



Australian Capital Territory

Domestic Relationships Act 1994 No 28

Republication No 2 (RI)

Republication date: 21 February 2002
(Reissued: 16 October 2002)

Last amendment made by Act 2001 No 44
(endnote correction)

Amendments incorporated to 12 September 2001

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Domestic Relationships Act 1994* as in force on 21 February 2002. It includes any amendment, repeal or expiry affecting the republished law to 12 September 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to
12 September 2001



Australian Capital Territory

Domestic Relationships Act 1994

Contents

	Page
Part 1	
Preliminary	
1 Short title	2
3 Interpretation for Act	2
4 Application of Act	5
5 Other relief or remedies not affected	5
Part 2	
Mediation and arbitration	
6 Advice about facilities	6
7 Conciliation	6
8 Referral of matters for mediation or arbitration	6
9 Admissions made to mediators	7

	Page
Part 3	Adjustment of property interests and maintenance
Division 3.1	Preliminary
10	Institution of proceedings 8
11	Prerequisite for relief—residence etc 9
12	Prerequisite for relief—length of relationship etc 9
13	Time limit for making applications 10
14	Court to end financial relations 10
Division 3.2	Adjustment of property interests
15	Property orders 10
16	Deferment of order 11
17	Death of party—effect on proceedings 11
Division 3.3	Maintenance
18	No general right to maintenance 11
19	Maintenance orders 12
20	Interim maintenance 13
21	Death of party—effect on application 13
22	Periodic maintenance orders—duration 13
23	Periodic maintenance orders—variation etc 14
24	Periodic maintenance orders—cessation 15
Division 3.4	General
25	Court orders etc 16
26	Execution of instruments by order of court 17
27	Urgent orders etc in the absence of a party 17
28	Variation and setting aside of orders 18
29	Transactions to defeat claims 19
30	Interests of other parties 19
Part 4	Domestic relationship agreements and termination agreements
31	Definitions for pt 4 20
32	Validity of agreements 20
33	Effect of agreements in proceedings under pt 3 20

	Page
34	21
35	22
36	22
37	22
Part 5	
	Miscellaneous
38	23
39	23
40	24
41	24
Endnotes	
1	25
2	25
3	26
4	26
5	27

Amendments incorporated to
12 September 2001



Australian Capital Territory

Domestic Relationships Act 1994

An Act to make provision with respect to certain domestic relationships

Part 1 Preliminary

1 Short title

This Act may be cited as the *Domestic Relationships Act 1994*.

3 Interpretation for Act

(1) In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

commencement day means 11 July 1997.

court means the Supreme Court or the Magistrates Court.

domestic relationship means a personal relationship (other than a legal marriage) between 2 adults in which one provides personal or financial commitment and support of a domestic nature for the material benefit of the other, and includes a de facto marriage.

domestic relationship agreement means—

- (a) an agreement between 2 persons that—
 - (i) is made in contemplation of their entering into a domestic relationship or during the existence of a domestic relationship between them; and
 - (ii) makes provision with respect to financial matters; or
- (b) such an agreement that varies a domestic relationship agreement;

regardless of when it is made, whether there are other parties or whether it makes provision with respect to non-financial matters.

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

financial resources, in relation to either or both of the parties to a domestic relationship, includes—

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

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

termination agreement means, subject to subsection (5)—

- (a) an agreement between 2 persons that—
 - (i) is made in contemplation of terminating a domestic relationship that exists between them or after the termination of a domestic relationship between them; and
 - (ii) makes provision with respect to financial matters; or
- (b) such an agreement that varies a domestic relationship agreement or termination agreement;

regardless of when it is made, whether there are other parties or whether it makes provision with respect to non-financial matters.

- (2) For subsection (1), definition of *domestic relationship*—
- (a) a personal relationship may exist between persons although they are not members of the same household; and
 - (b) a personal relationship shall not be taken to exist between persons only because one of them provides a service for the other—
 - (i) for fee or reward; or
 - (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.
- (3) A reference in this Act to a party to a *domestic relationship* includes a reference to a person who has been a party to a domestic relationship that has ended.
- (4) A reference in this Act to a *child* of the parties to a domestic relationship is as a reference to each of the following children:
- (a) a child of whom the parties are the parents;
 - (b) a child of whom the parties are presumed, under the *Artificial Conception Act 1985*, to be the father and mother;
 - (c) a child adopted by both parties;
 - (d) a child for whom both parties accept responsibility for his or her long-term welfare.
- (5) If—
- (a) a termination agreement is made in contemplation of the termination of a domestic relationship; and
 - (b) the relationship is not terminated within 3 months after the day on which the agreement is made;
- the agreement shall be taken to be a domestic relationship agreement.

4 Application of Act

This Act does not apply in relation to—

- (a) a domestic relationship that ceased before the commencement day; or
- (b) a person to the extent that he or she was a party to such a relationship.

5 Other relief or remedies not affected

Nothing in this Act shall be taken to affect any right of a party to a domestic relationship to any remedy or relief under any other Act or law.

Part 2 Mediation and arbitration

6 Advice about facilities

(1) On request by—

- (a) a party to a domestic relationship; or
- (b) a party to proceedings under this Act;

the registrar of a court shall, as far as practicable, advise the person about any 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) In subsection (1):

registrar includes a deputy registrar.

7 Conciliation

If 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 allow the parties to settle the matters in dispute; and
- (b) to encourage the parties to seek the assistance of the mediation and arbitration facilities referred to in section 6.

8 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.

9 Admissions made to mediators

Evidence of anything said, or of any admission made, at a conference conducted by a mediator under a referral under section 8 (1) is not admissible in proceedings in a court or before a tribunal or person having authority under a law in force in the ACT, or by consent of parties, to hear evidence.

Part 3 Adjustment of property interests and maintenance

Division 3.1 Preliminary

10 Institution of proceedings

- (1) Subject to subsection (2), proceedings under this Act may be instituted in—
 - (a) the Supreme Court; or
 - (b) the Magistrates Court.
- (2) Unless the parties agree and the Magistrates Court thinks it is desirable to do so, that court does not have jurisdiction to hear and determine proceedings under this Act if—
 - (a) the amount claimed (whether initially or as reduced by payment, admitted set-off or otherwise) exceeds the jurisdictional limit of the court; or
 - (b) the proceedings relate to a declaration with respect to title or right to property and the value of the property, or of the right to it, exceeds the jurisdictional limit of the court.
- (3) In subsection (2):

jurisdictional limit means the maximum amount that may be claimed in a personal action at law that the court has jurisdiction to hear and determine under the *Magistrates Court (Civil Jurisdiction) Act 1982*.

11 Prerequisite for relief—residence etc

- (1) A court shall not make an order under this part unless it is satisfied—
 - (a) that either or both of the parties to the domestic relationship were resident in the ACT on the day on which the application for the order was made; and
 - (b) that—
 - (i) both parties to the relationship have resided in the ACT for at least $\frac{1}{3}$ of the period of their relationship; or
 - (ii) substantial contributions of the kind referred to in section 15 (1) (b) or (c) have been made in the ACT 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 commencement day or outside the ACT.

12 Prerequisite for relief—length of relationship etc

- (1) Subject to subsection (2), a court shall not make an order under this part unless it is satisfied that a domestic relationship has existed between the applicant and the respondent for not less than 2 years.
- (2) If the 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 parties to the relationship; or
 - (b) the applicant—
 - (i) has made substantial contributions of the kind referred to in section 15 (1) (b) or (c) for which the applicant would otherwise not be adequately compensated if the order were not made; or

- (ii) has the care and control of a child of the respondent;
and that the failure to make the order would result in serious injustice to the applicant.

13 Time limit for making applications

- (1) An application for an order under this part by a party to a domestic relationship that has ended shall not be made more than 2 years after the day on which the relationship ended.
- (2) A court may grant leave to a person to apply for an order under this part after the end of the period referred to in subsection (1) if it is satisfied that greater hardship would be caused to the applicant if leave were refused than if it were granted.

14 Court to end financial relations

As far as practicable, a court shall make orders under this part that will end the financial relationship between the parties to the domestic relationship and avoid further proceedings between them.

Division 3.2 Adjustment of property interests

15 Property orders

- (1) On application by a party to a domestic relationship, a court may make an order adjusting the interests in the property of either or both of the parties that seems just and equitable to it having regard to—
 - (a) the nature and duration of the relationship; and
 - (b) the financial or non-financial contributions made directly or indirectly by or on behalf of either or both of the parties to the acquisition, conservation or improvement of any of the property or financial resources of either or both of them; and

- (c) the contributions (including any in the capacity of homemaker or parent) made by either of the parties to the welfare of the other or any child of the parties; and
 - (d) the matters referred to in section 19 (2), as far as they are relevant; and
 - (e) such other matters (if any) as the court considers relevant.
- (2) A court may make an order under subsection (1) whether or not it has declared the title or rights of a party in respect of the property.

16 Deferment of order

If a court is satisfied that a party to a domestic relationship is likely to become entitled soon to property that may be applied in satisfaction of an order under this part, it may defer the operation of the order until a date, or the occurrence of an event, specified in the order.

17 Death of party—effect on proceedings

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—

- (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.

Division 3.3 Maintenance

18 No general right to maintenance

Except as otherwise provided by this division, a party to a domestic relationship is not liable to maintain the other party to the relationship.

19 Maintenance orders

- (1) On an application by a party to 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 it is satisfied that—
 - (a) the applicant is unable to support himself or herself adequately because of having the care and control of a child of the parties, or a child of the other party, who, on the day on which the application is made, has not attained the age of—
 - (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—
 - (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
 - (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 shall have regard to—
 - (a) the income, property and financial resources of each party; and
 - (b) the physical and mental capacity of each party for appropriate gainful employment; and
 - (c) the financial needs and obligations of each party; and
 - (d) the responsibilities of either party to support any other person; and

- (e) the terms of any order made or proposed to be made under section 15 with respect to the property of either or both of the parties; and
 - (f) any payments made to the applicant, under an order of a court or otherwise, in respect of the maintenance of a child or children.
- (3) In making an order for maintenance, a court shall ensure that the terms of the order will, as far as practicable, preserve any entitlement of the applicant to a pension, allowance or benefit.

20 Interim maintenance

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

21 Death of party—effect on application

Proceedings on an application for an order under this division may not be continued after the death of either party to the domestic relationship.

22 Periodic maintenance orders—duration

- (1) Subject to subsections (2), (3) and (4) and sections 23 and 24, 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 ground specified in section 19 (1) (a), shall not be made in respect of a period after the child attains the age of—
 - (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 19 (1) (b) shall not be made in respect of a period after—
 - (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 parties to the domestic relationship ended, or last ended, their relationship;whichever occurs sooner.
- (4) An order for periodic maintenance based on the grounds specified in section 19 (1) (a) and (b) shall have effect for a period determined by the court, not exceeding the period permissible under subsection (2) or (3), whichever is longer.

23 Periodic maintenance orders—variation etc

- (1) On application by a person in respect of whom an order for periodic maintenance has been made, a court may—
 - (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
 - (d) subject to subsection (2) and sections 19, 22 and 24, vary the order.
- (2) A court shall not 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 party have so changed; or
 - (b) the cost of living has changed to such an extent;

as to justify it doing so.

- (3) For subsection (2) (b), a court shall have regard to any changes that have occurred since the order was made or last varied in—
 - (a) the consumer price index (all groups index) issued by the Australian statistician; or
 - (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 the group set out in that index)—the prescribed group.
- (4) In considering the variation of an order, a court shall not 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.

24 Periodic maintenance orders—cessation

- (1) An order for periodic maintenance ceases to have effect, to the extent that it relates to the maintenance of a child by virtue of section 19 (1) (a), on the expiration of the day on which the person in whose favour the order was made ceases to have the care and control of the child.
- (2) An order for periodic maintenance ceases to have effect on the death of either party to the 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.

Division 3.4 General

25 Court orders etc

For this Act but without limiting the other provisions of this part, a court may—

- (a) order the transfer of property; or
- (b) order the sale of property and the distribution of the proceeds of sale in such proportions as it thinks fit; or
- (c) order that any necessary deed or instrument be executed and that documents of title be produced or other things be done to enable an order to be carried out effectively or to provide security for the due performance of an order; or
- (d) order payment of a lump sum, whether in 1 amount or by instalments; or
- (e) order payment of a periodic sum; or
- (f) order that payment of any sum ordered to be paid be wholly or partly secured in such manner as the court directs; or
- (g) appoint or remove trustees; or
- (h) make an order or grant an injunction—
 - (i) to protect, or otherwise relating to, the property or financial resources of either or both of the parties to the relationship; or
 - (ii) to aid enforcement of any other order made in respect of an application; or
- (i) impose terms and conditions; or
- (j) make an order by consent; or
- (k) make an order in the absence of a party; or

- (l) make any other order or grant any other injunction (whether or not of the same nature as those mentioned in paragraphs (a) to (k)) that it considers is necessary to do justice.

26 Execution of instruments by order of court

- (1) If—
 - (a) a person fails to comply with an order directing the person to execute a deed or an 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 firstmentioned person and to do all acts and things necessary to give effect to the deed or instrument.
- (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.
- (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.

27 Urgent orders etc in the absence of a party

- (1) In a case of urgency, a court may—
 - (a) make an order under section 20; or
 - (b) make an order or grant an injunction referred to in section 25 (h);in the absence of a party.
- (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 shall not 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.
- (4) A court may give 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 shall be expressed to operate or apply until a specified time or the further order of the court.
- (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.

28 Variation and setting aside of orders

If, on the application of a person in respect of whom an order under section 15 or 19 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
- (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 set it aside and make a substitute;

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

29 Transactions to defeat claims

- (1) On an application for an order under this part, a court may set aside or restrain the making of an instrument or a disposition of property by, or on behalf of or in the interest of, a party that is made or proposed to be made to defeat an existing or anticipated order relating to the application, or which, irrespective of intention, is likely to defeat any such order.
- (2) The court may, without limiting the operation of section 25, 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 an order under this part or for costs as the court directs, or that the proceeds of a sale shall be paid into court to await its order.
- (3) 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.

30 Interests of other parties

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

Part 4 Domestic relationship agreements and termination agreements

31 Definitions for pt 4

In this part:

agreement means a domestic relationship agreement or a termination agreement.

solicitor means a legal practitioner who practises as a solicitor, either on his or her own account or as a member of a partnership.

32 Validity of agreements

- (1) Except as otherwise provided by this part, an agreement is subject to, and enforceable in accordance with, the law of contract.
- (2) Nothing in an agreement shall be taken to affect 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;
a child of the parties to the agreement.
- (3) A provision in an agreement purporting to exclude the jurisdiction of a court is invalid but its invalidity does not affect the validity of the rest of the agreement.

33 Effect of agreements in proceedings under pt 3

- (1) In proceedings under part 3, if a court is satisfied that—
 - (a) there is an agreement between the parties to a domestic relationship; and
 - (b) the agreement is in writing; and

- (c) the agreement is signed by the party against whom it is sought to be enforced; and
- (d) before the agreement was so signed each party was furnished with a certificate by a solicitor to the effect that the solicitor had advised that party, independently of the other party, as to the following matters:
 - (i) the effect of the agreement on the rights of the parties under this Act;
 - (ii) if it was advantageous, financially or otherwise, for that party to enter into the agreement;
 - (iii) if it was prudent for that party to enter into the agreement;
 - (iv) if the agreement was fair and reasonable in the light of the circumstances that were reasonably foreseeable then; and
- (e) the certificates referred to in paragraph (d) are endorsed on or accompany the agreement;

the court shall not (except as provided by sections 34 and 35) make an order under part 3 that would be inconsistent with the terms of the agreement.

- (2) In proceedings under part 3, if a court is satisfied that there is an agreement between the parties to a domestic relationship, but is not satisfied as to any 1 or more of the matters referred to in subsection (1) (b), (c), (d) or (e), the court may nevertheless have regard to the terms of the agreement in making any order under that part.

34 Variation etc of agreements

In proceedings under part 3, a court may vary or set aside all or any of the provisions of an agreement, notwithstanding that the matters referred to in sections 33 (1) (b), (c), (d) and (e) are satisfied, only if it is satisfied that the enforcement of the agreement would result in serious injustice.

35 Revocation etc of agreements

In proceedings under part 3, a court is not required to give effect to the terms of an agreement if it is satisfied that—

- (a) the parties have, by words or conduct, revoked the agreement or consented to its revocation; or
- (b) the agreement has otherwise ceased to have effect.

36 Death of party—effect on periodic maintenance under agreement

- (1) The provisions of an agreement requiring a person to pay periodic maintenance cease to have effect on the death of the person, unless the agreement provides otherwise.
- (2) The provisions of an agreement providing for a person to receive periodic maintenance cease to have effect on the death of the person.
- (3) Subsections (1) and (2) shall not be taken to affect the right to recover arrears of periodic maintenance due under the agreement at the time of the party's death.

37 Death of party—transfer of property and lump sum payments under agreement

The provisions of an agreement relating to property or lump sum payments may, on the death of a party, be enforced on behalf of, or against the estate of the deceased party, as the case may be, except to the extent that the agreement provides otherwise.

Part 5 Miscellaneous

38 **Declarations—existence of domestic relationship**

- (1) A court may, on application or its own initiative, declare whether a domestic relationship exists, or existed, between specified persons on a specified date or during a specified period, or both.
- (2) A declaration has effect as a judgment of the court.
- (3) A declaration may be made whether or not the person or either of the persons named by the applicant as a party or parties to a domestic relationship is alive.
- (4) While a declaration is in force, the persons to whom it relates shall be taken for all purposes to have been, or not to have been, parties to a domestic relationship, as specified in the declaration.

39 **Annulment of declaration**

- (1) A court may, by order, annul a declaration under section 38—
 - (a) on application by a person who applied for, or is affected by, the declaration; and
 - (b) if it is satisfied that new facts or circumstances have arisen that have not previously been disclosed to the court and could not have been so disclosed by the exercise of reasonable diligence.
- (2) A declaration ceases to have effect on the making of an order of annulment but an annulment does not affect anything done in reliance on the declaration while it remained in force.
- (3) If a court annuls a declaration, it may, if it is satisfied that it would be just and equitable to do so, make ancillary orders (including orders varying rights with respect to property or financial resources) to place any person affected by the annulment, as far as practicable, in the position that person would have been in if the declaration had not been made.

40 Declarations—interests in property

- (1) In proceedings between parties to a domestic relationship with respect to existing title or rights in respect of property, a court may declare the title or rights (if any) that a party has in respect of the property.
- (2) A court may make orders to give effect to a declaration, including orders as to possession.
- (3) An order under this section is binding on the parties to a domestic relationship but not on any other person.

41 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may make provision in relation to the enforcement by the Magistrates Court of orders of the Supreme Court under this Act that could have been made by the Magistrates Court.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

Domestic Relationships Act 1994 No 28

notified 31 May 1994 (Gaz 1994 No S93)

s 1, s 2 commenced 31 May 1994 (s 2 (1))

remainder commenced 11 July 1994 (s 2 (2) and Gaz 1994 No S149)

as amended by

Legal Practitioners (Consequential Amendments) Act 1997 No 96 sch 1

notified 1 December 1997 (Gaz 1997 No S380)

s 1, s 2 commenced 1 December 1997 (s 2(1))

sch 1 commenced 1 June 1998 (s 2 (2))

Legislation (Consequential Amendments) Act 2001 No 44 pt 108

notified 26 July 2001 (Gaz 2001 No 30)

s 1, s 2 commenced 26 July 2001 (IA s 10B)

pt 108 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

4 Amendment history

Commencement

s 2 om 2001 No 44 amdt 1.1161

Preliminary

div 3.1 hdg (prev pt 3 div 1 hdg) renum R2 LA

Adjustment of property interests

div 3.2 hdg (prev pt 3 div 2 hdg) renum R2 LA

Maintenance

div 3.3 hdg (prev pt 3 div 3 hdg) renum R2 LA

General

div 3.4 hdg (prev pt 3 div 4 hdg) renum R2 LA

Court orders etc

s 25 pars renum R2 LA

Definitions for pt 4

s 31 def *solicitor* sub 1997 No 96 sch 1

Regulation-making power

s 41 sub 2001 No 44 amdt 1.1162

Regulations

s 42 om 2001 No 44 amdt 1.1162

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1997 No 96	17 April 2000

Authorised when accessed at www.legislation.act.gov.au or in authorised printed form

© Australian Capital Territory 2002