account is relevant in any wrongful death claim, the wishes of the deceased play a secondary role in such a claim to the principal aim of compensating the partner or other members of the family of the deceased for any loss suffered as a result of the death. The direct and immediate nature of the loss (in contrast to any property claim) impacting on the day to day living of the deceased's family, demands that the period of co-habitation of the deceased be of less importance in determining a right to claim.

⁹³ See Chapter 5 above.

⁹⁴ Section 2.1 *Worker's Compensation Act 1990* (Qld).

⁹⁵ Report No. 42.

⁹⁶ Report No. 42 at 23.

There was also the concern in the context of intestacy that too short a qualifying period might attract persons intent upon exploiting an older person perhaps in declining health. Where the surviving partner is the parent of the child under 18 years of age and was living on a genuine domestic basis with the intestate at the time of death, no qualifying period would be required.

Under the *Workers' Compensation Act 1990* for a "spouse" to qualify as a claimant he or she must have lived in a "connubial relationship" with the worker for a continuous period of one year at least before the death. It is unclear why the period of one year was chosen.

As discussed in Chapter 4, above, other jurisdictions have adopted various qualifying periods or no qualifying period at all.⁹⁷ Tasmania has adopted a 3 year qualifying period but has given the Court a discretion to determine that a relevant relationship existed even if the qualifying period had not been achieved.

A shorter qualifying period could be justified for wrongful death litigation on the bases that the party has suffered a catastrophic event by the loss of the breadwinner and that dependency on the deceased would also have to be shown to establish an entitlement to pecuniary damages. In the case of property distribution at the breakdown of a de facto relationship a longer period could be justified on the basis that there is a need to establish a contribution by the partners to the couple's assets. The reasons given for an even longer qualifying period for intestacy claims have been set out earlier.

There is an argument that the qualifying period under the *Common Law Practice Act 1867* should be consistent with the qualifying period under the *Worker's Compensation Act 1990* on the basis that de facto and married spouses of workers killed in the course of employment are entitled to workers' compensation benefits. Only married spouses are entitled to benefit in a claim for damages for wrongful death arising from the same circumstances as the worker's compensation claim. Justice would determine that de facto spouses, as defined for the purposes of worker's compensation, should have the same entitlement as a married spouse, to benefit in a common law claim.

3. PRELIMINARY RECOMMENDATIONS

The Commission invites comment on the following recommendations:

1. that section 13 of the *Common Law Practice Act 1867* be amended to include the term "de facto partner" in the list of persons to benefit from an action for wrongful death;

⁹⁷ Eg. Victoria where the Court has a discretion to determine if dependency existed.

2. that "de facto partner" be defined as—
 - (a) where the deceased left a dependant who is a child of the relationship—a person who was in a "de facto relationship" with the deceased person immediately before the deceased person's death;⁹⁸ or
 - (b) where the deceased did not leave a dependant who is a child of the relationship—a person who was in a "de facto relationship" with the deceased person for a continuous period of **one year** immediately before the deceased person's death;⁹⁹

3. that "de facto relationship" be defined as the relationship between two persons (whether of a different or the same gender) who, although they are not legally married to each other, live in a relationship like the relationship between a married couple.¹⁰⁰

4. **ALTERNATIVE RECOMMENDATION: "DE FACTO PARTNER" DEFINITION**

An alternative to Recommendation 2 above which found some support within the Commission, and upon which the Commission also invites comment, is as follows:

that "de facto partner" be defined as—

- (a) where the deceased left a dependant who is a child of the relationship—a person who was in a "de facto relationship" with the deceased person immediately before the deceased person's death; or
- (b) where the deceased did not leave a dependant who is a child of the relationship—a person who was in a "de facto relationship" with the deceased person for a continuous period of **two years** immediately before the deceased person's death; or

⁹⁸ Compare *Wrongs Act 1936* (SA) ss 20(1) & 3A (definition "spouse") and *Family Relations Act 1975* (SA) s 11(1)(b); *Fatal Accidents Act 1959* (WA) s 6(1)(c) and Schedule 2 para (h)(i).

⁹⁹ Compare *Wrongs Act 1936* (SA) ss 20(1) & 3A (definition "spouse") and *Family Relations Act 1975* (SA) s 11(1)(a); *Fatal Accidents Act 1959* (WA) s 6(1)(c) and Schedule 2 para (h)(ii).

¹⁰⁰ Clause 5, *De Facto Relationships Bill* (Appendix to Report No. 44).

- (c) a person who was in a "de facto relationship" with the deceased person at some time during the **two years** before the deceased person's death, and in respect of whom the court considers that obvious injustice would result if that person were not treated as a "de facto partner" of the deceased for the purposes of section 13 of the Act.¹⁰¹2

The Commission invites comment on the following recommendations:

1. Section 13 of the *Common Law Practice Act*, 1867 include the term "de facto partner" in the list of persons to benefit from an action.
2. "De facto partner" be defined as a partner in a 'de facto relationship'.
3. "De facto relationship" be defined as per the definition in clause 5, De Facto Relationships Bill (Appendix to Report No. 44):

"A 'de facto relationship' is the relationship between 2 persons (whether of a different or the same gender) who, although they are not legally married to each other, live in a relationship like the relationship between a married couple."

4. A qualifying period of 1 year be included in the definition of "de facto relationship".
5. The qualifying period does not apply if a person had been living in a de facto relationship with the deceased at the time of death and was the parent of a child of the deceased.

¹⁰¹ Compare *Fatal Accidents Act 1934* (Tas) s 3A.

APPENDIX

WRITTEN SUBMISSIONS TO THE COMMISSION

- 1. Queensland Law Society Inc.**
- 2. Bar Association of Queensland**
- 3. Australian Council of Trade Unions - Qld Branch**

**Queensland Law
Society Inc**GPO Box 1785
Brisbane QLD 4001
Facsimile (07) 233 5999
DX123Law Society House
179 Ann Street Brisbane
Qld Australia 4000
Telephone (07) 233 5888

Your Ref:

Our Ref: SSC:km:1720

12 October 1994

Mr Wayne G Briscoe
Commissioner
Law Reform Commission
P O Box 312
ROMA STREET QLD 4003
Facsimile No: 227 9045

Dear Commissioner Briscoe,

RE: COMMON LAW PRACTICE ACT 1867

I refer to your telephone enquiry yesterday regarding the attitude of the Society toward proposals to amend Section 13 of the *Common Law Practice Act 1867* to permit an action for the benefit of a surviving de facto spouse of a person whose death was caused by a wrongful act. I confirm that the Society does favour the creation of such a right of action and has made submissions to a previous Queensland government suggesting such an amendment.

The recent work of the Commission in respect of shared property issues identified many anomalies between the rights which accrue to married persons and those who accrue to persons living in de facto relationships. The operation of Section 13 of the *Common Law Practice Act 1867* provides a clear and unwarranted example of such an anomaly which operates unfairly and to the detriment of the significant number of persons in this State who choose to live in de facto relationships.

The Society recognises that, for the reasons discussed in our telephone conversation yesterday, any amendment to create the right of action for the benefit of de facto spouses should be attended by procedures which do not have the result of retrospectively exposing underwriters to fresh risk or liability. It is apparent that it would be difficult to cure by future amendment the difficulties created by the recent tragic mining accident which has served to focus present attention on the problem. It may be that those circumstances can only be properly addressed by some form of ex gratia payment.

- 2 -

The Society has not formulated any specific amendment but is not aware of any particular problems arising from the test applied by the *Workers' Compensation Act* in Queensland. Rights to statutory payments under that legislation accrue to any person who satisfies the description of "spouse" in the definition of that term appearing in Section 2.1 of that Act. The definition expressly extends to persons in de facto relationships and seems generally satisfactory in its operation.

The Society has been gratified by the strong commitment of the government toward maintenance of common law remedies and would support an amendment of the type now proposed.

I trust these comments are of some assistance to you and I would be happy to respond to any enquiries you may have.

Yours sincerely



Scott S Carter
Solicitor to the Society



Your Ref:

Our Ref: SSC:km:1720

12 October 1994

Mr Wayne G Briscoe
Commissioner
Law Reform Commission
P O Box 312
ROMA STREET QLD 4003
Facsimile No: 227 9045

Dear Commissioner Briscoe,

RE: COMMON LAW PRACTICE ACT 1867

I refer to your telephone enquiry yesterday regarding the attitude of the Society toward proposals to amend Section 13 of the *Common Law Practice Act 1867* to permit an action for the benefit of a surviving de facto spouse of a person whose death was caused by a wrongful act. I confirm that the Society does favour the creation of such a right of action and has made submissions to a previous Queensland government suggesting such an amendment.

The recent work of the Commission in respect of shared property issues identified many anomalies between the rights which accrue to married persons and those who accrue to persons living in de facto relationships. The operation of Section 13 of the *Common Law Practice Act 1867* provides a clear and unwarranted example of such an anomaly which operates unfairly and to the detriment of the significant number of persons in this State who choose to live in de facto relationships.

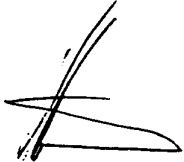
The Society recognises that, for the reasons discussed in our telephone conversation yesterday, any amendment to create the right of action for the benefit of de facto spouses should be attended by procedures which do not have the result of retrospectively exposing underwriters to fresh risk or liability. It is apparent that it would be difficult to cure by future amendment the difficulties created by the recent tragic mining accident which has served to focus present attention on the problem. It may be that those circumstances can only be properly addressed by some form of ex gratia payment.

The Society has not formulated any specific amendment but is not aware of any particular problems arising from the test applied by the *Workers' Compensation Act* in Queensland. Rights to statutory payments under that legislation accrue to any person who satisfies the description of "spouse" in the definition of that term appearing in Section 2.1 of that Act. The definition expressly extends to persons in de facto relationships and seems generally satisfactory in its operation.

The Society has been gratified by the strong commitment of the government toward maintenance of common law remedies and would support an amendment of the type now proposed.

I trust these comments are of some assistance to you and I would be happy to respond to any enquiries you may have.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott S Carter', with a stylized flourish at the end.

Scott S Carter
Solicitor to the Society



Your ref:

Our ref:

REPORT TO LAW REFORM COMMISSION

“OUGHT THE *COMMON LAW PRACTICE ACT* 1867 BE AMENDED TO INCLUDE CLAIMS FOR WRONGFUL DEATH ON BEHALF OF DE-FACTO SPOUSES OF THE DECEASED.”

1. This Association believes that there is no good reason to deny the relief to the spouse merely because a recognised form of marriage has not been entered into.

2. Section 13 of the *Common Law Practice Act* 1867 provides that a Lord Campbell's action “shall be for the benefit of the wife, husband, parent and child of the person whose death shall have been so caused ...”.

3. De facto spouses are expressly entitled to claim under the legislation of:
 - (a) New South Wales: *Compensation to Relatives Act* 1897, ss 4(2), 7(1A), 7(1B);
 - (b) Western Australian: *Fatal Accidents Act* 1959, s 6(1), (4),

Schedule 2;

(c) Northern Territory: *Compensation (Fatal Injuries) Act* 1974, s 4(3)(c);

(d) Australian Capital Territory: *Compensation (Fatal Injuries) Act* 1968, s 4(2)(h).

4. In Victoria, the legislation enables actions to be brought for the benefit of "dependants" of a deceased person, the definition of which would seem to include a de facto spouse: *Wrongs Act* 1958, s 17(2).

5. The South Australian legislation speaks of "putative spouses": *Wrongs Act* 1936, s 20(4). It seems to us this entitles such actions to be brought by de-facto spouses.

6. Up to 1993 Tasmania was the only other State apart from Queensland which did not provide for relief for de-facto spouses. This relief is now available.

7. It is relevant to note:

(a) the action for loss of consortium has been extended to lawful wives in Queensland. *Law Reform(Husband and Wife) Act ; Amendment Act No 81 of 1989*. This does not extend to de-facto spouses.

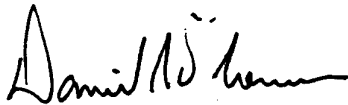
- (b) only the Northern Territory (and, perhaps, South Australia) have extended the loss of consortium actions to de facto spouses;
- (c) other remedies, e.g. for family provision under Part IV of the *Succession Act* 1981 have been extended to de facto spouses;
- (d) other States, e.g. New South Wales, have for some years now had legislation permitting de facto spouses to sue for property rights, i.e. a manner similar to that granted to lawful spouses under the Federal family law legislation.

8. The Legislature recognises the existence of the rights of the common law spouse in many other instances not the least in this context, the *Worker's Compensation Act 1990*. In that Act s. 2.1 defines "dependants" to cover such members of the family of the worker who were wholly or partially dependent on the earnings of the worker and "members of the family" includes a "spouse". "Spouse" is relevantly defined to include a person who has lived in a connubial relationship with the worker for a continuous period of one year preceding the death.

9. The *Succession Act 1981* has a similar definition but the period is 5 years:

10. The Statute is wholly beneficial in nature. Other legislation

recognises the rights of families involving de-facto relationships and legal rights and benefits flowing from such relationships. This Act presently does not do so fully. Consistently with other legislation this Act ought recognise the "family" in many cases today includes de-facto spouses.

A handwritten signature in black ink, appearing to read "Daniel D. Brennan". The signature is fluid and cursive, with a prominent initial "D" and a long, sweeping underline.

for Walter Sofronoff



ACTU

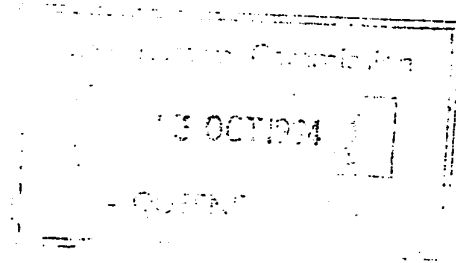
Australian Council of Trade Unions — Queensland Branch

Address all correspondence to:
The General Secretary,
Level 5,
T. & L.C. Building,
16 Peel Street,
South Brisbane, 4101.
Telephone: (07) 846 2468
Fax: (07) 844 4865

JT:TR

Refer: John Thompson

12 October 1994



Law Reform Commission
Level 13
179 North Quay
BRISBANE QLD 4001

ATTENTION: MR WAYNE BRISTOE

Dear Sir,

RE: REVIEW OF RIGHTS FOR PERSONS IN DE FACTO RELATIONSHIPS

In response to your phone conversation of 10 October 1994 seeking our views on the abovementioned matter, we wish to advise our position in limited detail (due to time constraints) with the offer to provide a more expanded response at a later date should you so require.

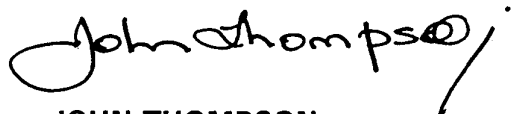
The Australian Council of Trade Unions - Queensland Branch supports:

- * A detailed review of all Acts effecting persons in de facto relationships with the view of standardising rights and entitlements
- * Such changes reflect as a minimum, provisions contained within the Social Security Act which recognises a de facto relationship in the same terms as a marriage after a period of 12 months co-habitation
- * That urgent steps be taken to ensure that appropriate legislation is enacted immediately so as to provide the necessary protection for persons currently discriminated against

*** That consideration be given to applying a reasonable level of retrospectivity to any legislative changes particularly in areas relating to the Workers Compensation Act.**

Should you require further information or comment please do not hesitate to contact our office.

Yours faithfully

A handwritten signature in black ink that reads "John Thompson". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

JOHN THOMPSON
Assistant General Secretary