

# De Facto Relationships Act 1984 No 147

[1984-147]



New South Wales

## Status Information

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### Provisions in force

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### Notes—

- **Does not include amendments by**  
*Property (Relationships) Legislation Amendment Act 1999 No 4* (not commenced)

### Authorisation

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# De Facto Relationships Act 1984 No 147



New South Wales

An Act to make provision with respect to de facto partners.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *De Facto Relationships Act 1984*.

### 2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

### 3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**applicant** includes a cross-applicant.

**appointed day** means the day appointed and notified under section 2 (2).

**de facto partner** means:

- (a) in relation to a man, a woman who is living or has lived with a man as his wife on a bona fide domestic basis although not married to him, and
- (b) in relation to a woman, a man who is living or has lived with the woman as her husband on a bona fide domestic basis although not married to her.

**de facto relationship** means the relationship between de facto partners, being the relationship of living or having lived together as husband and wife on a bona fide domestic basis although not married to each other.

**financial resources**, in relation to de facto partners or either of them, includes:

- (a) a prospective claim or entitlement in respect of a scheme, fund or arrangement under which superannuation, retirement or similar benefits are provided,
- (b) property which, pursuant to the provisions of a discretionary trust, may become vested in or used or applied in or towards the purposes of the de facto partners or either of them,
- (c) property, the alienation or disposition of which is wholly or partly under the control of the de facto partners or either of them and which is lawfully capable of being used or applied by or on behalf of the de facto partners or either of them in or towards their or his or her own purposes, and
- (d) any other valuable benefit.

**Local Court** means a Local Court established under section 6 (1) of the [Local Courts Act 1982](#).

**property**, in relation to de facto partners or either of them, includes real and personal property and any estate or interest (whether a present, future or contingent estate or interest) in real or personal property, and money, and any debt, and any cause of action for damages (including damages for personal injury), and any other chose in action, and any right with respect to property.

**regulation** means a regulation made under this Act.

**Supreme Court** means the Supreme Court of New South Wales.

- (2) A reference in this Act to a child of de facto partners (whether the de facto partners are referred to as the parties to an application for an order under Part 3 or otherwise) is a reference to:
  - (a) a child born as a result of sexual relations between the partners,
  - (b) a child of the woman of whom her de facto partner is presumed by operation of section 14 (presumptions of parentage arising out of use of fertilisation procedures) of the [Status of Children Act 1996](#) to be the father, or
  - (c) a child adopted by the partners.
- (3) A reference in this Act to periodic maintenance is a reference to maintenance paid or payable or to be paid, as the case may require, by means of a weekly, fortnightly, monthly, yearly or other periodic sum.

#### 4 (Repealed)

#### 5 Application of references to de facto partners

Except as provided by section 6, a reference in this Act to a de facto partner includes a reference to a person who has, whether before, on or after the appointed day, been a de

facto partner.

## **6 Application of Act**

This Act (except Part 5) does not apply to or in respect of:

- (a) a de facto relationship which ceased before the appointed day, or
- (b) a person in so far as he or she was a partner in a de facto relationship referred to in paragraph (a).

## **7 Other rights of de facto partners not affected by this Act**

Nothing in this Act derogates from or affects any right of a de facto partner to apply for any remedy or relief under any other Act or any other law.

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

- (1) Without limiting the generality of section 7, in proceedings between de facto partners with respect to existing title or rights in respect of property, a court may declare the title or rights, if any, that a de facto partner has in respect of the property.
- (2) Where a court makes a declaration under subsection (1), it may make consequential orders to give effect to the declaration, including:
  - (a) orders as to possession, and
  - (b) in the case of a Local Court, orders of the kind which may be made under section 38 (1) (b), (c), (i) and (j).
- (3) An order under this section is binding on the de facto partners but not on any other person.

## **Part 2 Jurisdiction**

### **9 Courts having jurisdiction under this Act**

Subject to this Act, a person may apply to:

- (a) the Supreme Court, or
- (b) a Local Court,

for an order or relief under this Act.

### **10 Limit of jurisdiction of Local Courts**

Except as provided by section 12, a Local Court shall not have jurisdiction under this Act:

- (a) in relation to property, to declare a title or right or adjust an interest, or

(b) to make an order for maintenance,

of a value or amount in excess of the amount prescribed for the time being by section 12 of the *Local Courts (Civil Claims) Act 1970*.

## **11 Staying and transfer of proceedings**

- (1) Where there are pending in a court proceedings that have been instituted under this Act by or in relation to a person and it appears to the court that other proceedings that have been so instituted by or in relation to the same person are pending in another court having jurisdiction under this Act, the firstmentioned court:
  - (a) may stay the proceedings pending before it for such time as it thinks fit, or
  - (b) may dismiss the proceedings.
- (2) Where there are pending in a court proceedings that have been instituted under this Act and it appears to the court that it is in the interests of justice that the proceedings be dealt with in another court having jurisdiction under this Act, the court may transfer the proceedings to the other court.

## **12 Transfer of proceedings from Local Courts in certain cases**

- (1) Where proceedings are instituted in a Local Court with respect to an interest in property, being an interest of a value or amount in excess of the amount prescribed for the time being by section 12 of the *Local Courts (Civil Claims) Act 1970*, the Local Court shall, unless the parties agree to the Court hearing and determining the proceedings, transfer the proceedings to the District Court or the Supreme Court, as may be appropriate.
- (2) Where proceedings referred to in subsection (1) are before it, the Local Court may transfer the proceedings of its own motion, notwithstanding that the parties would be willing for the Local Court to hear and determine the proceedings.
- (3) Before transferring proceedings under subsection (1), the Local Court may make such orders as it considers necessary pending the disposal of the proceedings by the District Court or Supreme Court.
- (4) Where proceedings are transferred under subsection (1), the District Court or Supreme Court, as the case may be, shall, subject to the rules of court, proceed as if the proceedings had been originally instituted in that Court.
- (5) Without prejudice to the duty of a Local Court to comply with this section, failure by the Local Court so to comply does not invalidate any order of the Court in the proceedings.

### **13 Courts to act in aid of each other**

All courts having jurisdiction under this Act shall severally act in aid of and be auxiliary to each other in all matters under this Act.

## **Part 3 Proceedings for financial adjustment**

### **Division 1 Preliminary**

#### **14 Applications for orders under this Part**

- (1) Subject to this Part, a de facto partner may apply to a court for an order under this Part for the adjustment of interests with respect to the property of the de facto partners or either of them or for the granting of maintenance, or both.
- (2) An application referred to in subsection (1) 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 any other law.

#### **15 Prerequisites for making of order—residence within State etc**

- (1) A court shall not make an order under this Part unless it is satisfied:
  - (a) that the parties to the application were or either of them was resident within New South Wales on the day on which the application was made, and
  - (b) that:
    - (i) both parties were resident within New South Wales for a substantial period of their de facto relationship, or
    - (ii) substantial contributions of the kind referred to in section 20 (1) (a) or (b) have been made in New South Wales by the applicant.
- (2) For the purposes of subsection (1) (b) (i), the parties to an application shall be taken to have been resident within New South Wales for a substantial period of their de facto relationship if they have lived together in the State for a period equivalent to at least one-third of the duration of their relationship.

#### **16 Relevant facts and circumstances**

Where a court is satisfied as to the matters specified in section 15 (1) (a) and (b), it may make or refuse to make an order under this Part by reason of facts and circumstances notwithstanding that those facts and circumstances, or some of them, took place before the appointed day or outside New South Wales.

#### **17 Prerequisites for making of order—length of relationship etc**

- (1) Except as provided by subsection (2), a court shall not make an order under this Part

unless it is satisfied that the parties to the application have lived together in a de facto relationship for a period of not less than 2 years.

(2) A court may make an order under this Part where it is satisfied:

(a) that there is a child of the parties to the application, or

(b) that the applicant:

(i) has made substantial contributions of the kind referred to in section 20 (1) (a) or (b) 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 that the failure to make the order would result in serious injustice to the applicant.

## **18 Time limit for making applications**

(1) Except as provided by subsections (2) and (3), where de facto partners have ceased to live together as husband and wife on a bona fide domestic basis, an application to a court for an order under this Part shall be made before the expiration of the period of 2 years after the day on which they ceased, or last ceased, as the case may require, to so live together.

(2) A court may, at any time after the expiration of the period referred to in subsection (1), grant leave to a de facto partner to apply to the court for an order under this Part (other than an order under section 27 (1) made where the court is satisfied as to the matters specified in section 27 (1) (b)) where the court is satisfied, having regard to such matters as it considers relevant, that 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.

(3) Where, under subsection (2), a court grants a de facto partner leave to apply to the court for an order under this Part, the de facto partner may apply accordingly.

## **19 Duty of court to end financial relationships**

In proceedings for an order under this Part, a court shall, so far as is practicable, make such orders as will finally determine the financial relationships between the de facto partners and avoid further proceedings between them.

# **Division 2 Adjustment of interests with respect to property**

## **20 Application for adjustment**

(1) On an application by a de facto partner for an order under this Part to adjust interests with respect to the property of the de facto partners or either of them, a court may

make such order adjusting the interests of the partners in the property as to it seems just and equitable having regard to:

- (a) the financial and non-financial contributions made directly or indirectly by or on behalf of the de facto partners to the acquisition, conservation or improvement of any of the property of the partners or either of them or to the financial resources of the partners or either of them, and
  - (b) the contributions, including any contributions made in the capacity of homemaker or parent, made by either of the de facto partners to the welfare of the other de facto partner or to the welfare of the family constituted by the partners and one or more of the following, namely:
    - (i) a child of the partners,
    - (ii) a child accepted by the partners or either of them into the household of the partners, whether or not the child is a child of either of the partners.
- (2) A court may make an order under subsection (1) in respect of property whether or not it has declared the title or rights of a de facto partner in respect of the property.

## **21 Adjournment of application—likelihood of significant change in circumstances**

- (1) Without limiting the power of a court to grant an adjournment in relation to any proceedings before it, where, on an application by a de facto partner for an order under this Part to adjust interests with respect to the property of the de facto partners or either of them, or otherwise, the court is of the opinion:
- (a) that there is likely to be a significant change in the financial circumstances of the partners or either of them and that, having regard to the time when that change is likely to take place, it is reasonable to adjourn the proceedings, and
  - (b) that an order that the court could make with respect to the property of the partners or either of them if that significant change in financial circumstances occurs is more likely to do justice as between the partners than an order that the court could make immediately with respect to the property of the partners or either of them,

the court may, if so requested by either partner, adjourn the application until such time, before the expiration of a period specified by the court, as that partner applies for the application to be determined, but nothing in this section requires the court to adjourn any application in any particular circumstances.

- (2) Where a court proposes to adjourn an application as provided by subsection (1), the court may, before so adjourning the application, make such order or orders (if any) as it considers appropriate with respect to the property of the de facto partners or either of them.

- (3) A court may, in forming an opinion for the purposes of subsection (1) as to whether there is likely to be a significant change in the financial circumstances of the de facto partners or either of them, have regard to any change in the financial circumstances of a partner that may occur by reason of the vesting in the partners or either of them or the use or application in or towards the purposes of the partners or either of them of a financial resource of the partners or either of them, but nothing in this subsection limits the circumstances in which the court may form the opinion that there is likely to be a significant change in the financial circumstances of the partners or either of them.

## **22 Adjournment of application—proceedings in the Family Court of Australia**

- (1) Without limiting the power of a court to grant an adjournment in relation to any proceedings before it, where, at any time before the court has made a final order under this Part to adjust interests with respect to the property of de facto partners or either of them, proceedings in relation to the property of the partners or either of them are commenced in the Family Court of Australia, the court may adjourn the hearing of the application for the order.
- (2) Where the hearing of an application for an order has been adjourned under subsection (1), the applicant for the order may, where the proceedings referred to in that subsection are delayed by neglect or by the unreasonable conduct of a party to those proceedings or by collusion between the parties to those proceedings, apply to the court for the hearing of the application to proceed.

## **23 Deferment of order**

Where a court is of the opinion that a de facto partner in respect of the property of whom an order is made pursuant to an application under section 20 is likely to become entitled, within a short period, to property which may be applied in satisfaction of the order, the court may defer the operation of the order until such date or the occurrence of such event as is specified in the order.

## **24 Effect of death of parties on application**

- (1) Where, before an application under section 20 is determined, either party to the application dies, the application may be continued by or against, as the case may require, the legal personal representative of the deceased party.
- (2) Where a court is of the opinion:
  - (a) that it would have adjusted interests in respect of property if the deceased party had not died, and
  - (b) that, notwithstanding the death of the deceased party, it is still appropriate to adjust those interests,

the court may make an order under this Part in respect of that property.

- (3) An order referred to in subsection (2) may be enforced on behalf of, or against, as the case may require, the estate of the deceased party.
- (4) The rules of a court may, for the purposes of subsection (1), provide for the substitution of the legal personal representative as a party to the application.

## **25 Effect of death of party on order**

Where, after an order is made against a party to an application under section 20, the party dies, the order may be enforced against the estate of the deceased party.

## **Division 3 Maintenance**

### **26 No general right of de facto partner to maintenance**

Except as otherwise provided by this Division, a de facto partner is not liable to maintain the other de facto partner and a de facto partner is not entitled to claim maintenance from the other de facto partner.

### **27 Order for maintenance**

- (1) On an application by a de facto partner for an order under this Part for maintenance, a court may make an order for maintenance (whether for periodic maintenance or otherwise) where the court is satisfied as to either or both of the following:
  - (a) that the applicant is unable to support himself or herself adequately by reason of having the care and control of a child of the de facto partners or a child of the respondent, being, in either case, a child who is, on the day on which the application is made:
    - (i) except in the case of a child referred to in subparagraph (ii)—under the age of 12 years, or
    - (ii) in the case of a physically handicapped child or mentally handicapped child—under the age of 16 years,
  - (b) that the applicant is unable to support himself or herself adequately because the applicant's earning capacity has been adversely affected by the circumstances of the relationship and, in the opinion of the court:
    - (i) an order for maintenance would increase the applicant's earning capacity by enabling the applicant to undertake a course or programme of training or education, and
    - (ii) it is, having regard to all the circumstances of the case, reasonable to make the order.

- (2) In determining whether to make an order under this Part for maintenance and in fixing any amount to be paid pursuant to such an order, a court shall have regard to:
- (a) the income, property and financial resources of each de facto partner (including the rate of any pension, allowance or benefit paid to either partner or the eligibility of either partner for a pension, allowance or benefit) and the physical and mental capacity of each partner for appropriate gainful employment,
  - (b) the financial needs and obligations of each de facto partner,
  - (c) the responsibilities of either de facto partner to support any other person,
  - (d) the terms of any order made or proposed to be made under section 20 with respect to the property of the de facto partners, and
  - (e) any payments made, pursuant to an order of a court or otherwise, in respect of the maintenance of a child or children in the care and control of the applicant.
- (3) In making an order for maintenance, a court shall ensure that the terms of the order will, so far as is practicable, preserve any entitlement of the applicant to a pension, allowance or benefit.

## **28 Interim maintenance**

Where, on an application by a de facto partner for an order under this Part 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 what order, if any, should be made, the court may order the payment by the respondent, pending the disposal of the application, of such periodic sum or other sums as the court considers reasonable.

## **29 Effect of subsequent relationship or marriage**

Where de facto partners have ceased to live together as husband and wife on a bona fide domestic basis, an application to a court for an order under this Part for maintenance may not be made by a de facto partner who, at the time at which the application is made, has entered into a subsequent de facto relationship with another person or who, at that time, has married or remarried.

## **30 Duration of orders for periodic maintenance**

- (1) An order under this Part for periodic maintenance, being an order made where a court is satisfied solely as to the matters specified in section 27 (1) (a), may apply for such period as may be determined by the court, not exceeding the period expiring when the child to whom section 27 (1) (a) applies, or the younger or youngest such child, as the case may require:
- (a) except in the case of a child referred to in paragraph (b)—attains the age of 12

years, or

(b) in the case of a physically handicapped child or mentally handicapped child—attains the age of 16 years.

(2) An order under this Part for periodic maintenance, being an order made where a court is satisfied solely as to the matters specified in section 27 (1) (b), may apply for such period as may be determined by the court, not exceeding:

(a) 3 years after the day on which the order is made, or

(b) 4 years after the day on which the de facto partners ceased, or last ceased, as the case may require, to live together,

whichever is the shorter.

(3) An order under this Part for periodic maintenance, being an order made where a court is satisfied as to the matters specified in section 27 (1) (a) and (b), may apply for such period as may be determined by the court, not exceeding the period permissible under subsection (1) or (2), whichever is the longer.

(4) Nothing in this section or an order under this Part for periodic maintenance prevents such an order from ceasing to have effect pursuant to section 32 or 33.

### **31 Effect of death of parties on application**

Where, before an application under section 27 is determined, either party to the application dies, the application shall abate.

### **32 Cessation of order—generally**

(1) An order under this Part for maintenance shall cease to have effect:

(a) on the death of the de facto partner in whose favour the order was made,

(b) on the death of the de facto partner against whom the order was made, or

(c) on the marriage or remarriage of the de facto partner in whose favour the order was made.

(2) Where, in relation to a de facto partner in whose favour an order under this Part for maintenance is made, a marriage or remarriage referred to in subsection (1) (c) takes place, the partner shall, without delay, notify the de facto partner against whom the order was made of the date of the marriage or remarriage.

(3) Any money paid pursuant to an order under this Part for periodic maintenance, being money paid in respect of a period occurring after a marriage or remarriage referred to in subsection (1) (c) takes place, may be recovered as a debt in a court of competent jurisdiction by the de facto partner who made the payment.

### **33 Cessation of order—child care responsibilities**

Where a court makes an order under this Part for periodic maintenance, being an order made where the court is satisfied solely as to the matters specified in section 27 (1) (a), the order shall cease to have effect on the day on which the de facto partner in whose favour the order was made ceases to have the care and control of the child of the relationship, or the children of the relationship, as the case may require, in respect of whom the order was made.

### **34 Recovery of arrears**

Nothing in section 32 or 33 affects the recovery of arrears due pursuant to an order under this Part for maintenance at the time when the order ceased to have effect.

### **35 Variation etc of orders for periodic maintenance**

- (1) On an application by a de facto partner in respect of whom an order has been made under this Part for periodic maintenance, a court may:
  - (a) subject to subsection (2), discharge the order,
  - (b) suspend the operation of the order wholly or in part and either until further order or until a fixed time or the happening of some future event,
  - (c) revive wholly or in part the operation of an order suspended under paragraph (b), or
  - (d) subject to subsection (2), vary the order so as to increase or decrease any amount directed to be paid by the order or in any other manner.
- (2) A court shall not make an order discharging, increasing or decreasing an amount directed to be paid by an order unless it is satisfied that, since the order was made, or last varied:
  - (a) the circumstances of the de facto partner in whose favour the order was made have so changed,
  - (b) the circumstances of the de facto partner against whom the order was made have so changed, or
  - (c) the cost of living has changed to such an extent,  
as to justify its so doing.
- (3) In satisfying itself for the purposes of subsection (2) (c), a court shall have regard to any changes that, during the relevant period, have occurred:
  - (a) except as provided by paragraph (b), in the Consumer Price Index (All Groups Index) issued by the Australian Statistician, or

- (b) where a group of numbers or of amounts, other than those set out in the Index referred to in paragraph (a) (being a group of numbers or of amounts which relate to the price of goods and services, and which is issued by the Australian Statistician) is prescribed for the purposes of this paragraph—in the group of numbers or of amounts so prescribed.
- (4) A court shall not, in considering the variation of an order, 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 having regard to a change in the cost of living.
- (5) An order decreasing the amount of a periodic sum payable under an order may be expressed to be retrospective to such date as the court thinks fit.
- (6) For the purposes of this section, a court shall have regard to the provisions of sections 26 and 27.

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

Except as provided by section 41, an order made under this Part for maintenance, not being an order for periodic maintenance, may not be varied.

### **37 Extension of orders for periodic maintenance**

- (1) Where a court has made an order under this Part for periodic maintenance for a period which is less than the maximum period permissible in accordance with section 30, the de facto partner in whose favour the order is made may, at any time before the expiration of that maximum period, apply to the court for an extension of the period for which the order applies.
- (2) A court shall not make an order pursuant to an application under subsection (1) unless it is satisfied that there are circumstances which justify its so doing.
- (3) An order extending the period for which an order under this Part for periodic maintenance applies may not be made so as to extend the period beyond the maximum period permissible under section 30 in relation to the secondmentioned order.
- (4) For the purposes of this section, a court shall have regard to the provisions of sections 26 and 27.

## **Division 4 General**

### **38 Orders etc of a court**

- (1) Without derogating from any other power of a court under this or any other Act or any other 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 such proportions as the court thinks fit,
  - (c) order that any necessary deed or instrument be executed and that such documents of title be produced or such other things be done as are necessary to enable an order to be carried out effectively or to provide security for the due 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 such manner as the court directs,
  - (g) appoint or remove trustees,
  - (h) make an order or grant an injunction:
    - (i) for the protection of or otherwise relating to the property or financial resources of the parties to an application or either of them, or
    - (ii) to aid enforcement of any other order made in respect of an application, or both,
  - (i) impose terms and conditions,
  - (j) make an order by consent,
  - (j1) make an order in the absence of a party,
  - (k) make any other order or grant any other injunction (whether or not of the same nature as those mentioned in the preceding paragraphs) which it thinks it is necessary to make to do justice.
- (2) A court may, in relation to an application under this Part:
- (a) make any order or grant any remedy or relief which it is empowered to make or grant under this or any other Act or any other law, and
  - (b) make any order or grant any remedy or relief under this Part in addition to or in conjunction with making any other order or granting any other remedy or relief which it is empowered to make or grant under this Act or any other Act or any other law.

### **39 Execution of instruments by order of a court**

(1) Where:

- (a) an order under this Part has directed a person to execute a deed or instrument, and
- (b) the person has refused or neglected to comply with the direction or, for any other reason, 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 to execute the deed or instrument in the name of the person to whom the direction was given and to do all acts and things necessary to give validity and operation to the deed or instrument.

- (2) The execution of the deed or instrument by the person so appointed has the same force and validity as if it had been executed by the person directed by the order to execute it.
- (3) A court may make such order as it thinks just as to the payment of the costs and expenses of and incidental to the preparation of the deed or instrument and its execution.

### **40 Ex parte orders**

- (1) In the case of urgency, a court may make or grant, as the case may be, any one or more of the following:
  - (a) an ex parte order pursuant to section 28,
  - (b) an ex parte order or ex parte injunction for either or both of the purposes specified in section 38 (1) (h),
  - (c) an ex parte injunction for any of the purposes specified in section 53.
- (2) An application under this section may be made orally or in writing or in such form as the court considers appropriate.
- (3) Where an application under this section is not made in writing, the court shall not make an order or grant an injunction under subsection (1) unless by reason of the extreme urgency of the case it considers that it is necessary to do so.
- (4) The court may give such directions with respect to the filing of a written application, the service of the application and the further hearing of the application as it thinks fit.
- (5) An order made or injunction granted under subsection (1) shall be expressed to operate or apply only until a specified time or the further order of the court.
- (6) Where 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 such other documents as it thinks fit, and
- (b) the hearing of an application for a further order.

#### **41 Variation and setting aside of orders**

Where, on the application of a person in respect of whom an order referred to in section 20 or 27 has been made, a court is satisfied that:

- (a) there has been a miscarriage of justice by reason of fraud, duress, suppression of evidence, the giving of false evidence or any other circumstance,
- (b) in the circumstances that have arisen since the order was made, it is impracticable for the order to be carried out or impracticable for a part of the order to be carried out, or
- (c) a person has defaulted in carrying out an obligation imposed on the person by the order and, in the circumstances that have arisen as a result of that default, it is just and equitable to vary the order or to set the order aside and make another order in substitution for the order,

the court may, in its discretion, vary the order or set the order aside and, if it thinks fit, make another order in accordance with this Part in substitution for the order so set aside.

#### **42 Transactions to defeat claims**

- (1) In this section, **disposition** includes a sale and a gift.
- (2) On an application for an order under this Part, a court may set aside or restrain the making of an instrument or disposition by or on behalf of, or by direction or in the interest of, a party, which is made or proposed to be made to defeat an existing or anticipated order relating to the application (being an order adjusting interests with respect to the property of the parties or either of them, an order for maintenance or an order for costs) or which, irrespective of intention, is likely to defeat any such order.
- (3) The court may, without limiting section 38, order that any property dealt with by any such instrument or disposition may be taken in execution or used or applied in, or charged with, the payment of such sums payable pursuant to an order adjusting interests with respect to the property of the parties or either of them or for maintenance or costs as the court directs, or that the proceeds of a sale shall be paid into court to abide its order.
- (4) A party or a person acting in collusion with a party may be ordered to pay the costs of any other party or of a bona fide purchaser or other person interested of and incidental to any such instrument or disposition and the setting aside or restraining of the instrument or disposition.

### 43 Interests of other parties

In the exercise of its powers under this Part, a court shall have regard to the interests of, and shall make any order proper for the protection of, a bona fide purchaser or other person interested.

## Part 4 Cohabitation agreements and separation agreements

### 44 Interpretation

(1) In this Part:

**cohabitation agreement** means an agreement between a man and a woman, whether or not there are other parties to the agreement:

- (a) which is made (whether before, on or after the appointed day):
  - (i) in contemplation of their entering into a de facto relationship, or
  - (ii) during the existence of a de facto relationship between them, and
- (b) which makes provision with respect to financial matters, whether or not it also makes provision with respect to other matters,

and includes such an agreement which varies an earlier cohabitation agreement.

**financial matters**, in relation to de facto partners, means matters with respect to any one or more of the following:

- (a) the maintenance of either or both of the partners,
- (b) the property of those partners or either of them,
- (c) the financial resources of those partners or either of them.

**separation agreement** means an agreement between a man and a woman, whether or not there are other parties to the agreement:

- (a) which is made (whether before, on or after the appointed day):
  - (i) except as provided by subsection (2), in contemplation of the termination of a de facto relationship that exists between them, or
  - (ii) after the termination of a de facto relationship that existed between them, and
- (b) which makes provision with respect to financial matters, whether or not it also makes provision with respect to other matters,

and includes such an agreement which varies an earlier cohabitation agreement or separation agreement.

- (2) Where, in relation to a separation agreement made in contemplation of the termination of a de facto relationship, the relationship is not terminated within 3 months after the day on which the agreement was made, the agreement shall be deemed to be a cohabitation agreement.

#### **45 Entering into of agreements**

- (1) Notwithstanding any rule of public policy to the contrary, a man and a woman who are not married to each other may enter into a cohabitation agreement or separation agreement.
- (2) Nothing in a cohabitation agreement or separation agreement affects the power of a court to make an order with respect to the right to custody of, maintenance of or access to or otherwise in relation to the children of the parties to the agreement.

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

Except as otherwise provided by this Part, a cohabitation agreement or separation agreement shall be subject to and enforceable in accordance with the law of contract, including, without limiting the generality of this section, the [Contracts Review Act 1980](#).

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

- (1) Where, on an application by a de facto partner for an order under Part 3, a court is satisfied:
  - (a) that there is a cohabitation agreement or separation agreement between the de facto partners,
  - (b) that the agreement is in writing,
  - (c) that the agreement is signed by the partner against whom it is sought to be enforced,
  - (d) that each partner was, before the time at which the agreement was signed by him or her, as the case may be, furnished with a certificate in or to the effect of the prescribed form by a solicitor which states that, before that time, the solicitor advised that partner, independently of the other partner, as to the following matters:
    - (i) the effect of the agreement on the rights of the partners to apply for an order under Part 3,
    - (ii) whether or not, at that time, it was to the advantage, financially or otherwise, of that partner to enter into the agreement,
    - (iii) whether or not, at that time, it was prudent for that partner to enter into the agreement,

(iv) whether or not, at that time and in the light of such circumstances as were, at that time, reasonably foreseeable, the provisions of the agreement were fair and reasonable, and

(e) that the certificates referred to in paragraph (d) are endorsed on or annexed to or otherwise accompany the agreement,

the court shall not, except as provided by sections 49 and 50, make an order under Part 3 in so far as the order would be inconsistent with the terms of the agreement.

- (2) Where, on an application by a de facto partner for an order under Part 3, a court is satisfied that there is a cohabitation agreement or separation agreement between the de facto partners, but the court is not satisfied as to any one or more of the matters referred to in subsection (1) (b), (c), (d) or (e), the court may make such order as it could have made if there were no cohabitation agreement or separation agreement between the partners, but in making its order, the court, in addition to the matters to which it is required to have regard under Part 3, may have regard to the terms of the cohabitation agreement or separation agreement.
- (3) A court may make an order referred to in subsection (2) notwithstanding that the cohabitation agreement or separation agreement purports to exclude the jurisdiction of the court to make that order.

#### **48 Effect of certain exclusion provisions in agreements**

Where a cohabitation agreement or separation agreement does not satisfy any one or more of the matters referred to in section 47 (1) (b), (c), (d) or (e), the provisions of the agreement may, in proceedings other than an application for an order under Part 3, be enforced notwithstanding that the cohabitation agreement purports to exclude the jurisdiction of a court under Part 3 to make such an order.

#### **49 Variation of terms of cohabitation agreements**

- (1) On an application by a de facto partner for an order under Part 3, a court may vary or set aside the provisions, or any one or more of the provisions, of a cohabitation agreement (but not a separation agreement) made between the de facto partners, being a cohabitation agreement which satisfies the matters referred to in section 47 (1) (b), (c), (d) and (e), where, in the opinion of the court, the circumstances of the partners have so changed since the time at which the agreement was entered into that it would lead to serious injustice if the provisions of the agreement, or any one or more of them, were, whether on the application for the order under Part 3 or on any other application for any remedy or relief under any other Act or any other law, to be enforced.
- (2) A court may, pursuant to subsection (1), vary or set aside the provisions, or any one or more of the provisions, of a cohabitation agreement notwithstanding any provision

of the agreement to the contrary.

## **50 Effect of revocation etc of agreements**

Without limiting or derogating from the provisions of section 46, on an application by a de facto partner for an order under Part 3, a court is not required to give effect to the terms of any cohabitation agreement or separation agreement entered into by that partner where the court is of the opinion:

- (a) that the de facto partners have, by their words or conduct, revoked or consented to the revocation of the agreement, or
- (b) that the agreement has otherwise ceased to have effect.

## **51 Effect of death of de facto partner—periodic maintenance**

- (1) The provisions of a cohabitation agreement or separation agreement requiring a de facto partner to pay periodic maintenance to the other de facto partner shall, on the death of the firstmentioned de facto partner, except in so far as the cohabitation agreement or separation agreement otherwise provides, be unenforceable against his or her estate.
- (2) The provisions of a cohabitation agreement or separation agreement requiring a de facto partner to pay periodic maintenance to the other de facto partner shall, on the death of the secondmentioned partner, be unenforceable by his or her estate.
- (3) Nothing in subsection (1) or (2) affects the recovery of arrears of periodic maintenance due and payable under a cohabitation agreement or separation agreement at the date of death of the partner.

## **52 Effect of death of de facto partner—transfer of property and lump sum payments**

Except in so far as a cohabitation agreement or separation agreement otherwise provides, the provisions of such an agreement entered into by de facto partners relating to property and lump sum payments may, on the death of one of the partners, be enforced on behalf of, or against, as the case may be, the estate of the deceased partner.

# **Part 5 Domestic violence and harassment**

## **53 Granting of injunctions**

A court may, on an application made to it by a de facto partner or in any proceedings between de facto partners, whether under Part 3 or otherwise, grant an injunction:

- (a) for the personal protection of a de facto partner or of a child ordinarily residing within the same household as the de facto partners or who at any time ordinarily so resided,
- (b) restraining a de facto partner:

- (i) from entering the premises in which the other de facto partner resides, or
- (ii) from entering a specified area, being an area in which the premises in which the other de facto partner resides are situated,
- (c) restraining a de facto partner:
  - (i) from entering the place of work of the other de facto partner, or
  - (ii) from entering the place of work of a child referred to in paragraph (a), or
- (d) relating to the use or occupancy of the premises in which the de facto partners reside.

#### **54 Failure to comply with injunction**

- (1) A person against whom an injunction under section 53 has been granted and who:
  - (a) has been served personally, in the prescribed manner, with a copy of the order under section 53 by which the injunction was granted, and
  - (b) after having been so served, knowingly fails to comply with a restriction or prohibition specified in the order,shall be guilty of an offence and liable on conviction before a Magistrate to imprisonment for 6 months.
- (2) Nothing in subsection (1) affects the power of a court to punish a person for contempt of court.

#### **55 Other powers of courts not affected**

Nothing in this Part derogates from or affects any power of a court under any other Act or law with respect to any act, matter or thing to which this Part applies.

### **Part 6 Miscellaneous**

#### **56 Declaration as to existence of de facto relationship**

- (1) A person who alleges that a de facto relationship exists or has existed between the person and another named person or between 2 named persons may apply to the Supreme Court for a declaration as to the existence of a de facto relationship between the persons.
- (2) If, on an application under subsection (1), it is proved to the satisfaction of the Court that a de facto relationship exists or has existed, the Court may make a declaration (which shall have effect as a judgment of the Court) that persons named in the declaration have or have had a de facto relationship.
- (3) Where the Court makes a declaration under subsection (2), it shall state in its declaration that:

- (a) the de facto relationship existed as at a date specified in the declaration, or
  - (b) the de facto relationship existed between dates specified in the declaration, or both.
- (4) Where any person whose interests would, in the opinion of the Court, be affected by the making of a declaration under subsection (2) is not present or represented, and has not been given the opportunity to be present or represented, at the hearing of an application under subsection (1), the Court may, if it thinks that that person ought to be present or represented at the hearing, adjourn the hearing in order to enable that person to be given an opportunity to be so present or represented.
- (5) A declaration may be made under subsection (2) whether or not the person or either of the persons named by the applicant as a partner or partners to a de facto relationship is alive.
- (6) While a declaration made under subsection (2) remains in force, the persons named in the declaration shall, for all purposes, be presumed conclusively to have had a de facto relationship as at the date specified in the declaration or between the dates so specified, or both, as the case may require.
- (7) Where a declaration has been made under subsection (2) and, on the application of any person who applied or could have applied for the making of the declaration or who is affected by the declaration, it appears to the Court that new facts or circumstances have arisen that have not previously been disclosed to the Court and could not by the exercise of reasonable diligence have previously been disclosed to the Court, the Court may make an order annulling the declaration, and the declaration shall thereupon cease to have effect, but the annulment of the declaration shall not affect anything done in reliance on the declaration before the making of the order of annulment.
- (8) Where any person whose interests would, in the opinion of the Court, be affected by the making of an order under subsection (7) is not present or represented and has not been given an opportunity to be present or represented, at the hearing of an application made under that subsection, the Court may, if it thinks that that person ought to be present or represented at the hearing, adjourn the hearing in order to enable that person to be given an opportunity to be so present or represented.
- (9) Where the Court makes an order under subsection (7) annulling a declaration made under subsection (2), it may, if it thinks that it would be just and equitable to do so, make such ancillary orders (including orders varying rights with respect to property or financial resources) as may be necessary to place as far as practicable any person affected by the annulment of the declaration in the same position as that person would have been in if the declaration had not been made.

## **57 Enforcement of certain Supreme Court orders by Local Courts**

The regulations may make provision for or with respect to the enforcement by a Local Court of an order under this Act of the Supreme Court for the payment of money.

## **58 Enforcement of certain orders for payment of money**

The provisions of Division 6 of Part 4 of the [Local Courts \(Civil Claims\) Act 1970](#), and of Parts 5 and 7 of that Act apply to and in respect of:

- (a) an order under this Act of a Local Court for the payment of money, and
- (b) an order under this Act of the Supreme Court for the payment of money, being an order which, pursuant to the regulations, may be enforced by a Local Court,

in the same way as they apply to and in respect of a judgment of a Local Court under that Act.

## **59 Enforcement of other orders etc**

- (1) If a court having jurisdiction under this Act is satisfied that a person has knowingly and without reasonable cause contravened or failed to comply with an order made or injunction granted under this Act (not being an order for the payment of money), the court may:
  - (a) order the person to pay a fine not exceeding 20 penalty units,
  - (b) require the person to enter into a recognizance, with or without sureties, in such reasonable amount as the court thinks fit, that the person will comply with the order or injunction, or order the person to be imprisoned until the person enters into such a recognizance or until the expiration of 3 months, whichever first occurs,
  - (c) order the person to deliver up to the court such documents as the court thinks fit, and
  - (d) make such other orders as the court considers necessary to enforce compliance with the order or injunction.
- (2) Nothing in subsection (1) affects the power of a court to punish a person for contempt of court.
- (3) Where an act or omission referred to in subsection (1) is an offence against any other law, the person committing the offence may be prosecuted and convicted under that law, but nothing in this section renders any person liable to be punished twice in respect of the same offence.

## **60 Rules of court**

- (1) For the purpose of regulating any proceedings under this Act in or before the Supreme Court, rules of court may be made under the [Supreme Court Act 1970](#), for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Subsection (1) does not limit the rule-making powers conferred by the [Supreme Court Act 1970](#).

## **61 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A provision of a regulation may:
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,or may do any combination of those things.