

# BILL NO. 5 OF 2018

## A BILL

### FOR AN ACT TO AMEND THE SUCCESSION, PROBATE AND ADMINISTRATION ACT 1970

ENACTED by the Parliament of the Republic of Fiji—

*Short title and commencement*

1.—(1) This Act may be cited as the Succession, Probate and Administration (Amendment) Act 2018.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

(3) In this Act, the Succession, Probate and Administration Act 1970 is referred to as the “Principal Act”.

*Section 2 amended*

2. Section 2 of the Principal Act is amended by inserting the following new definitions—

““*de facto* partner” means a person in a *de facto* relationship;” and

““*de facto* relationship” means a relationship between a man and a woman who are at least 18 years of age and, although not legally married to each other, have lived with each other as spouses on a genuine domestic basis for—

(a) a period of more than 3 years; or

- (b) a period of less than 3 years, provided—
  - (i) the relationship has resulted in the birth or adoption of a child;  
or
  - (ii) the court, having regard to the circumstances listed in section 154A of the Family Law Act 2003, considers it just to treat the relationship as a *de facto* relationship;”.

*Section 6 amended*

**3.** Section 6 of the Principal Act is amended by—

- (a) in subsection (1)—
  - (i) deleting paragraphs (a) and (c) and inserting the following—
    - “(a) if the intestate leaves a wife or husband or *de facto* partner but not both a wife or husband and a *de facto* partner, without issue, the surviving wife or husband or *de facto* partner shall take the whole of the estate absolutely;
    - (b) if the intestate leaves both a wife or husband and a *de facto* partner, without issue, the surviving wife or husband and the *de facto* partner shall take the whole of the estate in accordance with subsection (1A) absolutely;
    - (c) if the intestate leaves issue and—
      - (i) a wife or husband or *de facto* partner but not both a wife or husband and a *de facto* partner, the surviving wife or husband or *de facto* partner shall take the prescribed amount and the personal chattels and one-third only of the residuary estate absolutely; or
      - (ii) both a wife or husband and a *de facto* partner, the surviving wife or husband and the *de facto* partner shall take the prescribed amount and the personal chattels and one-third only of the residuary estate in accordance with subsection (1A) absolutely,  
  
and the issue shall take *per stirpes* and not *per capita* the remaining two-thirds of the residuary estate absolutely;”;
- (ii) deleting paragraph (g); and
- (iii) in paragraphs (d) to (k), deleting “wife or husband” and “husband or wife” wherever they appear and substituting “wife or husband or *de facto* partner”; and

(b) after subsection (1), inserting the following new subsection—

“(1A) Where an intestate leaves both a wife or husband and a *de facto* partner—

- (a) if the intestate leaves no issue, the whole of the estate; or
- (b) if the intestate leaves issue, the prescribed amount and the personal chattels and one-third only of the residuary estate,

shall be distributed—

- (i) in accordance with an order of the court;
- (ii) in accordance with a written agreement between the surviving wife or husband and the *de facto* partner; or
- (iii) in equal shares between the surviving wife or husband and the *de facto* partner, provided—
  - (A) the administrator serves the surviving wife or husband and the *de facto* partner a notice in writing stating that the administrator shall distribute the property equally between them unless, within 3 months of the notice, at least one of them seeks an order of the court under subparagraph (i) or they enter into an agreement under subparagraph (ii); and
  - (B) within 3 months of the notice, the surviving wife or husband or *de facto* partner does not take an action stated in the notice under subparagraph (iii)(A).”.

*Section 6A amended*

4. Section 6A of the Principal Act is amended by—

- (a) in the heading, deleting “of spouse”;
- (b) in subsection (1), deleting “husband or wife” wherever it appears and substituting “wife or husband or *de facto* partner”;
- (c) in subsection (2)—
  - (i) in paragraph (a), deleting “husband or wife” and substituting “wife or husband or *de facto* partner”;
  - (ii) in paragraph (d), deleting “intestate and his or her husband or wife” and substituting “surviving wife or husband or *de facto* partner”; and
  - (iii) in the concluding paragraph, deleting “husband or wife of the intestate” and substituting “wife or husband or *de facto* partner of the intestate occupying the dwelling house as required under paragraph (d)”;

(d) after subsection (2), inserting the following new subsection—

“(2A) Where an intestate leaves both a wife or husband and a *de facto* partner and the requirements under subsection (2) are met in the circumstances of both the wife or husband and the *de facto* partner, the right to acquire the matrimonial home under this section may be exercised—

(a) in accordance with an order of the court; or

(b) in accordance with a written agreement between the surviving wife or husband and the *de facto* partner.”;

(e) in subsection (3), deleting “husband or wife of the intestate” wherever it appears and substituting “wife or husband or *de facto* partner seeking to exercise the right to acquire the matrimonial home under this section”;

(f) in subsection (5), deleting “husband or wife” and substituting “wife or husband or *de facto* partner”; and

(g) in subsection (6), deleting “husband or wife” wherever it appears and substituting “wife or husband or *de facto* partner”.

*Section 6B amended*

**5.** Section 6B of the Principal Act is amended by—

(a) in subsection (1) —

(i) deleting paragraph (a) and substituting the following—

“(a) after the death of—

(i) where the intestate leaves a wife or husband or *de facto* partner but not both a wife or husband and a *de facto* partner, the surviving wife or husband or *de facto* partner; or

(ii) where the intestate leaves both a wife or husband and a *de facto* partner, the surviving wife or husband or *de facto* partner who meets the requirements for acquiring the matrimonial home under section 6A(2);” and

(ii) in paragraph (d), deleting “husband or wife” and substituting “wife or husband or *de facto* partner”;

(b) in subsection (2), deleting “husband or wife” and substituting “wife or husband or *de facto* partner”;

(c) deleting subsection (3) and substituting the following—

“(3) During the period of 12 months referred to in subsection (1)(b), the administrator, not being the surviving wife or husband or *de facto* partner of the intestate, shall not sell or dispose of the interest of the intestate in the matrimonial home except—

(a) as authorised under subsection (4);

- (b) in the course of administration due to want of other assets; or
- (c) with the written consent of—
  - (i) where the intestate leaves a wife or husband or *de facto* partner but not both a wife or husband and a *de facto* partner, the wife or husband or *de facto* partner; or
  - (ii) where the intestate leaves both a wife or husband and a *de facto* partner, the surviving wife or husband or *de facto* partner who meets the requirements for acquiring the matrimonial home under section 6A(2); and

(d) in subsection (4), deleting “husband or wife” and substituting “wife or husband or *de facto* partner”.

*Section 6C amended*

**6.** Section 6C of the Principal Act is amended by deleting “husband or wife” wherever it appears and substituting “wife or husband or *de facto* partner”.

*Section 6F amended*

**7.** Section 6F of the Principal Act is amended by deleting “husband or wife” wherever it appears and substituting “wife or husband or *de facto* partner”.

*Section 7 amended*

**8.** Section 7 of the Principal Act is amended by—

- (a) deleting “21” and substituting “18”; and
- (b) deleting “husband or wife” wherever it appears and substituting “wife or husband or *de facto* partner”.

*Section 17 amended*

**9.** Section 17(2) of the Principal Act is amended after “continue” by inserting “to be”.

*Section 22 amended*

**10.** Section 22(1) of the Principal Act is amended by deleting “husband or widow” and substituting “surviving wife or husband or *de facto* partner”.

*Section 27 amended*

**11.** Section 27(1) of the Principal Act is amended by deleting “21” and substituting “18”.

*Section 31 amended*

**12.** Section 31 of the Principal Act is amended by deleting “21” and substituting “18”.

*Section 49 amended*

**13.** Section 49 of the Principal Act is amended in the heading by deleting “to widow or widower or next of kin”.

March 2018

**SUCCESSION, PROBATE AND ADMINISTRATION (AMENDMENT)  
BILL 2018**

**EXPLANATORY NOTE**

*(This note is not part of the Bill and is intended only to indicate its general effect)*

**1.0 BACKGROUND**

- 1.1 In 2012 the rights of persons in a *de facto* relationship were formally recognised by way of an amendment to the Family Law Act 2003. This amendment was a significant step forward for Fiji in ensuring that there are significant protections in place for overall spousal rights and, in particular, for women in vulnerable situations.
- 1.2 *De facto* relationships were further recognised by regulations made under the Fiji National Provident Fund Act 2011. These developments were a clear indication of the continued commitment to ensuring recognition of the rights of persons in *de facto* relationships.
- 1.3 However, the Succession, Probate and Administration Act 1970 ('**Act**'), which consolidates the law relating to succession, probate and administration of estates of deceased persons, does not recognise persons in *de facto* relationships in relation to the granting of letters of administration or the distribution of property upon intestacy.
- 1.4 The Succession, Probate and Administration (Amendment) Bill 2018 ('**Bill**') seeks to amend the Act to allow persons in *de facto* relationships to apply for grants of letters of administration and to set out their entitlement in the scheme of property distribution upon intestacy. The Bill thus ensures that progress made over the years for *de facto* recognition is not curtailed and that the laws of Fiji are consistent.

**2.0 CLAUSES**

- 2.1 Clause 1 of the Bill provides for the short title and the commencement. If passed by Parliament the amending legislation will come into force on a date or dates appointed by the Minister by notice in the Gazette.

- 2.2 Clause 2 of the Bill amends section 2 of the Act by inserting the definitions of “*de facto* partner” and “*de facto* relationship”.
- 2.3 Clause 3 of the Bill amends section 6(1) of the Act to allow for the entitlement of *de facto* partners in relation to property distribution upon intestacy. Clause 3 achieves this by inserting paragraphs (a) to (c). The new paragraph (a) provides for situations where the deceased intestate leaves behind either a legal spouse or a *de facto* partner but not both simultaneously. The new paragraph (b) provides for situations where the deceased intestate leaves both a spouse and a *de facto* partner. The new paragraph (c) provides for both alternatives captured in paragraphs (a) and (b), but where the intestate also has children.
- 2.4 Clause 3 of the Bill also amends section 6 of the Act to insert a new subsection which determines the manner in which property is to be distributed between a surviving spouse and a *de facto* partner where the intestate leaves both.
- 2.5 Clause 4 of the Bill amends section 6A of the Act in relation to the entitlement to acquire the matrimonial home. Sections 6A to 6G of the Act were inserted by the Succession, Probate and Administration (Amendment) Act 2004 and establish the entitlement of spouses to acquire the matrimonial home. These provisions did not extend the entitlement to *de facto* partners and clause 4 amends section 6A of the Act to allow for this.
- 2.6 Clauses 5 to 7 of the Bill amend sections 6B, 6C and 6F of the Act to give effect to the amendment made by clause 4 of the Bill.
- 2.7 Clause 8 of the Bill amends section 7 of the Act to allow persons in *de facto* relationships to apply for the grant of letters of administration and to lower the age threshold at which persons may apply for such grants from 21 years to 18 years.
- 2.8 Clause 9 of the Bill amends section 17 of the Act for the purposes of clarity.
- 2.9 Clause 10 of the Bill amends section 22 of the Act to bring section 22 of the Act in line with the amendment made by clause 8 of the Bill.
- 2.10 Clause 11 of the Bill amends section 27 of the Act to lower the age at which a guardian may hold administration of an estate on behalf of an infant from 21 years to 18 years.
- 2.11 Clause 12 of the Bill amends section 31 of the Act to give effect to the amendment made by clause 11 of the Bill.
- 2.12 Clause 13 of the Bill amends the heading of section 49 of the Act for consistency.

**3.0 MINISTERIAL RESPONSIBILITY**

3.1 The Act comes under the responsibility of the Minister responsible for justice.

A. SAYED-KHAIYUM  
Attorney-General