



New South Wales

Significant Personal Relationships Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to define a *significant personal relationship*,
 - (b) to define and provide for the following types of significant personal relationships:
 - (i) recognised relationships, and
 - (ii) domestic relationships,
 - (c) to provide for the exercise of rights, entitlements, responsibilities and obligations by persons in recognised relationships and domestic relationships,
 - (d) in the event that any such relationship breaks down:
 - (i) to provide for the resolution of any disputes arising, and
 - (ii) to provide for the termination of the relationship,
 - (e) to provide for certain testamentary matters,
 - (f) to repeal the *De Facto Relationships Act 1984*.
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Outline of provisions

Part 1 Preliminary

This Part sets out the name (also called the short title) and objects of the proposed Act.

The Part also makes provision as to the commencement of the proposed Act, definitions used in the proposed Act, the application of the proposed Act and states that certain remedies and forms of relief are not affected by its provisions.

Part 2 Recognised relationships

This Part deals with the establishment and termination of recognised relationships.

Part 3 Domestic relationships

This Part deals with the establishment and termination of domestic relationships.

Part 4 Relationship agreements

This Part deals with the making of relationship agreements.

Part 5 Conciliation, mediation and arbitration

This Part deals with alternative dispute settlement procedures between the parties to certain disputes or proceedings referred to in the proposed Act.

Part 6 Resolution of disputes

This Part contains provisions dealing with the resolution of certain disputes relating to property and financial matters and maintenance.

Part 7 Domestic violence and harassment

This Part deals with cases of domestic violence or harassment between partners to recognised relationships or domestic relationships.

Part 8 Register of recognised relationships

This Part makes provision for the establishment of a register of recognised relationships.

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Part 9 Miscellaneous

This Part makes provision as to miscellaneous matters, including the construction of references to de facto relationships in other Acts and laws, the amendment of certain Acts and the repeal of the *De Facto Relationships Act 1984*.

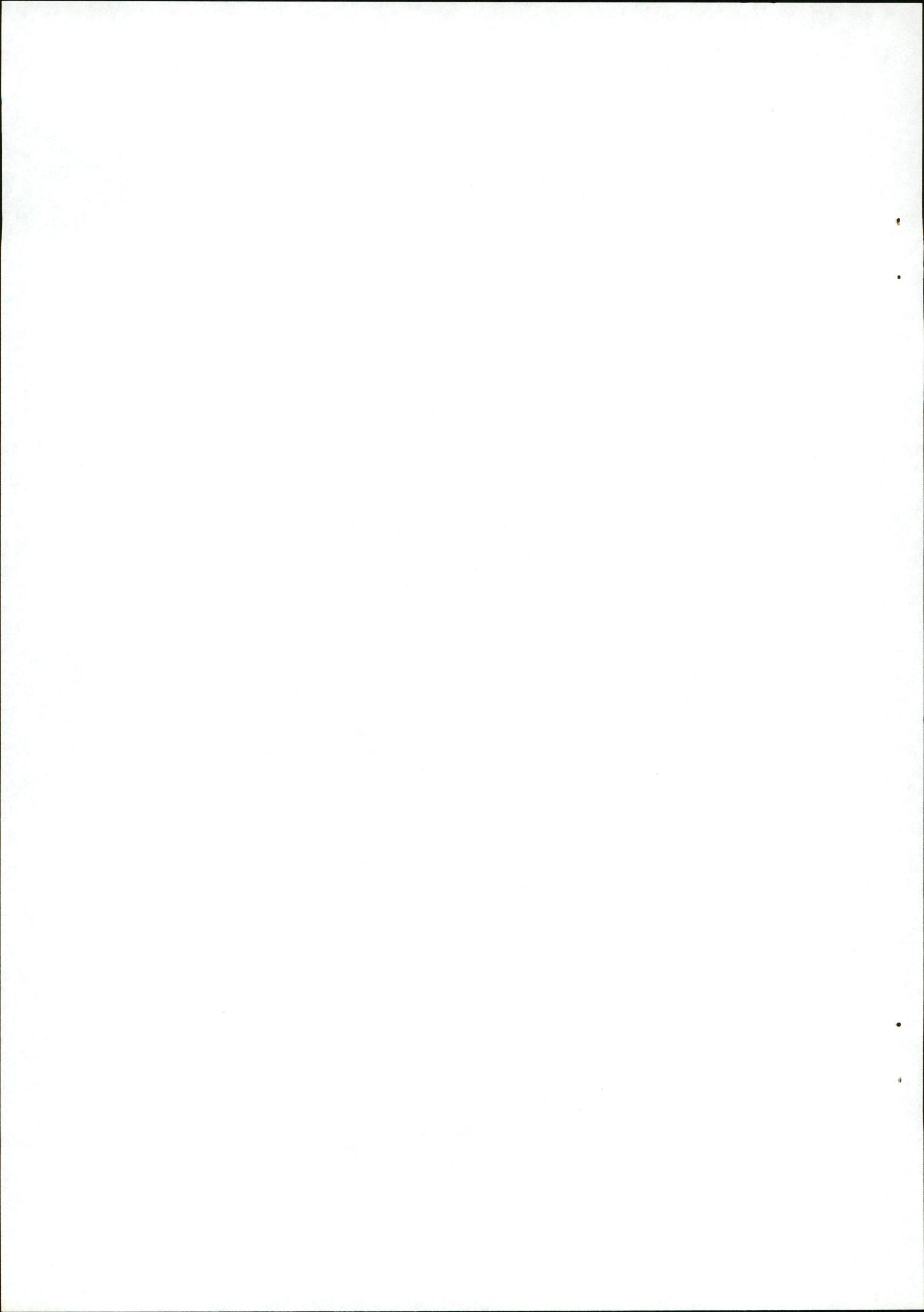
Schedules

Schedule 1 (Excluded legislation) sets out a list of legislation that is not affected by the proposed Act.

Schedule 2 (Forms) sets out certain forms for the purposes of the proposed Act.

Schedule 3 (Amendment of Acts) contains amendments to Acts, including the *Anti-Discrimination Act 1977*, the *Stamp Duties Act 1920* and the *Wills, Probate and Administration Act 1898*.

Schedule 4 (Savings, transitional and other provisions) enables the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act, and contains savings and transitional provisions.





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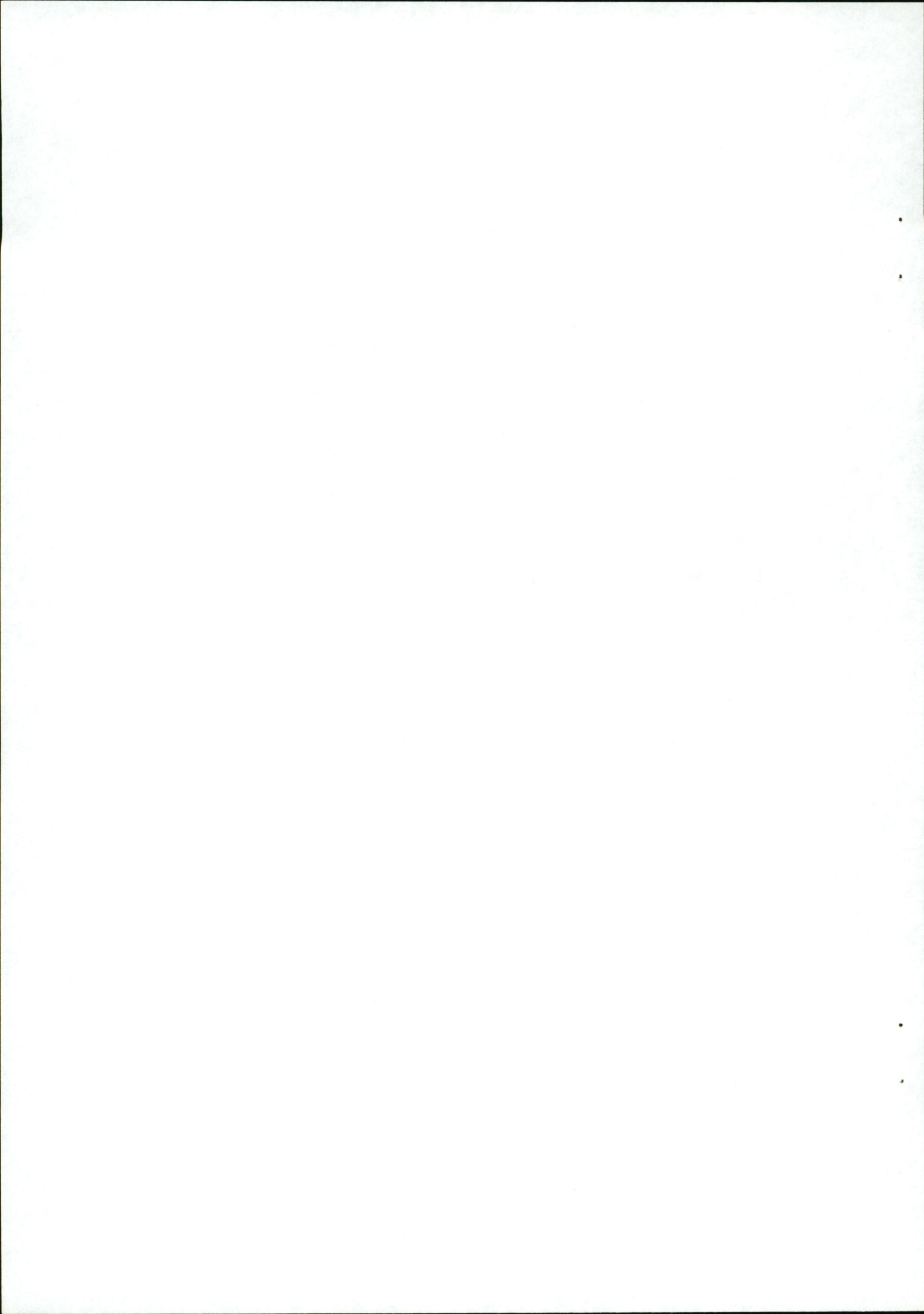
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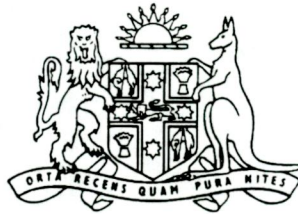
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New South Wales

Significant Personal Relationships Bill 1997

No. , 1997

A Bill for

An Act to make provision with respect to the recognition of certain significant personal relationships; to make consequential amendments to certain Acts; to repeal the *De Facto Relationships Act 1984*; and for other purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Significant Personal Relationships Act 1997*.

2 Commencement

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This Act commences 3 months after the date of assent, except in so far as commenced sooner by proclamation.

3 Objects of Act

The objects of this Act are as follows:

- (a) to define a *significant personal relationship*, 10
- (b) to define and provide for the following types of significant personal relationships:
 - (i) recognised relationships, and
 - (ii) domestic relationships,
- (c) to provide for the exercise of rights, entitlements, responsibilities and obligations by persons in recognised relationships and domestic relationships, 15
- (d) in the event that any such relationship breaks down:
 - (i) to provide for the resolution of any disputes arising, and 20
 - (ii) to provide for the termination of the relationship,
- (e) to provide for certain testamentary matters,
- (f) to repeal the *De Facto Relationships Act 1984*.

4 Definitions

- (1) In this Act: 25

authorised official means:

- (a) a clerk of a Local Court, or any other officer of a Local Court prescribed by the regulations, or
- (b) a legal practitioner.

certificate of independent legal advice means a certificate referred to in section 30.

court means the Supreme Court, the District Court or a Local Court.

domestic relationship—see section 7. 5

financial matters, in relation to either or both of the partners to a significant personal relationship, means matters with respect to the maintenance, property or financial resources of either or both of the partners.

financial resources, in relation to either or both of the partners to a significant personal relationship, includes: 10

- (a) a prospective claim or entitlement in favour of either or both of the partners in respect of a scheme, fund or arrangement under which superannuation, retirement or similar benefits are provided, and 15
- (b) property that, under a discretionary trust, may become vested in or used for the purposes of either or both of the partners, and
- (c) property that either or both of the partners may dispose of wholly or partially and that is capable of being used lawfully by or on behalf of either or both of the partners, and 20
- (d) any other benefit of value to either or both of the partners.

legal practitioner means a barrister or a solicitor who holds a current practising certificate within the meaning of sections 32 and 33 of the *Legal Profession Act 1987*. 25

partner means either or both persons who are parties to a significant personal relationship.

property, in relation to either or both of the partners to a domestic relationship, means real or personal property in any form to which either is, or both are, entitled. 30

recognised relationship—see section 6.

recognised relationship certificate means a certificate issued under section 13.

relationship agreement means an agreement of a kind referred to in section 29.

significant personal relationship—see section 5.

termination agreement—see section 29 (4).

termination order means an order made under section 17 5
terminating a recognised relationship.

tribunal means any body or person able to make an order or determination under any Act or law, and includes the Equal Opportunity Tribunal, the Victims Compensation Tribunal, the Guardianship Board and any court or tribunal that may make an order or determination in any way affecting the partners to a recognised relationship or a domestic relationship or their property or financial resources. 10

(2) A reference in this Act to a partner to a significant personal relationship (whether a recognised relationship or a domestic relationship) is, unless the contrary intention appears, to be read as including a reference to a person who has been a party to a significant personal relationship that has ended or has been terminated. 15

(3) A reference in this Act to a child of the partners to a significant personal relationship is to be read as a reference to each of the following children: 20

- (a) a child of whom the partners are the parents,
- (b) a child of whom the parties are presumed, by virtue of the *Artificial Conception Act 1984*, to be the father and mother, 25
- (c) a child adopted by both partners,
- (d) a child for whom both partners accept responsibility for the child's long-term welfare.

5 Meaning of "significant personal relationship" 30

(1) A **significant personal relationship** means a relationship which exists because the parties to the relationship:

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- (a) mutually acknowledge:
- (i) their emotional interdependency, or
 - (ii) the fellowship and support that each provides to the other,
- or both, and 5
- (b) believe that the relationship will continue and are mutually committed to the relationship continuing.
- (2) For the purposes of the definition of *significant personal relationship* in subsection (1), a significant personal relationship may exist: 10
- (a) where the parties to the relationship:
- (i) are not members of the same household, or
 - (ii) do not intermingle their finances or have common or collective financial arrangements, or
 - (iii) do not provide financial support to each other, whether directly or indirectly (such as, for example, in kind or by way of the provision of services), or 15
- (b) where no sexual relationship exists or, at any time during the relationship, existed.
- (3) For the purposes of the definition of *significant personal relationship* in subsection (1), a significant personal relationship is not taken to exist where: 20
- (a) the relationship exists principally as a matter of convenience (for example, between flatmates), or
- (b) the sole basis or purpose of the relationship is to conduct a professional or business association or to engage in commerce or trade, or both, or 25
- (c) the relationship between the persons exists only because one of the persons provides a service for the other:
- (i) for fee or reward (including employer/employee relationships), or 30
 - (ii) on behalf of another person (including a government or body corporate), or
 - (iii) on behalf of an organisation the principal objects or purposes of which are charitable or benevolent. 35
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6 Meaning of "recognised relationship"

A *recognised relationship* is a significant personal relationship between two adult persons that has been formalised in the manner provided for in Division 2 of Part 2.

7 Meaning of "domestic relationship" 5

- (1) A *domestic relationship* is a significant personal relationship, that has not been formalised in the manner provided for in Division 2 of Part 2, between two adult persons who:
- (a) live together, or
 - (b) if living apart: 10
 - (i) do not live apart on a permanent basis, or
 - (ii) share a common household or households for a significant period or periods, or
 - (iii) otherwise share their lives.
- (2) A reference in this Act to persons *living together* is to be read as a reference to persons sharing or living in the same household or households. 15

8 Application of Act

- (1) This Act does not apply in relation to:
- (a) a significant personal relationship that ceased before the commencement of this Act, or 20
 - (b) a person to the extent that he or she was a party to such a relationship referred to in 8 (1) (a).
- (2) Nothing in this Act affects any right or liability of a person under an Act specified in Schedule 1. 25

9 Other relief or remedies not affected

Nothing in this Act affects any right of a party to a significant personal relationship to any remedy or relief under any other Act or law.

Part 2 Recognised relationships

Division 1 Preliminary

10 Persons excluded from entering into recognised relationship

- (1) A person who is:
- (a) married, or 5
 - (b) a partner in another recognised relationship that has not been terminated,
- cannot enter into a recognised relationship.
- (2) A person who is not an Australian citizen or permanent resident cannot enter into a recognised relationship. 10

Division 2 Establishing recognised relationships

11 Recognition of significant personal relationship

- (1) The partners in a significant personal relationship may have their relationship recognised, by each making a declaration in writing before an authorised official. 15
- (2) A declaration must only be made if both partners have lodged a notice of intention to enter into a recognised relationship, in or to the effect of Form 1 in Schedule 2, with the authorised official, or his or her delegate, in accordance with section 15.
- (3) The declaration, to be referred to as the *relationship declaration*, must be in or to the effect of Form 2 in Schedule 2. 20
- (4) Prior to each partner signing the relationship declaration, the authorised official must ask each of them:
- “Do you acknowledge and accept the rights and responsibilities associated with entering into a recognised relationship?” 25
- If each answers in the affirmative, the authorised official must then ask:

“Do you now wish to proceed with signing the relationship declaration?”

If each answers in the affirmative, the authorised official must request each partner to sign the relationship declaration. Once they have done so, the authorised official must then complete and sign the “Declaration by the authorised official” on Form 1 as prescribed by Schedule 2. 5

- (5) The partners to the recognised relationship and the authorised official shall complete additional copies of the forms referred to in this section as may be prescribed by the regulations. 10

12 Effect of the completion of the relationship declaration

On the completion and certification of the relationship declaration, the significant personal relationship between the two persons making the declaration has the status of a recognised relationship that exists for all purposes. 15

13 Issue of recognised relationship certificate

- (1) After the relationship agreement has been completed, the authorised official must complete, sign and hand to the partners a recognised relationship certificate.
- (2) The recognised relationship certificate is to be in or to the effect of Form 3 in Schedule 2. 20

14 Effect of issue of recognised relationship certificate

The partners to the relationship need not meet any requirements or produce any evidence, other than the certificate, to prove the existence of their relationship or to exercise their rights as partners to a recognised relationship under this or any other Act or law. 25

15 Procedure for giving notice

- (1) In this section, *notice* means a notice of intention to enter a recognised relationship. 30

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- (2) A notice must be lodged not earlier than 90 days, and not later than 45 days before the date upon which the relationship declaration is to be made.
- (3) Despite subsection (2), a court may permit a relationship declaration to be made earlier than 45 days from the date the notice is lodged if: 5
- (a) the application for the waiver is supported by both partners, and
 - (b) the Court is satisfied that there are compassionate or other proper grounds for so doing. 10
- (4) The notice must be in writing in or to the effect of Form 1 in Schedule 2 and signed by both intending partners before the authorised official.
- (5) The authorised official must:
- (a) witness and certify the signing of the notice, and 15
 - (b) inspect such documents as may be required by the regulations, and
 - (c) say to both intending partners words to the effect:
“You are both contemplating entering into a recognised relationship. Between now and when you each sign the relationship declaration, you should give serious consideration to the step you are each planning to take. You should be aware that entering into a recognised relationship carries with it certain rights, entitlements, obligations, responsibilities and duties under the law of New South Wales. You are strongly advised to each seek further information about these rights and obligations. You are also advised to seek information about the making of relationship agreements under the *Significant Personal Relationships Act 1997*.”, and 20
25
 - (d) give both partners a copy of the relationship declaration and any other material or information that is prescribed by the regulations. 30
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- (6) Nothing in this section is intended to limit the advice which an authorised official may give to persons giving notice of their intention to enter into a recognised relationship.

Division 3 Termination of recognised relationship

16 Termination of recognised relationship by marriage 5

A recognised relationship is terminated if:

- (a) either partner to the relationship marries another person, or
- (b) the partners to the relationship marry each other.

17 Termination by a court

- (1) In this Division, *notice* means notice of intention to terminate a recognised relationship. 10
- (2) A court may by order terminate a recognised relationship on application of either or both the partners to the relationship.

18 Termination on application by both partners

- (1) Where both partners to a recognised relationship apply to terminate the relationship, they must lodge a notice in writing with a court in the manner and form prescribed in the regulations. 15
- (2) A court must not make any order terminating the relationship less than 30 days from the date the notice was lodged.
- (3) Both partners must attend the court on the date the order terminating the relationship is set down to be made. 20
- (4) Prior to making the order, the court must determine whether both partners wish to proceed with the termination.
- (5) If the court determines that both partners wish to proceed, the court must make an order terminating the relationship. 25
- (6) If the court determines that either partner does not wish to proceed, the court may:
 - (a) adjourn the proceedings, or

-
- (b) require evidence from each of the partners as to why the relationship should or should not be terminated.
- (7) Upon hearing evidence from both partners, the court may:
- (a) adjourn the proceedings, or
- (b) make an order terminating the relationship. 5
- (8) If both partners fail to attend the court on the date the order terminating the relationship is set down to be made, the court must dismiss the application for termination.
- (9) If one partner fails to attend the court on the date the order terminating the relationship is set down to be made, the court may hear evidence from the other partner. 10
- (10) Upon hearing evidence, the court may:
- (a) adjourn the proceedings, or
- (b) make an order terminating the relationship.
- (11) Both partners may withdraw the notice at any time prior to the date the order terminating the relationship is set down to be made. 15
- (12) Such withdrawal must be in writing in a form prescribed by the regulations.
- 19 Termination on application by one partner 20**
- (1) A partner to a recognised relationship may apply to terminate the relationship, by notice in writing with a court in the manner and form prescribed in the regulations.
- (2) The notice must be personally served on the other partner in accordance with the regulations. 25
- (3) A court must not make any order terminating the relationship:
- (a) less than 30 days from the date the notice was served on the other partner, or
- (b) if personal service of the notice is impractical, less than 45 days after the notice was lodged. 30
- (4) The partner seeking the termination of the relationship must attend the court on the date the order terminating the relationship is set down to be made.
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- (5) The other partner may attend the court, but is not required to do so.
- (6) Prior to making the order:
- (a) the court must:
 - (i) be satisfied that the notice was properly served in accordance with the regulations, or 5
 - (ii) if the notice was not served, be satisfied that all reasonable steps were taken to serve the notice, and be further satisfied that personal service is impractical, and 10
 - (b) if both partners are present, determine whether both partners wish to proceed with the termination.
- (7) If the court determines that both partners wish to proceed, the court must make an order terminating the relationship.
- (8) If the court determines that either partner does not wish to proceed, the court may: 15
- (a) adjourn the proceedings, or
 - (b) require evidence from each of the partners as to why the relationship should or should not be terminated.
- (9) Upon hearing evidence from both partners, the court may: 20
- (a) adjourn the proceedings, or
 - (b) make an order terminating the relationship.
- (10) If the partner seeking the termination fails to attend the court on the date the order terminating the relationship is set down to be made, the court must dismiss the application for termination. 25
- (11) The partner seeking the termination may withdraw the notice at any time prior to the date the order terminating the relationship is set down to be made.
- (12) Such withdrawal must be in writing in the form prescribed by the regulations. 30

20 Court may adjourn proceedings

Nothing in this section is intended to limit the power of the court to defer making a termination order pending the parties or a party to the recognised relationship receiving counselling, and for this purpose the court may adjourn proceedings. 35

21 Date of termination by a court

A recognised relationship terminated by a court ends on the day on which the court makes the order terminating the relationship.

22 Exclusion of general public from hearing

While a court is hearing proceedings for the termination of a recognised relationship, any person who is not directly interested in the proceedings is, unless the court otherwise directs, to be excluded from the place where the proceedings are being heard.

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23 Offence to represent existence of recognised relationship

A person who represents to another person that he or she is a partner to a recognised relationship when that person knew or ought to have known that the relationship had been terminated by a court is guilty of an offence.

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Maximum penalty: 20 penalty units or 6 months imprisonment.

Part 3 Domestic relationships

Division 1 Establishing existence of domestic relationship

24 Determination as to existence of domestic relationship

- (1) Either or both partners to a significant personal relationship or former significant personal relationship may make an application to a court or tribunal for a determination that a domestic relationship exists or has existed between the partners. 5
- (2) Where a court or tribunal is to determine that a domestic relationship exists, or has existed between specified persons, it may find that the relationship commenced on a specified date or continued for a specified period, or both. 10
- (3) A determination may be made whether or not the person or either of the persons named by the applicant as a partner or partners to a domestic relationship is alive.
- (4) A determination made by a court or tribunal as to whether a domestic relationship exists or has existed must not bind any other court or tribunal exercising jurisdiction under this Act. 15

25 Evidence court or tribunal may consider

- (1) In determining whether a domestic relationship exists or has existed between two persons, a court or tribunal may have regard to the following: 20
 - (a) the way or ways in which emotional interdependency or fellowship or both is, or was, expressed in the relationship,
 - (b) the nature and extent of the support each of the partners provided to the other, 25
 - (c) the way or ways in which the partners to the relationship share or shared their lives,
 - (d) the duration of the relationship,
 - (e) the living arrangements of the partners to the relationship,
 - (f) the care and support of children of the partners to the relationship, 30

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- (g) any testamentary disposition or power of attorney made by each party to the relationship,
- (h) financial arrangements, including the following:
- (i) the operation of bank, credit or other accounts,
 - (ii) sharing of domestic expenses, 5
 - (iii) ownership of property, including household items,
- (i) material evidence which tends to show the existence of the relationship and without limiting the foregoing, the following:
- (i) letters, facsimiles, electronic mail, cards and other communications exchanged between the partners to the relationship, 10
 - (ii) photographs, videotapes, audiotapes, film or other recorded material,
- (j) mutually shared interests or activities, or both, such as, for example, joint membership of organisations or clubs, 15
- (k) mutually shared associations with persons not a partner to the relationship.
- (2) None of the matters referred to in subsection (1) is essential to establish the existence of a domestic relationship, and a court or tribunal may use its discretion in determining what weight or significance (if any) is to be accorded to the presence or absence of these matters from the relationship under consideration. 20

Division 2 Termination of domestic relationship

26 Termination of domestic relationship by marriage 25

A domestic relationship is terminated if:

- (a) either partner to the relationship marries another person, or
- (b) the parties to the relationship marry each other.

27 Termination by the partners or a partner to the relationship

A domestic relationship (other than a relationship that is terminated by the death of a partner or marriage) ends: 30

- (a) on the date the partners to the relationship mutually agree that the relationship has ended, or

- (b) when one partner, by words or conduct, signifies to the other that the relationship has ended.

28 Court may determine termination date

- (1) In proceedings under this Act, a court may require that evidence be adduced as to the date on which a domestic relationship ended. 5
- (2) In the event of any uncertainty as to the date on which the relationship ended, the court is to determine, on the balance of probabilities, on what date the relationship ended, having regard to the evidence that has been adduced before it. 10

Part 4 Relationship agreements

29 Making of relationship agreements

- (1) The partners to a recognised relationship or domestic relationship may make a relationship agreement to make provision with respect to any one or more of the following: 5
- (a) the maintenance of either or both partners,
 - (b) the property of the partners or either of them,
 - (c) the financial resources of the partners or either of them,
 - (d) any other aspect, whether financial and non-financial, of the relationship, 10
 - (e) any matter, whether financial and non-financial, that may arise in the event of the relationship ending or being terminated,
 - (f) the finalisation of matters, whether financial or non-financial, arising from the termination of a recognised relationship or domestic relationship. 15
- (2) The partners to a recognised relationship or domestic relationship may make a relationship agreement:
- (a) in contemplation of entering into a recognised relationship or domestic relationship, or 20
 - (b) at the commencement of the relationship, or
 - (c) at any time during the relationship, or
 - (d) at the termination of the relationship.
- (3) The partners to a recognised relationship or domestic relationship may vary any such agreement at any time during the relationship. 25
- (4) A relationship agreement made on the termination of a recognised relationship or domestic relationship is to be referred to as a **termination agreement**.
- (5) A relationship agreement must be:
- (a) in writing, 30
 - (b) signed by both partners to the agreement,
 - (c) certified in accordance with section 30.

30 Certificates of independent legal advice

- (1) Before a relationship agreement, or a variation of a relationship agreement, can be entered into, each party to the proposed agreement must obtain a certificate by a legal practitioner to the effect that the legal practitioner has advised that party, independently of the other party, as to the following matters: 5
- (a) the effect of the agreement on the rights of the parties under this Act,
 - (b) if it is advantageous, financially or otherwise, for that party to enter into the agreement, 10
 - (c) if the agreement is fair and reasonable in the light of the circumstances that are reasonably foreseeable.
- (2) The certificate must be endorsed on or accompany a relationship agreement, or variation of an agreement, before it is signed by the parties. 15
- (3) The certificate must be in the form prescribed by the regulations.
- (4) A relationship agreement, or variation of a relationship agreement, that is not endorsed with or accompanied by certificates of independent legal advice in accordance with this section is of no force or effect for the purposes of this Act. 20
- (5) A relationship agreement, or variation of a relationship agreement (provided it is in writing) which does not comply with this section may still be taken into account by the court when the court makes an order under this Act if the court is satisfied the agreement evidences the intention of the parties at a specific time. 25

31 Validity of relationship agreement

- (1) Except as otherwise provided by this Act, a relationship agreement is subject to and enforceable in accordance with the law of contract, including, without limiting the generality of this section, the *Contracts Review Act 1980*. 30
- (2) Nothing in a relationship agreement affects the power of a court to make an order with respect to:
- (a) the right to custody or maintenance of, or access to, or
 - (b) any other matter relating to, 35
- a child of the parties to a relationship agreement.

Part 5 Conciliation, mediation and arbitration

32 Conciliation

When proceedings under this Act have been instituted, it is the duty of the court, and each legal practitioner representing a party to the proceedings, as far as practicable:

- (a) to avoid the termination of the relationship that is the subject of the proceedings, and
- (b) to allow the parties to settle the matters in dispute, and
- (c) to encourage the parties to seek the assistance of the mediation and arbitration facilities referred to in section 34.

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33 Advice about facilities

- (1) The registrar or other proper officer of a court must, as far as practicable, advise the parties to any proceedings under this Act about any counselling, conciliation, mediation or arbitration facilities available in the court or elsewhere in relation to matters with respect to which proceedings could be instituted under this Act and how those facilities are made available.
- (2) Such advice must be given on request by:
 - (a) a partner to a recognised relationship or a domestic relationship, or
 - (b) a party to proceedings under this Act.

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34 Referral of matters for mediation or arbitration

- (1) A court may refer all or any of the matters in dispute in proceedings before it to a mediator.
- (2) A court may refer proceedings before it, or any part of them or any matter arising in them, to an arbitrator.

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35 Admissions made to mediators

Evidence of anything said, or of any admission made, at a conference conducted by a mediator pursuant to a referral under section 34 (1) is not admissible in proceedings in a court or before a tribunal or person having authority under a law of the State or by consent of parties to hear evidence.

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Part 6 Resolution of disputes

Division 1 Preliminary

36 Right of partners to seek orders

- (1) Subject to this Part, a partner to a recognised relationship or a domestic relationship may apply to a court for an order under this Part for the settlement or adjustment of interest with respect to the property of the partners to the relationship, or either of them, or for the granting of maintenance, or both. 5
- (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 under any other Act or any other law. 10

37 Prerequisite for relief—existence of recognised relationship or domestic relationship

- (1) A court must not make an order under this Part unless it is satisfied that: 15
- (a) the relationship in issue was:
- (i) a recognised relationship, or
- (ii) a domestic relationship, and
- (b) that either or both of the parties to the recognised relationship or domestic relationship were resident in the State on the day on which the application for the order was made, and that: 20
- (i) both partners to the relationship have resided in the State for at least one third of the period of their relationship, or 25
- (ii) substantial contributions of the kind referred to in section 48 (3) (a) or (b) have been made in the State by the applicant.
- (2) If the court is so satisfied, it may make or refuse to make an order under this Part because of facts and circumstances even though they, or some of them, took place before the day on which this Part commences or outside the State. 30

- (3) A court is to be satisfied that a recognised relationship exists on the tender to it of the recognised relationship certificate in respect of the relationship concerned.
- (4) Any relationship agreement entered into by the partners to a recognised relationship or domestic relationship is also to be tendered to the court. 5

38 Time limit for making application

- (1) An application for an order under this Part by a partner to a recognised relationship must not be made more than 2 years after the day on which the relationship was terminated. 10
- (2) An application for an order under this Part by a partner to a domestic relationship must not be made more than 2 years after the day on which the relationship ended.
- (3) A court may grant leave to a partner to a domestic relationship to apply for an order under this Part after the end of the period referred to in subsection (2) if: 15
- (a) it is unable to determine the exact date upon which the relationship ended, and
- (b) the application was made not more than 2 and one half years from the date the relationship is likely to have ended. 20
- (4) A court may grant leave to a partner to a recognised relationship or domestic relationship to apply for an order under this Part after the end of the period referred to in subsections (1) and (2) if it is satisfied that greater hardship would be caused to the applicant if leave were refused than if it were granted. 25

39 Prerequisite for relief—length of domestic relationship

- (1) Except as provided in subsection (2), a court must not make an order under this Part unless it is satisfied that the domestic relationship in issue has existed or did exist for a period of not less than 2 years. 30
- (2) Where a court is not so satisfied, it may make an order under this Part if it is satisfied that:
- (a) there is a child of the partners to the relationship, or

(b) the applicant:

(i) has made substantial contributions of the kind referred to in section 48 (3) (a) or (b) for which the applicant would otherwise not be adequately compensated if the order were not made, or

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(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.

40 Court to end financial relationship

As far as practicable, a court is to make orders under this Part that will end the financial relationship between the partners to the recognised relationship or domestic relationship and avoid further proceedings between them.

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41 Effect of relationship agreements on proceedings

(1) In proceedings under this Part, where the partners to a recognised relationship or domestic relationship have made a relationship agreement in accordance with sections 29 and 30, the court must not (except as provided by sections 50 and 51) make an order under this Part that would be inconsistent with the terms of the agreement.

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(2) In proceedings under this Part, where a court is satisfied that there is an agreement between the parties to a recognised relationship or a domestic relationship, but it has not been made in accordance with sections 29 and 30, the court may nevertheless have regard to the terms of the agreement in making any order.

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(3) In proceedings under this Part, a court may make orders at variance with the provisions of a relationship agreement, notwithstanding that it was made in accordance with sections 29 and 30, if the court is satisfied that there are compelling reasons to do so (for example, if the court believes the provisions of the relationship agreement are unfair and unreasonable).

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- (4) In proceedings under this Part, a court is not required to have regard to the terms of a relationship agreement if it is satisfied that:
- (a) the partners have, by words or conduct, revoked the agreement or consented to its revocation, or
 - (b) the agreement has otherwise ceased to have effect.

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Division 2 Proceedings and jurisdiction of courts

42 Institution of proceedings

Subject to this Act, proceedings under this Act may be instituted in:

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- (a) the Supreme Court, or
- (b) the District Court, or
- (c) a Local Court.

43 Limit of jurisdiction of Local Courts

- (1) Except as provided by section 46, a Local Court does 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 lump sum maintenance, of a value or amount in excess of the amount for the time being prescribed by section 12 of the *Local Courts (Civil Claims) Act 1970*.
- (2) A Local Court has jurisdiction to make an order for periodic maintenance in any amount.

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44 Jurisdiction of District Court

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- (1) Except as provided in subsection (3) and section 46, the District Court does 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 lump sum maintenance, of a value or amount in excess of the amount for the time being that the District Court may award in a personal action under the *District Court Act 1973*.

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- (2) The District Court has jurisdiction to make an order for periodic maintenance in any amount.
- (3) If the parties agree and the District Court thinks it appropriate, the Court has unlimited jurisdiction to hear and determine proceedings referred to in subsection (1) of whatever value or amount. 5

45 Jurisdiction of Supreme Court

- (1) The Supreme Court has jurisdiction under this Act:
 - (a) in relation to property, to declare a title or right or adjust an interest, or 10
 - (b) to make an order for lump sum maintenance, of a value or amount in excess of \$250,000.
- (2) The Supreme Court has jurisdiction to make an order for periodic maintenance in any amount.

46 Transfer of proceedings in certain cases 15

- (1) If proceedings are instituted in a Local Court or the District Court with respect to an interest in property of a value, or seeking an order for lump sum maintenance of an amount, that is in excess of the value or amount referred to in section 43 (1) and 44 (1) respectively: 20
 - (a) in the case of a Local Court—the Local Court must transfer the proceedings to the District Court or, if the value or amount in issue is greater than the jurisdictional limit of that Court as referred to in section 44 (1), to the Supreme Court, or 25
 - (b) in the case of the District Court—the District Court must, unless the parties and the Court agree to the Court hearing and determining the proceedings, transfer the proceedings to the Supreme Court.
- (2) If proceedings referred to in subsection (1) are before a Local Court or the District Court, the Local Court or the District Court may transfer the proceedings of its own motion, despite the fact that the parties would be willing for the Local Court or the District Court to hear and determine the proceedings. 30

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- (3) Before transferring proceedings under subsection (1), the Local Court or the District Court may make such orders as the Local Court or the District Court considers necessary pending the disposal of the proceedings by the Court to which the proceedings are transferred. 5
- (4) If proceedings are transferred under subsection (1), the Court to which they are transferred is, subject to the rules of court, to proceed as if the proceedings had been originally instituted in that Court.
- (5) Without prejudice to the duty of a Local Court or the District Court to comply with this section, failure by the Local Court or the District Court so to comply does not invalidate any order of the Court concerned in the proceedings. 10

47 Courts to act in aid of each other

All courts having jurisdiction under this Act are to severally act in aid of and to be auxiliary to each other in all matters under this Act. 15

Division 3 Property adjustments and financial disputes

48 Property orders

- (1) On an application by a partner to a recognised relationship or a domestic relationship, a court may make such order as it considers appropriate altering the interests of the parties in the property and without limiting the generality of the foregoing, the court may make the following orders, namely: 20
- (a) an order for a settlement of property in substitution for any interest in the property, 25
- (b) an order requiring either or both partners to make, for the benefit of either or both of the partners or a child of the partners, such settlement or transfer of property as the court determines. 30
- (2) A court may make an order under this section whether or not it has declared the title or rights of a partner in respect of the property.

- (3) In considering what orders, if any, should be made under this section, a court may make such order as to it seems just and equitable and without limiting the generality of the foregoing, the court may have regard to the following:
- (a) the financial and non-financial contributions made directly or indirectly by or on behalf of the 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, 5
 - (b) the contributions, including any contributions made in the capacity of homemaker or parent, made by either of the partners to the welfare of the other partner or a child of either or both of the partners, 10
 - (c) whether the relationship is a recognised relationship or a domestic relationship, 15
 - (d) any representation made by either partner to the other partner which is relied upon by that partner concerning his or her maintenance and support or the maintenance and support of a child of the partners,
 - (e) the reasonable expectations of each partner with respect to the following: 20
 - (i) the duration of the relationship,
 - (ii) a standard of living,
 - (iii) their:
 - (A) entitlement to property, 25
 - (B) maintenance and support,for themselves or a child of the partners upon the termination of their relationship,
 - (f) such conduct of a partner which has had a significant deleterious or detrimental impact upon the property of a partner or the health, welfare or advancement in life of either one or both of them or a child of the partners (for example, where one partner has physically or sexually abused the other partner or a said child). 30

49 Relevance and weight to be given to conduct

- (1) Nothing in this Part is intended to establish a code of conduct under which a presumption of fault on the part of one or other of the partners is presumed to have a deleterious impact on the relationship (for example, a sexual relationship with a person other than a partner to the relationship will not give rise to such a presumption). 5
- (2) Where a court has regard to the conduct of the partners it must, in weighing up what order should be made under this Part, make orders which are compensatory of the harm done to the other partner or a child of the partners. 10

50 Death of partner—effect on proceedings

- (1) If a party to proceedings under this Division dies before the proceedings are completed and the proceedings are continued by or against the legal personal representative of the deceased party, a court may make an order under this Division if it is of the opinion that: 15
- (a) it would have adjusted interests in respect of the property but for the death, and
- (b) despite the death, it is still appropriate to adjust those interests. 20
- (2) The order may be enforced against the estate of the deceased partner.

Division 4 Maintenance**51 No general right to maintenance**

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- (1) Except as otherwise provided by this Division, a partner to a recognised relationship or a domestic relationship is not liable to maintain the other partner to the relationship.
- (2) Despite subsection (1), a court may presume that a partner to a recognised relationship or domestic relationship intends to maintain the other partner to the relationship if this is provided for in the relationship agreement entered into by them. 30

52 Maintenance orders

- (1) On an application by a partner to a recognised relationship or a domestic relationship, a court may order the other party to the relationship to pay an amount, or periodic amounts, by way of maintenance to the applicant if the court is satisfied that: 5
- (a) the applicant is unable to support himself or herself adequately because of having the care and control of a child of the partners, or a child of the other partner, who, on the day on which the application is made, has not attained the age of: 10
- (i) 12 years, or
- (ii) if the child has a physical or mental disability—16 years, or
- (b) 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 the court is satisfied that: 15
- (i) an order for maintenance would increase the applicant's earning capacity by enabling the applicant to undertake a course or program of training or education, and 20
- (ii) it is reasonable to make the order, having regard to all the circumstances of the case.
- (2) In exercising a power under subsection (1), a court is to have regard to: 25
- (a) the income, property and financial resources of each partner, and
- (b) the physical and mental capacity of each partner for appropriate gainful employment, and
- (c) the financial needs and obligations of each partner, and 30
- (d) the responsibilities of either partner to support any other person, and
- (e) the terms of any order made or proposed to be made under section 48 (Property orders) with respect to the property of either or both of the partners, and 35

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- (f) any payments made to the applicant, pursuant to an order of a court or otherwise, in respect of the maintenance of a child or children.
- (3) If a court is satisfied that an applicant has the physical and mental capacity to obtain appropriate gainful employment, the court is not to make an order under this Part in favour of the applicant. 5
- (4) In making an order for maintenance, a court is to 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. 10

53 Interim maintenance

If a court is satisfied that an applicant for an order under this Division 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 other partner to the recognised relationship or domestic relationship to pay to the applicant such periodic or other amounts as the court considers reasonable, until the application is determined. 15

54 Effect of subsequent relationship or marriage

A court is not to make an order under this Division in favour of an applicant who: 20

- (a) was a partner to a recognised relationship or a domestic relationship that has ended, and
- (b) on the day on which the application is made, has:
- (i) entered into a subsequent recognised relationship or domestic relationship with another person, or 25
- (ii) has married or remarried.

55 Death of partner—effect on application

Proceedings on an application for an order under this Division may not be continued after the death of either partner to a recognised relationship or a domestic relationship. 30

56 Periodic maintenance orders—duration

- (1) Subject to subsections (2), (3) and (4) and sections 57 and 59, an order for periodic maintenance has effect for the period ascertained in accordance with the order.
- (2) An order for periodic maintenance in respect of a child, based solely on the grounds specified in section 52 (1) (a), is not to be made in respect of a period after the child attains the age of: 5
- (a) 12 years, or
- (b) if the child has a physical or mental disability—16 years.
- (3) An order for periodic maintenance based solely on the ground specified in section 52 (1) (b) is not to be made in respect of a period after: 10
- (a) the expiration of the period of 3 years commencing on the date of the order, or
- (b) the expiration of the period of 4 years commencing on the date on which the recognised relationship or domestic relationship terminated, or last terminated, 15
- whichever occurs sooner.
- (4) An order for periodic maintenance based on the grounds specified in section 52 (1) (a) or (b) is to have effect for a period determined by the court, not exceeding the period permissible under subsection (2) or (3), whichever is the longer. 20

57 Periodic maintenance orders—variation etc

- (1) On application by a partner in respect of whom an order for periodic maintenance has been made, a court may: 25
- (a) subject to subsection (2), discharge the order, or
- (b) suspend the operation of the order wholly or in part, for a specified period or until a specified time or event, or
- (c) revoke a suspension under paragraph (b), wholly or in part, or 30
- (d) subject to subsection (2) and sections 52, 56 and 59, vary the order.

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- (2) A court is not to discharge the order, or vary the amount of maintenance ordered to be paid, unless it is satisfied that, since the order was made, or last varied:
- (a) the circumstances of either partner have so changed,
 - (b) the cost of living has changed to such an extent, 5
as to justify it doing so.
- (3) For the purposes of subsection (2) (b), a court is to have regard to any changes that have occurred, since the order was last made or last varied in:
- (a) the Consumer Price Index (All Groups Index) issued by the Australian Statistician, or 10
 - (b) if the regulations prescribe a group of numbers or amounts issued by the Australian Statistician that relate to the price of goods and services (other than those set out in that Index)—the prescribed group. 15
- (4) In considering the variation of an order, a court 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 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. 20

58 Other maintenance orders not to be varied

Except as provided by section 64, an order made under this Division for maintenance (other than periodic maintenance) may not be varied. 25

59 Periodic maintenance orders—cessation

- (1) An order for periodic maintenance ceases to have effect, to the extent that it related to the maintenance of a child by virtue of section 52 (1) (a), on the expiration of the day on which the partner in whose favour the order was made ceases to have the care and control of the child. 30

- (2) An order for periodic maintenance ceases to have effect on the death of either partner to a recognised relationship or a domestic relationship.
- (3) The cessation of an order does not affect the recovery of arrears of maintenance due when the order ceased to have effect. 5

Division 5 General

60 Court to sanction settlement agreements

- (1) If the partners to a recognised relationship or domestic relationship that has ended settle any dispute concerning their financial affairs: 10
 - (a) privately, or
 - (b) as a result of the adoption of alternative dispute resolution procedures under Part 5,

the terms of any agreement which the partners may make to resolve any dispute under this Act must not be binding upon a court unless the agreement is a termination agreement made in accordance with sections 29 and 30. 15
- (2) A court may make orders at variance with the provisions of a termination agreement, notwithstanding that it was made in accordance with sections 29 and 30, if the court is satisfied that there are compelling reasons to do so (for example, the court believes the provisions of the relationship agreement are unfair and unreasonable). 20
- (3) A court is not required to have regard to the terms of a termination agreement if it is satisfied that: 25
 - (a) the partners have, by words or conduct, revoked the agreement or consented to its revocation, or
 - (b) the agreement has otherwise ceased to have effect.
- (4) The terms of the settlement may be contained in a deed or set out in a consent order for the approval of the court. 30

- (5) Where the partners have commenced proceedings and they apply to the court to approve orders by consent, such orders must not be approved unless the court is satisfied that the terms of the orders and the settlement are fair and reasonable.

61 Court orders etc

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- (1) For the purposes of this Act, but without limiting the generality of the other provisions of this Part, a court 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, 10
 - (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, 15
 - (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, 20
 - (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: 25
 - (i) to protect, or otherwise relating to, the property or financial resources of either or both of the partners to the relationship concerned, or
 - (ii) to aid enforcement of any other order made in respect of an application, 30
 - or both,
 - (i) impose terms and conditions,
 - (j) make an order by consent,
 - (k) make an order in the absence of a party,

- (1) make any other order or grant any other injunction (whether or not of the same nature as those mentioned in the preceding paragraphs) that it thinks it is necessary to make to do justice.
- (2) A court may, in relation to an application under this Part: 5
 - (a) make any order or grant any remedy or relief that 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 that it is empowered to make or grant under this Act or any other Act or any other law. 10

62 Execution of instruments by order of court

- (1) If: 15
 - (a) a person refuses or fails to comply with an order directing the person to execute a deed or instrument, or
 - (b) for any other reason, a court thinks it necessary to do so, the court may appoint an officer of the court or other person to execute the deed or instrument in the name of the first-named person and to do all acts and things necessary to give effect to the deed or instrument. 20
- (2) The execution of the deed or instrument by the person so appointed has the same effect as if it had been executed by the person directed by the order to execute it. 25
- (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 and execution of the deed or instrument.

63 Urgent orders etc in absence of party

- (1) In the case of urgency, a court may: 30
 - (a) make an order under section 53, or
 - (b) make an order or grant an injunction referred to in section 61 (1) (h),in the absence of a party.

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- (2) An application for relief under this section may be made orally or in writing or in any form the court considers appropriate.
- (3) A court is not to make an order or grant an injunction on an application that is not in writing unless it considers that it is necessary to do so because of the extreme urgency of the case. 5
- (4) A court may give such directions with respect to the filing, serving and further hearing of a written application.
- (5) An order made or injunction granted on an application under this section is to be expressed to operate or apply until a specified time or the further order of the court. 10
- (6) A court 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.

64 Variation and setting aside of orders 15

If, on the application of a person in respect of whom an order referred to in section 25 is in force, 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 circumstance, or 20
- (b) in the circumstances that have arisen since the order was made, it is impracticable for the order, or a part of the order, to be carried out, or
- (c) a person has defaulted in carrying out an obligation imposed 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 a substitute, 25

the court may vary the order or set the order aside and, if it thinks fit, make another order under this Part in substitution for the order. 30

65 Deferment of order or adjournment of proceedings

- (1) If a court is satisfied that a partner to a recognised relationship or a domestic relationship is likely to become entitled soon to property that may be applied in satisfaction of an order made under this Part, the court may: 35

- (a) defer the operation of any order made by the court until a date, or the occurrence of an event, specified in the order, or
 - (b) adjourn the proceedings until a time or for a period that the court specifies. 5
- (2) A court may, before adjourning proceedings under this section, make any order that the court considers appropriate with respect to the property of either or both of the partners.

66 Transactions to defeat claims

- (1) In this section, *disposition* includes a sale and a gift. 10
- (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 partner, that is made or proposed to be made to defeat an existing or anticipated order relating to the application, or that, irrespective of intention, is likely to defeat any such order. 15
- (3) The court may, without limiting the operation of section 61, order that any property dealt with by the instrument or disposition may be taken in execution of, or used or applied in, or charged with, the payment of any sum payable under this Part or for costs as the court directs, or that the proceeds of a sale be paid into court to await its order. 20
- (4) The court may order a person who acts in collusion with a party in relation to the making of the instrument or disposition to pay the costs of any other party or of a purchaser in good faith or other interested person in relation to the instrument or disposition or the setting aside or restraining of the instrument or disposition. 25

67 Interests of other parties

In the exercise of a power under this Part, a court is to have regard to the interests of, and is to make any order proper for the protection of, a purchaser in good faith or other interested person. 30

Part 7 Domestic violence and harassment

68 Definition

In this Part, *relationship partner* means a partner to a recognised relationship or a domestic relationship.

69 Granting of injunctions

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(1) A court may, on an application made to it by a relationship partner or in any proceedings between the relationship partners, whether under Part 6 or otherwise, grant an injunction for any one or more of the following purposes:

(a) the personal protection of a relationship partner or of a child ordinarily residing within the same household as the relationship partners or, who at any time ordinarily so resided, 10

(b) restraining a relationship partner:

(i) from entering the premises in which the other relationship partner resides, or 15

(ii) from entering a specified area, being an area in which the premises in which the other relationship partner resides are situated,

(c) restraining a relationship partner: 20

(i) from entering the place of work of the other relationship partner, or

(ii) from entering the place of work of a child referred to in paragraph (a),

(d) relating to the use or occupancy of the premises in which the relationship partners reside. 25

70 Failure to comply with injunction

(1) A person against whom an injunction under section 69 has been granted and who:

(a) has been served personally, in the prescribed manner, with a copy of the order under section 69 by which the injunction was granted, and 30

Clause 70 Significant Personal Relationships Bill 1997

Part 7 Domestic violence and harassment

(b) after having been so served, knowingly fails to comply with a restriction or prohibition specified in the order,

is 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. 5

71 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. 10

Part 8 Register of recognised relationships

72 Definition

In this Part, *register* means the register of recognised relationships.

73 Establishment of register of recognised relationships 5

- (1) The Registrar-General is to establish and maintain a register of recognised relationships.
- (2) Part 5 of the *Births, Deaths And Marriages Registration Act 1995* applies to the register established under this Part.

74 Lodgment of documents 10

- (1) A copy of each of the following documents is to be lodged in the register:
 - (a) a copy of the notice of intention completed by each of the partners intending to enter into a recognised relationship and certified by the authorised official, 15
 - (b) a copy of the relationship declaration completed by each of the partners to a recognised relationship and certified by the authorised official,
 - (c) a copy of the relationship certificate issued to the partners to a recognised relationship, 20
 - (d) a copy of a relationship agreement and any variation of a relationship agreement completed under Part 4,
 - (e) a copy of a notice of intention to terminate a recognised relationship lodged with a court,
 - (f) a copy of any order terminating a recognised relationship. 25
- (2) The documents referred to in subsection (1) are to be lodged as soon as practicable after their completion.
- (3) The documents referred to in subsection (1) (a), (b) and (c) are to be lodged by the authorised official or a person so delegated by the authorised official. 30

- (4) The documents referred to in subsection (1) (d) are to be lodged by the partners to the recognised relationship or their representative.
- (5) The documents referred to in subsection (1) (e) are to be lodged by an officer of the court at which the notice of intention to terminate a recognised relationship is lodged. 5
- (6) The documents referred to in subsection (1) (f) are to be lodged by an officer of the court at which the termination order is made.

75 Copies or extracts of register

Either or both of the partners to a recognised relationship may obtain a copy of the relationship certificate or an extract of the relationship certificate relating to that recognised relationship. 10

Part 9 Miscellaneous

76 Construction of certain references in Acts etc

- (1) A reference in any Act or in any instrument made under any Act or in any other law to a person in any of the following relationships is taken to include a reference to a partner to a de facto relationship: 5
- (a) a man and a woman living together as husband and wife, although not legally married to each other,
 - (b) a man and a woman living in a genuine domestic relationship, although not legally married to each other, 10
 - (c) a man and a woman living in a genuine domestic relationship, although not husband and wife.
- (2) For the purposes of this section, a reference in or under any Act or in any instrument made under any Act or law to any of the following relationships is taken to include a reference to a de facto relationship: 15
- (a) a man and a woman living together as husband and wife, although not legally married to each other,
 - (b) a man and a woman living in a genuine domestic relationship, although not legally married to each other, 20
 - (c) a man and a woman living in a genuine domestic relationship, although not husband and wife.
- (3) A reference in any Act, in any instrument made under any Act or in any other law to:
- (a) a husband or a wife is taken to include a reference to a spouse, and 25
 - (b) a husband and wife is taken to include a reference to spouses, and
 - (c) a spouse is taken to include a reference to a de facto spouse, and 30
 - (d) a de facto spouse, whether explicitly or as a consequence of the operation of this section, is taken to include a partner to a de facto relationship.

- (4) Except as otherwise provided by this Act, a reference in or under any Act or in any instrument made under any Act or in any other law to a de facto relationship is taken to include a reference to a significant personal relationship which is either a recognised relationship or a domestic relationship. 5
- (5) Except as otherwise provided by this Act, a reference in or under any Act or in any instrument to a partner to a de facto relationship is taken to include a reference to a partner of a significant personal relationship which is either a recognised relationship or a domestic relationship. 10
- (6) Except as otherwise provided by this Act, any right or benefit conferred by or duty imposed on a partner to a de facto relationship by or under any Act or law extends and applies to a partner:
- (a) to a recognised relationship on and from the date of issue of the recognised relationship certificate with respect to the relationship, or 15
 - (b) to a domestic relationship in accordance with the same requirements (for example, as to the duration of the relationship) as are prescribed with respect to a de facto relationship by or under the Act or law concerned. 20
- (7) Except as otherwise provided by this Act, any right or benefit conferred by or duty imposed on a surviving partner to a de facto relationship on the death of the other partner to the relationship by or under any Act or law extends to and applies to a surviving partner: 25
- (a) to a recognised relationship on and from the date of issue of the recognised relationship certificate with respect to the relationship, or
 - (b) subject to subsection (3), to a domestic relationship in accordance with the same requirements (for example, as to the length of the relationship) as are prescribed with respect to a de facto relationship by or under the Act or law concerned. 30
- (8) For the purposes of subsection (2), if a domestic relationship has existed for less than the period specified by or under the Act or law concerned, a court may, despite that fact, by order declare 35

that the relevant provisions of or under the Act or law extend and apply to a surviving partner of the relationship if the court is satisfied:

- (a) that, but for the death of the other partner to the relationship, the relationship would have continued, and 5
 - (b) that to decline to make an order would result in substantial hardship for the surviving partner, or
 - (c) that it would be unjust in all of the circumstances not to make the order.
- (9) If, as a result of the operation of this section, more than one person would qualify as a spouse, only the last person to so qualify is taken to be a spouse. 10
- (10) The regulations may limit the application of this section to any Act or other law.
- (11) Any regulation made under subsection (10) expires 1 year after it commences. 15
- (12) Subsection (10) expires 2 years after it commences.

77 Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone. 20

78 Enforcement by Local Courts of certain District Court and Supreme Court orders

The regulations may make provision in relation to the enforcement by a Local Court of orders of the District Court and Supreme Court under this Act, being orders that could have been made by a Local Court. 25

79 Rules of court

- (1) For the purposes of regulating any proceedings under this Act, rules of court may be made 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. 30
- (2) Subsection (1) does not limit the rule-making powers of a court.

Clause 80 Significant Personal Relationships Bill 1997

Part 9 Miscellaneous

80 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 the carrying out or giving effect to this Act. 5
- (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

81 Amendment of Acts

Each Act specified in Schedule 3 is amended as set out in that Schedule. 10

82 Repeal of De Facto Relationships Act 1984 No 147

The *De Facto Relationships Act 1984* is repealed.

83 Savings, transitional and other provisions

Schedule 4 has effect.

Schedule 1 Excluded legislation

(Section 8 (2))

Adoption of Children Act 1965	
Coal and Oil Shale Mine Workers (Superannuation) Act 1941	
Evidence Act 1995	5
First State Superannuation Act 1992	
Judges' Pensions Act 1953	
Local Government and Other Authorities (Superannuation) Act 1927	
Married Persons (Equality Of Status) Act 1996	10
New South Wales Retirement Benefits Act 1972	
Parliamentary Contributory Superannuation Act 1971	
Police Association Employees (Superannuation) Act 1969	
Police Regulation (Superannuation) Act 1906	
Public Authorities Superannuation Act 1985	15
Public Sector Executives Superannuation Act 1989	
State Authorities Non-contributory Superannuation Act 1987	
State Authorities Superannuation Act 1987	
State Public Service Superannuation Act 1985	
Superannuation Act 1916	20
Superannuation Administration Act 1996	
Superannuation (Axiom Funds Management Corporation) Act 1996.	

Schedule 2 Forms

(Sections 11 and 13)

Form 1 Notice of intention to enter a recognised relationship

I. Declarations by applicants 5

[Both applicants are to complete a declaration in the form below.]

Declaration by:

I [name of applicant] of [address of applicant] on [date of notice] give notice of my intention to enter into a recognised relationship with [name of intended partner] of [address of intended partner]. 10

I hereby declare that I have attained the age of 18 years and that I am:

- (a) single and have never married, or 15
- (b) divorced, or
- (c) widowed.

.....
[Signature of applicant]

..... 20
[Date]

II. Declaration by authorised official

I, [name of authorised official] of [name of local court (if clerk or delegate) or registered business address (if legal practitioner)] being an authorised official within the meaning of the *Significant Personal Relationships Act 1997*, hereby certify that I have witnessed and received the Notice of Intention made by [name of applicant] and [name of other applicant]. 25

I certify that I have examined such documentation as prescribed in the regulations supporting the declarations each of these persons have made.

I certify that I have done all other such things as are required in the abovementioned Act and regulations upon acceptance of this Notice of Intention.

5

.....

[Signature of authorised official]

.....

[Date]

10

Form 2 Relationship declaration

I. Declarations by persons entering into a recognised relationship

[Both persons are to complete the declaration in the form of either Type 1, Type 2 or Type 3.] 5

Type 1

Declaration by: [name of partner]

I [name of partner] of [address of applicant] hereby declare that a significant personal relationship exists between me and [name of other partner] in that I acknowledge our emotional interdependency and I believe that this relationship will continue and am mutually committed to the relationship continuing. 10

In formally acknowledging the existence of this relationship, I acknowledge and accept the rights and obligations associated with this relationship under New South Wales law. 15

I therefore wish to have this relationship recognised in accordance with the *Significant Personal Relationships Act 1997*.

.....

[Signature of partner] 20

.....

[Date]

Type 2

Declaration by: [name of partner]

I [name of partner] of [address of applicant] hereby declare that a significant personal relationship exists between me and [name of other partner] in that I acknowledge the fellowship and support we provide to each other and I believe that this relationship will continue and am mutually committed to the relationship continuing. 5

In formally acknowledging the existence of this relationship, I acknowledge and accept the rights and obligations associated with this relationship under New South Wales law. 10

I therefore wish to have this relationship recognised in accordance with the *Significant Personal Relationships Act 1997*.

..... 15
[Signature of partner]

.....
[Date]

Type 3

Declaration by: [name of partner] 20

I [name of partner] of [address of applicant] hereby declare that a significant personal relationship exists between me and [name of other partner] in that I acknowledge our emotional interdependency and the fellowship and support we provide to each other and I believe that this relationship will continue and am mutually committed to the relationship continuing. 25

In formally acknowledging the existence of this relationship, I acknowledge and accept the rights and obligations associated with this relationship under New South Wales law.

I therefore wish to have this relationship recognised in accordance with the *Significant Personal Relationships Act 1997*.

.....

[Signature of partner]

5

.....

[Date]

II. Certification of the declaration

I.....being an authorised official within the meaning of the *Significant Personal Relationships Act 1997*, hereby certify that: 10

(1) I inspected the notice of intention to enter a recognised relationship lodged by the persons named in the declarations on this form and satisfied myself that the notice of intention was lodged no earlier than 45 days from the date these declarations were made. 15

(2) Before witnessing each person signing the declaration, I asked each of the partners:
“Have you read and do you understand the declaration you are about to sign?”

Having received an answer in the affirmative from both persons, I then asked them: 20

“Are you now willing to enter into a recognised relationship?”

(3) Having received an answer in the affirmative from both persons, I then witnessed them each sign four copies of the declaration. 25

Signed on 19 at

Form 3 Certificate of recognition of relationship

I.....being an authorised official within the meaning of the *Significant Personal Relationships Act 1997*, hereby state that, on at.....,and entered into a recognised relationship within the meaning of the *Significant Personal Relationships Act 1997*. 5

The partners to this relationship need not meet any requirements or produce any other evidence, other than this certificate, to prove the existence of their relationship or to exercise their rights as partners to a recognised relationship under any Act or law of New South Wales. 10

Signed on19

at [Place where declaration is made]

Schedule 3 Amendment of Acts

(Section 81)

3.1 Anti-Discrimination Act 1977 No 48

Part 4H, sections 49ZZA–49ZZL

Insert after Part 4G:

5

Part 4H Discrimination on ground of significant personal relationship

Division 1 General

49ZZA Definitions

In this Part:

10

domestic relationship has the same meaning as in the *Significant Personal Relationships Act 1997*.

partner means a person who is a party to a recognised relationship or a domestic relationship.

recognised relationship has the same meaning as in the *Significant Personal Relationships Act 1997*.

15

significant personal relationship has the same meaning as in the *Significant Personal Relationships Act 1997* but, in this Part, applies only to a significant personal relationship that is a recognised relationship or a domestic relationship.

20

49ZZB What constitutes discrimination on ground of significant personal relationship

A person (*the perpetrator*) discriminates against a person who is a partner in a significant personal relationship (*the aggrieved person*) if the perpetrator:

25

- (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person who is a party to a relationship other than a significant personal relationship, or 5
- (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who are partners to relationships other than significant personal relationships comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply. 10
15

Division 2 Discrimination in work

49ZZC Discrimination against employees and employees' partners

- (1) It is unlawful for an employer to discriminate against an employee who is a partner to a significant personal relationship or an employee's partner by denying either of them access to, or limiting their access to, any benefit or entitlement enjoyed by or available to any other employee, or any third party associated with the employee by virtue of their relationship, where the relationship is not a significant personal relationship. 20
25
- (2) Subsection (1) does not apply to employment:
 - (a) for the purposes of a private household, or
 - (b) where the number of persons employed by the employer, disregarding any persons employed within his or her private household, does not exceed 5, or 30
 - (c) by a private educational authority.
- (3) For the purposes of subsection (2) (b), a corporation is to be regarded as the employer of the employees of any other corporation which, with respect to the first mentioned corporation, is a related corporation within the meaning of the *Corporations Law*. 35

49ZZD Discrimination against commission agents

It is unlawful for a principal to discriminate against a commission agent who is a partner to a significant personal relationship or a commission agent's partner by denying either of them access to, or limiting their access to, any benefit or entitlement enjoyed by or available to any other commission agent, or any third party associated with the commission agent by virtue of their relationship, where the relationship is not a significant personal relationship. 5
10

49ZZE Discrimination against contract workers

It is unlawful for a principal to discriminate against a contract worker who is a partner to a significant personal relationship or a contract worker's partner by denying either of them access to, or limiting their access to, any benefit or entitlement enjoyed by or available to any other contract worker or any third party associated with the contract worker by virtue of their relationship, where the relationship is not a significant personal relationship. 15

49ZZF Partnerships

It is unlawful for a firm consisting of 6 or more partners, to discriminate against a partner who is party to a significant personal relationship or the other person who is the party to the relationship, by denying either of them access to, or limiting their access to, any benefit or entitlement enjoyed by or available to any other partner or any third party associated with the partner by virtue of their relationship, where the relationship is not a significant personal relationship. 20
25

49ZZG Industrial organisations

It is unlawful for an industrial organisation to discriminate against a member of the organisation who is a partner to a significant personal relationship or the member's partner by denying either of them access to, or limiting their access to, any benefit or entitlement 30
35

enjoyed by or available to any other member or any third party associated with the member by virtue of their relationship, where the relationship is not a significant personal relationship.

Division 3 Discrimination in other areas 5

49ZZH Education

It is unlawful for an educational authority to discriminate against a student who is a partner to a significant personal relationship or the student's partner by denying either of them access to, or limiting their access to, any benefit or entitlement provided by the educational authority to any other student or any third party associated with the student by virtue of their relationship, where the relationship is not a significant personal relationship. 10

15

49ZZI Provision of goods and services

It is unlawful for a person who provides, for payment or not, goods or services to discriminate against a person who is a partner to a significant personal relationship or the person's partner by denying either of them access to, or limiting their access to, any benefit or entitlement associated with the provision of the goods or services that is provided to any other person or any third party associated with the other person by virtue of their relationship, where the relationship is not a significant personal relationship. 20

25

49ZZJ Access to hospitals and other health care facilities

- (1) It is unlawful for a hospital or any other health care facility, including a nursing home or community health centre, to discriminate against a patient or resident who is a partner to a significant personal relationship and the patient's or resident's partner by denying the partner visiting access to the patient or resident on the same terms or under the same conditions as are available to any other persons who have an association or relationship with a patient or resident where the relationship is not a significant personal relationship. 30
- 35

- (2) It is unlawful for a hospital or any other health care facility, including a nursing home or community health centre, to discriminate against a patient or resident who is a partner to a significant personal relationship and the patient's or resident's partner by denying the partner any information concerning the patient or resident that would otherwise be made available to any other persons who have an association or relationship with a patient or resident where the relationship is not a significant personal relationship. 5
10

49ZZK Accommodation

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person who is a partner to a significant personal relationship or the person's partner by denying either or both of them access to, or limiting their access to, any benefit associated with accommodation occupied by the person that is available to any other person or any third party associated with the other person by virtue of their relationship, where the relationship is not a significant personal relationship. 15
20
- (2) Nothing in this section applies to or in respect of the provision of accommodation in premises if:
- (a) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises, and 25
 - (b) the accommodation provided in those premises is for no more than 6 persons.

49ZZL Registered clubs

It is unlawful for a registered club to discriminate against a member of the registered club who is a partner to a significant personal relationship or the member's partner by denying either of them access to, or limiting their access to, any benefit or entitlement enjoyed by or available to any other member or any third party associated with the member by virtue of their relationship, where the relationship is not a significant personal relationship. 30
35

3.2 Family Provision Act 1982 No 160**[1] Section 6 Definitions**

Insert after paragraph (a) in the definition of *eligible person*:

- (a1) a person who was a partner to a recognised relationship with the deceased person within the meaning of the *Significant Personal Relationships Act 1997*, 5
- (a2) a person who was a partner to a domestic relationship with the deceased person within the meaning of the *Significant Personal Relationships Act 1997* (whether or not the relationship had existed continuously for not less than 2 years before the death of the deceased person), 10

[2] Section 6, definition of "eligible person"

Insert after paragraph (d) (ii): 15

- (iii) a person who was a partner to a significant personal relationship (not being a recognised relationship or a domestic relationship) with the deceased person within the meaning of the *Significant Personal Relationships Act 1997* (whether or not the relationship had existed continuously for not less than 2 years before the death of the deceased person), 20

3.3 Stamp Duties Act 1920 No 47 25**[1] Section 66E Conveyance between married couple**

Insert in alphabetical order the following definitions:

domestic relationship has the same meaning as in the *Significant Personal Relationships Act 1997*.

partner means a person who is a partner to a recognised relationship or a domestic relationship. 30

recognised relationship has the same meaning as in the *Significant Personal Relationships Act 1997*.

significant personal relationship has the same meaning as in the *Significant Personal Relationships Act 1997* but, in this section, applies only to a significant personal relationship that is a recognised relationship or a domestic relationship. 5

[2] Section 66E (2B) and (2C)

Insert after section 66E (2A):

(2B) A conveyance of property is exempt from stamp duty, if it is proved to the satisfaction of the Chief Commissioner that: 10

(a) as a result of the conveyance, the property is held by the partners in a significant personal relationship as: 15

(i) joint tenants, or

(ii) tenants in common in equal shares, or

(iii) tenants in common in shares, other than equal shares, and the resulting share of the person to whom the property is conveyed is less than a half share, or 20

(iv) tenants in common in shares, other than equal shares, and, if the resulting share of the person to whom the property is conveyed is more than a half share, the shares are proportionate to the contributions of the parties towards the purchase and improvement of the property or are in such proportions (if any) as may be prescribed and have been created in circumstances (if any) as may be prescribed, and 25 30

(b) the property qualifies under subsection (2C), and

(c) the conveyer was one or both partners to the relationship and no other person was conveyer or conveyee, and 35

- (d) in the case of a domestic relationship, the relationship had existed for at least 2 years before the date of the conveyance.
- (2C) Property qualifies under this subsection if:
 - (a) the property has erected on it a private dwelling house and was solely or principally used, at the date of the conveyance, as the principal place of residence of the partners to the significant personal relationship, or 5
 - (b) the property is vacant land and the partners to the relationship intend to use it as the site of a private dwelling house to be solely or principally used as the principal place of residence of the partners to the relationship. 10
- [3] Section 66E (3) (a)** 15

Omit "couple;".
 Insert instead "couple, or the person is a partner to a significant personal relationship or the persons are partners to a significant personal relationship,"
- [4] Section 66E (3) (c) and (d)** 20

Insert "or as the principal place of residence of the partners to the significant personal relationship" after "residence" wherever occurring.
- [5] Section 74CA Definitions** 25

Insert the following definitions in alphabetical order in section 74CA (1):

 - domestic relationship* has the same meaning as in the *Significant Personal Relationships Act 1997*.
 - partner* means a person who is a partner to a recognised relationship or a domestic relationship. 30
 - recognised relationship* has the same meaning as in the *Significant Personal Relationships Act 1997*.

significant personal relationship has the same meaning as in the *Significant Personal Relationships Act 1997* but, in this Division, applies only to a significant personal relationship that is a recognised relationship or a domestic relationship.

5

[6] Section 74CA (1), definition of “partnership property”

Omit the definition. Insert instead:

partnership property, in relation to a significant personal relationship, means the property of the partners to the relationship or of either of them.

10

[7] Section 74CA (2B)

Insert after section 74CA (2A):

(2B) A reference in this Division to a partner includes a reference to a person who was a partner in a significant personal relationship that has ceased, whether the cessation took effect in Australia or elsewhere.

15

[8] Section 74CB Certain instruments exempt from duty

Omit section 74CB (2)–(4). Insert instead:

(2) An instrument is exempt from duty to the extent that the instrument makes provision for or with respect to the conveyance to the partners in a significant personal relationship, or to either of them, or to a child or children of them, of partnership property, if:

20

- (a) the significant personal relationship ceases, and
- (b) the instrument is a termination agreement made under the *Significant Personal Relationships Act 1997* or is an order of a court made under that Act or is executed in accordance with such an order.

25

(3) An instrument, being:

- (a) a termination agreement made within the meaning of Part 4 of the *Significant Personal Relationships Act 1997*,

30

- (b) a conveyance made in accordance with the termination agreement that conveys property to one of the former partners to the relationship or a child or children of either of them,

is exempt from duty if the Chief Commissioner is satisfied that the former partners to the relationship have been separated for at least 3 months before the instrument is lodged for stamping. 5

- (4) For the purposes of subsection (3) and section 25 (2), the date of the first execution of the termination agreement referred to in subsection (2) is taken to be 3 months after the actual date of first execution. 10

[9] Section 74CC Special provisions as to motor vehicles

Omit section 74CC (2). Insert instead:

- (2) A motor vehicle certificate of registration issued to the partners in a significant personal relationship or to either of them (and to no other person) pursuant to an application relating to the transfer of the vehicle concerned is exempt from duty to the extent that the vehicle was, at the time the application was made, partnership property, if: 15

- (a) the significant personal relationship ceases, and
- (b) the application was made for the purposes of, or in accordance with, an order of a court under the *Significant Personal Relationships Act 1997*. 20 25

[10] Section 78FA Exemption from duty—leases of accommodation for aged and disabled persons

Omit “or the de facto partner (within the meaning of the *De Facto Relationships Act 1984*)” from the definition of *retired person* in section 78FA (2). 30

- [11] Section 99A Definitions**
Omit the definitions of *de facto partner* and *de facto relationship* from section 99A (1).
- [12] Section 99A (1), definition of "designated landholder"**
Omit "de facto partner," from paragraph (a) (iv). 5
- [13] Section 99A (8) (a) (ii)**
Omit "de facto partners".
Insert instead "partners in a recognised relationship or a domestic relationship within the meaning of the *Significant Personal Relationships Act 1997*". 10
- [14] Section 99B Acquisitions to which Division does not apply**
Omit section 99B (1) (c) (ii). Insert instead:
(ii) a person who was the other partner to a recognised relationship or a domestic relationship within the meaning of the *Significant Personal Relationships Act 1997* and has occurred solely as the result of the termination of the relationship, or 15
- [15] Tenth Schedule Savings, transitional and other provisions**
Insert at the end of clause 1A (1): 20
Significant Personal Relationships Act 1997
- [16] Tenth Schedule, Part 15**
Insert after Part 14:
- Part 15 Significant Personal Relationships Act 1997**
47 Application of amendments generally 25
(1) A provision of this Act as in force before the amendment of the provision by the *Significant Personal Relationships Act 1997* continues to apply to an instrument referred to in the provision that was executed,

or a transaction referred to in the provision that was entered into, before the date on which the amendment commenced.

- (2) An amendment made to this Act by the *Significant Personal Relationships Act 1997* does not apply to an instrument executed, or a transaction entered into, before the date on which the amendment commenced. 5

3.4 Wills, Probate and Administration Act 1898 No 13

[1] Section 15AA

Insert after section 15: 10

15AA Effect of recognition of relationship

- (1) A will made by a person is revoked if the person:
- (a) enters into a relationship agreement, or
 - (b) is named as a partner in a recognised relationship certificate issued, 15
- pursuant to the *Significant Personal Relationships Act 1997*.
- (2) A will made after the commencement of this section in contemplation of the recognition of a recognised relationship, whether or not that contemplation is expressed in the will (and whether or not it is expressed generally or by reference to the issue of a recognised relationship certificate or otherwise), is not revoked by the person entering into a relationship agreement or by the issue of a recognised relationship certificate in which the person is named as a partner. 20 25
- (3) In this section, *relationship agreement* and *recognised relationship* have the same meanings as in the *Significant Personal Relationships Act 1997*.

[2] Section 32G

Omit the section. Insert instead:

32G Definitions

(1) In this Part:

relationship home, in relation to an intestate's estate, 5
means a dwelling-house in which the intestate held an
interest in respect of which the significant partner of the
intestate for whom part of the estate of the intestate is
required to be held in trust under section 61B (3), (3A)
or (3B) is entitled to exercise the right conferred by 10
section 61D.

significant partner, in relation to a person dying wholly
or partially intestate, means a person who, at the time of
death of the person:

(a) was the other partner in a recognised relationship 15
within the meaning of the *Significant Personal
Relationships Act 1997*, or

(b) was the other partner in a domestic relationship
within the meaning of that Act that had, subject to
section 61B (3A) and (3B), subsisted for a period 20
of not less than 2 years before the death of the
person,

but if more than one person would so qualify as a
significant partner, means only the last person to so
qualify. 25

significant personal relationship has the same meaning
as in the *Significant Personal Relationships Act 1997*,
but, in this Part, applies to a recognised relationship or a
domestic relationship only.

(2) In this Part, except in so far as the context or 30
subject-matter otherwise indicates or requires, a
reference to a husband or wife of an intestate includes a
reference to a person who, at the time of death of the
intestate, was the significant partner of the intestate.

- (3) In this Part, except in so far as the context or subject-matter otherwise indicates or requires, a reference to a matrimonial home of an intestate includes a reference to a relationship home.

[3] Section 61B Succession to real and personal property on intestacy 5

Omit section 61B (3A) and (3B). Insert instead:

- (3A) Despite subsections (2) and (3), if the intestate leaves a husband or wife and a significant partner, the whole or, as the case may be, such part of the estate of the intestate as is required to be held in trust for the husband or wife of the intestate must be held in trust for:
 - (a) if the significant partner was the significant partner of the intestate in a recognised relationship or in a domestic relationship (whether or not it existed for a continuous period of not less than 2 years before the death of the intestate) and the intestate did not, during the whole or any part of that period, live with the person to whom the intestate was married—the significant partner, or 15
 - (b) in any other case—the husband or wife. 20
- (3B) Despite subsection (3), if the intestate leaves a significant partner but no husband or wife, and also leaves issue, the whole or, as the case may be, such part of the estate of the intestate as would, if the intestate had left a husband or wife, be required to be held in trust for the husband or wife of the intestate is to be held in trust for: 25
 - (a) if the relationship of the significant partner to the intestate was a recognised relationship, or a domestic relationship (whether or not it existed for a continuous period of not less than 2 years before the death of the intestate)—the significant partner, or 30

- (b) in any other case:
 - (i) the issue as if the intestate left no husband or wife, or
 - (ii) if the intestate leaves no issue being children of the intestate or if such of the issue as are children of the intestate are issue also of the surviving partner—the significant partner. 5

[4] Section 61B (4)

Omit the subsection. Insert instead: 10

- (4) If the intestate leaves issue but no husband or wife or significant partner as specified in subsection (3B), the estate is to be held in statutory trust for the issue of the intestate.

[5] Section 61B (5) and (6) 15

Insert “or significant other person as specified in subsection (3B)” after “wife” wherever occurring.

[6] Section 61B (10)

Insert “or the surviving significant other person as referred to in subsection (3B),” after “subsection (3),” 20

[7] Section 61D Rights of surviving husband or wife with respect to matrimonial home

Omit “de facto husband or de facto wife” wherever occurring in section 61D (2).

Insert instead “surviving significant partner” 25

[8] Section 63 To whom administration may be granted

Insert at the end of section 63 (c):

, or

- (c1) the surviving significant partner as referred to in section 61B (3A) or (3B), or 30

(c2) the surviving significant partner as referred to in section 61B (3A) or (3B) conjointly with one or more of the next of kin, provided that the court is satisfied that the next of kin is or are able to conduct their relationship with the surviving significant partner in a harmonious and courteous manner, 5

[9] Fifth Schedule Savings and transitional provisions arising from amendments to this Act

Insert after Part 1: 10

Part 2 Provisions consequent on enactment of Significant Personal Relationships Act 1997

8 Persons dying wholly or partially intestate before commencement of Significant Personal Relationships Act 1997 15

The amendments made to this Act by the *Significant Personal Relationships Act 1997* do not apply to or in respect of the estate of a person who died wholly or partially intestate before the commencement of this clause, and any such estate is to be distributed in accordance with the enactments and rules of law in force at the date of death of that person. 20

Schedule 4 Savings, transitional and other provisions

(Section 83)

Part 1 Savings and transitional regulations

- 1 Regulations** 5
- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day. 10
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 15
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 20

Part 2 Provisions consequent on enactment of Significant Personal Relationships Act 1997

- 2 Definitions**
- In this Part: 25
- repealed Act* means the *De Facto Relationships Act 1984*.
- 3 Pending applications under repealed Act**
- All pending applications before any court under the provisions of the repealed Act must be heard in accordance with the repealed Act. 30

4 Orders made under repealed Act

Any order made by a court under the repealed Act is enforceable as if the order was made under the provisions of this Act.

5 Agreements made under repealed Act

Any agreement which may have been made under Part 4 of the repealed Act takes effect as if the agreement had been made under Part 4 of this Act.

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6 General saving

(1) If anything done or commenced under a provision of the repealed Act before the repeal of that provision by this Act and still having effect or not completed immediately before that repeal could have been done or commenced under this Act if this Act had been in force when the thing was done or commenced:

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(a) the thing done continues to have effect, or

(b) the thing commenced may be completed,

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as if it had been done or commenced under this Act.

(2) This clause has effect subject to any express provision of this Act on the matter.

