

1994  
THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

**Domestic Relationships Bill 1994**

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**TABLE OF PROVISIONS**

**Section**

**PART I—PRELIMINARY**

1. Short title
2. Commencement
3. Interpretation
4. Application of Act
5. Other relief or remedies not affected

**PART II—MEDIATION AND ARBITRATION**

6. Advice about facilities
7. Conciliation
8. Referral of matters for mediation or arbitration
9. Admissions made to mediators

**PART III—ADJUSTMENT OF PROPERTY INTERESTS  
AND MAINTENANCE**

*Division 1—Preliminary*

10. Institution of proceedings
11. Prerequisite for relief—residence etc.

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## TABLE OF PROVISIONS—continued

## Section

- 12. Prerequisite for relief—length of relationship etc.
- 13. Time limit for making applications
- 14. Court to end financial relations
  - Division 2—Adjustment of property interests*
- 15. Property orders
- 16. Deferment of order
- 17. Death of party—effect on proceedings
  - Division 3—Maintenance*
- 18. No general right to maintenance
- 19. Maintenance orders
- 20. Interim maintenance
- 21. Death of party—effect on application
- 22. Periodic maintenance orders—duration
- 23. Periodic maintenance orders—variation etc.
- 24. Periodic maintenance orders—cessation
  - Division 4—General*
- 25. Court orders etc.
- 26. Execution of instruments by order of a court
- 27. Urgent orders etc. in the absence of a party
- 28. Variation and setting aside of orders
- 29. Transactions to defeat claims
- 30. Interests of other parties
- PART IV—DOMESTIC RELATIONSHIP AGREEMENTS  
AND TERMINATION AGREEMENTS**
- 31. Interpretation
- 32. Validity of agreements
- 33. Effect of agreements in proceedings under Part III
- 34. Variation etc. of agreements
- 35. Revocation etc. of agreements
- 36. Death of party—effect on periodic maintenance under agreement
- 37. Death of party—transfer of property and lump sum payments under agreement
- PART V—MISCELLANEOUS**
- 38. Declarations—existence of domestic relationship
- 39. Annulment of declaration
- 40. Declarations—interests in property
- 41. Enforcement by Magistrates Court of certain Supreme Court orders
- 42. Regulations

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**Domestic Relationships Bill 1994**

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**A BILL**

**FOR**

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

The Legislative Assembly for the Australian Capital Territory enacts as follows:

**PART I—PRELIMINARY**

**Short title**

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

**Commencement**

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.
- 10       (2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.
- (3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which

this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

### Interpretation

3. (1) In this Act, unless the contrary intention appears—

5 “commencement day” means the day on which this Act (other than sections 1 and 2) commences;

“court” means the Supreme Court or the Magistrates Court;

10 “domestic relationship” means a personal relationship (other than a legal marriage) between 2 adults in which 1 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—

15 (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;

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

25 “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—

30 (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;

(b) property that, under a discretionary trust, may become vested in or used for the purposes of either or both of the parties;

(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;

5 “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—

10 (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

15 (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.

20 (2) For the purposes of the definition of “domestic relationship” in subsection (1)—

(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—

25 (i) for fee or reward;

(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.

30 (3) A reference in this Act to a party to a domestic relationship shall, unless the contrary intention appears, be read as including 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 shall be read as a reference to each of the following children:

35 (a) a child of whom the parties are the parents;

- (b) a child of whom the parties are presumed, by virtue of 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

(5) Where—

- (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;

10

the agreement shall be taken to be a domestic relationship agreement.

**Application of Act**

4. This Act does not apply in relation to—

15

- (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.

**Other relief or remedies not affected**

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5. 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 II—MEDIATION AND ARBITRATION**

**Advice about facilities**

6. (1) On request by—

25

- (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.

30

(2) In subsection (1)—

“Registrar” includes a Deputy Registrar.

### **Conciliation**

7. Where 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—

- 5 (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.

### **Referral of matters for mediation or arbitration**

10 8. (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.

### **Admissions made to mediators**

15 9. Evidence of anything said, or of any admission made, at a conference conducted by a mediator pursuant to a referral under subsection 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 Territory, or by consent of parties, to hear evidence.

## **PART III—ADJUSTMENT OF PROPERTY INTERESTS AND 20 MAINTENANCE**

### ***Division 1—Preliminary***

#### **Institution of proceedings**

10. (1) Subject to subsection (2), proceedings under this Act may be instituted in—

- 25 (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 where—

- 30 (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,
- 35 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*.

**Prerequisite for relief—residence etc.**

11. (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 Territory 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 Territory for at least one third of the period of their relationship; or

(ii) substantial contributions of the kind referred to in paragraph 15 (1) (b) or (c) have been made in the Territory by the applicant.

(2) Where 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 Territory.

**Prerequisite for relief—length of relationship etc.**

12. (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) Where 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 paragraph 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.



**Time limit for making applications**

13. (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.

- 5 (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.

**Court to end financial relations**

- 10 14. 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 2—Adjustment of property interests***

**Property orders**

- 15 15. (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;
- 20 (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;
- (c) the contributions (including any in the capacity of home-maker or parent) made by either of the parties to the welfare of the other or any child of the parties;
- 25 (d) the matters referred to in subsection 18 (2), as far as they are relevant; and
- (e) such other matters, if any, as the court considers relevant.

- 30 (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.

**Deferment of order**

- 35 16. Where 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.

**Death of party—effect on proceedings**

17. Where 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—Maintenance****10 No general right to maintenance**

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

**Maintenance orders**

15 19. (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—

- 20 (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
- 25 (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—
  - 30 (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.

35 (2) In exercising a power under subsection (1), a court shall have regard to—

- (a) the income, property and financial resources of each party;

- (b) the physical and mental capacity of each party for appropriate gainful employment;
- (c) the financial needs and obligations of each party;
- (d) the responsibilities of either party to support any other person;
- 5 (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, pursuant to an order of a court or otherwise, in respect of the maintenance of a child or children.

- 10 (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.

**Interim maintenance**

- 15 20. Where 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.

20 **Death of party—effect on application**

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

**Periodic maintenance orders—duration**

- 25 22. (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.

- 30 (2) An order for periodic maintenance in respect of a child, based solely on the ground specified in paragraph 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.

- 35 (3) An order for periodic maintenance based solely on the ground specified in paragraph 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 paragraphs 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.

**Periodic maintenance orders—variation etc.**

23. (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;
- (b) suspend the operation of the order, wholly or in part, for a specified period or until a specified time or event;
- (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 the purposes of paragraph (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 (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.

#### Periodic maintenance orders—cessation

- 10 24. (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 paragraph 18 (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.

15

#### Division 4—General

##### Court orders etc.

25. For the purposes of this Act but without limiting the generality of the other provisions of this Part, a court may—

- 20 (a) order the transfer of property;
- (b) order the sale of property and the distribution of the proceeds of sale in such proportions as it thinks fit;
- 25 (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;
- (d) order payment of a lump sum, whether in one amount or by instalments;
- (e) order payment of a periodic sum;
- 30 (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—
- 35 (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;
- (j) impose terms and conditions;
- (k) make an order by consent;
- 5 (m) make an order in the absence of a party; or
- (n) 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 considers is necessary to do justice.

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

##### **10 26. (1) Where—**

- (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;

15 the court may appoint an officer of the court or other person to execute the deed or instrument in the name of the first-mentioned 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.

20 (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.

#### **Urgent orders etc. in the absence of a party**

##### **27. (1) In a case of urgency, a court may—**

- 25 (a) make an order under section 20; or
- (b) make an order or grant an injunction referred to in paragraph 25 (h);

in the absence of a party.

30 (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 (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.

10 **Variation and setting aside of orders**

28. Where, 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—

15 (a) there has been a miscarriage of justice because of fraud, duress, suppression of evidence, the giving of false evidence or any other circumstance;

(b) in the circumstances that have arisen since the order was made, it is impracticable for the order, or a part of the order, to be carried out; or

20 (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.

25 **Transactions to defeat claims**

30 29. (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.

35 (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.

#### Interests of other parties

- 5        30. 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 IV—DOMESTIC RELATIONSHIP AGREEMENTS AND TERMINATION AGREEMENTS

#### 10 Interpretation

31. In this Part, unless the contrary intention appears—

“agreement” means a domestic relationship agreement or a termination agreement;

- 15        “solicitor” means a barrister and solicitor, as defined in the *Legal Practitioners Act 1970*, who practises, either on his or her own account or as a member of a partnership, as a solicitor or as both a barrister and solicitor.

#### Validity of agreements

- 20        32. (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;  
25 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.

#### Effect of agreements in proceedings under Part III

- 30        33. (1) In proceedings under Part III, where a court is satisfied that—

- (a) there is an agreement between the parties to a domestic relationship;  
(b) the agreement is in writing;



(c) the agreement is signed by the party against whom it is sought to be enforced;

5 (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:

- 10 (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

15 (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 III that would be inconsistent with the terms of the agreement.

20 (2) In proceedings under Part III, where a court is satisfied that there is an agreement between the parties to a domestic relationship, but is not satisfied as to any one or more of the matters referred to in paragraph (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.

#### **Variation etc. of agreements**

25 34. In proceedings under Part III, a court may vary or set aside all or any of the provisions of an agreement, notwithstanding that the matters referred to in paragraphs 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.

#### **Revocation etc. of agreements**

30 35. In proceedings under Part III, 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.

**Death of party—effect on periodic maintenance under agreement**

5       36. (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.

10       (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.

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

15       37. 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 V—MISCELLANEOUS****Declarations—existence of domestic relationship**

20       38. (1) A court may, on application or its own motion, 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.

25       (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.

**Annulment of declaration**

30       39. (1) A court may, by order, annul a declaration under section 38—

- 35       (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.

- 5 (3) Where 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.

**Declarations—interests in property**

- 10 40. (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.

- 15 (3) An order under this section is binding on the parties to a domestic relationship but not on any other person.

**Enforcement by Magistrates Court of certain Supreme Court orders**

- 20 41. The regulations may make provision in relation to the enforcement by the Magistrates Court of orders of the Supreme Court under this Act, being orders that could have been made by the Magistrates Court.

**Regulations**

42. The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- 25 (a) required or permitted by this Act to be prescribed; or  
(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.