

TASMANIA

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**RELATIONSHIPS BILL 2003**

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# **RELATIONSHIPS BILL 2003**

*(Brought in by the Minister for Justice and Industrial Relations, the Honourable Judith Louise Jackson)*

## **A BILL FOR**

### **An Act to make provision with respect to certain relationships**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

## **PART 1 – PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Relationships Act 2003*.

### **Commencement**

2. This Act commences on a day to be proclaimed.

### **Interpretation**

3. In this Act –

“**caring relationship**” – see section 5;

“**child**” includes –

- (a) a child of which the partners are the natural parents; and
- (b) a child of a female whose male partner is treated as the father of the child under section 10C of the *Status of Children Act 1974*; and
- (c) a child of a female whose female partner is treated as a parent of the child under section 10C of the *Status of Children Act 1974*; and
- (d) a child adopted by the partners;

**“court”** means –

- (a) the Supreme Court; or
- (b) the Magistrates Court;

**“disposition”** includes a sale or gift;

**“family relationship”** – see section 7;

**“financial matters”** means matters relating to any one or more of the following:

- (a) the maintenance of either or both of the partners;
- (b) the income or property of either or both of the partners;
- (c) the financial resources of either or both of the partners;

**“financial resources”** includes –

- (a) a prospective claim or entitlement in respect of a scheme, fund or arrangement under which

superannuation, retirement or similar benefits are provided; and

- (b) property that under the provisions of a discretionary trust may become vested in or used or applied in or towards the purposes, or for the benefit, of either or both partners or of any third party at their direction; and
- (c) property, the alienation or disposition of which is wholly or partly under the control of either or both partners and which is lawfully capable of being used or applied by or on behalf of either or both partners in or towards their purposes or for their benefit or that of any third party at their direction; and
- (d) an indexed pension; and
- (e) any other valuable benefit;

**“Magistrates Court”** means the Magistrates Court (Civil Division) established under the *Magistrates Court (Civil Division) Act 1992*;

**“marriage”** means a marriage under the *Marriage Act 1961* of the Commonwealth;

**“order”** means an order under Part 5;

**“partner”** means a person who is or has been in a personal relationship;

**“periodic maintenance”** means maintenance paid or payable as a weekly, fortnightly, monthly, yearly or other periodic sum;

**“personal relationship”** – see section 6;

**“personal relationship agreement”** means an agreement or a variation of an agreement between two persons, whether or not there are other parties to the agreement –

- (a) that is made before, on or after the commencement of this Act –
  - (i) in contemplation of their entering into a personal relationship; or
  - (ii) during the existence of their personal relationship; and
- (b) that provides for financial matters, whether or not it provides for other matters;

**“property”** includes –

- (a) real and personal property; and
- (b) any estate or interest (whether a present, future or contingent estate or interest) in real or personal property; and
- (c) money and any debt; and
- (d) any cause of action for damages; and
- (e) any other chose in action; and
- (f) any right with respect to property;

**“Register”** means the Relationships Register maintained under section 19;

**“Registrar”** means the Registrar of Births, Deaths and Marriages holding office under the *Births, Deaths and Marriages Registration Act 1999*;



**“regulations”** means the regulations in force under this Act;

**“separation agreement”** means an agreement or a variation of an agreement between partners, whether or not there are other parties to the agreement, and an agreement which varies a personal relationship agreement –

- (a) that is made before, on or after the commencement of this Act –
  - (i) in contemplation of the termination of the personal relationship; or
  - (ii) after the termination of the personal relationship; and
- (b) that provides for financial matters, whether or not it provides for other matters;

**“significant relationship”** – see section 4.

### **Significant relationships**

**4. (1)** For the purposes of this Act, a significant relationship is a relationship between two adult persons –

- (a) who have a relationship as a couple; and
- (b) who are not married to one another or related by family.

**(2)** If a significant relationship is registered under Part 2, proof of registration is proof of the relationship.

**(3)** If a significant relationship is not registered under Part 2, in determining whether two persons are in a

significant relationship, all the circumstances of the relationship are to be taken into account, including such of the following matters as may be relevant in a particular case:

- (a) the duration of the relationship;
- (b) the nature and extent of common residence;
- (c) whether or not a sexual relationship exists;
- (d) the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties;
- (e) the ownership, use and acquisition of property;
- (f) the degree of mutual commitment to a shared life;
- (g) the care and support of children;
- (h) the performance of household duties;
- (i) the reputation and public aspects of the relationship.

**(4)** No finding in respect of any of the matters mentioned in subsection (3)(a) to (i), or in respect of any combination of them, is to be regarded as necessary for the existence of a significant relationship, and a court determining whether such a relationship exists is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.

### **Caring relationships**

**5. (1)** For the purposes of this Act, a caring relationship is a relationship other than a marriage or significant

relationship between two adult persons whether or not related by family, one or each of whom provides the other with domestic support and personal care.

**(2)** For the purposes of subsection (1), a caring relationship is taken not to exist between two persons where one of them provides the other with domestic support and personal care –

- (a) for fee or payment in the nature of wages; or
- (b) under an employment relationship between the persons; or
- (c) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation).

**(3)** For the purpose of subsection (2)(a), a fee does not include a carer allowance or carer payment under the *Social Security Act 1991* of the Commonwealth made to a party to a caring relationship in respect of care provided by that party to the other party to the relationship.

**(4)** If a caring relationship is registered under Part 2, proof of registration is proof of the relationship.

**(5)** If a caring relationship is not registered under Part 2, in determining whether two persons are in a caring relationship, all the circumstances of the relationship are to be taken into account including such of the following matters as may be relevant in a particular case:

- (a) the duration of the relationship;
- (b) the nature and extent of common residence;
- (c) the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties;

- (d) the ownership, use and acquisition of property;
- (e) the degree of mutual commitment to a shared life;
- (f) the performance of household duties;
- (g) the reputation and public aspects of the relationship;
- (h) the level of personal care and domestic support provided by one or each of the partners to the other.

**(6)** No finding in respect of any of the matters mentioned in subsection (5)(a) to (h), or in respect of any combination of them, is to be regarded as necessary for the existence of a caring relationship, and a court determining whether such a relationship exists is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.

### **Personal relationships**

**6.** For the purposes of this Act, a personal relationship is –

- (a) a significant relationship; or
- (b) a caring relationship.

### **Family relationships**

**7. (1)** For the purposes of sections 4 and 5, persons are related by family if –

- (a) one is the parent, or another ancestor, of the other; or

- (b) one is the child, or another descendant, of the other; or
- (c) they have a parent in common.

**(2)** For the purposes of this section –

- (a) a person is taken to be an ancestor or descendant of another person even if the relationship between them is traced through, or to, a person who is or was an adopted child; and
- (b) the relationship of the parent and child between an adoptive parent and an adopted child is taken to continue even though the order by which the adoption was effected has been annulled, cancelled or discharged or the adoption has otherwise ceased to be effective; and
- (c) the relationship between an adopted child and the adoptive parent, or each of the adoptive parents, is taken to be or to have been the natural relationship of child and parent; and
- (d) a person who has been adopted more than once is taken to be the child of each person by whom he or she has been adopted.

**Application of Act**

**8.** This Act does not apply to –

- (a) a personal relationship that ceased before the commencement of this Act; or
- (b) a person who was a partner in a personal relationship that ceased before the

commencement of this Act in relation to matters arising out of that relationship.

### **Other remedy and relief not excluded**

**9.** This Act does not exclude any other form of remedy or relief under any other Act or law.

### **Declaration of interests in property**

**10. (1)** In proceedings between partners relating to existing title or rights in property, a court may declare any title or rights that a partner has in respect of the property.

**(2)** In making a declaration under subsection (1), the court may make any order to give effect to the declaration.

**(3)** An order under this section is binding on –

- (a) the partners; and
- (b) any other person who was given –
  - (i) notice of the proceedings; and
  - (ii) the opportunity of being heard.

**PART 2 – REGISTRATION OF DEED OF  
RELATIONSHIP**

**Application to register deed of relationship**

**11. (1)** Two adult persons –

- (a) who are domiciled or ordinarily resident in the State; and
- (b) who are not married or a party to a deed of relationship; and
- (c) who are in a significant or caring relationship –

may apply to the Registrar, in a form approved by the Registrar, for registration of a deed of relationship in relation to that significant or caring relationship.

**(2)** An application under subsection (1) is to be accompanied by –

- (a) a statutory declaration from each of the applicants verifying that the person who is the subject of the application –
  - (i) consents to the registration; and
  - (ii) is not married; and
  - (iii) is not a party to a deed of relationship or in another personal relationship; and
- (b) evidence of the identity and age of each applicant (as provided for in the form of application); and
- (c) in the case of a caring relationship, a certificate referred to in subsection (3); and

- (d) the fee prescribed under section 30(1)(a); and
- (e) any other document or information that the Registrar requires.

**(3)** Each party to a caring relationship must lodge a certificate, in a form approved by the Registrar, from a solicitor of the Supreme Court of Tasmania which states that the solicitor provided legal advice to that party, independently of the other party to the relationship, as to –

- (a) the effect of the registration of a deed of relationship on the rights of the parties; and
- (b) the advantages and disadvantages, at the time that the advice was provided, to the party of registering a deed of relationship.

### **Withdrawal of application**

**12. (1)** Either party to an application for the registration of a deed of relationship or both parties to the deed jointly may, within the period referred to in subsection (2) by notice in writing to the Registrar, withdraw the application.

**(2)** The notice referred to in subsection (1) is to be given to the Registrar within 28 days of the date of the lodgment of the application or the provision of additional information referred to in section 11(2)(e), whichever is the later.

### **Registration of deed of relationship**

**13. (1)** The Registrar must not make a decision regarding registration of a deed of relationship until after the expiry of 28 days from the receipt of the application.



(2) Prior to making a decision, the Registrar may require the person or persons who signed the application to provide further particulars as the Registrar requires.

(3) Unless the application is withdrawn, at the expiration of 28 days following lodgment or following the provision of additional information if requested by the Registrar under subsection (2), the Registrar must within a reasonable time –

- (a) register the deed of relationship by making an entry in the Register; or
- (b) refuse to register the deed of relationship.

(4) The Registrar must not register the deed of relationship if either of the persons is married or a party to a deed of relationship.

### **Effect of registration of deed of relationship**

**14.** If a deed of relationship is registered under this Part, the persons are, for the purposes of, but subject to, any law in force in this State, taken to be in a personal relationship.

### **Revocation of deed of relationship**

**15. (1)** A deed of relationship is revoked by –

- (a) the death of either party to the deed; or
- (b) the marriage of either party to the deed.

(2) A deed of relationship may be revoked by –

- (a) an order of a court; or

- (b) on the application to the Registrar of either party to the deed or both parties to the deed jointly in accordance with section 16.

### **Notice of revocation**

**16. (1)** Either party to a deed of relationship or both parties jointly may, on payment of the fee prescribed under section 30(1)(b), apply to the Registrar in a form approved by the Registrar for the revocation of the deed.

**(2)** If one party to the deed of relationship makes an application under subsection (1), the application is to be accompanied by proof of service on the other party to the deed.

**(3)** The Registrar is not to consider an application under subsection (1) unless it is accompanied by proof of service on the other party to the deed.

**(4)** A person who lodged an application for the revocation of a deed of relationship may, by notice in writing to the Registrar within 90 days of the day on which it was lodged with the Registrar and with the consent of the other party to the deed, withdraw the application.

### **When does revocation take place?**

**17.** At the expiry of 90 days from the date of lodgment of the application, the Registrar must revoke the deed of relationship unless –

- (a) the application is withdrawn under section 16(4); or
- (b) a court directs otherwise.

**Court may order retention or revocation of deed of relationship**

**18.** A magistrate, on application by an interested person or on his or her own initiative, may order the revocation of the deed of relationship.

## **PART 3 – THE RELATIONSHIPS REGISTER**

### ***Division 1 – Keeping the Register***

#### **The Register**

**19. (1)** The Registrar must maintain a register of deeds of relationships to be known as the Relationships Register.

**(2)** The Register –

- (a) must contain the particulars of deeds of relationships required under this Act to be included in the Register; and
- (b) may contain further information if the Registrar considers its inclusion appropriate.

**(3)** The Register may be wholly or partly in the form of a computer database, in documentary form, or in another form the Registrar considers appropriate.

**(4)** The Registrar must maintain the indexes to the Register that are necessary to make the information contained in the Register reasonably accessible.

### ***Division 2 – Access to, and certification of, Register entries***

#### **Access to Register**

**20. (1)** The Registrar may, on any conditions the Registrar considers appropriate –

- (a) allow access to the Register to a person or organisation that has an adequate reason for wanting access to the Register; or

- (b) provide information extracted from the Register to a person or organisation that has an adequate reason for wanting information from the Register.

(2) In deciding whether an applicant has an adequate reason for wanting access to the Register, or information from the Register, the Registrar must have regard to –

- (a) the nature of the applicant's interest; and
- (b) the sensitivity of the information; and
- (c) the use to be made of the information; and
- (d) other relevant factors.

(3) In deciding the conditions on which access to the Register, or information from the Register, is to be allowed or provided under this section, the Registrar must, as far as practicable, protect the persons to whom the entries in the Register relate from unjustified intrusion on their privacy.

### **Search of Register**

**21. (1)** The Registrar may, on application, search the Register for an entry about a deed of registration.

(2) The applicant must state the reason for the applicant's interest in the subject matter of the search.

(3) The Registrar may reject the application if the applicant does not have an adequate reason for wanting the information to which the application relates.

(4) In deciding whether an applicant has an adequate reason for wanting information, the Registrar must have regard to –

- (a) the relationship, if any, between the applicant and the persons to whom the information relates; and
- (b) the age of the entry; and
- (c) the contents of the entry; and
- (d) any other relevant factors.

### **Protection of privacy**

**22.** In providing information extracted from the Register, the Registrar must, as far as practicable, protect the persons to whom the entries in the Register relate from unjustified intrusion on their privacy.

### **Issue of certificate**

**23. (1)** On completing a search of the Register under section 21(1), the Registrar may issue a certificate –

- (a) certifying particulars contained in an entry; or
- (b) certifying that no relevant entry was located in the Register.

**(2)** A certificate under subsection (1) is admissible in legal proceedings as evidence of –

- (a) the entry to which the certificate relates; and
- (b) the facts recorded in the entry.

**Access policies**

**24. (1)** The Registrar must maintain a written statement of the policies on which access to information contained in the Register is to be given or denied under this Division.

**(2)** The Registrar must give a copy of the statement, on request, to any person.

**Review**

**25.** A person who is dissatisfied with a decision of the Registrar made in the performance or purported performance of functions under this Part may apply to the Magistrates Court (Administrative Appeals Division) for a review of the decision.

**False or misleading statements**

**26.** A person must not, in giving any information under this Act –

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without the matter the statement is false or misleading.

Penalty: Fine not exceeding 30 penalty units.

**Unauthorised access to or interference with Register**

**27.** A person must not, without the authority of the Registrar or other lawful authority –

- (a) obtain access to the Register or information contained in the Register; or
- (b) make, alter or delete an entry in the Register; or
- (c) interfere with the Register in any other way.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

### **Falsification of certificate**

**28. (1)** A person must not forge the Registrar's signature.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

**(2)** A person must not forge or falsify a certificate or other document under this Act.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

**(3)** The Registrar may impound –

- (a) a document which the Registrar has reason to believe bears a forged impression of the Registrar's signature; or
- (b) a certificate or other document purporting to be a certificate or other document under this Act which the Registrar has reason to believe has been forged or falsified; or
- (c) a certificate issued under section 23(1) if the entry in the Register about the event has been



revoked or corrected since the issue of the certificate.

### **Immunity from liability**

**29. (1)** No liability attaches to the Registrar for an honest act or omission in the performance or purported performance of functions under this Act.

**(2)** A liability that would, but for subsection (1), attach to the Registrar attaches instead to the Crown.

### **Fees**

**30. (1)** The regulations may prescribe fees or a basis for calculating fees for –

- (a) lodgment of an application for registration of a deed of relationship; or
- (b) lodgment of an application for revocation of a deed of relationship; or
- (c) access to the Register; or
- (d) a search of the Register; or
- (e) the issue of a certificate following a search of the Register; or
- (f) other services provided by the Registrar.

**(2)** The regulations may allow for fees to be fixed by negotiation between the Registrar and the person who asks for the relevant services.

## PART 4 – JURISDICTION

### Limit of jurisdiction of Magistrates Court

**31.** Subject to section 9, the Magistrates Court does not have jurisdiction under this Act to declare a title or right or adjust an interest in property of a value exceeding the amount prescribed under section 7 of the *Magistrates Court (Civil Division) Act 1992*.

### Stay and transfer of proceedings

**32. (1)** If proceedings instituted under this Act by or in relation to a person are pending in a court and it appears to the court that other proceedings under this Act instituted by or in relation to the same person are pending in another court, the court may –

- (a) stay the proceedings pending before it for any period it considers fit; or
- (b) dismiss the proceedings.

**(2)** If proceedings instituted under this Act are pending in a court and it appears to the court that it is in the interests of justice that the proceedings be dealt with in another court, the court may transfer the proceedings to the other court.

### Transfer of proceedings from Magistrates Court

**33. (1)** The Magistrates Court is to transfer any proceedings relating to an interest in property of a value exceeding the amount prescribed under section 7 of the *Magistrates Court (Civil Division) Act 1992* to the Supreme

Court, unless the parties agree to the Magistrates Court hearing and determining the proceedings.

(2) If proceedings referred to in subsection (1) are before it, the Magistrates Court may transfer the proceedings of its own motion, notwithstanding that the parties are willing for the Magistrates Court to hear and determine the proceedings.

(3) Before transferring proceedings, the Magistrates Court may make any orders it considers necessary pending the disposal of the proceedings by the Supreme Court.

(4) If proceedings are transferred to the Supreme Court, the Supreme Court is to proceed as if the proceedings had been originally instituted in that Court.

(5) Failure by the Magistrates Court to comply with this section does not invalidate any order of that Court in the proceedings.

### **Transfer of proceedings from Supreme Court**

**34. (1)** The Supreme Court may transfer any proceedings under this Act relating to an interest in property to the Magistrates Court if –

- (a) the value of that interest is less than or equal to the amount prescribed under section 7 of the *Magistrates Court (Civil Division) Act 1992*; or
- (b) the value of that interest is in excess of that prescribed amount and the parties agree to the Magistrates Court hearing and determining the proceedings.

(2) The Supreme Court may transfer any proceedings under this Act relating to maintenance.

**Courts aiding each other**

**35.** Courts are to act severally in aid of, and be auxiliary to, each other in all matters under this Act.

**PART 5 – PROCEEDINGS FOR FINANCIAL  
ADJUSTMENT AND MAINTENANCE**

***Division 1 – Preliminary***

**Application for adjustment or maintenance**

**36. (1)** A partner may apply to a court for an order for the adjustment of interests with respect to the property of either or both of the partners or for the granting of maintenance, or both.

**(2)** The application may be made whether or not any other application for any remedy or relief is or may be made under this Act or any other Act or law.

**Prerequisites for making of order**

**37. (1)** Subject to subsection (2), a court is not to make an order unless satisfied that the partners referred to in an application under section 36(1) have been in a personal relationship for a continuous period of not less than 2 years.

**(2)** A court may make an order if satisfied that –

- (a) there is a child of the partners referred to in the application; or
- (b) the applicant –
  - (i) has made substantial contributions of the kind referred to in section 40(1) for which the applicant would otherwise not be adequately compensated if the order were not made; or

- (ii) has the care and control of a child of the respondent –

and the failure to make the order would result in serious injustice to the applicant.

(3) This section does not apply if a deed of relationship has been registered in relation to the personal relationship.

### **Time limit for making application**

**38. (1)** If partners have ceased to be in a personal relationship, an application to a court for an order under section 36(1) is to be made before the expiration of the period of 2 years after the day on which they ceased or last ceased to be in the relationship.

(2) A court, at any time before or after the expiration of the period referred to in subsection (1), may grant leave to a partner to apply to the court for an order if greater hardship would be caused to the applicant if that leave were not granted than would be caused to the respondent if that leave were granted.

### **Order to end financial relationship**

**39.** In proceedings for an order, a court, so far as is practicable, is to make an order that –

- (a) finally determines the financial relationship between the partners; and
- (b) avoids further proceedings between them.

***Division 2 – Adjustment of interest in property*****Order for adjustment**

**40. (1)** On an application by a partner for an order for the adjustment of interests in respect of the property of either or both the partners, a court may make any order it considers just and equitable having regard to –

- (a) the financial and non-financial contributions made directly or indirectly by or on behalf of either or both of the partners to the acquisition, conservation or improvement of any of the property; and
- (b) the financial resources of either or both of the partners; and
- (c) the contributions, including any contributions made in the capacity of homemaker or parent, made by a partner to the welfare of the other partner or to the welfare of the family constituted by the partners and one or more of –
  - (i) a child of the partners; or
  - (ii) a child accepted by either or both the partners into the household of the partners, whether or not the child is a child of either of the partners; and
- (d) the nature and duration of the relationship; and
- (e) any relevant matter mentioned in section 47.

**(2)** A court may make an order in respect of property whether or not it has declared the title or rights of a partner in respect of the property.

**Adjournment because of significant change in circumstances**

**41. (1)** Without limiting the power of a court to grant an adjournment in relation to any proceedings before it, if, on an application by a partner for an order under section 40, the court is of the opinion that –

- (a) there is likely to be a significant change in the financial circumstances of either or both of the partners and that, having regard to when that change is likely to take place, it is reasonable to adjourn the proceedings; and
- (b) an order that the court could make with respect to the property of either or both of the partners, if that significant change occurs, is more likely to do justice between the partners than an order that the court could make immediately with respect to the property of either or both of the partners –

the court, if requested by either partner, may adjourn the application for a specified period.

**(2)** Before adjourning an application under subsection (1), the court may make any order it considers appropriate with respect to the property of either or both of the partners.

**(3)** A court, in forming an opinion for the purposes of subsection (1), may have regard to –

- (a) any change in the financial circumstances of a partner that may occur because of the vesting in either or both of the partners, or the use or application in or towards the purposes of either or both of the partners, of a financial resource of either or both of the partners; and



- (b) any other circumstances the court considers appropriate.

### **Adjournment because of proceedings in Family Court**

**42. (1)** Without limiting the power of a court to grant an adjournment in relation to any proceedings before it, the court may adjourn the hearing of the application for an order under section 40 if, before the court has made a final order to adjust interests with respect to the property of either or both partners, proceedings in relation to the property are commenced in the Family Court of Australia.

**(2)** If the hearing of an application for an order is adjourned under subsection (1), either partner may apply to the court for the hearing of the application to proceed.

### **Deferment of order**

**43.** If a court is of the opinion that a partner, in respect of the property of whom an order is made under section 40, is likely to become entitled to property that may be applied in satisfaction of the order, the court may defer the operation of the order until the date or the occurrence of an event specified in the order.

### **Death before order made**

**44. (1)** If, before an application under section 40 is determined, either party to the application dies, the application may be continued by or against the legal personal representative of the deceased party.

**(2)** A court may make an order in respect of property if of the opinion that –

- (a) it would have adjusted interests in respect of property if the deceased party had not died; and
- (b) notwithstanding the death of the deceased party, it is still appropriate to adjust those interests.

(3) Any order may be enforced on behalf of, or against, the estate of the deceased party.

### **Death after order made**

**45.** If a party to a proceeding for an order under section 40 dies after the order is made in favour of, or against, that party, the order may be enforced on behalf of, or against, the estate of the deceased party.

## ***Division 3 – Maintenance***

### **Right to maintenance**

**46.** Subject to this Division –

- (a) a partner is not liable to maintain the other partner; and
- (b) a partner is not entitled to claim maintenance from the other partner.

### **Order for maintenance**

**47. (1)** On an application by a partner for an order for maintenance, a court may make the order if satisfied that the applicant is unable to support himself or herself adequately because –

- (a) the partner's earning capacity has been adversely affected by the circumstances of the personal relationship; or
- (b) of any other reason arising in whole or in part from the circumstances of the personal relationship.

**(2)** In determining whether to make the order and in fixing any amount to be paid under the order, a court is to have regard to the following:

- (a) the income, property and financial resources of each partner (including the rate of any pension, allowance or benefit paid, payable or entitled to be paid to either partner) and the physical and mental capacity of each partner for appropriate gainful employment;
- (b) the financial needs and obligations of each partner;
- (c) the responsibilities of either partner to support any other person;
- (d) the terms of any order made or proposed to be made under section 40;
- (e) any payments provided for the maintenance of a child in the care and control of either partner;
- (f) whether either partner has the care and control of a child of the partner who is under 18;
- (g) the age and state of health of each partner;
- (h) the standard of living that is reasonable for each partner in all the circumstances;

- (i) the extent to which the payment of maintenance to the partner whose maintenance is under consideration would increase the earning capacity of the partner by enabling the partner –
  - (i) to undertake a course of education or training; or
  - (ii) to establish a business; or
  - (iii) otherwise to obtain adequate income;
- (j) the extent to which the partner whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other partner;
- (k) the length of the personal relationship;
- (l) the extent to which the personal relationship has affected the earning capacity of the partner whose maintenance is under consideration;
- (m) any other fact or circumstances the court considers relevant.

**(3)** In making an order for maintenance, a court is to disregard any entitlement of the person whose maintenance is under consideration to an income-tested pension, allowance or benefit.

**(4)** If, before an application is determined, either party to the application dies, the application abates.

**Interim maintenance**

**48.** If, on an application by a partner for an order for maintenance, it appears to a court that the applicant is in immediate need of financial assistance but it is not practicable in the circumstances to determine immediately if any order should be made, the court may order the payment by the other partner, pending the disposal of the application, of any periodic sum or other sums the court considers reasonable.

**Subsequent relationship or marriage**

**49.** If partners cease to be in a personal relationship, an application to a court for an order for maintenance may not be made by a partner who, at the time at which the application is made –

- (a) is in a personal relationship with another person; or
- (b) has married or remarried.

**Cessation of order**

**50. (1)** An order for maintenance ceases to have effect –

- (a) on the death of the partner in whose favour the order was made; or
- (b) on the death of the partner against whom the order was made; or
- (c) on the marriage or remarriage of the partner in whose favour the order was made to another person; or

- (d) on the registration of a deed of relationship relating to the relationship of the partner in whose favour the order was made to another person.

(2) If a marriage, remarriage or registration of a deed of relationship takes place, the partner is to notify the partner against whom the order was made of the date of the marriage, remarriage or registration as soon as practicable.

(3) Any money paid under an order for periodic maintenance in respect of a period occurring after the marriage, remarriage or registration of a deed of relationship takes place may be recovered as a debt in a court of competent jurisdiction by the partner who made the payment.

(4) If a notification under subsection (2) is not provided or reasonable steps are not taken to provide the notification, interest is payable on any money recovered under subsection (3) with effect from the date of the marriage, remarriage or registration of the deed of relationship.

(5) The rate of interest payable is the rate applicable in the relevant court.

### **Recovery of arrears**

**51.** The provisions of this Division do not affect the recovery of any arrears due under an order for maintenance when the order ceases to have effect.

**Variation of order for periodic maintenance**

**52. (1)** On an application by a partner in respect of whom an order has been made for periodic maintenance, a court may –

- (a) subject to subsection (2), discharge the order;  
or
- (b) suspend the operation of the order wholly or in part until –
  - (i) a further order; or
  - (ii) a fixed time; or
  - (iii) the happening of a future event; or
- (c) revive wholly or in part the operation of an order suspended under paragraph (b); or
- (d) subject to subsection (2), vary the terms of the order.

**(2)** A court is not to make an order discharging an order or increasing or decreasing an amount payable under an order unless satisfied that it is justifiable to do so because, since the order was made or last varied –

- (a) the circumstances of the partner in whose favour the order was made have changed; or
- (b) the circumstances of the partner against whom the order was made have changed; or
- (c) the cost of living has changed.

**(3)** In satisfying itself for the purposes of subsection (2)(c), a court is to have regard to any changes occurring during the relevant period in –

- (a) the Consumer Price Index (All Groups Index) issued by the Australian Statistician; or
- (b) a group of prescribed numbers or prescribed amounts relating to the price of goods and services issued by the Australian Statistician, other than those set out in the Index referred to in paragraph (a).

(4) A court, in considering the variation of an order, is not to have regard to a change in the cost of living unless at least 12 months have elapsed since the order was made or last varied.

(5) An order increasing or decreasing the amount of a periodic sum payable under an order may be expressed to be retrospective to any date the court thinks fit.

(6) For the purposes of this section, a court is to have regard to the provisions of sections 46 and 47.

### **Other maintenance orders not to be varied**

**53.** Subject to section 57, an order for maintenance, other than for periodic maintenance, is not to be varied.

## ***Division 4 – General***

### **Orders of court**

**54. (1)** Without derogating from any other power of a court under this or any other Act or law, a court, in exercising its powers under this Part, may do any one or more of the following:

- (a) order the transfer of property;



- (b) order the sale of property and the distribution of the proceeds of sale in any proportions it thinks fit;
- (c) order that any necessary deed or instrument be executed and that any documents of title be produced or any other things be done as are necessary to enable an order to be carried out effectively or to provide security for the performance of an order;
- (d) order payment of a lump sum, whether in one amount or by instalments;
- (e) order payment of a weekly, fortnightly, monthly, yearly or other periodic sum;
- (f) order that payment of any sum ordered to be paid be wholly or partly secured in any manner the court directs;
- (g) appoint or remove trustees;
- (h) make an order or grant an injunction for either or both of the following purposes:
  - (i) for the protection of, or otherwise relating to, the property or financial resources of either or both of the parties to an application;
  - (ii) to aid enforcement of any other order made in respect of an application;
- (i) impose terms and conditions;
- (j) make an order by consent;
- (k) make an order in the absence of a party;
- (l) make any other order or grant any other injunction (whether or not of the same nature

as those mentioned in this subsection) that it thinks is necessary to do justice.

**(2)** A court, in relation to an application, may make any order or grant any remedy or relief –

- (a) that it is empowered to make or grant under this or any other Act or law; and
- (b) under this Part, in addition to or in conjunction with making any other order or granting any other remedy or relief that it is so empowered to make or grant.

### **Execution of instruments**

**55. (1)** If a person refuses or fails to comply with a direction in an order to execute a deed or instrument, or a court thinks it necessary to exercise the powers conferred on it under this subsection, the court may appoint an officer of the court or other person –

- (a) to execute a deed or instrument in the name of the person to whom the direction was given; and
- (b) to do anything necessary to give validity and operation to the deed or instrument.

**(2)** The execution of the deed or instrument by the person appointed is as valid as if it were executed by the person directed by the order to execute it.

**(3)** A court may make any order it thinks just relating to the payment of the costs and expenses of, and incidental to, the preparation of the deed or instrument and its execution.

**Ex parte orders**

**56. (1)** In the case of urgency and on application made to it, a court may make or grant the following:

- (a) an ex parte order under section 48;
- (b) an ex parte order or ex parte injunction for either or both of the purposes specified in section 54(1)(h).

**(2)** An application under this section is to be made –

- (a) orally or in writing; or
- (b) in any form the court considers appropriate.

**(3)** If an application is not made in writing, the court is not to make an order or grant an injunction under subsection (1) unless, because of the extreme urgency of the case, it considers that it is necessary to do so.

**(4)** The court may give any directions with respect to the filing of a written application, the service of the application and the further hearing of the application it thinks fit.

**(5)** An order made or injunction granted under subsection (1) operates or applies until a specified time or the further order of the court as specified in the order.

**(6)** If a court makes an order or grants an injunction under subsection (1), it may give directions with respect to –

- (a) the service of the order or injunction and any other documents it thinks fit; and
- (b) the hearing of an application for a further order.

**Variation and setting aside of orders**

**57.** If, on the application of a person in respect of whom an order referred to in section 40 or 47 is made, a court is satisfied that –

- (a) there has been a miscarriage of justice because of fraud, duress, suppression of evidence, the giving of false evidence or any other circumstances; or
- (b) it is impracticable for the order or part of the order to be carried out; or
- (c) a person failed to carry out an obligation imposed on the person by the order –

the court may vary or set aside the order and make another order in substitution for the order set aside.

**Transactions to defeat claims**

**58. (1)** If a court is satisfied that an existing or anticipated order in a proceeding under this Act is likely to be defeated by the making of a document or disposition by a party to the proceeding, the court may set aside or restrain the making of the document or disposition.

**(2)** If a court is satisfied that an existing or anticipated order in a proceeding under this Act was defeated by the making of a document or disposition by a party to the proceeding, the court may order that –

- (a) any property dealt with by the document or disposition be applied towards, or charged with, payment of –
  - (i) an amount payable under an order adjusting interests in the property of one

or more of the parties to the proceeding;  
or

(ii) costs; or

(b) the proceeds of a sale be paid into court to satisfy its order.

**(3)** A court may order a party or a person acting in collusion with a party to pay the costs of any other party, or of a genuine purchaser or other interested person, of and incidental to any document or disposition or the setting aside or restraining of the document or disposition.

**(4)** For the purpose of this section –

- (a) something is made by a person if the thing is made by or on behalf of, or by direction or in the interests of, the person; and
- (b) it does not matter that the document or disposition is intended to defeat the order concerned.

### **Interests of other parties**

**59.** In exercising its powers under this Part, a court is to –

- (a) have regard to the interests of a genuine purchaser or other person interested; and
- (b) make an order that is proper for the protection of such a purchaser or person.

## **PART 6 – AGREEMENTS**

### **Entering into agreements**

**60.** Notwithstanding any rule of public policy to the contrary, two adult persons who are not married to each other may enter into a personal relationship agreement or separation agreement.

### **Agreements subject to law of contract**

**61.** A personal relationship agreement or separation agreement is subject to, and enforceable in accordance with, the law of contract.

### **Effect of agreements in certain proceedings**

**62. (1)** If, on an application by a partner for an order, a court is satisfied that –

- (a) there is a personal relationship agreement or separation agreement between the partners; and
- (b) the agreement is in writing; and
- (c) the agreement is signed by the partner against whom it is sought to be enforced; and
- (d) each party to the relationship was, before the time at which the agreement was signed by him or her, given by a solicitor of the Supreme Court of Tasmania a certificate in a form approved by the Minister which states that, before that time, the solicitor provided legal advice to that party, independently of the

other party to the relationship, as to the following matters:

- (i) the effect of the agreement on the rights of the parties to apply for an order under Part 5;
- (ii) the advantages and disadvantages, at the time that the advice was provided, to the party of making the agreement; and
- (e) the certificates referred to in paragraph (d) are endorsed on or annexed to or otherwise accompany the agreement –

the court is not to make an order that is inconsistent with the terms of the agreement.

**(2)** If, on an application by a partner for an order, a court is satisfied that there is a personal relationship agreement or separation agreement between the partners but it is not satisfied as to any of the matters referred to in subsection (1)(b), (c) or (d) the court may –

- (a) make any order it could have made if there were no personal relationship agreement or separation agreement between the partners; and
- (b) have regard to the terms of the personal relationship agreement or separation agreement.

**(3)** A court may make an order referred to in subsection (2) notwithstanding that the personal relationship agreement or separation agreement purports to exclude the jurisdiction of the court to make that order.

**Variation of terms of cohabitation and separation agreements**

**63. (1)** On an application by a partner for an order, a court may vary or set aside any provision of a personal relationship agreement or separation agreement that satisfies the matters referred to in section 62(1)(b), (c), (d) and (e) if, in the opinion of the court, the circumstances of the partners have so changed since the agreement was entered into that it would lead to serious injustice if the provision were enforced, whether on the application for the order or on any other application for any remedy or relief under any other Act or law.

**(2)** A court may vary or set aside any provision of a personal relationship agreement or separation agreement –

- (a) if of the opinion that the agreement was entered into under duress or by fraud; or
- (b) on any other ground that would allow a contract to be set aside.

**(3)** A court may vary or set aside any provision of a personal relationship agreement or separation agreement notwithstanding any provision of the agreement to the contrary.

**Revocation of agreements**

**64.** On an application by a partner for an order, a court is not required to give effect to the terms of any personal relationship agreement or separation agreement entered into by that partner if the court is of the opinion that –

- (a) the partners have, by their words or conduct, revoked or consented to the revocation of the agreement; or



- (b) the agreement has otherwise ceased to have effect.

### **Effect of death of partner**

**65. (1)** The provisions of a personal relationship agreement or separation agreement requiring a partner to pay periodic maintenance to the other partner are –

- (a) on the death of the first-mentioned partner, unenforceable against his or her estate unless the agreement provides otherwise; and
- (b) on the death of the second-mentioned partner, unenforceable by his or her estate.

**(2)** Subsection (1) does not affect the recovery of arrears of periodic maintenance due and payable under a personal relationship agreement or separation agreement at the date of death of the partner.

**(3)** Unless a personal relationship agreement or separation agreement otherwise provides, the provisions of the agreement entered into by partners relating to property and lump sum payments are, on the death of one of the partners, enforceable on behalf of, or against, the estate of the deceased partner.

**PART 7 – MISCELLANEOUS****Declaration of existence of personal relationship**

**66. (1)** A person who alleges that a personal relationship exists or existed between the person and another person or between 2 persons may apply to the Supreme Court for a declaration as to the existence of a personal relationship between the persons.

**(2)** If it is proved to the satisfaction of the Supreme Court that a personal relationship exists or existed, the Supreme Court may make a declaration, that has effect as a judgment of the Court, that persons named in the declaration have or had a personal relationship, whether or not any of those persons are alive.

**(3)** If the Supreme Court makes a declaration, it is to state in its declaration either or both of the following:

- (a)** that the personal relationship existed as at a date specified in the declaration;
- (b)** that the personal relationship existed between the dates specified in the declaration.

**(4)** While a declaration remains in force, the persons named in the declaration are presumed conclusively for all purposes to have had a personal relationship as at the date, or between the dates, specified in the declaration.

**(5)** The Supreme Court may make an order annulling a declaration on the application of any person who applied or could have applied for the making of a declaration, or who is affected by a declaration, if it appears to the Supreme Court that new facts or circumstances have arisen that were not previously disclosed to it and could not by the exercise of reasonable diligence have previously been disclosed to it.

(6) An order annulling a declaration does not affect anything done in reliance on the declaration before the making of the order.

(7) If any person whose interest, in the opinion of the Supreme Court, may be affected by a declaration under subsection (2) or an order under subsection (5) is not present or represented and has not been given an opportunity to be present or represented at the hearing of the application, the Supreme Court may adjourn the hearing so that the person is given an opportunity to be present or represented.

(8) The Supreme Court, in making an order under subsection (5), may make any ancillary orders necessary to place as far as practicable any person affected by the order in the same position as that person would have been in if a declaration under subsection (2) had not been made.

### **Enforcement of orders for payment**

**67. (1)** A prescribed order for the payment of money made by the Supreme Court is enforceable in the Magistrates Court as if it were a judgment of the Magistrates Court under the *Magistrates Court (Civil Division) Act 1992*.

(2) An order for the payment of money made by the Magistrates Court is enforceable in that court as if it were a judgment of that court under the *Magistrates Court (Civil Division) Act 1992*.

### **Costs**

**68.** A court may make any order for costs it considers appropriate.

**Enforcement of other orders**

**69. (1)** If a court is satisfied that a person has knowingly and without reasonable cause contravened or failed to comply with an order or injunction under this Act, other than an order for the payment of money, the court may –

- (a) order the person to deliver up to the court any documents the court thinks fit; and
- (b) make any other orders the court considers necessary to enforce compliance with the order or injunction.

**(2)** This section does not affect the power of a court to punish a person for contempt of court.

**Rules of court**

**70.** For the purpose of this Act, rules of court may be made under the *Supreme Court Civil Procedure Act 1932* and the *Magistrates Court (Civil Division) Act 1992*.

**Regulations**

**71. (1)** The Governor may make regulations for the purposes of this Act.

**(2)** Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

**(3)** The regulations may –

- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and

- (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.

(4) The regulations may authorise any matter to be from time to time determined, applied or regulated by any person or body specified in the regulations.

(5) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(6) Regulations under subsection (5) may take effect on the day on which this Act commences or a later day as specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

### **Administration of Act**

**72.** Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice and Industrial Relations; and
- (b) the department responsible to the Minister for Justice and Industrial Relations in relation to the administration of this Act is the Department of Justice and Industrial Relations.

**Savings and transitional****73. (1)** An order –

- (a) continued under the *De Facto Relationship Act 1999* and in force immediately before the commencement of this Act; or
- (b) made under the *De Facto Relationship Act 1999* and in force immediately before the commencement of this Act –

continues with any necessary modifications or adaptations as if it were an order made under this Act and is to be taken for all purposes as if it had been made under this Act.

**(2)** An application under the *De Facto Relationship Act 1999* is taken to be an application under this Act with any necessary modifications or adaptations, and anything done in respect of that application under the *De Facto Relationship Act 1999* is taken to have been done under this Act.

**(3)** Any right or entitlement that a de facto partner, within the meaning of the *De Facto Relationship Act 1999*, had or was entitled to under that Act is taken to be a right or entitlement which that person has or is entitled to under this Act.

***De Facto Relationship Act 1999* repealed**

**74.** The *De Facto Relationship Act 1999* is repealed.

***De Facto Relationship Regulations 2000* rescinded**

**75.** The *De Facto Relationship Regulations 2000* are rescinded.