

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Output 1.1

Question No. 17

Senator Crossin asked the following question at the hearing on 31 October 2006:

In relation to De Facto referrals to the Family Court:

- (a) Can you confirm that all states except SA have now referred power to the Commonwealth to enable heterosexual de facto property disputes to be heard by the Family Court?
- (b) Will the Commonwealth now act on this referral of power?
- (c) Is any work being done to implement this referral from the states, and preparing laws to give effect to this?
- (d) When is a Bill expected?

The answer to the honourable senator's question is as follows:

(a) All State Parliaments, except Western Australia and South Australia, have passed State legislation to provide a full reference of State powers in respect of financial matters arising on the breakdown of de facto relationships (de facto financial matters).

New South Wales, Queensland, Victoria and Tasmania have enacted State Acts, in identical terms, providing a full reference of powers that will enable the Commonwealth to legislate in respect of de facto financial matters – see for example, the *Commonwealth Powers (De Facto Relationships) Act 2003* (NSW). These State Acts will come into effect on proclamation under State law.

Territories do not refer powers, however any Commonwealth enactment on these matters will apply in the Territories by exercise of section 122 of the Constitution.

In Western Australia, the *Commonwealth Powers (De Facto Relationships) Act 2006* was enacted in June 2006, and will come into effect on Proclamation. The Act refers certain superannuation matters arising out of the breakdown of de facto relationships to the Parliament of the Commonwealth for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth, with a view to the Family Court of Western Australia being invested with jurisdiction to deal with those matters under section 77(iii) of the Constitution of the Commonwealth.

The South Australian Government has not referred any powers in de facto financial matters.

(b) The Commonwealth will act to implement full State references of powers in de facto financial matters, in respect of heterosexual de facto relationships.

(c) Drafting work has commenced on the proposed Family Law Amendment (De Facto Financial Matters) Bill (the Bill). The Bill will amend the *Family Law Act 1975* (Cth) to provide for de facto financial matters under federal family law. The Bill will apply in States that have provided a full reference of powers in these matters. The objective of the Bill will be to place

de facto couples in a similar position, as far as possible, to that of married couples under family law, while also operating consistently with the terms of State references. Consultations on the proposed Bill are being undertaken with key stakeholders.

(d) The Government proposes to introduce the Bill in the Autumn 2007 Parliamentary sittings.