

2008

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Family Law Amendment (De Facto  
Financial Matters and Other Measures)  
Bill 2008**

**No.     , 2008**

*(Attorney-General)*

**A Bill for an Act to amend the *Family Law Act*  
*1975*, and for related purposes**



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1     **A Bill for an Act to amend the *Family Law Act***  
2     ***1975, and for related purposes***

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act may be cited as the *Family Law Amendment (De Facto*  
6                     *Financial Matters and Other Measures) Act 2008*.

7     **2 Commencement**

8                     (1) Each provision of this Act specified in column 1 of the table  
9                     commences, or is taken to have commenced, in accordance with  
10                    column 2 of the table. Any other statement in column 2 has effect  
11                    according to its terms.  
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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 2, items 1 to 32	At the same time as the provision(s) covered by table item 2.	
4. Schedule 2, item 33	The later of: (a) the commencement of the provision(s) covered by table item 2; and (b) the commencement of the <i>First Home Saver Accounts Act 2008</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
5. Schedule 2, items 34 to 52	At the same time as the provision(s) covered by table item 2.	
6. Schedule 3	The day on which this Act receives the Royal Assent.	
7. Schedule 4, item 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
8. Schedule 4, item 2	Immediately after the commencement of section 330 of the <i>Proceeds of Crime Act 2002</i> .	1 January 2003

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Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.



1  
2 **Schedule 1—Amendments relating to de facto**  
3 **financial matters**

4 **Part 1—Amendments**

5 *Family Law Act 1975*

6 **1 Title**

7 Omit “**Children, and**”, substitute “**Children, and to financial matters**  
8 **arising out of the breakdown of de facto relationships and to**”.

9 **2 Subsection 4(1)**

10 Insert:

11 *breakdown:*

- 12 (a) in relation to a marriage, does not include a breakdown of the  
13 marriage by reason of death; and  
14 (b) in relation to a de facto relationship, does not include a  
15 breakdown of the relationship by reason of death.

16 **3 Subsection 4(1)**

17 Insert:

18 *de facto financial cause* means:

- 19 (a) proceedings between the parties to a de facto relationship  
20 with respect to the maintenance of one of them after the  
21 breakdown of their de facto relationship; or  
22 (b) proceedings between:  
23 (i) a party to a de facto relationship; and  
24 (ii) the bankruptcy trustee of a bankrupt party to the  
25 de facto relationship;  
26 with respect to the maintenance of the first-mentioned party  
27 after the breakdown of the de facto relationship; or  
28 (c) proceedings between the parties to a de facto relationship  
29 with respect to the distribution, after the breakdown of the  
30 de facto relationship, of the property of the parties or either  
31 of them; or  
32 (d) proceedings between:
-



- 1 (i) a party to a de facto relationship; and  
2 (ii) the bankruptcy trustee of a bankrupt party to the  
3 de facto relationship;  
4 with respect to the distribution, after the breakdown of the  
5 de facto relationship, of any vested bankruptcy property in  
6 relation to the bankrupt party; or  
7 (e) without limiting any of the preceding paragraphs,  
8 proceedings with respect to a Part VIIIAB financial  
9 agreement that are between any combination of:  
10 (i) the parties to that agreement; and  
11 (ii) the legal personal representatives of any of those parties  
12 who have died;  
13 (including a combination consisting solely of parties or  
14 consisting solely of representatives); or  
15 (f) third party proceedings (as defined in section 4B) to set aside  
16 a Part VIIIAB financial agreement; or  
17 (g) any other proceedings (including proceedings with respect to  
18 the enforcement of a decree or the service of process) in  
19 relation to concurrent, pending or completed proceedings of a  
20 kind referred to in any of the preceding paragraphs.

#### 21 **4 Subsection 4(1)**

22 Insert:

23 *de facto property settlement or maintenance proceedings* means  
24 proceedings with respect to:

- 25 (a) the property of the parties to a de facto relationship or of  
26 either of them; or  
27 (b) the vested bankruptcy property in relation to a bankrupt party  
28 to a de facto relationship; or  
29 (c) the maintenance of a party to a de facto relationship.

#### 30 **5 Subsection 4(1) (definition of *de facto relationship*)**

31 Repeal the definition, substitute:

32 *de facto relationship* has the meaning given by section 4AA.

#### 33 **6 Subsection 4(1)**

34 Insert:

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*distribute:*

- (a) in relation to:
  - (i) property, and financial resources, of the parties to a de facto relationship or either of them; or
  - (ii) vested bankruptcy property in relation to a bankrupt party to a de facto relationship;
- includes conferring rights or obligations in relation to the property or financial resources; and
- (b) in relation to a Part VIIIAB financial agreement, has a meaning affected by subsection 90UI(3).

11 **7 Subsection 4(1) (definition of *financial matters*)**

12 Repeal the definition, substitute:

13 *financial matters* means:

- 14 (a) in relation to the parties to a marriage—matters with respect  
15 to:
  - 16 (i) the maintenance of one of the parties; or
  - 17 (ii) the property of those parties or of either of them; or
  - 18 (iii) the maintenance of children of the marriage; or
- 19 (b) in relation to the parties to a de facto relationship—any or all  
20 of the following matters:
  - 21 (i) the maintenance of one of the parties;
  - 22 (ii) the distribution of the property of the parties or of either  
23 of them;
  - 24 (iii) the distribution of any other financial resources of the  
25 parties or of either of them.

26 **8 Subsection 4(1)**

27 Insert:

28 *non-referring State de facto financial law* means a law that:

- 29 (a) is a law of a State that is not a participating jurisdiction; and
- 30 (b) relates to financial matters relating to the parties to de facto  
31 relationships arising out of the breakdown of those de facto  
32 relationships.

33 **9 Subsection 4(1)**

34 Insert:

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1 *participating jurisdiction* has the meaning given by subsection  
2 90RA(1).

3 **10 Subsection 4(1)**

4 Insert:

5 *Part VIIIAB financial agreement* means an agreement:  
6 (a) made under section 90UB, 90UC or 90UD; or  
7 (b) covered by section 90UE.

8 **11 Subsection 4(1)**

9 Insert:

10 *Part VIIIAB proceedings* means:  
11 (a) proceedings under Part VIIIAB for orders with respect to:  
12 (i) the maintenance of a party to a de facto relationship; or  
13 (ii) the property of the parties to a de facto relationship or of  
14 either of them; or  
15 (b) proceedings in relation to a Part VIIIAB financial agreement;  
16 but does not include any proceedings specified in the regulations  
17 for the purposes of this definition.

18 **12 Subsection 4(1)**

19 Insert:

20 *Part VIIIAB termination agreement* means an agreement made  
21 under paragraph 90UL(1)(b).

22 **13 Subsection 4(1)**

23 Insert:

24 *party to a de facto relationship* means a person who lives or has  
25 lived in a de facto relationship.

26 **14 Subsection 4(1) (definition of *property*)**

27 Repeal the definition, substitute:

28 *property* means:  
29 (a) in relation to the parties to a marriage or either of them—  
30 means property to which those parties are, or that party is, as

- 1 the case may be, entitled, whether in possession or reversion;  
2 or  
3 (b) in relation to the parties to a de facto relationship or either of  
4 them—means property to which those parties are, or that  
5 party is, as the case may be, entitled, whether in possession  
6 or reversion.

7 **15 Subsection 4(1) (definition of *property settlement***  
8 ***proceedings*)**

9 Repeal the definition, substitute:

10 ***property settlement proceedings*** means:

- 11 (a) in relation to the parties to a marriage—proceedings with  
12 respect to:  
13 (i) the property of the parties or either of them; or  
14 (ii) the vested bankruptcy property in relation to a bankrupt  
15 party to the marriage; or  
16 (b) in relation to the parties to a de facto relationship—  
17 proceedings with respect to:  
18 (i) the property of the parties or either of them; or  
19 (ii) the vested bankruptcy property in relation to a bankrupt  
20 party to the de facto relationship.

21 **16 Subsection 4(1)**

22 Insert:

23 ***referring State*** has the meaning given by subsections 90RA(2),  
24 (3), (4) and (5).

25 **17 Subsection 4(1)**

26 Insert:

27 ***section 90RD declaration*** means a declaration under subsection  
28 90RD(1).

29 **18 Subsection 4(1) (definition of *spouse party*)**

30 Repeal the definition, substitute:

31 ***spouse party*** means:

- 1 (a) in relation to a financial agreement—a party to the agreement  
2 who is a party to the contemplated marriage, marriage or  
3 former marriage to which the agreement relates; or  
4 (b) in relation to a Part VIIIAB financial agreement—a party to  
5 the agreement who is a party to the contemplated de facto  
6 relationship or de facto relationship to which the agreement  
7 relates.

8 **19 Subsection 4(1) (definition of *third party*)**

9 Repeal the definition, substitute:

10 *third party*, in relation to a financial agreement or Part VIIIAB  
11 financial agreement, means a party to the agreement who is not a  
12 spouse party.

13 **20 After subsection 4(2)**

14 Insert:

- 15 (2A) A reference in this Act, the standard Rules of Court or the related  
16 Federal Magistrates Rules to a party to a de facto relationship  
17 includes a reference to a person who was a party to a de facto  
18 relationship that has broken down.

19 **21 After section 4**

20 Insert:

21 **4AA De facto relationships**

22 *Meaning of de facto relationship*

- 23 (1) A person is in a *de facto relationship* with another person if:  
24 (a) the persons are not legally married to each other; and  
25 (b) the persons are not related by family (see subsection (6)); and  
26 (c) having regard to all the circumstances of their relationship,  
27 they have a relationship as a couple living together on a  
28 genuine domestic basis.

29 Paragraph (c) has effect subject to subsection (5).

30 *Working out if persons have a relationship as a couple*

- 31 (2) Those circumstances may include any or all of the following:

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- 1 (a) the duration of the relationship;  
2 (b) the nature and extent of their common residence;  
3 (c) whether a sexual relationship exists;  
4 (d) the degree of financial dependence or interdependence, and  
5 any arrangements for financial support, between them;  
6 (e) the ownership, use and acquisition of their property;  
7 (f) the degree of mutual commitment to a shared life;  
8 (g) whether the relationship is or was registered under a  
9 prescribed law of a State or Territory as a prescribed kind of  
10 relationship;  
11 (h) the care and support of children;  
12 (i) the reputation and public aspects of the relationship.
- 13 (3) No particular finding in relation to any circumstance is to be  
14 regarded as necessary in deciding whether the persons have a  
15 de facto relationship.
- 16 (4) A court determining whether a de facto relationship exists is  
17 entitled to have regard to such matters, and to attach such weight to  
18 any matter, as may seem appropriate to the court in the  
19 circumstances of the case.
- 20 (5) For the purposes of this Act:  
21 (a) a de facto relationship can exist between 2 persons of  
22 different sexes and between 2 persons of the same sex; and  
23 (b) a de facto relationship can exist even if one of the persons is  
24 legally married to someone else or in another de facto  
25 relationship.

26 *When 2 persons are related by family*

- 27 (6) For the purposes of subsection (1), 2 persons are ***related by family***  
28 if:  
29 (a) one is the child (including an adopted child) of the other; or  
30 (b) one is another descendant of the other (even if the  
31 relationship between them is traced through an adoptive  
32 parent); or  
33 (c) they have a parent in common (who may be an adoptive  
34 parent of either or both of them).
- 35 For this purpose, disregard whether an adoption is declared void or  
36 has ceased to have effect.
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1 **22 After subsection 4A(1)**

2 Insert:

3 (1A) For the purposes of paragraph (eab) of the definition of  
4 ***matrimonial cause*** in subsection 4(1), ***third party proceedings*** also  
5 means proceedings between:

6 (a) any combination of:

7 (i) the parties to a financial agreement; and

8 (ii) the legal personal representatives of any of those parties  
9 who have died;

10 (including a combination consisting solely of parties or  
11 consisting solely of representatives); and

12 (b) either:

13 (i) another person who is a party to a de facto relationship  
14 with one of the spouse parties to the financial  
15 agreement; or

16 (ii) the legal personal representative of that other person if  
17 that person has died;

18 being proceedings for the setting aside of the financial agreement  
19 on the ground specified in paragraph 90K(1)(ab).

20 **23 After section 4A**

21 Insert:

22 **4B Third party proceedings to set aside Part VIIIAB financial**  
23 **agreement**

24 (1) For the purposes of paragraph (f) of the definition of ***de facto***  
25 ***financial cause*** in subsection 4(1), ***third party proceedings*** means  
26 proceedings between:

27 (a) any combination of:

28 (i) the parties to a Part VIIIAB financial agreement; and

29 (ii) the legal personal representatives of any of those parties  
30 who have died;

31 (including a combination consisting solely of parties or  
32 consisting solely of representatives); and

33 (b) any of the following:

34 (i) a creditor;

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**Part 1** Amendments

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- 1 (ii) if a creditor is an individual who has died—the legal  
2 personal representative of the creditor;
- 3 (iii) a government body acting in the interests of a creditor;  
4 being proceedings for the setting aside of the Part VIIIAB financial  
5 agreement on the ground specified in paragraph 90UM(1)(b).
- 6 (2) For the purposes of paragraph (f) of the definition of *de facto*  
7 *financial cause* in subsection 4(1), *third party proceedings* also  
8 means proceedings between:
- 9 (a) any combination of:
- 10 (i) the parties to a Part VIIIAB financial agreement; and  
11 (ii) the legal personal representatives of any of those parties  
12 who have died;
- 13 (including a combination consisting solely of parties or  
14 consisting solely of representatives); and
- 15 (b) either:
- 16 (i) another person who is a party to a de facto relationship  
17 with one of the spouse parties to the Part VIIIAB  
18 financial agreement; or  
19 (ii) the legal personal representative of that other person if  
20 that person has died;
- 21 being proceedings for the setting aside of the Part VIIIAB financial  
22 agreement on the ground specified in paragraph 90UM(1)(c).
- 23 (3) For the purposes of paragraph (f) of the definition of *de facto*  
24 *financial cause* in subsection 4(1), *third party proceedings* also  
25 means proceedings between:
- 26 (a) any combination of:
- 27 (i) the parties to a Part VIIIAB financial agreement; and  
28 (ii) the legal personal representatives of any of those parties  
29 who have died;
- 30 (including a combination consisting solely of parties or  
31 consisting solely of representatives); and
- 32 (b) either:
- 33 (i) another person who is a party to a marriage with one of  
34 the spouse parties to the Part VIIIAB financial  
35 agreement; or  
36 (ii) the legal personal representative of that other person if  
37 that person has died;
-



1 being proceedings for the setting aside of the Part VIIIAB financial  
2 agreement on the ground specified in paragraph 90UM(1)(d).

3 (4) In this section:

4 **creditor** means:

- 5 (a) a creditor of a party to the Part VIIIAB financial agreement;  
6 or  
7 (b) a person who, at the commencement of the proceedings,  
8 could reasonably have been foreseen by the court as being  
9 reasonably likely to become a creditor of a party to the  
10 Part VIIIAB financial agreement.

11 **government body** means:

- 12 (a) the Commonwealth, a State or a Territory; or  
13 (b) an official or authority of the Commonwealth, a State or a  
14 Territory.

#### 15 **24 Paragraph 10L(2)(a)**

16 After “Part VIII proceedings”, insert “, or Part VIIIAB proceedings  
17 (other than proceedings relating to a Part VIIIAB financial  
18 agreement)”.

#### 19 **25 Subparagraph 10L(2)(b)(i)**

20 After “Part VIIIA proceedings”, insert “Part VIIIAB proceedings”.

#### 21 **26 Subsection 13E(1)**

22 Omit all the words after “exercising”, substitute:

23 jurisdiction in:

- 24 (a) Part VIII proceedings; or  
25 (b) Part VIIIAB proceedings (other than proceedings relating to  
26 a Part VIIIAB financial agreement);  
27 may make an order referring the proceedings, or any part of them,  
28 or any matter arising in them, to an arbitrator for arbitration.

29 Note: The heading to section 13E is altered by inserting “**or Part VIIIAB proceedings**” after  
30 “**Part VIII proceedings**”.

#### 31 **27 At the end of paragraph 31(1)(a)**

32 Add “and”.

1 **28 After paragraph 31(1)(a)**

2 Insert:

3 (aa) matters arising under this Act in respect of which de facto  
4 financial causes are instituted under this Act; and

5 **29 At the end of paragraph 31(1)(b)**

6 Add “and”.

7 **30 Subparagraph 37A(1)(f)(i)**

8 Omit “or 77”, substitute “, 77 or 90SG”.

9 **31 Part V (heading)**

10 Repeal the heading, substitute:

11 **Part V—Jurisdiction of courts**

12 **32 Before section 39**

13 Insert:

14 **Division 1—Jurisdiction in matrimonial causes**

15 **33 After section 39**

16 Insert:

17 **Division 2—Jurisdiction in de facto financial causes**

18 **39A Instituting proceedings**

19 *Instituting proceedings under this Act*

20 (1) A de facto financial cause may be instituted under this Act in:

21 (a) the Family Court; or

22 (b) the Federal Magistrates Court; or

23 (c) the Supreme Court of the Northern Territory of Australia; or

24 (d) a court of summary jurisdiction of a participating jurisdiction.

25 (2) However:

26 (a) in the case of proceedings between the parties to the de facto  
27 relationship—either of those parties; or

---

- 1 (b) in any other case—at least one of the parties to the  
2 proceedings;  
3 must be an Australian citizen, ordinarily resident in Australia or  
4 present in Australia on the following day:  
5 (c) if the application instituting the proceedings is filed in a  
6 court—the day on which the application is so filed;  
7 (d) in any other case—the day on which the application  
8 instituting the proceedings is made.
- 9 (3) Subsection (2) does not apply in relation to proceedings referred to  
10 in paragraph (g) of the definition of *de facto financial cause* in  
11 subsection 4(1).
- 12 (4) Subsection (1) has effect subject to this Part.
- 13 *Proceedings only to be instituted under this Act*
- 14 (5) A de facto financial cause that may be instituted under this Act  
15 must not, after the commencement of this section, be instituted  
16 otherwise than under this Act.
- 17 (6) Subsection (5) has effect subject to subsection 90RC(5).

### 18 **39B Jurisdiction in de facto financial causes**

- 19 (1) Jurisdiction is conferred on:  
20 (a) the Family Court; and  
21 (b) the Federal Magistrates Court; and  
22 (c) the Supreme Court of the Northern Territory of Australia;  
23 and  
24 (d) each court of summary jurisdiction of each Territory;  
25 with respect to matters arising under this Act in respect of which  
26 de facto financial causes are instituted under this Act.
- 27 Note 1: The exercise of this jurisdiction by the Family Court is subject to  
28 section 40.
- 29 Note 2: The exercise of this jurisdiction by the Federal Magistrates Court is  
30 subject to section 40A.
- 31 Note 3: The exercise of this jurisdiction by a Territory court is subject to  
32 sections 39C, 39D, 39E and 39F.
- 33 (2) Each court of summary jurisdiction of each referring State is  
34 invested with federal jurisdiction with respect to matters arising

1 under this Act in respect of which de facto financial causes are  
2 instituted under this Act.

3 Note: The exercise of this jurisdiction by a State court is subject to  
4 sections 39D and 39E.

5 (3) This section has effect subject to this Part.

6 **39C Ceasing jurisdiction of Supreme Court of the Northern**  
7 **Territory of Australia**

8 (1) The Governor-General may, by Proclamation, fix a day as the day  
9 on and after which a de facto financial cause:

10 (a) may not be instituted in, or transferred to, the Supreme Court  
11 of the Northern Territory of Australia; or

12 (b) may be so instituted or transferred only where specified  
13 conditions are complied with.

14 (2) Without limiting the generality of subsection (1), a Proclamation  
15 under that subsection may be expressed to apply only in relation to  
16 one or more of the following:

17 (a) proceedings of specified classes;

18 (b) the institution of proceedings in, or the transfer of  
19 proceedings to, the Supreme Court of the Northern Territory  
20 of Australia.

21 (3) The Supreme Court of the Northern Territory of Australia must not  
22 hear and determine de facto financial causes otherwise than in  
23 accordance with any Proclamation in force under subsection (1).

24 **39D Ceasing jurisdiction of State or Territory courts of summary**  
25 **jurisdiction**

26 (1) The Governor-General may, by Proclamation, fix a day as the day  
27 on and after which a de facto financial cause may not be instituted  
28 in, or transferred to, a court of summary jurisdiction in a specified  
29 participating jurisdiction.

30 (2) Without limiting the generality of subsection (1), a Proclamation  
31 under that subsection may be expressed to apply only in relation to  
32 one or more of the following:

33 (a) proceedings of specified classes;

---

- 1 (b) the institution of proceedings in, or the transfer of  
2 proceedings to, a court of summary jurisdiction in a specified  
3 part of a participating jurisdiction;  
4 (c) the institution of proceedings in, or the transfer of  
5 proceedings to, a court of summary jurisdiction constituted in  
6 a specified way.
- 7 (3) A court of summary jurisdiction must not hear and determine  
8 de facto financial causes otherwise than in accordance with any  
9 Proclamation in force under subsection (1).

10 **39E Revoking Proclamations ceasing jurisdiction of State or**  
11 **Territory courts**

- 12 (1) The Governor-General may, by Proclamation, declare that a  
13 Proclamation under section 39C or 39D is revoked on and from a  
14 specified day.
- 15 (2) If, under subsection (1), the Governor-General declares that a  
16 Proclamation under section 39C or 39D is revoked:  
17 (a) this Part (including sections 39C and 39D) has effect as if the  
18 revoked Proclamation had not been made; but  
19 (b) the effect of the revoked Proclamation on the jurisdiction of  
20 courts before the specified day is not affected.

21 **39F Territory court does not have jurisdiction unless a party is**  
22 **ordinarily resident in the Territory**

23 A court of a Territory must not hear or determine a de facto  
24 financial cause unless at least one of the parties to the proceedings  
25 is ordinarily resident in the Territory when the proceedings are  
26 instituted or are transferred to the court.

27 **39G Jurisdiction in relation to transferred matters under other**  
28 **Commonwealth laws**

29 If proceedings in relation to a matter arising under a law of the  
30 Commonwealth are transferred under this Act to a court that has  
31 jurisdiction conferred on or invested in it by this Division, the  
32 jurisdiction so conferred on or invested in the court includes  
33 jurisdiction in relation to that matter.

1 **Division 3—Other provisions**

2 **34 Section 43**

3 Before “The”, insert “(1)”.

4 **35 At the end of section 43**

5 Add:

6 (2) Paragraph (1)(a) does not apply in relation to the exercise of  
7 jurisdiction conferred or invested by Division 2.

8 **36 At the end of section 44**

9 Add:

10 (5) Subject to subsection (6), a party to a de facto relationship may  
11 apply for:

12 (a) an order under section 90SE, 90SG or 90SM; or

13 (b) a declaration under section 90SL;

14 only if the application is made within the period of 2 years after the  
15 end of the de facto relationship (the *standard application period*).

16 (6) The court may grant the party leave to apply after the end of the  
17 standard application period if the court is satisfied that:

18 (a) hardship would be caused to the party or a child if leave were  
19 not granted; or

20 (b) in the case of an application for an order for the maintenance  
21 of the party—the party’s circumstances were, at the end the  
22 standard application period, such that he or she would have  
23 been unable to support himself or herself without an income  
24 tested pension, allowance or benefit.

25 **37 Subsection 45(1A)**

26 After “proceedings” (second occurring), insert “under this Act”.

27 **38 After subsection 45(1A)**

28 Insert:

29 (1B) For the purposes of subsection (1):

30 (a) a de facto financial cause instituted in relation to a de facto  
31 relationship; and

---

- 1 (b) proceedings relating to an application, by the bankruptcy  
2 trustee of one of the parties to the de facto relationship, under  
3 section 139A of the *Bankruptcy Act 1966* for an order under  
4 Division 4A of Part VI of that Act;  
5 are taken to be proceedings under this Act in relation to the same  
6 matter.
- 7 (1C) For the purposes of subsection (1), the first proceedings set out in  
8 each item of following table, and the second proceedings set out in  
9 that item, are taken to relate to the same matter if one of the parties  
10 to each marriage, void marriage or de facto relationship referred to  
11 in that item is the same.
- 12

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**Proceedings relating to the same matter**

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<b>Item</b>	<b>First proceedings</b>	<b>Second proceedings</b>
1	a matrimonial cause instituted in relation to a marriage (or void marriage)	a de facto financial cause instituted in relation to a de facto relationship
2	a de facto financial cause instituted in relation to a de facto relationship	a de facto financial cause instituted in relation to a de facto relationship

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13 **39 Subsection 69ZM(3)**

14 Repeal the subsection, substitute:

- 15 (3) This Division also applies to other proceedings between the parties  
16 that involve the court exercising jurisdiction under this Act if:  
17 (a) the proceedings:  
18 (i) arise from the breakdown of the parties' marital  
19 relationship; or  
20 (ii) are a de facto financial cause; and  
21 (b) the parties to the proceedings consent.

22 **40 At the end of paragraphs 75(2)(a), (b), (c), (d), (e), (f), (g),**  
23 **(h), (j), (k), (l), (m) and (n)**

24 Add "and".

25 **41 After paragraph 75(2)(n)**

26 Insert:

- 1 (naa) the terms of any order or declaration made, or proposed to be  
2 made, under Part VIIIAB in relation to:  
3 (i) a party to the marriage; or  
4 (ii) a person who is a party to a de facto relationship with a  
5 party to the marriage; or  
6 (iii) the property of a person covered by subparagraph (i)  
7 and of a person covered by subparagraph (ii), or of  
8 either of them; or  
9 (iv) vested bankruptcy property in relation to a person  
10 covered by subparagraph (i) or (ii); and

11 **42 Paragraph 75(2)(p)**

12 After “parties”, insert “to the marriage”.

13 **43 At the end of subsection 75(2)**

14 Add:

15 ; and (q) the terms of any Part VIIIAB financial agreement that is  
16 binding on a party to the marriage.

17 **44 Subsection 79(10)**

18 After “this section”, insert “by a party to a marriage (the *subject*  
19 *marriage*)”.

20 **45 After paragraph 79(10)(a)**

21 Insert:

22 (aa) a person:

- 23 (i) who is a party to a de facto relationship with a party to  
24 the subject marriage; and  
25 (ii) who could apply, or has an application pending, for an  
26 order under section 90SM, or a declaration under  
27 section 90SL, in relation to the de facto relationship;

28 (ab) a person who is a party to a binding Part VIIIAB financial  
29 agreement with a party to the subject marriage;

30 **46 After subsection 79(10A)**

31 Insert:



- 1 (10B) If a person becomes a party to proceedings under this section  
2 because of paragraph (10)(aa), the person may, in the proceedings,  
3 apply for:  
4 (a) an order under section 90SM; or  
5 (b) a declaration under section 90SL;  
6 in relation to the de facto relationship described in that paragraph.

7 **47 At the end of section 79F**

8 Add:

9 Note: The applicable Rules of Court may, for example, require notice to be  
10 given to persons referred to in subsection 79(10) whose interests could  
11 be affected by proceedings for an order under section 79.

12 **48 Subparagraph 83(2)(a)(i)**

13 After “changed”, insert “(including the person entering into a stable and  
14 continuing de facto relationship)”.

15 **49 After paragraph 90K(1)(aa)**

16 Insert:

- 17 (ab) a party (the *agreement party*) to the agreement entered into  
18 the agreement:  
19 (i) for the purpose, or for purposes that included the  
20 purpose, of defrauding another person who is a party to  
21 a de facto relationship with a spouse party; or  
22 (ii) for the purpose, or for purposes that included the  
23 purpose, of defeating the interests of that other person in  
24 relation to any possible or pending application for an  
25 order under section 90SM, or a declaration under  
26 section 90SL, in relation to the de facto relationship; or  
27 (iii) with reckless disregard of those interests of that other  
28 person; or

29 **50 After Part VIIIA**

30 Insert:

1 **Part VIIIAB—Financial matters relating to**  
2 **de facto relationships**

3 **Division 1—Preliminary**

4 **Subdivision A—Meaning of key terms**

5 **90RA Participating jurisdictions**

6 *Participating jurisdictions*

7 (1) For the purposes of this Act, the following are the *participating*  
8 *jurisdictions*:

- 9 (a) each referring State;  
10 (b) each Territory.

11 *Referring States*

12 (2) A State is a *referring State* if:

- 13 (a) the Parliament of the State has referred, or refers, to the  
14 Parliament of the Commonwealth financial matters relating  
15 to the parties to de facto relationships arising out of the  
16 breakdown of those de facto relationships; and  
17 (b) the referral of the financial matters is made:  
18 (i) for the purposes of paragraph 51(xxxvii) of the  
19 Constitution; and  
20 (ii) to the extent that the financial matters are not otherwise  
21 included in the legislative powers of the Parliament of  
22 the Commonwealth (otherwise than by a reference  
23 under paragraph 51(xxxvii) of the Constitution).

24 This subsection has effect subject to subsection (5).

25 (3) To avoid doubt, a State is not a *referring State* if its Parliament has  
26 referred, or refers, to the Parliament of the Commonwealth only a  
27 limited class of the matters referred to in paragraph (2)(a).

28 (4) A State is a *referring State* even if a law of the State provides that  
29 a reference to the Commonwealth Parliament described in  
30 subsection (2) is to terminate in particular circumstances.

- 1 (5) A State ceases to be a *referring State* if the State's reference to the  
2 Commonwealth Parliament described in subsection (2) terminates.

3 **90RB Meaning of *child of a de facto relationship***

- 4 (1) For the purposes of this Part, any of the following is a *child of a*  
5 *de facto relationship*:  
6 (a) a child of whom each of the parties to the de facto  
7 relationship are the parents;  
8 (b) a child adopted by the parties to the de facto relationship or  
9 by either of them with the consent of the other;  
10 (c) a child who under subsection 60H(1) is a child of the parties  
11 to the de facto relationship.

12 This subsection has effect subject to subsection (2).

13 Note: Subsection 60H(1) is given an extended application by subsection  
14 60H(4) and subsection (3) of this section.

- 15 (2) A child of a de facto relationship who is adopted by a person who,  
16 before the adoption, is not a prescribed adopting parent ceases to  
17 be a child of that de facto relationship for the purposes of this Part.  
18 (3) For the purposes of this section, subsection 60H(1) applies to  
19 parties to a de facto relationship who are of the same sex in a  
20 corresponding way to the way in which it applies to parties to a  
21 de facto relationship who are of different sexes.

22 **Subdivision B—Relationship with State and Territory laws**

23 **90RC Relationship with State and Territory laws**

24 *De facto financial provisions*

- 25 (1) In this section:

26 *de facto financial provisions* means the following provisions:

- 27 (a) this Part;  
28 (b) Part VIII AA (as applied by section 90TA);  
29 (c) Part VIII B, to the extent to which it relates to a  
30 superannuation interest to be allocated between the parties to  
31 a de facto relationship.

1                                    *State and Territory laws do not apply to financial matters*

2                    (2) Parliament intends that the de facto financial provisions are to  
3                    apply to the exclusion of any law of a State or Territory to the  
4                    extent that the law:

5                                    (a) deals with financial matters relating to the parties to de facto  
6                                    relationships arising out of the breakdown of those de facto  
7                                    relationships; and

8                                    (b) deals with those matters by referring expressly to de facto  
9                                    relationships (regardless of how the State or Territory law  
10                                    describes those relationships).

11                    Note 1:    If, for example, both this Part and a law of a non-referring State deal  
12                                    with the distribution of property between the parties to a de facto  
13                                    relationship that has broken down after the commencement of this  
14                                    section, then the parties can only seek to distribute the property under  
15                                    this Part. Subsection (2) has the effect of preventing the parties from  
16                                    seeking to distribute the property under the State law.

17                    Note 2:    For *de facto relationship*, see section 4AA.

18                                    *Exception—insufficient link to a participating jurisdiction or*  
19                                    *Division 2 not applicable because of section 90SB*

20                    (3) Despite subsection (2), Parliament does not intend that the de facto  
21                    financial provisions are to apply to the exclusion of a law of a State  
22                    in relation to a financial matter relating to the parties to a de facto  
23                    relationship arising out of the breakdown of the relationship if:

24                                    (a) a court cannot make an order under this Part in relation to  
25                                    that financial matter because of section 90SB, 90SD or  
26                                    90SK; and

27                                    (b) there is no binding Part VIIIAB financial agreement dealing  
28                                    with that financial matter.

29                    Example 1: Abbey and Bob are parties to a de facto relationship that has broken  
30                                    down, and have never been ordinarily resident in a participating  
31                                    jurisdiction. Subsection (3) has the effect that State law will govern  
32                                    financial matters arising out of the breakdown of their relationship.

33                    Example 2: Cleo and Dan are parties to a de facto relationship that has broken  
34                                    down after the commencement of this section. Early in their  
35                                    relationship, they made a financial agreement under the law of a  
36                                    non-referring State, but later spent most of their relationship in a  
37                                    participating jurisdiction. Cleo and Dan now have a sufficient  
38                                    geographical link with a participating jurisdiction for either of them to  
39                                    apply for an order under this Part in relation to financial matters  
40                                    arising out of the breakdown of their relationship. This means that  
41                                    subsection (3) will not apply and that their financial agreement will

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1 not be enforceable under State law because of subsection (2).  
2 However, their financial agreement will be enforceable under this Part  
3 as a Part VIIIAB financial agreement (see section 90UE).

4 *Exception—laws facilitating this Act*

5 (4) Despite subsection (2), Parliament does not intend that the de facto  
6 financial provisions are to apply to the exclusion of a law of a State  
7 or Territory to the extent that the law facilitates the operation of  
8 this Act.

9 Note: This Part is not intended to apply to the exclusion of, for example, a  
10 State law that deals with superannuation entitlements by  
11 acknowledging superannuation splitting under Part VIIIIB of this Act.

12 *Exception—prescribed State or Territory laws*

13 (5) Despite subsection (2), Parliament does not intend that the de facto  
14 financial provisions are to apply to the exclusion of a law of a State  
15 or Territory if the law is prescribed in regulations made for the  
16 purposes of this subsection.

17 **Subdivision C—Declarations about existence of de facto**  
18 **relationships**

19 **90RD Declarations about existence of de facto relationships**

20 (1) If:

21 (a) an application is made for an order under section 90SE, 90SG  
22 or 90SM, or a declaration under section 90SL; and

23 (b) a claim is made, in support of the application, that a de facto  
24 relationship existed between the applicant and another  
25 person;

26 the court may, for the purposes of those proceedings (the *primary*  
27 *proceedings*), declare that a de facto relationship existed, or never  
28 existed, between those 2 persons.

29 (2) A declaration under subsection (1) of the existence of a de facto  
30 relationship may also declare any or all of the following:

31 (a) the period, or periods, of the de facto relationship for the  
32 purposes of paragraph 90SB(a);

33 (b) whether there is a child of the de facto relationship;

- 1 (c) whether one of the parties to the de facto relationship made  
2 substantial contributions of a kind mentioned in paragraph  
3 90SM(4)(a), (b) or (c);  
4 (d) when the de facto relationship ended;  
5 (e) where each of the parties to the de facto relationship was  
6 ordinarily resident during the de facto relationship.

7 Note: For *child of a de facto relationship*, see section 90RB.

8 **90RE Effect of declarations**

- 9 (1) A section 90RD declaration has effect as a judgment of the court.  
10 (2) For the purposes of this Act (other than Part VII), a section 90RD  
11 declaration has effect according to its terms.

12 **90RF Applying for declarations**

13 Any party to the primary proceedings may apply for a  
14 section 90RD declaration.

15 **90RG Geographical requirement**

16 A court may make a section 90RD declaration only if the court is  
17 satisfied that a person referred to in paragraph 90RD(1)(b), or both  
18 of those persons, were ordinarily resident in a participating  
19 jurisdiction when the primary proceedings commenced.

20 **90RH Setting aside declarations**

- 21 (1) If, in the primary proceedings, a person (the *affected person*)  
22 affected by a section 90RD declaration made in those proceedings  
23 applies under this subsection, and the court is satisfied that:  
24 (a) a fact or circumstance has arisen that has not previously been  
25 disclosed to the court; and  
26 (b) if the affected person was a party to the primary proceedings  
27 at the time the application for the declaration was made—the  
28 fact or circumstance was not within the affected person's  
29 knowledge at that time;  
30 the court may do any of the following:  
31 (c) vary the declaration;  
32 (d) set the declaration aside;
-

- 1 (e) set the declaration aside and make another section 90RD  
2 declaration in substitution for the declaration so set aside.
- 3 (2) The setting aside of a declaration does not affect anything done in  
4 reliance on the declaration while it remained in force.
- 5 (3) If the court sets aside a section 90RD declaration, the court may,  
6 on application by the affected person or any other interested  
7 person, make such order or orders (including an order for the  
8 transfer of property) as it considers just and equitable for the  
9 purpose of placing as far as practicable any person affected by the  
10 setting aside of the declaration in the same position as that person  
11 would have been in if the declaration had not been made.

12 **Division 2—Maintenance, declarations of property**  
13 **interests and alterations of property interests**

14 **Subdivision A—Application of Division**

15 **90SA This Division does not apply to certain matters covered by**  
16 **binding financial agreements**

- 17 (1) This Division does not apply to any of the following matters to  
18 which a binding Part VIIIAB financial agreement applies:  
19 (a) the maintenance of one of the spouse parties;  
20 (b) the property of the spouse parties or of either of them;  
21 (c) the financial resources of the spouse parties or of either of  
22 them.
- 23 (2) Subsection (1) does not apply in relation to:  
24 (a) proceedings between:  
25 (i) a party to a de facto relationship; and  
26 (ii) the bankruptcy trustee of a bankrupt party to the  
27 de facto relationship;  
28 with respect to the maintenance of the first-mentioned party  
29 after the breakdown of the de facto relationship; or  
30 (b) proceedings between:  
31 (i) a party to a de facto relationship; and  
32 (ii) the bankruptcy trustee of a bankrupt party to the  
33 de facto relationship;

1 with respect to the distribution, after the breakdown of the  
2 de facto relationship, of any vested bankruptcy property in  
3 relation to the bankrupt party.

4 (3) Despite subsection (1), a party to a de facto relationship is not  
5 prevented from bringing property settlement proceedings under  
6 this Part if a Part VIIIAB financial agreement is not binding on that  
7 party.

8 Example: Before Amy and Ben's de facto relationship breaks down, Ben and  
9 Cathy make a Part VIIIAB financial agreement. Ben and Cathy's  
10 Part VIIIAB financial agreement does not prevent Amy from bringing  
11 property settlement proceedings against Ben.

### 12 **90SB When this Division applies—length of relationship etc.**

13 A court may make an order under section 90SE, 90SG or 90SM, or  
14 a declaration under section 90SL, in relation to a de facto  
15 relationship only if the court is satisfied:

- 16 (a) that the period, or the total of the periods, of the de facto  
17 relationship is at least 2 years; or  
18 (b) that there is a child of the de facto relationship; or  
19 (c) that:  
20 (i) the party to the de facto relationship who applies for the  
21 order or declaration made substantial contributions of a  
22 kind mentioned in paragraph 90SM(4)(a), (b) or (c); and  
23 (ii) a failure to make the order or declaration would result in  
24 serious injustice to the applicant; or  
25 (d) that the relationship is or was registered under a prescribed  
26 law of a State or Territory.

27 Note: For *child of a de facto relationship*, see section 90RB.

### 28 **90SC This Division ceases to apply in relation to a de facto** 29 **relationship if the parties marry each other**

- 30 (1) This Division (other than subsections 90SJ(2) to (5)) ceases to  
31 apply in relation to a de facto relationship if the parties to the  
32 de facto relationship later marry each other.
- 33 (2) Despite subsection (1), a declaration, order or injunction:  
34 (a) made in property settlement proceedings under this Division  
35 in relation to the de facto relationship; and



1 (b) in force when the parties marry each other;  
2 may, after the marriage, be enforced, varied or set aside in  
3 accordance with this Act.

4 (3) If a declaration, order or injunction is set aside as described in  
5 subsection (2), another declaration, order or injunction may be  
6 made under this Division in substitution for that declaration, order  
7 or injunction.

8 **Subdivision B—Maintenance**

9 **90SD Geographical requirement**

10 (1) A court may make an order under section 90SE or 90SG in relation  
11 to a de facto relationship only if the court is satisfied:

12 (a) that either or both of the parties to the de facto relationship  
13 were ordinarily resident in a participating jurisdiction when  
14 the application for the order was made (the *application time*);  
15 and

16 (b) that either:

17 (i) both parties to the de facto relationship were ordinarily  
18 resident during at least a third of the de facto  
19 relationship; or

20 (ii) the applicant for the order made substantial  
21 contributions, in relation to the de facto relationship, of  
22 a kind mentioned in paragraph 90SM(4)(a), (b) or (c);  
23 in one or more States or Territories that are participating  
24 jurisdictions at the application time.

25 (2) For the purposes of paragraph (1)(b), a State need not have been a  
26 participating jurisdiction during the de facto relationship.

27 (3) If each State is a referring State, the Governor-General may, by  
28 Proclamation, fix a day as the day on which paragraph (1)(b)  
29 ceases to apply in relation to new applications.

30 Note: Paragraph (1)(b) will continue to apply in relation to applications  
31 made before the proclaimed day.

32 (4) If:

33 (a) a Proclamation under subsection (3) is in force; and

34 (b) a State ceases to be a referring State on a particular day;

1 the Proclamation is revoked by force of this subsection on and  
2 from that day.

3 (5) If, under subsection (4), a Proclamation under subsection (3) is  
4 revoked:

5 (a) this section has effect as if the revoked Proclamation had not  
6 been made; but

7 (b) the effect of the revoked Proclamation on applications made  
8 before the specified day is not affected.

9 **90SE Power of court in maintenance proceedings**

10 (1) After the breakdown of a de facto relationship, a court may make  
11 such order as it considers proper for the maintenance of one of the  
12 parties to the de facto relationship in accordance with this Division.

13 Note 1: The geographical requirement in section 90SD must be satisfied.

14 Note 2: The court must be satisfied of at least one of the matters in  
15 section 90SB.

16 (2) If:

17 (a) an application is made for an order under this section in  
18 proceedings between the parties to a de facto relationship  
19 with respect to the maintenance of a party to the de facto  
20 relationship; and

21 (b) either of the following subparagraphs apply to a party to the  
22 de facto relationship:

23 (i) when the application was made, the party was a  
24 bankrupt; and

25 (ii) after the application was made but before the  
26 proceedings are finally determined, the party became a  
27 bankrupt; and

28 (c) the bankruptcy trustee applies to the court to be joined as a  
29 party to the proceedings; and

30 (d) the court is satisfied that the interests of the bankrupt's  
31 creditors may be affected by the making of an order under  
32 this section in the proceedings;

33 the court must join the bankruptcy trustee as a party to the  
34 proceedings.

35 (3) If, under subsection (2), a bankruptcy trustee is a party to  
36 proceedings with respect to the maintenance of a party to a de facto

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- 1 relationship, then, except with the leave of the court, the bankrupt  
2 party to the de facto relationship is not entitled to make a  
3 submission to the court in connection with any vested bankruptcy  
4 property in relation to the bankrupt party.
- 5 (4) The court must not grant leave under subsection (3) unless the  
6 court is satisfied that there are exceptional circumstances.
- 7 (5) If:
- 8 (a) an application is made for an order under this section in  
9 proceedings between the parties to a de facto relationship  
10 with respect to the maintenance of a party to the de facto  
11 relationship; and
- 12 (b) either of the following subparagraphs apply to a party to the  
13 de facto relationship (the *debtor party*):
- 14 (i) when the application was made, the debtor party was a  
15 debtor subject to a personal insolvency agreement;
- 16 (ii) after the application was made but before it is finally  
17 determined, the debtor party becomes a debtor subject  
18 to a personal insolvency agreement; and
- 19 (c) the trustee of the agreement applies to the court to be joined  
20 as a party to the proceedings; and
- 21 (d) the court is satisfied that the interests of the debtor party's  
22 creditors may be affected by the making of an order under  
23 this section in the proceedings;
- 24 the court must join the trustee of the agreement as a party to the  
25 proceedings.
- 26 (6) If, under subsection (5), the trustee of a personal insolvency  
27 agreement is a party to proceedings with respect to the  
28 maintenance of a party to a de facto relationship, then, except with  
29 the leave of the court, the debtor party is not entitled to make a  
30 submission to the court in connection with any property subject to  
31 the agreement.
- 32 (7) The court must not grant leave under subsection (6) unless the  
33 court is satisfied that there are exceptional circumstances.
- 34 (8) For the purposes of subsections (2) and (5), an application for an  
35 order under this section is taken to be finally determined when:
- 36 (a) the application is withdrawn or dismissed; or

- 1 (b) an order (other than an interim order) is made as a result of  
2 the application.

3 **90SF Matters to be taken into consideration in relation to**  
4 **maintenance**

- 5 (1) In exercising jurisdiction under section 90SE (after being satisfied  
6 of the matters in subsections 44(5) and (6) and sections 90SB and  
7 90SD), the court must apply the principle that a party to a de facto  
8 relationship must maintain the other party to the de facto  
9 relationship:  
10 (a) only to the extent that the first-mentioned party is reasonably  
11 able to do so; and  
12 (b) only if the second-mentioned party is unable to support  
13 himself or herself adequately whether:  
14 (i) by reason of having the care and control of a child of the  
15 de facto relationship who has not attained the age of 18  
16 years; or  
17 (ii) by reason of age or physical or mental incapacity for  
18 appropriate gainful employment; or  
19 (iii) for any other adequate reason.

20 Note: For *child of a de facto relationship*, see section 90RB.

- 21 (2) In applying this principle, the court must take into account only the  
22 matters referred to in subsection (3).  
23 (3) The matters to be so taken into account are:  
24 (a) the age and state of health of each of the parties to the  
25 de facto relationship (the *subject de facto relationship*); and  
26 (b) the income, property and financial resources of each of the  
27 parties and the physical and mental capacity of each of them  
28 for appropriate gainful employment; and  
29 (c) whether either party has the care or control of a child of the  
30 de facto relationship who has not attained the age of 18 years;  
31 and  
32 (d) commitments of each of the parties that are necessary to  
33 enable the party to support:  
34 (i) himself or herself; and  
35 (ii) a child or another person that the party has a duty to  
36 maintain; and

- 1 (e) the responsibilities of either party to support any other  
2 person; and
- 3 (f) subject to subsection (4), the eligibility of either party for a  
4 pension, allowance or benefit under:
- 5 (i) any law of the Commonwealth, of a State or Territory or  
6 of another country; or
- 7 (ii) any superannuation fund or scheme, whether the fund or  
8 scheme was established, or operates, within or outside  
9 Australia;
- 10 and the rate of any such pension, allowance or benefit being  
11 paid to either party; and
- 12 (g) a standard of living that in all the circumstances is  
13 reasonable; and
- 14 (h) the extent to which the payment of maintenance to the party  
15 whose maintenance is under consideration would increase the  
16 earning capacity of that party by enabling that party to  
17 undertake a course of education or training or to establish  
18 himself or herself in a business or otherwise to obtain an  
19 adequate income; and
- 20 (i) the effect of any proposed order on the ability of a creditor of  
21 a party to recover the creditor's debt, so far as that effect is  
22 relevant; and
- 23 (j) the extent to which the party whose maintenance is under  
24 consideration has contributed to the income, earning  
25 capacity, property and financial resources of the other party;  
26 and
- 27 (k) the duration of the de facto relationship and the extent to  
28 which it has affected the earning capacity of the party whose  
29 maintenance is under consideration; and
- 30 (l) the need to protect a party who wishes to continue that  
31 party's role as a parent; and
- 32 (m) if either party is cohabiting with another person—the  
33 financial circumstances relating to the cohabitation; and
- 34 (n) the terms of any order made or proposed to be made under  
35 section 90SM in relation to:
- 36 (i) the property of the parties; or  
37 (ii) vested bankruptcy property in relation to a bankrupt  
38 party; and

**Schedule 1** Amendments relating to de facto financial matters

**Part 1** Amendments

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- 1 (o) the terms of any order or declaration made, or proposed to be  
2 made, under this Part in relation to:
- 3 (i) a party to the subject de facto relationship (in relation to  
4 another de facto relationship); or
- 5 (ii) a person who is a party to another de facto relationship  
6 with a party to the subject de facto relationship; or
- 7 (iii) the property of a person covered by subparagraph (i)  
8 and of a person covered by subparagraph (ii), or of  
9 either of them; or
- 10 (iv) vested bankruptcy property in relation to a person  
11 covered by subparagraph (i) or (ii); and
- 12 (p) the terms of any order or declaration made, or proposed to be  
13 made, under Part VIII in relation to:
- 14 (i) a party to the subject de facto relationship; or
- 15 (ii) a person who is a party to a marriage with a party to the  
16 subject de facto relationship; or
- 17 (iii) the property of a person covered by subparagraph (i)  
18 and of a person covered by subparagraph (ii), or of  
19 either of them; or
- 20 (iv) vested bankruptcy property in relation to a person  
21 covered by subparagraph (i) or (ii); and
- 22 (q) any child support under the *Child Support (Assessment) Act*  
23 *1989* that a party to the subject de facto relationship has  
24 provided, is to provide, or might be liable to provide in the  
25 future, for a child of the subject de facto relationship; and
- 26 (r) any fact or circumstance which, in the opinion of the court,  
27 the justice of the case requires to be taken into account; and
- 28 (s) the terms of any Part VIIIAB financial agreement that is  
29 binding on either or both of the parties to the subject de facto  
30 relationship; and
- 31 (t) the terms of any financial agreement that is binding on a  
32 party to the subject de facto relationship.
- 33 (4) In exercising its jurisdiction under section 90SE, a court must  
34 disregard any entitlement of the party whose maintenance is under  
35 consideration to an income tested pension, allowance or benefit.

1 **90SG Urgent maintenance cases**

2 If, in proceedings with respect to the maintenance of a party to a  
3 de facto relationship in accordance with this Division, it appears to  
4 the court that:

- 5 (a) the party is in immediate need of financial assistance; and  
6 (b) it is not practicable in the circumstances to determine  
7 immediately what order, if any, should be made;

8 the court may order the payment, pending the disposal of the  
9 proceedings, of such periodic sum or other sums as the court  
10 considers reasonable.

11 Note 1: The geographical requirement in section 90SD must be satisfied.

12 Note 2: The court must be satisfied of at least one of the matters in  
13 section 90SB.

14 **90SH Specification in orders of payments etc. for maintenance**  
15 **purposes**

16 (1) If:

- 17 (a) a court makes an order under this Act (whether or not the  
18 order is made in proceedings in relation to the maintenance  
19 of a party to a de facto relationship in accordance with this  
20 Division, is made by consent or varies an earlier order), and  
21 the order has the effect of requiring:  
22 (i) payment of a lump sum, whether in one amount or by  
23 instalments; or  
24 (ii) the transfer or settlement of property; and  
25 (b) the purpose, or one of the purposes, of the payment, transfer  
26 or settlement is to make provision for the maintenance of a  
27 party to a de facto relationship in relation to the breakdown  
28 of the de facto relationship;

29 the court must:

- 30 (c) express the order to be an order to which this section applies;  
31 and  
32 (d) specify the portion of the payment, or the value of the portion  
33 of the property, attributable to the maintenance of the party.

34 (2) If:

- 35 (a) a court makes an order of a kind referred to in  
36 paragraph (1)(a); and

- 1 (b) the order:  
2 (i) is not expressed to be an order to which this section  
3 applies; or  
4 (ii) is expressed to be an order to which this section applies,  
5 but does not comply with paragraph (1)(d);  
6 any payment, transfer or settlement of a kind referred to in  
7 paragraph (1)(a), that the order has the effect of requiring, must be  
8 taken not to make provision for the maintenance of a party to the  
9 relevant de facto relationship.

10 **90SI Modification of maintenance orders**

- 11 (1) If there is in force an order with respect to the maintenance of a  
12 party to a de facto relationship in accordance with this Division:  
13 (a) made by the court; or  
14 (b) made by another court and registered in the first-mentioned  
15 court in accordance with the applicable Rules of Court;  
16 the court may:  
17 (c) discharge the order if there is any just cause for so doing; or  
18 (d) suspend its operation wholly or in part and either until further  
19 order or until a fixed time or the happening of some future  
20 event; or  
21 (e) revive wholly or in part an order suspended under  
22 paragraph (d); or  
23 (f) subject to subsection (3), vary the order so as to increase or  
24 decrease any amount ordered to be paid or in any other  
25 manner.
- 26 (2) The court's jurisdiction under subsection (1) may be exercised:  
27 (a) in any case—in proceedings with respect to the maintenance  
28 of a party to the de facto relationship in accordance with this  
29 Division; or  
30 (b) if there is a bankrupt party to the de facto relationship—on  
31 the application of the bankruptcy trustee; or  
32 (c) if a party to the de facto relationship is a debtor subject to a  
33 personal insolvency agreement—on the application of the  
34 trustee of the agreement.
- 35 (3) The court must not make an order increasing or decreasing an  
36 amount ordered to be paid by an order unless it is satisfied:
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- 1 (a) that, since the order was made or last varied:
- 2 (i) the circumstances of a person for whose benefit the
- 3 order was made have so changed (including the person
- 4 entering into a stable and continuing de facto
- 5 relationship); or
- 6 (ii) the circumstances of the person liable to make payments
- 7 under the order have so changed; or
- 8 (iii) in the case of an order that operates in favour of, or is
- 9 binding on, a legal personal representative—the
- 10 circumstances of the estate are such;
- 11 as to justify its so doing; or
- 12 (b) that, since the order was made, or last varied, the cost of
- 13 living has changed to such an extent as to justify its so doing;
- 14 or
- 15 (c) in a case where the order was made by consent—that the
- 16 amount ordered to be paid is not proper or adequate; or
- 17 (d) that:
- 18 (i) material facts were withheld from the court that made
- 19 the order, or from a court that varied the order; or
- 20 (ii) material evidence previously given before such a court
- 21 was false.
- 22 (4) In satisfying itself for the purposes of paragraph (3)(b), the court
- 23 must have regard to any changes that have occurred in the
- 24 Consumer Price Index published by the Australian Statistician.
- 25 (5) The court must not, in considering the variation of an order, have
- 26 regard to a change in the cost of living unless at least 12 months
- 27 have elapsed since the order was made or was last varied having
- 28 regard to a change in the cost of living.
- 29 (6) In satisfying itself for the purposes of paragraph (3)(c), the court
- 30 must have regard to any payments, and any transfer or settlement
- 31 of property, previously made by a party to the de facto relationship,
- 32 or by the bankruptcy trustee of a party to the de facto relationship,
- 33 to:
- 34 (a) the other party; or
- 35 (b) any other person for the benefit of the other party.

- 1 (7) An order decreasing the amount of a periodic sum payable under  
2 an order or discharging an order may be expressed to be  
3 retrospective to such date as the court considers appropriate.
- 4 (8) If, as provided by subsection (7), an order decreasing the amount  
5 of a periodic sum payable under an order is expressed to be  
6 retrospective to a specified date, any money paid under the  
7 second-mentioned order since the specified date, being money that  
8 would not have been required to be paid under the  
9 second-mentioned order as varied by the first-mentioned order,  
10 may be recovered in a court having jurisdiction under this Act.
- 11 (9) If, as provided by subsection (7), an order discharging an order is  
12 expressed to be retrospective to a specified date, any money paid  
13 under the second-mentioned order since the specified date may be  
14 recovered in a court having jurisdiction under this Act.
- 15 (10) For the purposes of this section, the court must have regard to the  
16 provisions of section 90SF.
- 17 (11) The discharge of an order does not affect the recovery of arrears  
18 due under the order at the time as at which the discharge takes  
19 effect.

20 **90SJ Cessation of maintenance orders**

- 21 (1) An order with respect to the maintenance of a party to a de facto  
22 relationship in accordance with this Division ceases to have effect  
23 upon:  
24 (a) the death of the party; or  
25 (b) the death of the person liable to make payments under the  
26 order.
- 27 (2) An order with respect to the maintenance of a party to a de facto  
28 relationship in accordance with this Division ceases to have effect  
29 upon the marriage of the party unless in special circumstances a  
30 court having jurisdiction under this Act otherwise orders.
- 31 (3) If a marriage referred to in subsection (2) takes place, it is the duty  
32 of the person for whose benefit the order was made to inform  
33 without delay the person liable to make payments under the order  
34 of the date of the marriage.

1 (4) Any money paid in respect of a period after the event referred to in  
2 subsection (2) may be recovered in a court having jurisdiction  
3 under this Act.

4 (5) Nothing in this section affects the recovery of arrears due under an  
5 order at the time when the order ceased to have effect.

6 **Subdivision C—Declarations and alterations of property**  
7 **interests**

8 **90SK Geographical requirement**

9 (1) A court may make a declaration under section 90SL, or an order  
10 under section 90SM, in relation to a de facto relationship only if  
11 the court is satisfied:

12 (a) that either or both of parties to the de facto relationship were  
13 ordinarily resident in a participating jurisdiction when the  
14 application for the declaration or order was made (the  
15 **application time**); and

16 (b) that either:

17 (i) both parties to the de facto relationship were ordinarily  
18 resident during at least a third of the de facto  
19 relationship; or

20 (ii) the applicant for the declaration or order made  
21 substantial contributions in relation to the de facto  
22 relationship, of a kind mentioned in paragraph  
23 90SM(4)(a), (b) or (c);

24 in one or more States or Territories that are participating  
25 jurisdictions at the application time.

26 (2) For the purposes of paragraph (1)(b), a State need not have been a  
27 participating jurisdiction during the de facto relationship.

28 (3) If each State is a referring State, the Governor-General may, by  
29 Proclamation, fix a day as the day on which paragraph (1)(b)  
30 ceases to apply in relation to new applications.

31 Note: Paragraph (1)(b) will continue to apply in relation to applications  
32 made before the proclaimed day.

33 (4) If:

34 (a) a Proclamation under subsection (3) is in force; and

35 (b) a State ceases to be a referring State on a particular day;

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1 the Proclamation is revoked by force of this subsection on and  
2 from that day.

3 (5) If, under subsection (4), a Proclamation under subsection (3) is  
4 revoked:

5 (a) this section has effect as if the revoked Proclamation had not  
6 been made; but

7 (b) the effect of the revoked Proclamation on applications made  
8 before the specified day is not affected.

9 **90SL Declaration of interests in property**

10 (1) In proceedings between the parties to a de facto relationship:

11 (a) after the breakdown of the de facto relationship; and

12 (b) with respect to existing title or rights in respect of property;  
13 the court may declare the title or rights, if any, that a party has in  
14 respect of the property.

15 Note 1: The geographical requirement in section 90SK must be satisfied.

16 Note 2: The court must be satisfied of at least one of the matters in  
17 section 90SB.

18 (2) If a court makes a declaration under subsection (1), it may make  
19 consequential orders to give effect to the declaration, including  
20 orders as to sale or partition and interim or permanent orders as to  
21 possession.

22 **90SM Alteration of property interests**

23 (1) In property settlement proceedings after the breakdown of a  
24 de facto relationship, the court may make such order as it considers  
25 appropriate:

26 (a) in the case of proceedings with respect to the property of the  
27 parties to the de facto relationship or either of them—altering  
28 the interests of the parties to the de facto relationship in the  
29 property; or

30 (b) in the case of proceedings with respect to the vested  
31 bankruptcy property in relation to a bankrupt party to the  
32 de facto relationship—altering the interests of the bankruptcy  
33 trustee in the vested bankruptcy property;

34 including:

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- 1 (c) an order for a settlement of property in substitution for any  
2 interest in the property; and  
3 (d) an order requiring:  
4 (i) either or both of the parties to the de facto relationship;  
5 or  
6 (ii) the relevant bankruptcy trustee (if any);  
7 to make, for the benefit of either or both of the parties to the  
8 de facto relationship or a child of the de facto relationship,  
9 such settlement or transfer of property as the court  
10 determines.

11 Note 1: The geographical requirement in section 90SK must be satisfied.

12 Note 2: The court must be satisfied of at least one of the matters in  
13 section 90SB.

14 Note 3: For *child of a de facto relationship*, see section 90RB.

- 15 (2) If a party to the de facto relationship dies after the breakdown of  
16 the de facto relationship, an order made under subsection (1) in  
17 property settlement proceedings may be enforced on behalf of, or  
18 against, as the case may be, the estate of the deceased party.
- 19 (3) The court must not make an order under this section unless it is  
20 satisfied that, in all the circumstances, it is just and equitable to  
21 make the order.
- 22 (4) In considering what order (if any) should be made under this  
23 section in property settlement proceedings, the court must take into  
24 account:  
25 (a) the financial contribution made directly or indirectly by or on  
26 behalf of a party to the de facto relationship, or a child of the  
27 de facto relationship:  
28 (i) to the acquisition, conservation or improvement of any  
29 of the property of the parties to the de facto relationship  
30 or either of them; or  
31 (ii) otherwise in relation to any of that last-mentioned  
32 property;  
33 whether or not that last-mentioned property has, since the  
34 making of the contribution, ceased to be the property of the  
35 parties to the de facto relationship or either of them; and  
36 (b) the contribution (other than a financial contribution) made  
37 directly or indirectly by or on behalf of a party to the de facto  
38 relationship, or a child of the de facto relationship;
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- 1 (i) to the acquisition, conservation or improvement of any  
2 of the property of the parties to the de facto relationship  
3 or either of them; or  
4 (ii) otherwise in relation to any of that last-mentioned  
5 property;  
6 whether or not that last-mentioned property has, since the  
7 making of the contribution, ceased to be the property of the  
8 parties to the de facto relationship or either of them; and  
9 (c) the contribution made by a party to the de facto relationship  
10 to the welfare of the family constituted by the parties to the  
11 de facto relationship and any children of the de facto  
12 relationship, including any contribution made in the capacity  
13 of homemaker or parent; and  
14 (d) the effect of any proposed order upon the earning capacity of  
15 either party to the de facto relationship; and  
16 (e) the matters referred to in subsection 90SF(3) so far as they  
17 are relevant; and  
18 (f) any other order made under this Act affecting a party to the  
19 de facto relationship or a child of the de facto relationship;  
20 and  
21 (g) any child support under the *Child Support (Assessment) Act*  
22 *1989* that a party to the de facto relationship has provided, is  
23 to provide, or might be liable to provide in the future, for a  
24 child of the de facto relationship.
- 25 (5) Without limiting the power of any court to grant an adjournment in  
26 proceedings under this Act, if, in property settlement proceedings  
27 in relation to the parties to a de facto relationship, a court is of the  
28 opinion:  
29 (a) that there is likely to be a significant change in the financial  
30 circumstances of the parties to the de facto relationship or  
31 either of them and that, having regard to the time when that  
32 change is likely to take place, it is reasonable to adjourn the  
33 proceedings; and  
34 (b) that an order that the court could make with respect to:  
35 (i) the property of the parties to the de facto relationship or  
36 either of them; or  
37 (ii) the vested bankruptcy property in relation to a bankrupt  
38 de facto party to the de facto relationship;
-

- 1 if that significant change in financial circumstances occurs is  
2 more likely to do justice as between the parties to the de facto  
3 relationship than an order that the court could make  
4 immediately with respect to:
- 5 (iii) the property of the parties to the de facto relationship or  
6 either of them; or
- 7 (iv) the vested bankruptcy property in relation to a bankrupt  
8 party to the de facto relationship;
- 9 the court may, if so requested by either party to the de facto  
10 relationship or the relevant bankruptcy trustee (if any), adjourn the  
11 proceedings until such time, before the expiration of a period  
12 specified by the court, as that party to the de facto relationship or  
13 the relevant bankruptcy trustee, as the case may be, applies for the  
14 proceedings to be determined, but nothing in this subsection  
15 requires the court to adjourn any proceedings in any particular  
16 circumstances.
- 17 (6) If a court proposes to adjourn proceedings as provided by  
18 subsection (5), the court may, before so adjourning the  
19 proceedings, make such interim order or orders or such other order  
20 or orders (if any) as it considers appropriate with respect to:
- 21 (a) any of the property of the parties to the de facto relationship  
22 or of either of them; or
- 23 (b) any of the vested bankruptcy property in relation to a  
24 bankrupt party to the de facto relationship.
- 25 (7) The court may, in forming an opinion for the purposes of  
26 subsection (5) as to whether there is likely to be a significant  
27 change in the financial circumstances of either or both of the  
28 parties to the de facto relationship, have regard to any change in  
29 the financial circumstances of a party to the de facto relationship  
30 that may occur by reason that the party to the de facto relationship:
- 31 (a) is a contributor to a superannuation fund or scheme, or  
32 participates in any scheme or arrangement that is in the  
33 nature of a superannuation scheme; or
- 34 (b) may become entitled to property as the result of the exercise  
35 in his or her favour, by the trustee of a discretionary trust, of  
36 a power to distribute trust property;
- 37 but nothing in this subsection limits the circumstances in which the  
38 court may form the opinion that there is likely to be a significant

- 1 change in the financial circumstances of a party to the de facto  
2 relationship.
- 3 (8) If a party to the de facto relationship dies after the breakdown of  
4 the de facto relationship, but before property settlement  
5 proceedings are completed:
- 6 (a) the proceedings may be continued by or against, as the case  
7 may be, the legal personal representative of the deceased  
8 party and the applicable Rules of Court may make provision  
9 in relation to the substitution of the legal personal  
10 representative as a party to the proceedings; and
- 11 (b) if the court is of the opinion:
- 12 (i) that it would have made an order with respect to  
13 property if the deceased party had not died; and
- 14 (ii) that it is still appropriate to make an order with respect  
15 to property;
- 16 the court may make such order as it considers appropriate  
17 with respect to:
- 18 (iii) any of the property of the parties to the de facto  
19 relationship or either of them; or
- 20 (iv) any of the vested bankruptcy property in relation to a  
21 bankrupt de facto party to the de facto relationship; and
- 22 (c) an order made by the court pursuant to paragraph (b) may be  
23 enforced on behalf of, or against, as the case may be, the  
24 estate of the deceased party.
- 25 (9) The Family Court must not make an order under this section in  
26 property settlement proceedings (other than an order until further  
27 order or an order made with the consent of all the parties to the  
28 proceedings) unless:
- 29 (a) the parties to the proceedings have attended a conference in  
30 relation to the matter to which the proceedings relate with a  
31 Registrar or Deputy Registrar of the Family Court; or
- 32 (b) the court is satisfied that, having regard to the need to make  
33 an order urgently, or to any other special circumstance, it is  
34 appropriate to make the order notwithstanding that the parties  
35 to the proceedings have not attended a conference as  
36 mentioned in paragraph (a); or
- 37 (c) the court is satisfied that it is not practicable to require the  
38 parties to the proceedings to attend a conference as  
39 mentioned in paragraph (a).
-



- 1 (10) The following are entitled to become a party to proceedings in  
2 which an application is made for an order under this section by a  
3 party to a de facto relationship (the *subject de facto relationship*):  
4 (a) a creditor of a party to the proceedings if the creditor may not  
5 be able to recover his or her debt if the order were made;  
6 (b) a person:  
7 (i) who is a party to a de facto relationship (the *other*  
8 *de facto relationship*) with a party to the subject  
9 de facto relationship; and  
10 (ii) who could apply, or has an application pending, for an  
11 order under section 90SM, or a declaration under  
12 section 90SL, in relation to the other de facto  
13 relationship;  
14 (c) a person who is a party to a binding Part VIIIAB financial  
15 agreement with a party to the subject de facto relationship;  
16 (d) a person:  
17 (i) who is a party to a marriage with a party to the subject  
18 de facto relationship; and  
19 (ii) who could apply, or has an application pending, for an  
20 order under section 79, or a declaration under  
21 section 78, in relation to the marriage (or void  
22 marriage);  
23 (e) a person who is a party to a binding financial agreement with  
24 a party to the subject de facto relationship;  
25 (f) any other person whose interests would be affected by the  
26 making of the order.
- 27 (11) Subsection (10) does not apply to a creditor of a party to the  
28 proceedings:  
29 (a) if the party is a bankrupt—to the extent to which the debt is a  
30 provable debt (within the meaning of the *Bankruptcy Act*  
31 *1966*); or  
32 (b) if the party is a debtor subject to a personal insolvency  
33 agreement—to the extent to which the debt is covered by the  
34 personal insolvency agreement.
- 35 (12) If a person becomes a party to proceedings under this section  
36 because of paragraph (10)(b), the person may, in the proceedings,  
37 apply for:  
38 (a) an order under section 90SM; or
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- 1 (b) a declaration under section 90SL;  
2 in relation to the other de facto relationship described in that  
3 paragraph.
- 4 (13) If a person becomes a party to proceedings under this section  
5 because of paragraph (10)(d), the person may, in the proceedings,  
6 apply for:  
7 (a) an order under section 79; or  
8 (b) a declaration under section 78;  
9 in relation to the marriage (or void marriage) described in that  
10 paragraph.
- 11 (14) If:  
12 (a) an application is made for an order under this section in  
13 proceedings between the parties to a de facto relationship  
14 with respect to the property of the parties to the de facto  
15 relationship or either of them; and  
16 (b) either of the following subparagraphs apply to a party to the  
17 de facto relationship:  
18 (i) when the application was made, the party was a  
19 bankrupt;  
20 (ii) after the application was made but before it is finally  
21 determined, the party became a bankrupt; and  
22 (c) the bankruptcy trustee applies to the court to be joined as a  
23 party to the proceedings; and  
24 (d) the court is satisfied that the interests of the bankrupt's  
25 creditors may be affected by the making of an order under  
26 this section in the proceedings;  
27 the court must join the bankruptcy trustee as a party to the  
28 proceedings.
- 29 (15) If a bankruptcy trustee is a party to property settlement proceedings  
30 in relation to the parties to a de facto relationship, then, except with  
31 the leave of the court, the bankrupt party to the de facto  
32 relationship is not entitled to make a submission to the court in  
33 connection with any vested bankruptcy property in relation to the  
34 bankrupt party.
- 35 (16) The court must not grant leave under subsection (15) unless the  
36 court is satisfied that there are exceptional circumstances.
- 37 (17) If:
-

- 1 (a) an application is made for an order under this section in  
2 proceedings between the parties to a de facto relationship  
3 with respect to the property of the parties to the de facto  
4 relationship or either of them; and  
5 (b) either of the following subparagraphs apply to a party to the  
6 de facto relationship (the *debtor party*):  
7 (i) when the application was made, the party was a debtor  
8 subject to a personal insolvency agreement;  
9 (ii) after the application was made but before it is finally  
10 determined, the party becomes a debtor subject to a  
11 personal insolvency agreement; and  
12 (c) the trustee of the agreement applies to the court to be joined  
13 as a party to the proceedings; and  
14 (d) the court is satisfied that the interests of the debtor party's  
15 creditors may be affected by the making of an order under  
16 this section in the proceedings;  
17 the court must join the trustee of the agreement as a party to the  
18 proceedings.
- 19 (18) If the trustee of a personal insolvency agreement is a party to  
20 property settlement proceedings in relation to the parties to a  
21 de facto relationship, then, except with the leave of the court, the  
22 party to the de facto relationship who is the debtor subject to the  
23 agreement is not entitled to make a submission to the court in  
24 connection with any property subject to the agreement.
- 25 (19) The court must not grant leave under subsection (18) unless the  
26 court is satisfied that there are exceptional circumstances.
- 27 (20) For the purposes of subsections (14) and (17), an application for an  
28 order under this section is taken to be finally determined when:  
29 (a) the application is withdrawn or dismissed; or  
30 (b) an order (other than an interim order) is made as a result of  
31 the application.

32 **90SN Varying and setting aside orders altering property interests**

- 33 (1) If, on application by a person affected by an order made by a court  
34 under section 90SM in property settlement proceedings, the court  
35 is satisfied that:

- 1 (a) there has been a miscarriage of justice by reason of fraud,  
2 duress, suppression of evidence (including failure to disclose  
3 relevant information), the giving of false evidence or any  
4 other circumstance; or
- 5 (b) in the circumstances that have arisen since the order was  
6 made it is impracticable for the order to be carried out or  
7 impracticable for a part of the order to be carried out; or
- 8 (c) a person has defaulted in carrying out an obligation imposed  
9 on the person by the order and, in the circumstances that have  
10 arisen as a result of that default, it is just and equitable to  
11 vary the order or to set the order aside and make another  
12 order in substitution for the order; or
- 13 (d) in the circumstances that have arisen since the making of the  
14 order, being circumstances of an exceptional nature relating  
15 to the care, welfare and development of a child of the  
16 de facto relationship, the child or, where the applicant has  
17 caring responsibility for the child (as defined in  
18 subsection (3)), the applicant, will suffer hardship if the court  
19 does not vary the order or set the order aside and make  
20 another order in substitution for the order; or
- 21 (e) a proceeds of crime order has been made covering property  
22 of the parties to the de facto relationship or either of them, or  
23 a proceeds of crime order has been made against a party to  
24 the de facto relationship;

25 the court may, in its discretion, vary the order or set the order aside  
26 and, if it considers appropriate, make another order under  
27 section 90SM in substitution for the order so set aside.

28 Note: For *child of a de facto relationship*, see section 90RB.

- 29 (2) A court may, on application by a person affected by an order made  
30 by a court under section 90SM in property settlement proceedings,  
31 and with the consent of all the parties to the proceedings in which  
32 the order was made, vary the order or set the order aside and, if it  
33 considers appropriate, make another order under section 90SM in  
34 substitution for the order so set aside.
- 35 (3) For the purposes of paragraph (1)(d), a person has ***caring***  
36 ***responsibility*** for a child if:
- 37 (a) the person is a parent of the child with whom the child lives;  
38 or  
39 (b) a parenting order provides that:
-

- 1 (i) the child is to live with the person; or  
2 (ii) the person has parental responsibility for the child.
- 3 (4) An order varied or made under subsection (1) or (2) may, after the  
4 death of a party to the de facto relationship in relation to which the  
5 order was so varied or made, be enforced on behalf of, or against,  
6 as the case may be, the estate of the deceased party.
- 7 (5) If, before proceedings under this section in relation to an order  
8 made under section 90SM are completed, a party to the de facto  
9 relationship dies:
- 10 (a) the proceedings may be continued by or against, as the case  
11 may be, the legal personal representative of the deceased  
12 party and the applicable Rules of Court may make provision  
13 in relation to the substitution of the legal personal  
14 representative as a party to the proceedings; and
- 15 (b) if the court is of the opinion:
- 16 (i) that it would have exercised its powers under  
17 subsection (1) or (2) in relation to the order if the  
18 deceased party had not died; and
- 19 (ii) that it is still appropriate to exercise its powers under  
20 subsection (1) or (2) in relation to the order;
- 21 the court may vary the order, set the order aside, or set the  
22 order aside and make another order under section 90SM in  
23 substitution for the order so set aside; and
- 24 (c) an order varied or made by the court pursuant to  
25 paragraph (b) may be enforced on behalf of, or against, as the  
26 case may be, the estate of the deceased party.
- 27 (6) In the exercise of its powers under subsection (1), (2) or (5), a  
28 court must have regard to the interests of, and must make any order  
29 proper for the protection of, a bona fide purchaser or other person  
30 interested.
- 31 (7) For the purposes of this section, a creditor of a party to the  
32 proceedings in which the order under section 90SM was made is  
33 taken to be a person whose interests are affected by the order if the  
34 creditor may not be able to recover his or her debt because the  
35 order has been made.

- 1 (8) For the purposes of this section, if:  
2 (a) an order is made by a court under section 90SM in  
3 proceedings with respect to the property of the parties to a  
4 de facto relationship or either of them; and  
5 (b) either of the following subparagraphs apply to a party to the  
6 de facto relationship:  
7 (i) when the order was made, the party was a bankrupt;  
8 (ii) after the order was made, the party became a bankrupt;  
9 the bankruptcy trustee is taken to be a person whose interests are  
10 affected by the order.
- 11 (9) For the purposes of this section, if:  
12 (a) a party to a de facto relationship is a bankrupt; and  
13 (b) an order is made by a court under section 90SM in  
14 proceedings with respect to the vested bankruptcy property in  
15 relation to the bankrupt party;  
16 the bankruptcy trustee is taken to be a person whose interests are  
17 affected by the order.
- 18 (10) For the purposes of this section, if:  
19 (a) an order is made by a court under section 90SM in  
20 proceedings with respect to the property of the parties to a  
21 de facto relationship or either of them; and  
22 (b) either of the following subparagraphs apply to a party to the  
23 de facto relationship:  
24 (i) when the order was made, the party was a debtor subject  
25 to a personal insolvency agreement;  
26 (ii) after the order was made, the party became a debtor  
27 subject to a personal insolvency agreement;  
28 the trustee of the agreement is taken to be a person whose interests  
29 are affected by the order.

30 **Subdivision D—Notification of application**

31 **90SO Notifying third parties about application**

- 32 The applicable Rules of Court may specify the circumstances in  
33 which a person who:  
34 (a) applies for an order under this Division; or  
35 (b) is a party to a proceeding for an order under this Division;
-

1 is to give notice of the application to a person who is not a party to  
2 the proceedings.

3 Note: The applicable Rules of Court may, for example, make provision for  
4 the notification of a person married to, or in a de facto relationship  
5 with, the applicant or respondent to the proceedings.

6 **90SP Notifying bankruptcy trustee etc. about application under**  
7 **section 90SE, 90SL, 90SM or 90SN**

8 (1) The applicable Rules of Court may make provision for a bankrupt  
9 who becomes a party to a proceeding for an application under  
10 section 90SE, 90SL, 90SM or 90SN to give notice of the  
11 application to the bankruptcy trustee.

12 (2) The applicable Rules of Court may make provision for a debtor  
13 subject to a personal insolvency agreement who becomes a party to  
14 a proceeding for an application under section 90SE, 90SL, 90SM  
15 or 90SN to give notice of the application to the trustee of the  
16 agreement.

17 **90SQ Notifying court about bankruptcy etc.**

18 *Bankruptcy*

19 (1) The applicable Rules of Court may make provision for a person  
20 who:  
21 (a) is a party to a de facto relationship that has broken down; and  
22 (b) is a party to a proceeding for an application under  
23 section 90SE, 90SL, 90SM or 90SN; and  
24 (c) before that application is finally determined, becomes a  
25 bankrupt;  
26 to notify a court exercising jurisdiction under this Act that the  
27 person has become a bankrupt.

28 *Debtor subject to a personal insolvency agreement*

29 (2) The applicable Rules of Court may make provision for a person  
30 who:  
31 (a) is a party to a de facto relationship that has broken down; and  
32 (b) is a party to a proceeding for an application under  
33 section 90SE, 90SL, 90SM or 90SN; and

1 (c) before that application is finally determined, becomes a  
2 debtor subject to a personal insolvency agreement;  
3 to notify a court exercising jurisdiction under this Act that the  
4 person has become a debtor subject to a personal insolvency  
5 agreement.

6 *Institution of proceeding under the Bankruptcy Act 1966*

7 (3) The applicable Rules of Court may make provision for a person  
8 who:  
9 (a) is a party to a de facto relationship that has broken down; and  
10 (b) is a party to a proceeding for an application under  
11 section 90SE, 90SL, 90SM or 90SN; and  
12 (c) before that application is finally determined, becomes a party  
13 to a proceeding before the Federal Court or the Federal  
14 Magistrates Court under the *Bankruptcy Act 1966* that relates  
15 to:  
16 (i) the bankruptcy of the person; or  
17 (ii) the person's capacity as a debtor subject to a personal  
18 insolvency agreement;  
19 to notify a court exercising jurisdiction under this Act of the  
20 institution of the proceeding under the *Bankruptcy Act 1966*.

21 (4) The applicable Rules of Court may make provision for a person  
22 who:  
23 (a) is the bankruptcy trustee of a bankrupt party to a de facto  
24 relationship; and  
25 (b) the de facto relationship has broken down; and  
26 (c) applies under section 139A of the *Bankruptcy Act 1966* for  
27 an order under Division 4A of Part VI of that Act;  
28 to notify a court exercising jurisdiction under this Act of the  
29 making of the application.

30 *When application finally determined*

31 (5) For the purposes of this section, an application for an order under  
32 section 90SE, 90SM or 90SN is taken to be finally determined  
33 when:  
34 (a) the application is withdrawn or dismissed; or  
35 (b) an order (other than an interim order) is made as a result of  
36 the application.

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- 1 (6) For the purposes of this section, an application for a declaration  
2 under section 90SL is taken to be finally determined when:  
3 (a) the application is withdrawn or dismissed; or  
4 (b) a declaration is made as a result of the application.

5 **90SR Notifying non-bankrupt de facto party about application**  
6 **under section 139A of the *Bankruptcy Act 1966***

7 The applicable Rules of Court may make provision for a person  
8 who:

- 9 (a) is the bankruptcy trustee of a bankrupt party to a de facto  
10 relationship; and  
11 (b) applies under section 139A of the *Bankruptcy Act 1966* for  
12 an order under Division 4A of Part VI of that Act in relation  
13 to an entity (other than the other party to the de facto  
14 relationship);  
15 to notify the other party to the de facto relationship of the making  
16 of the application if that bankruptcy trustee is aware that the  
17 de facto relationship has broken down.

18 **Subdivision E—Court powers**

19 **90SS General powers of court**

20 *General powers*

- 21 (1) The court, in exercising its powers under this Division, may do any  
22 or all of the following:  
23 (a) order payment of a lump sum, whether in one amount or by  
24 instalments;  
25 (b) order payment of a weekly, monthly, yearly or other periodic  
26 sum;  
27 (c) order that a specified transfer or settlement of property be  
28 made by way of maintenance for a party to a de facto  
29 relationship;  
30 (d) order that payment of any sum ordered to be paid be wholly  
31 or partly secured in such manner as the court directs;  
32 (e) order that any necessary deed or instrument be executed and  
33 that such documents of title be produced or such other things  
34 be done as are necessary to enable an order to be carried out

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- 1 effectively or to provide security for the due performance of  
2 an order;
- 3 (f) appoint or remove trustees;
- 4 (g) order that payments be made direct to a party to the de facto  
5 relationship, to a trustee to be appointed or into court or to a  
6 public authority for the benefit of a party to the de facto  
7 relationship;
- 8 (h) make a permanent order, an order pending the disposal of  
9 proceedings or an order for a fixed term or for a life or during  
10 joint lives or until further order;
- 11 (i) impose terms and conditions;
- 12 (j) make an order by consent;
- 13 (k) make any other order, or grant any other injunction, (whether  
14 or not of the same nature as those mentioned in the preceding  
15 paragraphs of this section) which it thinks it is necessary to  
16 make to do justice;
- 17 (l) subject to this Act and the applicable Rules of Court, make  
18 an order under this Division at any time before or after the  
19 making of a decree under another provision of this Act.

20 Note: The court also has specific powers in relation to third parties (see  
21 Division 3 of Part VIII AA (as that Division has effect because of  
22 section 90TA)).

23 *Limitation for orders or injunctions covered by section 90AF*

- 24 (2) Subsection (1) has effect subject to subsection 90AF(3) (as that  
25 subsection has effect because of section 90TA).

26 Note: An order or injunction made or granted under subsection (1) that is of  
27 a kind covered by subsection 90AF(1) or (2) can only be made or  
28 granted in accordance with subsection 90AF(3).

29 *Maintenance orders*

- 30 (3) The making of an order of a kind referred to in paragraph (1)(c), or  
31 of any other order under this Division, in relation to the  
32 maintenance of a party to a de facto relationship does not prevent a  
33 court from making a subsequent order in relation to the  
34 maintenance of the party.
- 35 (4) The applicable Rules of Court may make provision with respect to  
36 the making of orders under this Division in relation to the  
37 maintenance of parties to de facto relationships (whether as to their
-

1 form or otherwise) for the purpose of facilitating their enforcement  
2 and the collection of maintenance payable under them.

3 *Injunctions*

4 (5) Without limiting paragraph (1)(k), the court may:

5 (a) grant:

6 (i) an interlocutory injunction; or

7 (ii) an injunction in aid of the enforcement of a decree;  
8 in any case in which it appears to the court to be just or  
9 convenient to do so; and

10 (b) grant an injunction either unconditionally or upon such terms  
11 and conditions as the court considers appropriate.

12 *Bankruptcy and insolvency*

13 (6) If a bankruptcy trustee is a party to a proceeding before the court,  
14 the court may make an order under paragraph (1)(e) directed to the  
15 bankrupt.

16 (7) If the trustee of a personal insolvency agreement is a party to a  
17 proceeding before the court, the court may make an order under  
18 paragraph (1)(e) directed to the debtor subject to the agreement.

19 (8) Subsections (6) and (7) do not limit paragraph (1)(e).

20 (9) If a party to a de facto relationship is a bankrupt, a court may, on  
21 the application of the other party to the de facto relationship, by  
22 interlocutory order, grant an injunction under subsection (1)  
23 restraining the bankruptcy trustee from declaring and distributing  
24 dividends amongst the bankrupt's creditors.

25 (10) If a party to a de facto relationship is a debtor subject to a personal  
26 insolvency agreement, a court may, on the application of the other  
27 party to the de facto relationship, by interlocutory order, grant an  
28 injunction under subsection (1) restraining the trustee of the  
29 agreement from disposing of (whether by sale, gift or otherwise)  
30 property subject to the agreement.

31 (11) Subsections (9) and (10) do not limit subsections (1) and (5).

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1 **90ST Duty of court to end financial relations**

2 In proceedings under this Division, other than proceedings under  
3 section 90SL, the court must, as far as practicable, make such  
4 orders as will finally determine the financial relationships between  
5 the parties to the de facto relationship and avoid further  
6 proceedings between them.

7 **Division 3—Orders and injunctions binding third parties**

8 **90TA Orders and injunctions binding third parties**

9 (1) In addition to the effect Part VIII AA has apart from this section,  
10 that Part also has effect in relation to:

11 (a) orders and injunctions under Division 2; and

12 (b) proceedings for orders or injunctions under Division 2;  
13 with the modifications provided for in subsections (2) and (3).

14 (2) Part VIII AA has effect in accordance with subsection (1) as if the  
15 following substitutions were made:

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**Substitutions to be made**

<b>Item</b>	<b>For a reference in Part VIII AA to ...</b>	<b>substitute a reference to ...</b>
1	marriage	de facto relationship
2	section 79	section 90SM
3	section 114	section 90SS
4	paragraph (ca) of the definition of <i>matrimonial cause</i>	paragraph (c) of the definition of <i>de facto financial cause</i>
5	orders or injunctions under section 114	orders or injunctions under Division 2 of Part VIII AB
6	proceedings under section 114	proceedings under Division 2 of Part VIII AB
7	an injunction under subsection 114(3)	an injunction covered by subsection 90SS(5)

17 (3) Part VIII AA has effect in accordance with subsection (1) as if:

18 (a) subsection 90AD(2) were replaced with the following:

19 “(2) For the purposes of section 90SS (to the extent that it provides for  
20 the granting of an injunction in relation to the property of a party to

1 a de facto relationship), *property* includes a debt owed by a party  
2 to the de facto relationship.”; and

3 (b) paragraph 90AF(3)(d) were omitted; and

4 (c) the following paragraph were inserted after paragraph  
5 90AF(3)(e):

6 “(ea) for any other injunction—the court is satisfied that, in all the  
7 circumstances, it is necessary to grant the injunction to do  
8 justice; and”; and

9 (d) the following subsection were added at the end of  
10 section 90AF:

11 “(5) Subsections (1) and (2) do not limit subsection 90SS(1).”.

## 12 **Division 4—Financial agreements**

### 13 **90UA Geographical requirement for agreements made in** 14 **participating jurisdictions**

15 Two or more people can make a Part VIIIAB financial agreement  
16 under section 90UB, 90UC or 90UD only if the spouse parties are  
17 ordinarily resident in a participating jurisdiction when they make  
18 the agreement.

### 19 **90UB Financial agreements before de facto relationship**

20 (1) If:

21 (a) people who are contemplating entering into a de facto  
22 relationship with each other make a written agreement with  
23 respect to any of the matters mentioned in subsection (2) in  
24 the event of the breakdown of the de facto relationship; and

25 (b) at the time of the making of the agreement, the people are not  
26 the spouse parties to any other binding Part VIIIAB financial  
27 agreement with respect to any of those matters; and

28 (c) the agreement is expressed to be made under this section;  
29 the agreement is a *Part VIIIAB financial agreement*. The people  
30 may make the Part VIIIAB financial agreement with one or more  
31 other people.

32 (2) The matters referred to in paragraph (1)(a) are the following:

33 (a) how all or any of the:

34 (i) property; or

---

- 1 (ii) financial resources;  
2 of either or both of the spouse parties at the time when the  
3 agreement is made, or at a later time and during the de facto  
4 relationship, is to be distributed;  
5 (b) the maintenance of either of the spouse parties.
- 6 (3) A Part VIIIAB financial agreement made as mentioned in  
7 subsection (1) may also contain matters incidental or ancillary to  
8 those mentioned in subsection (2).
- 9 (4) A Part VIIIAB financial agreement (the *new agreement*) made as  
10 mentioned in subsection (1) may terminate a previous Part VIIIAB  
11 financial agreement (however made) if all of the parties to the  
12 previous agreement are parties to the new agreement.

### 13 90UC Financial agreements during de facto relationship

- 14 (1) If:  
15 (a) while in a de facto relationship, the parties to the de facto  
16 relationship make a written agreement about any of the  
17 matters mentioned in subsection (2) in the event of the  
18 breakdown of the de facto relationship; and  
19 (b) at the time of the making of the agreement, the parties to the  
20 de facto relationship are not the spouse parties to any other  
21 binding Part VIIIAB financial agreement with respect to any  
22 of those matters; and  
23 (c) the agreement is expressed to be made under this section;  
24 the agreement is a *Part VIIIAB financial agreement*. The parties  
25 to the de facto relationship may make the Part VIIIAB financial  
26 agreement with one or more other people.
- 27 (2) The matters referred to in paragraph (1)(a) are the following:  
28 (a) how all or any of the:  
29 (i) property; or  
30 (ii) financial resources;  
31 of either or both of the spouse parties at the time when the  
32 agreement is made, or at a later time and during the de facto  
33 relationship, is to be distributed;  
34 (b) the maintenance of either of the spouse parties.

1 (3) A Part VIIIAB financial agreement made as mentioned in  
2 subsection (1) may also contain matters incidental or ancillary to  
3 those mentioned in subsection (2).

4 (4) A Part VIIIAB financial agreement (the *new agreement*) made as  
5 mentioned in subsection (1) may terminate a previous Part VIIIAB  
6 financial agreement (however made) if all of the parties to the  
7 previous agreement are parties to the new agreement.

8 **90UD Financial agreements after breakdown of a de facto**  
9 **relationship**

10 (1) If:

11 (a) after the breakdown of a de facto relationship, the parties to  
12 the de facto relationship make a written agreement with  
13 respect to any of the matters mentioned in subsection (2); and

14 (b) at the time of the making of the agreement, the parties to the  
15 de facto relationship are not the spouse parties to any other  
16 binding Part VIIIAB financial agreement with respect to any  
17 of those matters; and

18 (c) the agreement is expressed to be made under this section;  
19 the agreement is a *Part VIIIAB financial agreement*. The parties  
20 to the de facto relationship may make the Part VIIIAB financial  
21 agreement with one or more other people.

22 (2) The matters referred to in paragraph (1)(a) are the following:

23 (a) how all or any of the:

24 (i) property; or

25 (ii) financial resources;

26 that either or both of the spouse parties had or acquired  
27 during the de facto relationship is to be distributed;

28 (b) the maintenance of either of the spouse parties.

29 (3) A Part VIIIAB financial agreement made as mentioned in  
30 subsection (1) may also contain matters incidental or ancillary to  
31 those mentioned in subsection (2).

32 (4) A Part VIIIAB financial agreement (the *new agreement*) made as  
33 mentioned in subsection (1) may terminate a previous Part VIIIAB  
34 financial agreement (however made) if all of the parties to the  
35 previous agreement are parties to the new agreement.

1 **90UE Agreements made in non-referring States that become**  
2 **Part VIIIAB financial agreements**

3 *How State agreements can become Part VIIIAB financial*  
4 *agreements*

- 5 (1) This section applies if:
- 6 (a) 2 people (the *couple*) have made a written agreement, signed  
7 by both of them, with respect to any of the matters (the  
8 *eligible agreed matters*) mentioned in subsection (3); and
  - 9 (b) the agreement was made under a non-referring State de facto  
10 financial law; and
  - 11 (c) either:
    - 12 (i) a court could not, because of that law, make an order  
13 under that law that is inconsistent with the agreement  
14 with respect to any of the eligible agreed matters; or
    - 15 (ii) a court could not, because of that law, make an order  
16 under that law that is with respect to any of the eligible  
17 agreed matters to which the agreement applies; and
  - 18 (d) at the time the agreement was made, the members of the  
19 couple were not the spouse parties to any binding  
20 Part VIIIAB financial agreement with respect to any of the  
21 eligible agreed matters; and
  - 22 (e) at a later time (the *transition time*), the couple's  
23 circumstances change so that:
    - 24 (i) if the de facto relationship has not broken down—  
25 sections 90SB, 90SD and 90SK would not prevent a  
26 court from making an order or declaration under this  
27 Part in relation to the eligible agreed matters if the  
28 de facto relationship were to break down; or
    - 29 (ii) if the de facto relationship has broken down—  
30 sections 90SB, 90SD and 90SK do not prevent a court  
31 from making an order or declaration under this Part in  
32 relation to the eligible agreed matters; and
  - 33 (f) immediately before the transition time:
    - 34 (i) the agreement was in force under the non-referring State  
35 de facto financial law; and
    - 36 (ii) the couple were not married to each other.



1 Paragraph (a) extends to agreements made before the  
2 commencement of this section, and to agreements made with one  
3 or more other people.

4 Note: This section extends to agreements made in contemplation of a  
5 de facto relationship, during a de facto relationship or after a de facto  
6 relationship has broken down.

7 (2) For the purposes of this Act, the agreement is taken, on and after  
8 the transition time, to be a **Part VIIIAB financial agreement** to the  
9 extent that the agreement deals with:

10 (a) the eligible agreed matters; and

11 (b) matters incidental or ancillary to the eligible agreed matters.

12 Note: This means that, after the transition time, the agreement can only be  
13 enforced, varied, terminated or otherwise set aside under this Act.

14 *Eligible agreed matters*

15 (3) The matters referred to in paragraph (1)(a) are the following:

16 (a) how all or any of the:

17 (i) property; or

18 (ii) financial resources;

19 of either member, or both members, of the couple at the time  
20 when the agreement is made, or at a later time and during a  
21 de facto relationship between them, is to be distributed;

22 (b) the maintenance of either member of the couple;

23 in the event of the breakdown of a de facto relationship between  
24 them, or in relation to a de facto relationship between them that has  
25 broken down, as the case requires.

26 (4) For the purposes of paragraph (1)(c), disregard whether the  
27 non-referring State de facto financial law permits the court to make  
28 such an order if the court varies or sets aside the agreement.

29 **90UF Need for separation declaration for certain provisions of**  
30 **financial agreement to take effect**

31 (1) A binding Part VIIIAB financial agreement, to the extent to which  
32 it deals with how, in the event of the breakdown of the de facto  
33 relationship, all or any of the property or financial resources of  
34 either or both of the spouse parties:

35 (a) at the time when the agreement is made; or

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1 (b) at a later time and during the de facto relationship;  
2 are to be dealt with, is of no force or effect until a separation  
3 declaration is made.

4 Note: Before the separation declaration is made, the financial agreement will  
5 be of force and effect in relation to the other matters it deals with  
6 (except for any matters covered by section 90UG).

7 (2) Subsection (1) ceases to apply if either or both of the spouse parties  
8 die.

9 Note: This means the financial agreement will be of force and effect in  
10 relation to the matters mentioned in subsection (1) from the time of  
11 the death(s).

12 *Requirements for a valid separation declaration*

13 (3) A separation declaration is a written declaration that complies with  
14 subsections (4) and (5), and may be included in the Part VIIIAB  
15 financial agreement to which it relates.

16 (4) The declaration must be signed by at least one of the spouse parties  
17 to the Part VIIIAB financial agreement.

18 (5) The declaration must state that:

19 (a) the spouse parties lived in a de facto relationship; and

20 (b) the spouse parties have separated and are living separately  
21 and apart at the declaration time; and

22 (c) in the opinion of the spouse parties making the declaration,  
23 there is no reasonable likelihood of cohabitation being  
24 resumed.

25 *Meaning of **declaration time***

26 (6) In this section:

27 **declaration time** means the time when the declaration was signed  
28 by a spouse party to the Part VIIIAB financial agreement (or last  
29 signed by a spouse party to the agreement, if both spouse parties to  
30 the agreement have signed).

1 **90UG Whether or when certain other provisions of financial**  
2 **agreements take effect**

3 A binding Part VIIIAB financial agreement, to the extent to which  
4 it provides for matters covered by subsection 90UB(3) or 90UC(3)  
5 or paragraph 90UE(2)(b), is of no force or effect unless and until  
6 the de facto relationship breaks down.

7 **90UH Requirements with respect to provisions in financial**  
8 **agreements relating to the maintenance of a party or a**  
9 **child or children**

10 (1) A provision of a Part VIIIAB financial agreement that relates to the  
11 maintenance of a spouse party to the agreement or a child or  
12 children is void unless the provision specifies:

13 (a) the party, or the child or children, for whose maintenance  
14 provision is made; and

15 (b) the amount provided for, or the value of the portion of the  
16 relevant property attributable to, the maintenance of the  
17 party, or of the child or each child, as the case may be.

18 Note: While Part VIIIAB financial agreements are not made with respect to  
19 child maintenance, provisions about child maintenance could be  
20 included in the same document for child support (or other  
21 non-Part VIIIAB) purposes.

22 (2) Subsection (1) does not apply in relation to a Part VIIIAB financial  
23 agreement covered by section 90UE.

24 **90UI Certain provisions in financial agreements**

25 (1) No provision of a Part VIIIAB financial agreement excludes or  
26 limits the power of a court to make an order under Division 2 in  
27 relation to the maintenance of a party to the agreement if  
28 subsection (2) applies.

29 (2) This subsection applies if the court is satisfied that, when the  
30 agreement came into effect, the circumstances of the party were  
31 such that, taking into account the terms and effect of the  
32 agreement, the party was unable to support himself or herself  
33 without an income tested pension, allowance or benefit.

34 (3) To avoid doubt, a provision in a Part VIIIAB financial agreement:

- 1 (a) made as mentioned in subsection 90UB(1), 90UC(1) or  
2 90UD(1); or  
3 (b) covered by section 90UE;  
4 that provides for property or financial resources owned by a spouse  
5 party to the agreement to continue in the ownership of that party is  
6 taken, for the purposes of that subsection or section, to be a  
7 provision with respect to how the property or financial resources  
8 are to be distributed.

9 **90UJ When financial agreements are binding**

- 10 (1) A Part VIIIAB financial agreement (other than an agreement  
11 covered by section 90UE) is binding on the parties to the  
12 agreement if, and only if:  
13 (a) the agreement is signed by all parties; and  
14 (b) the agreement contains, in relation to each spouse party to the  
15 agreement, a statement to the effect that the party to whom  
16 the statement relates has been provided, before the agreement  
17 was signed by him or her, as certified in an annexure to the  
18 agreement, with independent legal advice from a legal  
19 practitioner as to the following matters:  
20 (i) the effect of the agreement on the rights of that party;  
21 (ii) the advantages and disadvantages, at the time that the  
22 advice was provided, to the party of making the  
23 agreement; and  
24 (c) the annexure to the agreement contains a certificate signed by  
25 the person providing the independent legal advice stating that  
26 the advice was provided; and  
27 (d) the agreement has not been terminated and has not been set  
28 aside by a court; and  
29 (e) after the agreement is signed, the original agreement is given  
30 to one of the spouse parties and a copy is given to each of the  
31 other parties.

32 Note: For the manner in which the contents of a financial agreement may be  
33 proved, see section 48 of the *Evidence Act 1995*.

- 34 (2) A Part VIIIAB financial agreement covered by section 90UE is  
35 binding on the parties to the agreement if, and only if, the  
36 agreement has not been terminated and has not been set aside by a  
37 court.

1 (3) A Part VIIIAB financial agreement ceases to be binding if, after  
2 making the agreement, the parties to the agreement marry each  
3 other.

4 (4) A court may make such orders for the enforcement of a  
5 Part VIIIAB financial agreement that is binding on the parties to  
6 the agreement as it thinks necessary.

7 **90UK Effect of death of party to financial agreement**

8 A Part VIIIAB financial agreement that is binding on the parties to  
9 the agreement continues to operate despite the death of a party to  
10 the agreement and operates in favour of, and is binding on, the  
11 legal personal representative of that party.

12 Note: If the parties are still in the de facto relationship when one of them  
13 dies, the de facto relationship is not taken to have broken down for the  
14 purposes of enforcing the matters mentioned in the financial  
15 agreement (see the definition of *breakdown* in subsection 4(1)).

16 **90UL Termination of financial agreement**

17 (1) The parties to a Part VIIIAB financial agreement may terminate the  
18 agreement for the purposes of this Act only by:

19 (a) including a provision to that effect in another Part VIIIAB  
20 financial agreement as mentioned in subsection 90UB(4),  
21 90UC(4) or 90UD(4); or

22 (b) making a written agreement (a *Part VIIIAB termination*  
23 *agreement*) to that effect.

24 (2) A Part VIIIAB termination agreement is binding on the parties if,  
25 and only if:

26 (a) the termination agreement is signed by all parties to the  
27 Part VIIIAB financial agreement; and

28 (b) the termination agreement contains, in relation to each spouse  
29 party, a statement to the effect that the party to whom the  
30 statement relates has been provided, before the termination  
31 agreement was signed by him or her, as certified in an  
32 annexure to the termination agreement, with independent  
33 legal advice from a legal practitioner as to the following  
34 matters:

35 (i) the effect of the termination agreement on the rights of  
36 that party;

- 1 (ii) the advantages and disadvantages, at the time that the  
2 advice was provided, to the party of making the  
3 termination agreement; and  
4 (c) the annexure to the termination agreement contains a  
5 certificate signed by the person providing the independent  
6 legal advice stating that the advice was provided; and  
7 (d) the termination agreement has not been set aside by a court;  
8 and  
9 (e) after the termination agreement is signed, the original  
10 termination agreement is given to one of the spouse parties  
11 and a copy is given to each of the other parties.
- 12 (3) A court may, on an application by:  
13 (a) a person who was a party to the Part VIIIAB financial  
14 agreement; or  
15 (b) any other interested person;  
16 make such order or orders (including an order for the transfer of  
17 property) as it considers just and equitable for the purpose of  
18 preserving or adjusting the rights of:  
19 (c) persons who were parties to the Part VIIIAB financial  
20 agreement; and  
21 (d) any other interested persons.

22 Note: For the manner in which the contents of a Part VIIIAB financial  
23 agreement may be proved, see section 48 of the *Evidence Act 1995*.

24 **90UM Circumstances in which court may set aside a financial**  
25 **agreement or termination agreement**

- 26 (1) A court may make an order setting aside, for the purposes of this  
27 Act, a Part VIIIAB financial agreement or a Part VIIIAB  
28 termination agreement if, and only if, the court is satisfied that:  
29 (a) the agreement was obtained by fraud (including  
30 non-disclosure of a material matter); or  
31 (b) a party to the agreement entered into the agreement:  
32 (i) for the purpose, or for purposes that included the  
33 purpose, of defrauding or defeating a creditor or  
34 creditors of the party; or  
35 (ii) with reckless disregard of the interests of a creditor or  
36 creditors of the party; or

- 1 (c) a party (the ***agreement party***) to the agreement entered into  
2 the agreement:
- 3 (i) for the purpose, or for purposes that included the  
4 purpose, of defrauding another person who is a party to  
5 a de facto relationship (the ***other de facto relationship***)  
6 with a spouse party; or
- 7 (ii) for the purpose, or for purposes that included the  
8 purpose, of defeating the interests of that other person in  
9 relation to any possible or pending application for an  
10 order under section 90SM, or a declaration under  
11 section 90SL, in relation to the other de facto  
12 relationship; or
- 13 (iii) with reckless disregard of those interests of that other  
14 person; or
- 15 (d) a party (the ***agreement party***) to the agreement entered into  
16 the agreement:
- 17 (i) for the purpose, or for purposes that included the  
18 purpose, of defrauding another person who is a party to  
19 a marriage with a spouse party; or
- 20 (ii) for the purpose, or for purposes that included the  
21 purpose, of defeating the interests of that other person in  
22 relation to any possible or pending application for an  
23 order under section 79, or a declaration under  
24 section 78, in relation to the marriage (or void  
25 marriage); or
- 26 (iii) with reckless disregard of those interests of that other  
27 person; or
- 28 (e) the agreement is void, voidable or unenforceable; or
- 29 (f) in the circumstances that have arisen since the agreement was  
30 made it is impracticable for the agreement or a part of the  
31 agreement to be carried out; or
- 32 (g) since the making of the agreement, a material change in  
33 circumstances has occurred (being circumstances relating to  
34 the care, welfare and development of a child of the de facto  
35 relationship) and, as a result of the change, the child or, if the  
36 applicant has caring responsibility for the child (as defined in  
37 subsection (4)), a party to the agreement will suffer hardship  
38 if the court does not set the agreement aside; or

**Schedule 1** Amendments relating to de facto financial matters

**Part 1** Amendments

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- 1 (h) in respect of the making of a Part VIIIAB financial  
2 agreement—a party to the agreement engaged in conduct that  
3 was, in all the circumstances, unconscionable; or  
4 (i) a payment flag is operating under Part VIIIAB on a  
5 superannuation interest covered by the agreement and there is  
6 no reasonable likelihood that the operation of the flag will be  
7 terminated by a flag lifting agreement under that Part; or  
8 (j) the agreement covers at least one superannuation interest that  
9 is an unsplitable interest for the purposes of Part VIIIAB; or  
10 (k) if the agreement is a Part VIIIAB financial agreement  
11 covered by section 90UE—subsection (5) applies.

12 Note: For *child of a de facto relationship*, see section 90RB.

- 13 (2) For the purposes of paragraph (1)(b), **creditor**, in relation to a party  
14 to the agreement, includes a person who could reasonably have  
15 been foreseen by the party as being reasonably likely to become a  
16 creditor of the party.
- 17 (3) For the purposes of the application of subparagraph (1)(c)(ii) to a  
18 Part VIIIAB financial agreement covered by section 90UE:  
19 (a) the reference in that subparagraph to an order under  
20 section 90SM is taken to include a reference to an order  
21 (however described) under a corresponding provision (if any)  
22 of the non-referring State de facto financial law concerned;  
23 and  
24 (b) the reference in that subparagraph to a declaration under  
25 section 90SL is taken to include a reference to a declaration  
26 (however described) under a corresponding provision (if any)  
27 of the non-referring State de facto financial law concerned.
- 28 (4) For the purposes of paragraph (1)(g), a person has **caring**  
29 **responsibility** for a child if:  
30 (a) the person is a parent of the child with whom the child lives;  
31 or  
32 (b) a parenting order provides that:  
33 (i) the child is to live with the person; or  
34 (ii) the person has parental responsibility for the child.
- 35 (5) This subsection applies if:



- 1 (a) at least one of the spouse parties to the agreement was not  
2 provided, before signing the agreement, with independent  
3 legal advice from a legal practitioner about the following:  
4 (i) the effect of the agreement on the rights of that party;  
5 (ii) the advantages and disadvantages, at the time that the  
6 advice was provided, to the party of making the  
7 agreement; or  
8 (b) if the advice was provided to one of the spouse parties—a  
9 signed statement by the legal practitioner stating that the  
10 advice was provided was neither:  
11 (i) included in, or attached to, the agreement; or  
12 (ii) given to the party;  
13 and it would be unjust and inequitable, having regard to the eligible  
14 agreed matters (within the meaning of section 90UE) for the  
15 agreement, if the court does not set the agreement aside.
- 16 (6) A court may, on an application by a person who was a party to the  
17 Part VIIIAB financial agreement that has been set aside, or by any  
18 other interested person, make such order or orders (including an  
19 order for the transfer of property) as it considers just and equitable  
20 for the purpose of preserving or adjusting the rights of persons who  
21 were parties to that financial agreement and any other interested  
22 persons.
- 23 (7) An order under subsection (1) or (6) may, after the death of a party  
24 to the proceedings in which the order was made, be enforced on  
25 behalf of, or against, as the case may be, the estate of the deceased  
26 party.
- 27 (8) If a party to proceedings under this section dies before the  
28 proceedings are completed:  
29 (a) the proceedings may be continued by or against, as the case  
30 may be, the legal personal representative of the deceased  
31 party and the applicable Rules of Court may make provision  
32 in relation to the substitution of the legal personal  
33 representative as a party to the proceedings; and  
34 (b) if the court is of the opinion:  
35 (i) that it would have exercised its powers under this  
36 section if the deceased party had not died; and  
37 (ii) that it is still appropriate to exercise those powers;

- 1 the court may make any order that it could have made under  
2 subsection (1) or (6); and  
3 (c) an order under paragraph (b) may be enforced on behalf of,  
4 or against, as the case may be, the estate of the deceased  
5 party.
- 6 (9) The court must not make an order under this section if the order  
7 would:  
8 (a) result in the acquisition of property from a person otherwise  
9 than on just terms; and  
10 (b) be invalid because of paragraph 51(xxxi) of the Constitution.  
11 For this purpose, *acquisition of property* and *just terms* have the  
12 same meanings as in paragraph 51(xxxi) of the Constitution.

13 **90UN Validity, enforceability and effect of financial agreements and**  
14 **termination agreements**

- 15 The question whether a Part VIIIAB financial agreement or a  
16 Part VIIIAB termination agreement is valid, enforceable or  
17 effective is to be determined by the court according to the  
18 principles of law and equity that are applicable in determining the  
19 validity, enforceability and effect of contracts and purported  
20 contracts, and, in proceedings relating to such an agreement, the  
21 court:  
22 (a) subject to paragraph (b), has the same powers, may grant the  
23 same remedies and must have the same regard to the rights of  
24 third parties as the High Court has, may grant and is required  
25 to have in proceedings in connection with contracts or  
26 purported contracts, being proceedings in which the High  
27 Court has original jurisdiction; and  
28 (b) has power to make an order for the payment, by a party to the  
29 agreement to another party to the agreement, of interest on an  
30 amount payable under the agreement, from the time when the  
31 amount became or becomes due and payable, at a rate not  
32 exceeding the rate prescribed by the applicable Rules of  
33 Court; and  
34 (c) in addition to, or instead of, making an order or orders under  
35 paragraph (a) or (b), may order that the agreement, or a  
36 specified part of the agreement, be enforced as if it were an  
37 order of the court.

1 **Division 5—Proceeds of crime and forfeiture**

2 **90VA Notification of proceeds of crime orders etc.**

3 (1) If:

4 (a) a person makes an application for an order, under this Part,  
5 with respect to:

6 (i) the property of the parties to a de facto relationship or  
7 either of them; or

8 (ii) the maintenance of a party to a de facto relationship;  
9 and

10 (b) the person knows that the property of the parties to the  
11 de facto relationship or either of them is covered by:

12 (i) a proceeds of crime order; or

13 (ii) a forfeiture application;

14 the person must:

15 (c) disclose in the application the proceeds of crime order or  
16 forfeiture application; and

17 (d) give to the court a sealed copy of that order or application.

18 (2) A person who does not comply with subsection (1) commits an  
19 offence punishable, on conviction, by a fine not exceeding 50  
20 penalty units.

21 (3) If:

22 (a) a person is a party to de facto property settlement or  
23 maintenance proceedings under this Part; and

24 (b) the person is notified by the DPP that the property of the  
25 parties to the de facto relationship or either of them is  
26 covered by:

27 (i) a proceeds of crime order; or

28 (ii) a forfeiture application;

29 the person must notify the Registry Manager in writing of the  
30 proceeds of crime order or forfeiture application.

31 (4) A person who does not comply with subsection (3) commits an  
32 offence punishable, on conviction, by a fine not exceeding 50  
33 penalty units.

1       **90VB Court to stay property or maintenance proceedings affected**  
2               **by proceeds of crime orders etc.**

- 3               (1) A court in which property settlement, or maintenance proceedings,  
4               are pending must stay those proceedings if notified under  
5               section 90VA in relation to the proceedings.
- 6               (2) The court may, before staying proceedings under subsection (1),  
7               invite or require the DPP to make submissions relating to staying  
8               the proceedings.
- 9               (3) A court must, on the application of the DPP, stay de facto property  
10              settlement or maintenance proceedings under this Part if the  
11              property of the parties to the de facto relationship or either of them  
12              is covered by:  
13              (a) a proceeds of crime order; or  
14              (b) a forfeiture application.
- 15             (4) A court must notify the DPP if the court stays de facto property  
16              settlement or maintenance proceedings under subsection (1) or (3).
- 17             (5) The DPP must notify the Registry Manager if:  
18              (a) a proceeds of crime order ceases to be in force; or  
19              (b) a forfeiture application is finally determined.
- 20             (6) For the purposes of subsection (5), a forfeiture application is taken  
21              to be *finally determined* when:  
22              (a) the application is withdrawn; or  
23              (b) if the application is successful—the resulting forfeiture order  
24              comes into force; or  
25              (c) if the application is unsuccessful—the time within which an  
26              appeal can be made has expired and any appeals have been  
27              finally determined or otherwise disposed of.

28       **90VC Lifting a stay**

- 29             (1) A court that stayed the de facto property settlement or maintenance  
30              proceedings under section 90VB must wholly or partially lift the  
31              stay if:  
32              (a) either party to the proceedings makes an application for the  
33              stay to be lifted and the DPP consents to such an application;  
34              or
-

- 1 (b) the DPP makes an application for the stay to be lifted.
- 2 (2) A court that stayed the de facto property settlement or maintenance  
3 proceedings under section 90VB may, on its own motion, wholly  
4 or partially lift the stay if the DPP consents to such a motion.
- 5 (3) Giving the Registry Manager written notice of the DPP's consent  
6 under this section is taken to be the giving of that consent, unless  
7 the court requires the DPP to appear in the proceedings. The notice  
8 may be given by the DPP or by a party to the proceedings.

9 **90VD Intervention by DPP**

- 10 (1) The DPP may intervene in any de facto property settlement or  
11 maintenance proceedings in relation to which a court is notified  
12 under section 90VA, or in any proceedings under section 90VB or  
13 90VC in which the DPP is not already a party.
- 14 (2) If the DPP intervenes, the DPP is taken to be a party to the  
15 proceedings with all the rights, duties and liabilities of a party.

16 **Division 6—Instruments not liable to duty**

17 **90WA Certain instruments not liable to duty**

- 18 (1) None of the following is subject to any duty or charge under any  
19 law of a State or Territory or any law of the Commonwealth that  
20 applies only in relation to a Territory:
- 21 (a) a deed or other instrument executed by a person for the  
22 purposes of, or in accordance with, an order made under  
23 Division 2;
- 24 (b) a Part VIIIAB financial agreement;
- 25 (c) a Part VIIIAB termination agreement;
- 26 (d) a deed or other instrument executed by a person for the  
27 purposes of, or in accordance with, an order or Part VIIIAB  
28 financial agreement made under Division 4.
- 29 (2) Subsection (1) does not apply to a liability to pay duty or charge (if  
30 any) in relation to a Part VIIIAB financial agreement covered by  
31 section 90UE if the liability arises before the transition time  
32 (within the meaning of that section) for the agreement.

- 1 (3) Despite any State law, a failure to discharge a liability covered by  
2 subsection (2) in relation to an agreement has no effect for the  
3 purposes of this Act. In particular, the failure does not affect  
4 whether the agreement may be presented in evidence in a court for  
5 the purposes of this Act.

6 **51 Section 90MA**

7 Omit all the words after “allocated”, substitute:

8 between:

- 9 (a) the parties to a marriage; or  
10 (b) the parties to a de facto relationship;  
11 either by agreement or by court order.

12 **52 Section 90MC**

13 Before “A superannuation”, insert “(1)”.

14 Note: The heading to section 90MC is altered by omitting “**meaning of matrimonial cause**”  
15 and substituting “**meanings of matrimonial cause and de facto financial cause**”.

16 **53 At the end of section 90MC**

17 Add:

- 18 (2) A superannuation interest is to be treated as property for the  
19 purposes of paragraph (c) of the definition of *de facto financial*  
20 *cause* in section 4.

21 **54 Section 90MD (definition of *declaration time*)**

22 Before “means”, insert “, in relation to a separation declaration,”.

23 **55 Section 90MD (definition of *spouse*)**

24 Repeal the definition, substitute:

25 *spouse* means:

- 26 (a) a party to a marriage; or  
27 (b) a party to a de facto relationship.

28 **56 Section 90MD (definition of *superannuation agreement*)**

29 Omit “section 90MH”, substitute “sections 90MH and 90MHA”.

30 **57 After subsection 90MG(1)**

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- 1 (db) if the agreement relates to a de facto relationship—the  
2 de facto relationship is broken down at the operative time;  
3 and

4 **61 Subsection 90MK(2) (paragraph (a) of the definition of**  
5 **service time)**

6 Repeal the paragraph, substitute:

- 7 (a) if the parties are divorced—a copy of the divorce order that  
8 has terminated the marriage; and  
9 (aa) if the parties are not divorced—a separation declaration with  
10 a declaration time that is not more than 28 days before the  
11 service on the trustee; and

12 **62 Section 90MM**

13 Before “If a”, insert “(1)”.

14 **63 At the end of section 90MM**

15 Add:

- 16 (2) If a court makes an order under section 90UM setting aside a  
17 Part VIIIAB financial agreement in respect of which a payment  
18 flag is operating, the court may also make an order terminating the  
19 operation of the flag.

20 Note: Under section 90MHA, a superannuation agreement relating to a  
21 de facto relationship must be part of a Part VIIIAB financial  
22 agreement. Therefore, setting aside the financial agreement also has  
23 the effect of setting aside the superannuation agreement.

24 **64 Subsection 90MN(4)**

25 Omit all the words after “satisfied”, substitute:

26 as to:

- 27 (a) if the spouses are parties to a marriage—any of the grounds  
28 set out in subsection 90K(1) (other than paragraph  
29 90K(1)(f)); or  
30 (b) if the spouses are parties to a de facto relationship—any of  
31 the grounds set out in subsection 90UM(1) (other than  
32 paragraph 90UM(1)(i)).

33 **65 At the end of subsection 90MN(5)**

34 Add “or Part VIIIAB financial agreement”.

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1 **66 At the end of section 90MN**

2 Add:

- 3 (7) An order under section 90UM setting aside a Part VIIIAB financial  
4 agreement also operates to set aside the related flag lifting  
5 agreement.

6 **67 Subsection 90MO(1)**

7 After “79”, insert “or 90SM”.

8 Note: The heading to section 90MO is altered by inserting “or 90SM” after “79”.

9 **68 After subsection 90MP(2)**

10 Insert:

11 *Spouses who are parties to a marriage*

- 12 (2A) Subsections (3) to (5) apply if the spouses are parties to a marriage.

13 **69 Subsection 90MP(5)**

14 Omit “this section”, substitute “subsections (3) to (4A)”.

15 **70 Subsection 90MP(6)**

16 Omit “this section”, substitute “subsections (3) to (5)”.

17 **71 At the end of section 90MP**

18 Add:

19 *Spouses who are parties to a de facto relationship*

- 20 (7) Subsections (8) to (12) apply if the spouses are parties to a de facto  
21 relationship.
- 22 (8) If section 90MQ applies to the declaration, then the declaration  
23 must state that:
- 24 (a) the spouses lived in a de facto relationship; and  
25 (b) the spouses separated and thereafter lived separately and  
26 apart for a continuous period of at least 12 months  
27 immediately before the declaration time; and  
28 (c) in the opinion of the spouse (or spouses) making the  
29 declaration, there is no reasonable likelihood of cohabitation  
30 being resumed.
-

- 1 (9) If section 90MQ does not apply to the declaration, then the  
2 declaration must state that the spouses lived in a de facto  
3 relationship, but are separated, at the declaration time.
- 4 (10) If either or both of the spouses have died, then the declaration must  
5 state:
- 6 (a) if section 90MQ applies to the declaration—that:
- 7 (i) the spouses lived in a de facto relationship; but  
8 (ii) at the most recent time when both spouses were alive,  
9 the spouses were separated and had lived separately and  
10 apart for a continuous period of at least 12 months  
11 immediately before that time; or
- 12 (b) if section 90MQ does not apply to the declaration—that the  
13 spouses:
- 14 (i) lived in a de facto relationship; but  
15 (ii) were separated at the most recent time when both  
16 spouses were alive.
- 17 Subsections (8) and (9) have effect subject to this subsection.
- 18 (11) For the purposes of subsection (8) and paragraph (10)(a), the  
19 spouses can have separated and be living separately and apart even  
20 if:
- 21 (a) their cohabitation was brought to an end by the action or  
22 conduct of one only of them; or  
23 (b) they have continued to reside in the same residence; or  
24 (c) either of them has rendered some household services to the  
25 other.
- 26 (12) For the purposes of subsection (8) and paragraph (10)(a), if, after  
27 the spouses separated, they resumed cohabitation on one occasion  
28 but, within a period of 3 months after the resumption of  
29 cohabitation, they again separated and thereafter lived separately  
30 and apart up to the relevant time referred to in paragraph (8)(b) or  
31 (10)(a):
- 32 (a) the periods of living separately and apart before and after the  
33 period of cohabitation may be aggregated as if they were one  
34 continuous period; but  
35 (b) the period of cohabitation shall not be taken to be part of the  
36 period of living separately and apart.

37 **72 Subsection 90MS(1)**

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1 After “79”, insert “or 90SM”.

2 Note: The heading to section 90MS is altered by inserting “or 90SM” after “79”.

3 **73 Subsection 90MS(1) (note 1)**

4 Repeal the note, substitute:

5 Note 1: Although the orders are made in accordance with this Division, they  
6 will be made under either section 79 or 90SM. Therefore they will be  
7 generally subject to all the same provisions as other orders made under  
8 that section.

9 **74 At the end of subsection 90MS(1)**

10 Add:

11 Note 3: Subsections 44(5) and (6) and sections 90SB, 90SK and 90MO limit  
12 the scope of section 90SM.

13 **75 Subsection 90MS(2)**

14 After “79”, insert “or 90SM”.

15 **76 Subsection 90MV(1)**

16 After “79”, insert “or 90SM”.

17 **77 Subsection 90MX(3) (example)**

18 Omit “Example”, substitute “Example 1”.

19 **78 At the end of subsection 90MX(3)**

20 Add:

21 Example 2: W has a superannuation interest that is subject to 3 payment splits in  
22 respect of W’s de facto relationship with X, W’s marriage to Y and  
23 W’s de facto relationship with Z (in that order). The operative times of  
24 the payment splits are in the same order as the relationships. Assume  
25 each payment split provides for a 50% share to the non-member  
26 spouse. W becomes entitled to a splittable payment of \$100. The final  
27 payment entitlements are as follows: X gets \$50. Y gets \$25. Z gets  
28 \$12.50. W gets the remaining \$12.50.

29 **79 Subsection 105(2A)**

30 After “90KA(c)”, insert “or 90UN(c)”.

31 **80 Paragraph 106B(1A)(a)**

32 After “marriage”, insert “, or a party to a de facto relationship.”.

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**Schedule 1** Amendments relating to de facto financial matters

**Part 1** Amendments

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1 **81 Paragraph 106B(1B)(a)**

2 After “marriage”, insert “, or a party to a de facto relationship,”.

3 **82 Subsection 106B(4A)**

4 After “80(1)”, insert “or 90SS(1)”.

5 **83 At the end of subsection 107(1)**

6 Add “or de facto financial cause”.

7 **84 Section 112AA (paragraph (b) of the definition of *order***  
8 ***under this Act*)**

9 After “section”, insert “90SS or”.

1

2 **Part 2—Transitional provisions**

3 **Division 1—Introduction**

4 **85 Interpretation**

5 In this Part:

6 *commencement* means the commencement of this Schedule.

7 *earlier participating jurisdiction* means a State or Territory that is a  
8 participating jurisdiction at commencement.

9 *later participating jurisdiction* means a State that becomes a  
10 participating jurisdiction after commencement.

11 *new Act* means the *Family Law Act 1975* as in force after  
12 commencement.

13 *Part VIII B* means Part VIII B of the new Act to the extent to which that  
14 Part relates to a superannuation interest to be allocated between the  
15 parties to a de facto relationship.

16 *preserved law*, of a State or Territory, means a law of the State or  
17 Territory relating to financial matters relating to the parties to de facto  
18 relationships arising out of the breakdown of those de facto  
19 relationships.

20 *transition time*, for a later participating jurisdiction, means the time the  
21 State becomes a participating jurisdiction.

22 **Division 2—New Act does not apply to de facto**  
23 **relationships breaking down before**  
24 **commencement**

25 **86 De facto relationships that broke down before**  
26 **commencement**

27 (1) Parts VIII AB and VIII B of the new Act do not extend to a de facto  
28 relationship that broke down before commencement.

29 Note 1: After commencement, State/Territory law will apply to any proceedings etc. to enforce,  
30 discharge, suspend, revive or vary an order or injunction in force at commencement in  
31 relation to the maintenance, or the distribution of property, of the parties to the de facto  
32 relationship arising out of the breakdown of the de facto relationship.

**Schedule 1** Amendments relating to de facto financial matters

**Part 2** Transitional provisions

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1 Note 2: After commencement, State/Territory law will continue to apply to any proceedings  
2 pending at commencement for an order or injunction in relation to the maintenance, or  
3 the distribution of property, of the parties to the de facto relationship arising out of the  
4 breakdown of the de facto relationship.

5 Note 3: After commencement, State/Territory law will continue to apply if the parties to the  
6 de facto relationship have made, or make, an agreement about financial matters arising  
7 out of the breakdown of the de facto relationship.

8 Note 4: Section 90UE of the new Act will not apply in relation to an agreement made, by the  
9 parties to the de facto relationship under a non-referring State de facto financial law,  
10 about financial matters arising out of the breakdown of the de facto relationship. Such  
11 an agreement will not be affected by the new Act.

12 (2) To avoid doubt, section 90RC of the new Act does not exclude the  
13 operation of any State or Territory law in relation to the de facto  
14 relationship.

15 Note: Subsection 39A(5) of the new Act will not apply in relation to the de facto relationship  
16 because the effect of this item is that a de facto financial cause relating to that  
17 relationship cannot be instituted under the new Act.

18 **Division 3—De facto relationships linked to earlier**  
19 **participating jurisdictions**

20 **87 Pre-commencement agreements—made in contemplation**  
21 **of de facto relationships**

- 22 (1) This item applies if:
- 23 (a) before commencement, 2 people (the *couple*) who were  
24 contemplating entering into a de facto relationship with each  
25 other made a written agreement, signed by both of them, with  
26 respect to any of the matters (the *eligible agreed matters*)  
27 mentioned in subitem (3); and
  - 28 (b) the agreement was made under a preserved law of an earlier  
29 participating jurisdiction; and
  - 30 (c) a court could not, because of the preserved law, make an  
31 order under that law that is inconsistent with the agreement  
32 with respect to any of the eligible agreed matters; and
  - 33 (d) immediately before commencement:
    - 34 (i) the agreement was in force under the preserved law; and
    - 35 (ii) if the couple had entered into the de facto relationship—  
36 the de facto relationship had not broken down; and
    - 37 (iii) the couple were not married to each other.

1 Paragraph (a) extends to an agreement made with one or more other  
2 people.

3 Note: Agreements made in non-referring States are not covered by this item. Those  
4 agreements continue to be governed by State law unless they are transformed into  
5 Part VIIIAB financial agreements (see section 90UE of the new Act and Division 4 of  
6 this Part).

7 (2) For the purposes of the new Act, the agreement is taken, on and after  
8 commencement, to be a Part VIIIAB financial agreement made as  
9 mentioned in subsection 90UB(1) of the new Act to the extent that the  
10 agreement deals with the eligible agreed matters.

11 Note: After commencement, the agreement can only be enforced, varied, terminated or  
12 otherwise set aside under the new Act.

13 (3) The matters referred to in paragraph (a) of subitem (1) are the  
14 following:

- 15 (a) how all or any of the:  
16 (i) property; or  
17 (ii) financial resources;  
18 of either member, or members, of the couple at the time when  
19 the agreement is made, or at a later time and during the  
20 de facto relationship, is to be distributed in the event of the  
21 breakdown of the de facto relationship;  
22 (b) the maintenance of either member of the couple in the event  
23 of the breakdown of the de facto relationship;  
24 (c) matters incidental or ancillary to those mentioned in  
25 paragraph (a) or (b).

26 (4) For the purposes of paragraph (c) of subitem (1), disregard whether the  
27 preserved law permits the court to make such an order if the court varies  
28 or sets aside the agreement.

## 29 **88 Pre-commencement agreements—made during de facto** 30 **relationships**

- 31 (1) This item applies if:  
32 (a) before commencement and while in a de facto relationship,  
33 the parties to the de facto relationship (the *couple*) made a  
34 written agreement, signed by both of them, with respect to  
35 any of the matters (the *eligible agreed matters*) mentioned in  
36 subitem (3); and

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- 1 (b) the agreement was made under a preserved law of an earlier  
2 participating jurisdiction; and  
3 (c) a court could not, because of the preserved law, make an  
4 order under that law that is inconsistent with the agreement  
5 with respect to any of the eligible agreed matters; and  
6 (d) immediately before commencement:  
7 (i) the agreement was in force under the preserved law; and  
8 (ii) the de facto relationship had not broken down; and  
9 (iii) the couple were not married to each other.

10 Paragraph (a) extends to an agreement made with one or more other  
11 people.

12 Note: Agreements made in non-referring States are not covered by this item. Those  
13 agreements continue to be governed by State law unless they are transformed into  
14 Part VIIIAB financial agreements (see section 90UE of the new Act).

15 (2) For the purposes of the new Act, the agreement is taken, on and after  
16 commencement, to be a Part VIIIAB financial agreement made as  
17 mentioned in subsection 90UC(1) of the new Act to the extent that the  
18 agreement deals with the eligible agreed matters.

19 Note: After commencement, the agreement can only be enforced, varied, terminated or  
20 otherwise set aside under the new Act.

21 (3) The matters referred to in paragraph (a) of subitem (1) are the  
22 following:

- 23 (a) how all or any of the:  
24 (i) property; or  
25 (ii) financial resources;  
26 of either member, or members, of the couple at the time when  
27 the agreement is made, or at a later time and during the  
28 de facto relationship, is to be distributed in the event of the  
29 breakdown of the de facto relationship;  
30 (b) the maintenance of either member of the couple in the event  
31 of the breakdown of the de facto relationship;  
32 (c) matters incidental or ancillary to those mentioned in  
33 paragraph (a) or (b).

34 (4) For the purposes of paragraph (c) of subitem (1), disregard whether the  
35 preserved law permits the court to make such an order if the court varies  
36 or sets aside the agreement.



1 **Division 4—De facto relationships linked to later**  
2 **participating jurisdictions**

3 **89 When this Division applies**

4 This Division applies if Parts VIIIAB and VIIIB of the new Act:

- 5 (a) extend to a de facto relationship; or  
6 (b) would, but for item 90, extend to a de facto relationship;

7 only because a State has become a later participating jurisdiction.

8 **Note:** This Division will not apply to a de facto relationship that breaks down during the  
9 period starting at commencement and ending at the transition time for the State if,  
10 during that period, section 90UE of the new Act has applied in relation to the de facto  
11 relationship. This is because it is section 90UE, and not the State becoming a  
12 participating jurisdiction, that has caused Part VIIIAB of the new Act to extend to the  
13 de facto relationship.

14 **Example 1:** Amy and Ben made an agreement in a non-referring State and then moved to, and  
15 spent most of their relationship in, an earlier participating jurisdiction. Their  
16 relationship broke down after commencement, but before the non-referring State  
17 became a later participating jurisdiction. Their residence in the earlier participating  
18 jurisdiction means section 90UE of the new Act will cause Amy and Ben's agreement to  
19 become a Part VIIIAB financial agreement.

20 **Example 2:** Cathy and Don made an agreement in a non-referring State and did not move from  
21 that State. Their relationship broke down after commencement but before the  
22 non-referring State became a later participating jurisdiction. That State becoming a later  
23 participating jurisdiction is the only way that Part VIIIAB could only apply to Cathy  
24 and Don's relationship. This means this Division, and item 90, will apply. The effect of  
25 item 90 is that State law will continue to govern Cathy and Don's agreement.

26 **Example 3:** During their de facto relationship, Emily and Fred made an agreement in a  
27 non-referring State and did not move from that State. Their relationship broke down  
28 after the non-referring State became a later participating jurisdiction. That State  
29 becoming a later participating jurisdiction is the only way that Part VIIIAB could only  
30 apply to Emily and Fred's relationship. This means this Division, and item 92, will  
31 apply. The effect of item 92 is that Emily and Fred's agreement will become a  
32 Part VIIIAB financial agreement.

33 **90 De facto relationships that break down before transition**  
34 **time for a later participating jurisdiction**

- 35 (1) Parts VIIIAB and VIIIB of the new Act do not extend to the de facto  
36 relationship if it broke down before the transition time for the State.

37 **Note 1:** After the transition time, the law of the State will apply to any proceedings etc. to  
38 enforce, discharge, suspend, revive or vary an order or injunction in force at the  
39 transition time in relation to the maintenance, or the distribution of property, of the  
40 parties to the de facto relationship arising out of the breakdown of the de facto  
41 relationship.

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1 Note 2: After the transition time, the law of the State will continue to apply to any proceedings  
2 pending at the transition time for an order or injunction in relation to the maintenance,  
3 or the distribution of property, of the parties to the de facto relationship arising out of  
4 the breakdown of the de facto relationship.

5 Note 3: After the transition time, the law of the State will continue to apply if the parties to the  
6 de facto relationship have, before the transition time, made an agreement (to which  
7 section 90UE of the new Act had not applied) about financial matters arising from that  
8 breakdown.

9 Note 4: After the transition time, the law of the State will continue to apply if the parties to the  
10 de facto relationship, after the transition time, make an agreement about financial  
11 matters arising from that breakdown.

12 (2) To avoid doubt, section 90RC of the new Act does not exclude the  
13 operation of any State or Territory law in relation to the de facto  
14 relationship.

15 Note: Subsection 39A(5) of the new Act will not apply in relation to the de facto relationship  
16 because the effect of this item is that a de facto financial cause relating to that  
17 relationship cannot be instituted under the new Act.

## 18 **91 Pre-transition time agreements—made in contemplation of** 19 **de facto relationships**

20 (1) This item applies if:

21 (a) before the transition time for the State, 2 people (the *couple*)  
22 who were contemplating entering into a de facto relationship  
23 with each other made a written agreement, signed by both of  
24 them, with respect to any of the matters (the *eligible agreed*  
25 *matters*) mentioned in subitem (3); and

26 (b) the agreement was made under a preserved law of the State;  
27 and

28 (c) either:

29 (i) a court could not, because of the preserved law, make an  
30 order under that law that is inconsistent with the  
31 agreement with respect to any of the eligible agreed  
32 matters; or

33 (ii) a court could not, because of the preserved law, make an  
34 order under that law that is with respect to any of the  
35 eligible agreed matters to which the agreement applies;  
36 and

37 (d) at the transition time for the State, the members of the couple  
38 were not the spouse parties to any binding Part VIIIAB  
39 financial agreement with respect to any of the eligible agreed  
40 matters; and

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- 1 (e) immediately before the transition time for the State:  
2 (i) the agreement was in force under the preserved law; and  
3 (ii) if the couple had entered into the de facto relationship—  
4 the de facto relationship had not broken down; and  
5 (iii) the couple were not married to each other.

6 Paragraph (a) extends to an agreement made with one or more other  
7 people.

- 8 (2) For the purposes of the new Act, the agreement is taken, on and after  
9 the transition time, to be a Part VIIIAB financial agreement made as  
10 mentioned in subsection 90UB(1) of the new Act to the extent that the  
11 agreement deals with the eligible agreed matters.

12 Note: After the transition time, the agreement can only be enforced, varied, terminated or  
13 otherwise set aside under the new Act.

- 14 (3) The matters referred to in paragraph (a) of subitem (1) are the  
15 following:

- 16 (a) how all or any of the:  
17 (i) property; or  
18 (ii) financial resources;  
19 of either member, or members, of the couple at the time when  
20 the agreement is made, or at a later time and during the  
21 de facto relationship, is to be distributed in the event of the  
22 breakdown of the de facto relationship;  
23 (b) the maintenance of either member of the couple in the event  
24 of the breakdown of the de facto relationship;  
25 (c) matters incidental or ancillary to those mentioned in  
26 paragraph (a) or (b).

- 27 (4) For the purposes of paragraph (c) of subitem (1), disregard whether the  
28 preserved law permits the court to make such an order if the court varies  
29 or sets aside the agreement.

30 **92 Pre-transition time agreements—made during de facto**  
31 **relationships**

- 32 (1) This item applies if:  
33 (a) before the transition time for the State and while in a de facto  
34 relationship, the parties to the de facto relationship (the  
35 *couple*) made a written agreement, signed by both of them,

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- 1 with respect to any of the matters (the *eligible agreed*  
2 *matters*) mentioned in subitem (3); and  
3 (b) the agreement was made under a preserved law of the State;  
4 and  
5 (c) either:  
6 (i) a court could not, because of the preserved law, make an  
7 order under that law that is inconsistent with the  
8 agreement with respect to any of the eligible agreed  
9 matters; or  
10 (ii) a court could not, because of the preserved law, make an  
11 order under that law that is with respect to any of the  
12 eligible agreed matters to which the agreement applies;  
13 and  
14 (d) at the transition time for the State, the members of the couple  
15 were not the spouse parties to any binding Part VIIIAB  
16 financial agreement with respect to any of the eligible agreed  
17 matters; and  
18 (e) immediately before the transition time for the State:  
19 (i) the agreement was in force under the preserved law; and  
20 (ii) the de facto relationship had not broken down; and  
21 (iii) the parties were not married to each other.

22 Paragraph (a) extends to an agreement made with one or more other  
23 people.

24 (2) For the purposes of the new Act, the agreement is taken, on and after  
25 the transition time, to be a Part VIIIAB financial agreement made as  
26 mentioned in subsection 90UC(1) of the new Act to the extent that the  
27 agreement deals with the eligible agreed matters.

28 Note: After the transition time, the agreement can only be enforced, varied, terminated or  
29 otherwise set aside under the new Act.

30 (3) The matters referred to in paragraph (a) of subitem (1) are the  
31 following:

- 32 (a) how all or any of the:  
33 (i) property; or  
34 (ii) financial resources;  
35 of either member, or members, of the couple at the time when  
36 the agreement is made, or at a later time and during the  
37 de facto relationship, is to be distributed in the event of the  
38 breakdown of the de facto relationship;
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- 1 (b) the maintenance of either member of the couple in the event  
2 of the breakdown of the de facto relationship;  
3 (c) matters incidental or ancillary to those mentioned in  
4 paragraph (a) or (b).
- 5 (4) For the purposes of paragraph (c) of subitem (1), disregard whether the  
6 preserved law permits the court to make such an order if the court varies  
7 or sets aside the agreement.

8 **Division 5—Application of new Act to transitioning**  
9 **agreements**

10 **93 Application of new Act to agreements covered by this Part**

- 11 (1) For the purposes of the application of the new Act to an agreement  
12 covered by item 87, 88, 91 or 92:
- 13 (a) section 90UA of the new Act has effect subject to this Part;  
14 and  
15 (b) section 90UG of the new Act has effect as if the reference in  
16 that section to paragraph 90UE(2)(b) of the new Act included  
17 a reference to paragraph (3)(c) of that item; and  
18 (c) section 90UH of the new Act is taken not to have been  
19 enacted; and  
20 (d) section 90UJ of the new Act has effect as if the references in  
21 that section to section 90UE of the new Act included  
22 references to that item; and  
23 (e) subparagraph 90UM(1)(c)(ii) of the new Act has effect as if:  
24 (i) the reference in that subparagraph to an order under  
25 section 90SM of the new Act included a reference to an  
26 order (however described) under a corresponding  
27 provision (if any) of the preserved law; and  
28 (ii) the reference in that subparagraph to a declaration under  
29 section 90SL of the new Act included a reference to a  
30 declaration (however described) under a corresponding  
31 provision (if any) of the preserved law; and  
32 (f) the reference in paragraph 90UM(1)(k) of the new Act to  
33 section 90UE of the new Act included a reference to that  
34 item; and  
35 (g) the reference in subsection 90UM(5) of the new Act to  
36 section 90UE of the new Act included a reference to that  
37 item; and
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- 1 (h) subsection 90WA(1) of the new Act does not apply to a  
2 liability to pay duty or charge (if any) in relation to the  
3 agreement if the liability arises before:  
4 (i) if the item is item 87 or 88—commencement; or  
5 (ii) if the item is item 91 or 92—the transition time.
- 6 (2) Despite any State or Territory law, a failure to discharge a liability  
7 covered by paragraph (h) of subitem (1) in relation to the agreement has  
8 no effect for the purposes of the new Act. In particular, the failure does  
9 not affect whether the agreement may be presented in evidence in a  
10 court for the purposes of the new Act.

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## **Schedule 2—Consequential amendments relating to de facto financial matters**

### ***A New Tax System (Family Assistance) Act 1999***

#### **1 Subparagraph 19(2)(c)(iii)**

After “maintenance agreement”, insert “, a financial agreement (within the meaning of the *Family Law Act 1975*), a Part VIIIAB financial agreement (within the meaning of that Act)”.

#### **2 Subparagraph 20A(10)(b)(iii) of Schedule 1**

After “financial agreement”, insert “, or Part VIIIAB financial agreement,”.

#### **3 Subparagraph 24(3)(a)(iii) of Schedule 1**

After “financial agreement”, insert “, or Part VIIIAB financial agreement,”.

### ***Bankruptcy Act 1966***

#### **4 Subsection 5(1) (definition of *maintenance agreement*)**

After “financial agreement”, insert “, or Part VIIIAB financial agreement,”.

#### **5 After subsection 35(1)**

Insert:

(1A) If, at a particular time:

(a) a party to a de facto relationship is a bankrupt; and

(b) the trustee of the bankrupt’s estate is:

(i) a party to property settlement proceedings in relation to either or both of the parties to the de facto relationship;  
or

(ii) an applicant under section 90SN of the *Family Law Act 1975* for the variation or setting aside of an order made under section 90SM of that Act in property settlement

1 proceedings in relation to either or both of the parties to  
2 the de facto relationship; or  
3 (iii) a party to maintenance proceedings under Part VIIIAB  
4 of the *Family Law Act 1975* in relation to the  
5 maintenance of one of the parties to the de facto  
6 relationship;  
7 then, at and after that time, the Family Court has jurisdiction in  
8 bankruptcy in relation to any matter connected with, or arising out  
9 of, the bankruptcy of the bankrupt.

## 10 **6 Subsection 35(2)**

11 Omit “Subsection (1) does”, substitute “Subsections (1) and (1A) do”.

## 12 **7 At the end of section 35**

13 Add:

14 (4) An expression used in subsection (1A) that is also used in the  
15 *Family Law Act 1975* has the same meaning in that subsection as it  
16 has in that Act.

## 17 **8 Subsection 35B(1)**

18 After “35”, insert “(other than subsection (1A))”.

## 19 **9 After subsection 35B(1)**

20 Insert:

21 (1A) Despite subsection (1), section 35A does not apply to the Family  
22 Court of Western Australia in relation to a de facto financial cause  
23 (within the meaning of the *Family Law Act 1975*).

## 24 **10 Paragraph 40(1)(o)**

25 Omit all the words after “accordance”, substitute:

26 with:

27 (i) a financial agreement (within the meaning of the *Family*  
28 *Law Act 1975*); or

29 (ii) a Part VIIIAB financial agreement (within the meaning  
30 of the *Family Law Act 1975*);

31 to which the debtor is a party.

## 32 **11 Section 59A**

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1 After “VIII”, insert “or VIIIAB”.

2 Note: The heading to section 59A is altered by inserting “or VIIIAB” after “VIII”.

3 **12 Paragraph 116(2)(q)**

4 After “spouse”, insert “, or a former spouse,”.

5 **13 At the end of subsection 116(2)**

6 Add:

7 ; (r) any property that, under an order under Part VIIIAB of the  
8 *Family Law Act 1975*, the trustee is required to transfer to a  
9 former de facto spouse of the bankrupt.

10 **14 Paragraph 120(5)(e)**

11 After “spouse”, insert “, or a former spouse,”.

12 **15 At the end of subsection 120(5)**

13 Add:

14 ; (f) if the transferee is a former de facto spouse of the  
15 transferor—the transferee granting the transferor a right to  
16 live at the transferred property, unless the grant relates to a  
17 transfer or settlement of property, or an agreement, under the  
18 *Family Law Act 1975*.

19 **16 Paragraph 121(6)(e)**

20 After “spouse”, insert “, or a former spouse,”.

21 **17 At the end of subsection 121(6)**

22 Add:

23 ; (f) if the transferee is a former de facto spouse of the  
24 transferor—the transferee granting the transferor a right to  
25 live at the transferred property, unless the grant relates to a  
26 transfer or settlement of property, or an agreement, under the  
27 *Family Law Act 1975*.

28 **18 Subsection 140(11)**

29 Omit “section 114 of the *Family Law Act 1975* (which deals”, substitute  
30 “section 90SS or 114 of the *Family Law Act 1975* (which deal”.

31 ***Child Support (Assessment) Act 1989***

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1 **19 At the end of subsection 84(5)**

2 Add:  
3 ; or (c) a Part VIIIAB financial agreement (within the meaning of  
4 that Act).

5 **20 Paragraph 152(1)(b)**

6 Omit “or a financial agreement within the meaning of the *Family Law*  
7 *Act 1975*”, substitute “a financial agreement (within the meaning of the  
8 *Family Law Act 1975*) or a Part VIIIAB financial agreement (within the  
9 meaning of that Act)”.

10 **21 Subsection 152(1)**

11 Omit “or financial agreement” (wherever occurring), substitute “,  
12 financial agreement or Part VIIIAB financial agreement”.

13 ***Child Support (Registration and Collection) Act 1988***

14 **22 Subsection 4(1) (at the end of subparagraph (a)(i) of the**  
15 **definition of *collection agency maintenance liability*)**

16 Add “or”.

17 **23 Subsection 4(1) (after subparagraph (a)(iii) of the**  
18 **definition of *collection agency maintenance liability*)**

19 Insert:  
20 or (iv) a party to a de facto relationship to pay a periodic  
21 amount for the maintenance of the other party to the  
22 de facto relationship;

23 **24 Subsection 4(1) (definition of *maintenance agreement*)**

24 Omit “or a party to a marriage”, substitute “, a party to a marriage or a  
25 party to a de facto relationship”.

26 **25 Subsection 4(1) (definition of *maintenance agreement*)**

27 After “financial agreement”, insert “, or Part VIIIAB financial  
28 agreement,”.

29 **26 Subsection 4(1)**

30 Insert:

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1                    *party to a de facto relationship* has the same meaning as in the  
2                    *Family Law Act 1975*.

3                    **27 Subsection 4(1) (after paragraph (d) of the definition of**  
4                    ***terminating event*)**

5                    Insert:

6                    (daa) in a case where the liability relates to the maintenance of a  
7                    party to a de facto relationship—the marriage of the person  
8                    unless, under the terms and conditions of the relevant court  
9                    order or maintenance agreement or otherwise by force of law,  
10                    the liability is to continue after the marriage of the person; or

11                    **28 Section 18**

12                    Before “Subject”, insert “(1)”.

13                    Note: The heading to section 18 is altered by inserting “, or parties to de facto  
14                    relationships,” after “marriages”.

15                    **29 At the end of section 18**

16                    Add:

- 17                    (2) Subject to section 19, a liability is a registrable maintenance  
18                    liability if:
- 19                    (a) it is a liability of a party to a de facto relationship to pay a  
20                    periodic amount for the maintenance of the other party to the  
21                    de facto relationship; and
  - 22                    (b) either of the following subparagraphs applies:
    - 23                    (i) it arises under a court order or court registered  
24                    maintenance agreement;
    - 25                    (ii) it is a collection agency maintenance liability.

26                    **30 At the end of subparagraph 112(1)(b)(ii)**

27                    Add “or”.

28                    **31 After subparagraph 112(1)(b)(ii)**

29                    Insert:

- 30                    (iii) the maintenance by a party to a de facto relationship of  
31                    the other party to the de facto relationship;

32                    ***Federal Magistrates Act 1999***

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1 **32 Subparagraph 102(2)(l)(i)**

2 Omit “or 77”, substitute “, 77 or 90SG”.

3 ***First Home Saver Accounts Act 2008***

4 **33 Section 18 (at the end of the definition of *family law***  
5 ***obligation*)**

6 Add:

7 ; or (c) a Part VIIIAB financial agreement (within the meaning of the  
8 *Family Law Act 1975*) that is binding because of  
9 section 90UJ of that Act.

10 ***Income Tax Assessment Act 1997***

11 **34 After paragraph 126-5(1)(d)**

12 Insert:

13 (da) something done under:

- 14 (i) a Part VIIIAB financial agreement (within the meaning  
15 of the *Family Law Act 1975*) that is binding because of  
16 section 90UJ of that Act; or  
17 (ii) a corresponding written agreement that is binding  
18 because of a corresponding foreign law; or

19 **35 Subsection 126-5(3A)**

20 After “(d)”, insert “, (da)”.

21 **36 After paragraph 126-15(1)(d)**

22 Insert:

23 (da) something done under:

- 24 (i) a Part VIIIAB financial agreement (within the meaning  
25 of the *Family Law Act 1975*) that is binding because of  
26 section 90UJ of that Act; or  
27 (ii) a corresponding written agreement that is binding  
28 because of a corresponding foreign law; or

29 **37 Subsection 126-15(5)**

30 After “(d)”, insert “, (da)”.

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1 **38 Paragraph 126-140(2A)(h)**

2 After “(2B)(d)”, insert “, (da)”.

3 **39 Paragraph 126-140(2B)(b)**

4 Omit “or subsection 90AE(2) or 90AF(2)”, substitute “, subsection  
5 90AE(2) or 90AF(2) or section 90SM”.

6 **40 Paragraph 126-140(2B)(c)**

7 Omit “section 79 or subsection 90AE(2) or 90AF(2)”, substitute  
8 “subsection 90AE(2) or 90AF(2) or section 90SM”.

9 **41 After paragraph 126-140(2B)(d)**

10 Insert:

11 (da) a Part VIIIAB financial agreement (within the meaning of the  
12 *Family Law Act 1975*) that is binding because of  
13 section 90UJ of that Act; or

14 ***Proceeds of Crime Act 2002***

15 **42 After subparagraph 330(4)(ba)(i)**

16 Insert:

17 (ia) an order in proceedings under the *Family Law Act 1975*  
18 with respect to the property of the parties to a de facto  
19 relationship (within the meaning of that Act) or either of  
20 them; or

21 **43 Subparagraph 330(4)(ba)(ii)**

22 After “agreement”, insert “, or Part VIIIAB financial agreement.”.

23 ***Social Security Act 1991***

24 **44 Subparagraph 9A(2)(h)(iva)**

25 Omit “spouse” (wherever occurring), substitute “partner”.

26 **45 Subparagraph 9B(2)(h)(iva)**

27 Omit “spouse” (wherever occurring), substitute “partner”.

28 **46 Subparagraph 9BA(2)(f)(vi)**

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1 Omit “spouse” (wherever occurring), substitute “partner”.

2 **47 Paragraph 9C(b)**

3 Omit “spouse” (wherever occurring), substitute “partner”.

4 ***Veterans’ Entitlements Act 1986***

5 **48 Subparagraph 5JA(2)(h)(iva)**

6 Omit “spouse” (wherever occurring), substitute “partner”.

7 **49 Subparagraph 5JB(2)(h)(iva)**

8 Omit “spouse” (wherever occurring), substitute “partner”.

9 **50 Subparagraph 5JBA(2)(f)(vi)**

10 Omit “spouse” (wherever occurring), substitute “partner”.

11 **51 Paragraph 5JC(b)**

12 Omit “spouse” (wherever occurring), substitute “partner”.

13 **52 Subparagraph 51(3)(a)(ia)**

14 Omit “under”, substitute “, or Part VIIIAB financial agreement, within  
15 the meaning of”.

1  
2 **Schedule 3—Amendments relating to financial**  
3 **agreements about marriage**

4 **Part 1—Clarifying that other persons can be parties**

5 *Family Law Act 1975*

6 **1 Subsection 4(1)**

7 Insert:

8 *spouse party*, in relation to a financial agreement, means a party to  
9 the agreement who is a party to the contemplated marriage,  
10 marriage or former marriage to which the agreement relates.

11 **2 Subsection 4(1)**

12 Insert:

13 *third party*, in relation to a financial agreement, means a party to  
14 the agreement who is not a spouse party.

15 **3 Paragraph 90B(1)(aa)**

16 Repeal the paragraph, substitute:

17 (aa) at the time of the making of the agreement, the people are not  
18 the spouse parties to any other binding agreement (whether  
19 made under this section or section 90C or 90D) with respect  
20 to any of those matters; and

21 **4 At the end of subsection 90B(1)**

22 Add “The people may make the financial agreement with one or more  
23 other people.”.

24 **5 Subsection 90B(2)**

25 Omit “them” (wherever occurring), substitute “the spouse parties”.

26 **6 Subsections 90B(3) and (4)**

27 Repeal the subsections, substitute:

28 (3) A financial agreement made as mentioned in subsection (1) may  
29 also contain:

**Schedule 3** Amendments relating to financial agreements about marriage  
**Part 1** Clarifying that other persons can be parties

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- 1 (a) matters incidental or ancillary to those mentioned in  
2 subsection (2); and  
3 (b) other matters.

- 4 (4) A financial agreement (the *new agreement*) made as mentioned in  
5 subsection (1) may terminate a previous financial agreement  
6 (however made) if all of the parties to the previous agreement are  
7 parties to the new agreement.

8 **7 Paragraph 90C(1)(aa)**

9 Repeal the paragraph, substitute:

- 10 (aa) at the time of the making of the agreement, the parties to the  
11 marriage are not the spouse parties to any other binding  
12 agreement (whether made under this section or section 90B  
13 or 90D) with respect to any of those matters; and

14 **8 At the end of subsection 90C(1)**

15 Add “The parties to the marriage may make the financial agreement  
16 with one or more other people.”.

17 **9 Subsection 90C(2)**

18 Omit “them” (wherever occurring), substitute “the spouse parties”.

19 **10 Subsections 90C(3) and (4)**

20 Repeal the subsections, substitute:

- 21 (3) A financial agreement made as mentioned in subsection (1) may  
22 also contain:

- 23 (a) matters incidental or ancillary to those mentioned in  
24 subsection (2); and  
25 (b) other matters.

- 26 (4) A financial agreement (the *new agreement*) made as mentioned in  
27 subsection (1) may terminate a previous financial agreement  
28 (however made) if all of the parties to the previous agreement are  
29 parties to the new agreement.

30 **11 Paragraph 90D(1)(aa)**

31 Repeal the paragraph, substitute:

- 32 (aa) at the time of the making of the agreement, the parties to the  
33 former marriage are not the spouse parties to any other
-



1 binding agreement (whether made under this section or  
2 section 90B or 90C) with respect to any of those matters; and

3 **12 At the end of subsection 90D(1)**

4 Add “The parties to the former marriage may make the financial  
5 agreement with one or more other people.”.

6 **13 Subsection 90D(2)**

7 Omit “them” (wherever occurring), substitute “the spouse parties”.

8 **14 Subsections 90D(3) and (4)**

9 Repeal the subsections, substitute:

10 (3) A financial agreement made as mentioned in subsection (1) may  
11 also contain:

12 (a) matters incidental or ancillary to those mentioned in  
13 subsection (2); and

14 (b) other matters.

15 (4) A financial agreement (the *new agreement*) made as mentioned in  
16 subsection (1) may terminate a previous financial agreement  
17 (however made) if all of the parties to the previous agreement are  
18 parties to the new agreement.

19 **15 Subsections 90DA(3) and (4)**

20 Omit “parties” (wherever occurring), substitute “spouse parties”.

21 **16 Subsection 90DA(5) (definition of *declaration time*)**

22 Repeal the definition, substitute:

23 *declaration time* means the time when the declaration was signed  
24 by a spouse party to the financial agreement (or last signed by a  
25 spouse party to the agreement, if both spouse parties to the  
26 agreement have signed).

27 **17 After section 90DA**

28 Insert:

1 **90DB Whether or when certain other provisions of financial**  
2 **agreements take effect**

- 3 (1) A binding financial agreement, to the extent to which it provides  
4 for a third party to contribute to the maintenance of a spouse party  
5 during the marriage, is of no force or effect.
- 6 (2) A binding financial agreement, to the extent to which it provides  
7 for matters covered by paragraph 90B(3)(b) or 90C(3)(b), is of no  
8 force or effect unless and until the marriage breaks down.

9 **18 Section 90E**

10 Omit “party” (first occurring), substitute “spouse party”.

11 **19 Subsection 90F(2)**

12 Omit “party” (first occurring), substitute “spouse party”.

13 **20 Paragraph 90G(1)(a)**

14 Omit “both”, substitute “all”.

15 **21 Paragraph 90G(1)(b)**

16 Omit “party” (first occurring), substitute “spouse party”.

17 **22 Paragraph 90G(1)(e)**

18 Omit “parties and a copy is given to the other”, substitute “spouse  
19 parties and a copy is given to each of the other parties”.

20 **23 Paragraph 90J(2)(a)**

21 Omit “both”, substitute “all”.

22 **24 Paragraph 90J(2)(b)**

23 Omit “party” (first occurring), substitute “spouse party”.

24 **25 Paragraph 90J(2)(e)**

25 Omit “parties and a copy is given to the other”, substitute “spouse  
26 parties and a copy is given to each of the other parties”.

27 **26 Paragraph 90K(1)(aa)**

28 Omit “either”, substitute “a”.

1 **27 Subsection 90MH(1)**

2 Omit “parties”, substitute “spouse parties”.

3 **28 Subsection 90MH(4)**

4 Omit “parties”, substitute “spouse parties”.

5 **29 Subsection 90MH(5)**

6 Omit “party” (first occurring), substitute “spouse party”.

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2 **Part 2—Separation declarations**

3 *Family Law Act 1975*

4 **30 Subsection 90DA(1)**

5 Repeal the subsection, substitute:

6 (1) A binding financial agreement, to the extent to which it deals with  
7 how, in the event of the breakdown of the marriage, all or any of  
8 the property or financial resources of either or both of the spouse  
9 parties:

10 (a) at the time when the agreement is made; or

11 (b) at a later time and before the termination of the marriage by  
12 divorce;

13 are to be dealt with, is of no force or effect until a separation  
14 declaration is made.

15 Note: Before the separation declaration is made, the financial agreement will  
16 be of force and effect in relation to the other matters it deals with  
17 (except for any matters covered by section 90DB).

18 (1A) Subsection (1) ceases to apply if:

19 (a) the spouse parties divorce; or

20 (b) either or both of them die.

21 Note: This means the financial agreement will be of force and effect in  
22 relation to the matters mentioned in subsection (1) from the time of  
23 the divorce or death(s).

24 **31 Subsection 90DA(2)**

25 After “(4)”, insert “, and may be included in the financial agreement to  
26 which it relates”.

27 **32 Section 90MD (at the end of the definition of *declaration*  
28 *time*)**

29 Add:

30 Note: If a spouse has died, the spouse’s legal personal representative may  
31 sign a declaration (see subsection 90MP(2)).

32 **33 Section 90MI**

33 Before “The”, insert “(1)”.

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1 **34 Paragraph 90MI(a)**

2 Repeal the paragraph, substitute:

3 (a) if the parties are divorced—a copy of the divorce order that  
4 has terminated the marriage; and

5 (aa) if, in the case of a payment split under a superannuation  
6 agreement:

7 (i) the parties are not divorced; and

8 (ii) a separation declaration is not part of the superannuation  
9 agreement;

10 a separation declaration; and

11 **35 At the end of section 90MI**

12 Add:

13 (2) For the purposes of subsection (1), the separation declaration must  
14 have a declaration time that is not more than 28 days before the  
15 service on the trustee.

16 **36 After paragraph 90MJ(1)(d)**

17 Insert:

18 (da) if the agreement relates to a marriage—the marriage is  
19 broken down at the operative time; and

20 **37 Subsection 90MP(1)**

21 After “section”, insert “, and may be included in the superannuation  
22 agreement to which it relates”.

23 **38 At the end of subsection 90MP(2)**

24 Add “For this purpose, if a spouse has died the spouse’s legal personal  
25 representative may sign the declaration.”.

26 **39 After subsection 90MP(4)**

27 Insert:

28 (4A) If either or both of the spouses have died, then the declaration must  
29 state:

30 (a) if section 90MQ applies to the declaration—that at the most  
31 recent time when both spouses were alive:

32 (i) the spouses were married; but

- 1 (ii) the spouses were separated and had lived separately and  
2 apart for a continuous period of at least 12 months  
3 immediately before that time; or  
4 (b) if section 90MQ does not apply to the declaration—that the  
5 spouses were married, but separated, at the most recent time  
6 when both spouses were alive.  
7 Subsections (3) and (4) have effect subject to this subsection.

8 **40 Subsection 90MQ(1)**

9 Repeal the subsection, substitute:

- 10 (1) This section applies to a declaration if:  
11 (a) if both spouses are alive at the declaration time—at the  
12 declaration time; or  
13 (b) otherwise—at the most recent time when both spouses were  
14 alive;  
15 the total withdrawal value for all the superannuation interests of the  
16 member spouse is more than the member spouse's low rate cap  
17 amount for the income year in which that time occurs.

18 **41 At the end of section 90MZG**

19 Add:

- 20 (4) Subsection (1) does not apply in relation to a declaration if a  
21 spouse to which the declaration relates died before the declaration  
22 was made.

1

2 **Part 3—Matrimonial causes**

3 *Family Law Act 1975*

4 **42 Subsection 4(1) (paragraph (eaa) of the definition of**  
5 ***matrimonial cause*)**

6 Omit all the words after “paragraphs,”, substitute:

7 proceedings with respect to a financial agreement that are  
8 between any combination of:

- 9 (i) the parties to that agreement; and  
10 (ii) the legal personal representatives of any of those parties  
11 who have died;

12 (including a combination consisting solely of parties or  
13 consisting solely of representatives); or

14 **43 Paragraphs 4A(1)(a) and (b)**

15 Repeal the paragraphs, substitute:

16 (a) any combination of:

- 17 (i) the parties to a financial agreement; and  
18 (ii) the legal personal representatives of any of those parties  
19 who have died;

20 (including a combination consisting solely of parties or  
21 consisting solely of representatives); and

22 (b) any of the following:

- 23 (i) a creditor;  
24 (ii) if a creditor is an individual who has died—the legal  
25 personal representative of the creditor;  
26 (iii) a government body acting in the interests of a creditor;

27 **44 Subsection 4A(2) (definition of *creditor*)**

28 Omit “either of the parties” (wherever occurring), substitute “a party”.

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2 **Part 4—Other amendments**

3 *Family Law Act 1975*

4 **45 Subsection 90F(2)**

5 Omit “subsection 90C(1)”, substitute “subsection 90B(1), 90C(1)”.

6 **46 Paragraph 90MU(1)(b)**

7 Omit “court”, substitute “member spouse and the non-member spouse”.

8 **47 Subsection 90MZB(8) (after paragraph (a) of the definition**  
9 **of eligible person)**

10 Insert:

11 (aa) if the member has died—the legal personal representative of  
12 the member; or

13 **48 Subsection 90MZB(8) (after paragraph (b) of the definition**  
14 **of eligible person)**

15 Insert:

16 (ba) if a spouse of the member has died—the legal personal  
17 representative of the spouse; or



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## **Schedule 4—Other measures**

### ***Family Law Act 1975***

#### **1 At the end of subsection 60I(8)**

Add:

; (d) a certificate to the effect that the person began attending family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, but that the practitioner considers, having regard to the matters prescribed by the regulations for the purposes of this paragraph, that it would not be appropriate to continue the family dispute resolution.

### ***Proceeds of Crime Act 2002***

#### **2 Paragraph 330(4)(ba)**

Before “the property has”, insert “if”.

Note: This item fixes a grammatical error.