

ACT NO. 6 OF 2018

I assent.

J. K. KONROTE
President

[16 March 2018]

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);”;

(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”.

Passed by the Parliament of the Republic of Fiji this 15th day of March 2018.