

**Version No. 004**  
**Relationships Act 2008**  
**No. 12 of 2008**

Version incorporating amendments as at 1 December 2009

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**Version No. 004**  
**Relationships Act 2008**  
**No. 12 of 2008**

Version incorporating amendments as at 1 December 2009

**The Parliament of Victoria enacts:**

**CHAPTER 1—INTRODUCTION**

**PART 1.1—PRELIMINARY**

**1 Purpose**

The purpose of this Act is—

- (a) to establish a relationships register in Victoria for the registration of domestic relationships and caring relationships;
- (b) to provide for relationship agreements;
- (c) to provide for adjustment of property interests between domestic partners and the rights of domestic partners to maintenance;
- (ca) to provide for adjustment of property interests between caring partners who are in, or have been in, a registered caring relationship and the rights to maintenance of caring partners who are in, or have been in, a registered caring relationship;
- (d) to repeal Part IX of the **Property Law Act 1958** and make consequential amendments to other Acts.

S. 1(a)  
amended by  
No. 4/2009  
s. 4(a).

S. 1(ca)  
inserted by  
No. 4/2009  
s. 4(b).

## 2 Commencement

- (1) Subject to subsections (2) and (3), this Act (including the items in Schedule 1) comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act (including an item or provision of an item in Schedule 1 other than items 25 and 69) does not come into operation before 1 December 2008, it comes into operation on that day.
- (3) If item 25 or 69 or a provision of item 25 or 69 in Schedule 1 does not come into operation before 1 July 2009, it comes into operation on that day.

## 3 Definitions

In this Act—

***adult person*** means a person who is 18 years of age or more;

***legal practitioner*** means an Australian legal practitioner within the meaning of the **Legal Profession Act 2004**;

***registered caring relationship*** means a relationship between two persons that is registered under section 10(3)(ab);

S. 3 def. of *registered caring relationship* inserted by No. 4/2009 s. 5(a).

***registered domestic relationship*** means a relationship between two persons that is registered under section 10(3)(a);

S. 3 def. of *registered domestic relationship* inserted by No. 4/2009 s. 5(a).

***registered relationship*** means—

- (a) a registered domestic relationship; or
- (b) a registered caring relationship;

S. 3 def. of *registered relationship* substituted by No. 4/2009 s. 5(b).

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*relationship agreement* has the meaning given in section 35(1).

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Chapter 2  
(Heading)  
amended by  
No. 4/2009  
s. 6.

## CHAPTER 2—REGISTRATION OF DOMESTIC RELATIONSHIPS OR CARING RELATIONSHIPS

### PART 2.1—PRELIMINARY

S. 4  
amended by  
No. 4/2009  
s. 7.

#### 4 Purpose

The purpose of this Chapter is to establish a relationships register in Victoria for the registration of domestic relationships or caring relationships.

#### 5 Definitions

In this Chapter—

S. 5 def. of  
*legal  
practitioner's  
certificate*  
inserted by  
No. 4/2009  
s. 8(a).

*legal practitioner's certificate* means a certificate given by a legal practitioner in accordance with section 7(ba);

S. 5 def. of  
*registrable  
caring  
relationship*  
inserted by  
No. 4/2009  
s. 8(a).

*registrable caring relationship* means a relationship (other than a registered relationship) between two adult persons who are not a couple or married to each other and who may or may not otherwise be related by family where one or each of the persons in the relationship provides personal or financial commitment and support of a domestic nature for the material benefit of the other, whether or not they are living under the same roof, but does not include a relationship in which a person provides domestic support and personal care to the other person—

(a) for fee or reward; or

- 
- (b) on behalf of another person or an organisation (including a government agency, a body corporate or a charitable or benevolent organisation);

**registrable information** means information that must or may be included in the Relationships Register;

**registrable domestic relationship** means a relationship (other than a registered relationship) between two adult persons who are not married to each other but are a couple where one or each of the persons in the relationship provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a relationship in which a person provides domestic support and personal care to the other person—

S. 5 def. of *registrable relationship* amended as *registrable domestic relationship* by No. 4/2009 s. 8(b).

- (a) for fee or reward; or
- (b) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

**Registrar** means the Registrar of Births, Deaths and Marriages;

**Relationships Register** means the register established under Part 2.3;

**revocation application** means an application made under section 12(1).

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**PART 2.2—REGISTRATION OF A REGISTRABLE  
RELATIONSHIP**

S. 6 (Heading)  
amended by  
No. 4/2009  
s. 9(1).

S. 6  
amended by  
No. 4/2009  
s. 9(2).

**6 Application to register a registrable domestic  
relationship or registrable caring relationship**

Persons who are in a registrable domestic relationship or registrable caring relationship may apply to the Registrar, in a form approved by the Registrar, for registration of that relationship if each person in the relationship is—

- (a) domiciled or ordinarily resident in the State;  
and
- (b) not married or in a registered relationship;  
and
- (c) not in another relationship that could be registered under this Part.

**7 Requirements of application for registration**

An application under section 6 must include or be accompanied by—

- (a) a statutory declaration from each of the applicants verifying that the applicant—
  - (i) consents to the registration; and
  - (ii) is not married or in a registered relationship; and
  - (iii) is not in another relationship that could be registered under this Part; and
- (b) evidence of the identity and age of each applicant; and
- (ba) in the case of a registrable caring relationship, a legal practitioner's certificate obtained by each of the applicants from a legal practitioner who has signed the certificate and that states that the legal

S. 7(ba)  
inserted by  
No. 4/2009  
s. 10.

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practitioner provided legal advice to the applicant independently of the other party to the registrable caring relationship as to—

- (i) the effect of the registration of the registrable caring relationship on the rights of the parties to the relationship; and
  - (ii) the advantages and disadvantages, at the time the advice was provided, to the applicant of registering the registrable caring relationship; and
- (c) the prescribed fee; and
- (d) any other document or information that the Registrar requires for the purposes of determining the application.

#### **8 Registrar may require further information**

The Registrar may require persons who have applied under section 6 to provide any further information that the Registrar requires for the purposes of determining the application.

#### **9 Withdrawal of application for registration**

- (1) One or both persons who have applied under section 6 may withdraw the application by giving the Registrar a withdrawal form within the period set out in subsection (3).
- (2) The withdrawal form must be in a form approved by the Registrar.
- (3) The withdrawal form must be given to the Registrar within 28 days after the date of lodgement of the application under section 6.

## 10 Registration

S. 10(1)  
amended by  
No. 4/2009  
s. 11(1).

(1) If an application to register a registrable domestic relationship or registrable caring relationship has not been withdrawn under section 9, the Registrar may register the relationship in accordance with this section.

S. 10(2)  
amended by  
No. 4/2009  
s. 11(1).

(2) The Registrar must not register a registrable domestic relationship or registrable caring relationship until the later of—

- (a) 28 days after the date of lodgement of the application; or
- (b) the time when further information is provided to the Registrar under section 8.

(3) The Registrar must, within a reasonable time after the expiry of the period specified in subsection (2)—

S. 10(3)(a)  
substituted by  
No. 4/2009  
s. 11(2).

(a) in the case of a registrable domestic relationship application, register the relationship in the Relationships Register as a registered domestic relationship; or

S. 10(3)(ab)  
inserted by  
No. 4/2009  
s. 11(2).

(ab) in the case of a registrable caring relationship application, register the relationship in the Relationships Register as a registered caring relationship; or

(b) refuse to register the relationship.

## 11 Revocation of registration

(1) The registration of a registered relationship is revoked by—

- (a) the death of either person in the relationship; or
- (b) the marriage of either person in the relationship (whether to each other or another person).

- 
- (2) The registration of a registered relationship may be revoked by the Registrar, on application by either person or both persons in the relationship in accordance with section 12.

**Note**

A court may order the revocation of the registration of a registered relationship under section 16. VCAT may revoke the registration of a registered relationship on an application for review under section 28.

**12 Application for revocation of registration**

- (1) Either person, or both persons, in a registered relationship may apply to the Registrar, in a form approved by the Registrar, for the revocation of registration of that relationship.
- (2) If a person in a registered relationship makes a revocation application alone, the person must serve the other person in the relationship with a copy of the revocation application in accordance with section 13(1).
- (3) A revocation application must be accompanied by—
- (a) evidence of the identity of the applicant or applicants; and
  - (b) the prescribed fee; and
  - (c) in the case of a person in the registered relationship making the revocation application alone, proof of service of the revocation application on the other person in the relationship; and
  - (d) any other document or information that the Registrar requires for the purposes of determining the revocation application.

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- (4) Subject to subsections (5) and (6), the Registrar must not consider a revocation application if—
- (a) the application was made by only one person in the registered relationship; and
  - (b) the application is not accompanied by proof that the application was served on the other person in the registered relationship.
- (5) If a person to whom subsection (2) applies cannot effect service in accordance with section 13(1), the person may apply to the Registrar for permission—
- (a) to serve a copy of the application other than in accordance with section 13(1); or
  - (b) to dispense with service altogether.
- (6) If the Registrar gives permission under subsection (5), the person who applied for permission—
- (a) is not required to comply with subsection (2) or (3)(c); and
  - (b) must comply with any conditions on which the permission is given.

**13 Service of revocation application and proof of service**

- (1) A copy of a revocation application made by only one person in a registered relationship may be served on the other person in that relationship—
- (a) by delivering it personally to the other person; or
  - (b) by sending it by registered post addressed to the other person at that person's last known place of residence.

- 
- (2) A person to whom section 12(2) applies must prove service of a copy of the revocation application on the other person in the registered relationship by making a statutory declaration specifying—
- (a) that a copy of that application was served on the other person; and
  - (b) the name of the person who served the copy of the application; and
  - (c) the method of service used to serve the copy of the application; and
  - (d) the date and time that the copy of the application was served.

#### **14 Withdrawal of revocation application**

- (1) A person who has made a revocation application to the Registrar may withdraw the application by giving the Registrar a withdrawal of revocation form in accordance with subsection (2).
- (2) The withdrawal of revocation form must—
- (a) be given to the Registrar within 90 days after the date of lodgement of the revocation application; and
  - (b) be in a form approved by the Registrar; and
  - (c) be signed by both persons in the registered relationship that is the subject of the revocation application.

#### **15 Revocation of registration by Registrar**

The Registrar must revoke the registration of a registered relationship after the expiry of 90 days after the date of lodgement of the revocation application unless—

- 
- (a) the revocation application is withdrawn under section 14; or
  - (b) a court or tribunal otherwise directs.

**16 Revocation of registration by court**

A court may order the revocation of the registration of a registered relationship—

- (a) on application made by an interested person;  
or
  - (b) on its own motion.
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**PART 2.3—THE RELATIONSHIPS REGISTER**

**Division 1—Keeping the Relationships Register**

**17 The Relationships Register**

- (1) The Registrar must maintain a register of registered relationships to be known as the Relationships Register.
- (2) The Relationships Register—
  - (a) must contain the particulars of each registered relationship required under this Act to be included in the Register in a form determined by the Registrar; and
  - (b) may contain further information if its inclusion is considered appropriate by the Registrar.
- (3) The Relationships Register may be wholly or partly in the form of a computer data base, in documentary form, or in another form the Registrar considers appropriate.

**Division 2—Registrar's powers of inquiry**

**18 Registrar's powers of inquiry**

- (1) The Registrar may conduct an inquiry to find out—
  - (a) particulars to verify information given for, or in connection with, an application for registration of a relationship or revocation of registration; or
  - (b) whether particulars of a registered relationship have been correctly recorded in the Relationships Register.

- (2) The Registrar may, by notice given to a person who may be able to provide information relevant to an inquiry under this section, require the person to answer specified questions or to provide other information within a time and in a way specified in the notice.
- (3) A person must not, without reasonable excuse, fail to comply with a notice under subsection (2).

Penalty: 10 penalty units.

### **Division 3—Correction and amendment of Relationships Register**

#### **19 Correction and amendment of Register**

- (1) The Registrar may correct or amend the Relationships Register—
  - (a) to reflect a finding made on inquiry under Division 2; or
  - (b) to bring an entry about a registered relationship into conformity with the most reliable information available to the Registrar of the registered relationship.
- (2) The Registrar must, if required by a court or tribunal, correct or amend the Relationships Register.
- (3) The Registrar corrects or amends the Relationships Register by adding or cancelling an entry in the Register or by adding, altering or deleting particulars contained in an entry.
- (4) The Registrar may add additional registrable information to an entry in the Relationships Register.
- (5) A person may apply to the Registrar for the addition of registrable information to an entry in the Relationships Register.

- 
- (6) An application under subsection (5) must be accompanied by the prescribed fee.

#### **Division 4—Access to and certification of Register entries**

##### **20 Protection of privacy**

In providing information extracted from the Relationships Register, the Registrar must, as far as practicable, protect the persons to whom the entries in the Register relate, and any other persons named in those entries, from unreasonable intrusion on their privacy.

##### **21 Search of Register**

- (1) The Registrar may, on application, search the Relationships Register for an entry about a particular registered relationship.
- (2) The applicant must—
- (a) state the reason for the applicant's interest in the subject-matter of the search; and
  - (b) pay the prescribed fee.
- (3) The Registrar may reject the application if the applicant does not show an adequate reason for wanting the information to which the application relates.
- (4) In deciding whether an applicant has an adequate reason for wanting information, the Registrar must have regard to—
- (a) the relationship (if any) between the applicant and the persons to whom the information relates; and
  - (b) the age of the entry; and
  - (c) the contents of the entry; and
  - (d) any other relevant factors.

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## 22 Issue of certificate

- (1) On completing a search of the Relationships Register and on payment by the applicant of the prescribed fee, the Registrar may issue a certificate—
  - (a) certifying particulars contained in an entry; or
  - (b) certifying that no entry was located in the Relationships Register about the relevant relationship.
- (2) A certificate under subsection (1)(a) is admissible in legal proceedings as evidence of—
  - (a) the entry to which the certificate relates; and
  - (b) the facts recorded in the entry.

### Note

See also section 10 of the **Births, Deaths and Marriages Registration Act 1996**.

## 23 Access policies

- (1) The Registrar must maintain a written statement of the policies on which access to information contained in the Relationships Register is to be given or denied under this Division.
- (2) The Registrar must give a copy of the statement, on request, to any person.

## 24 Access to Register

- (1) The Registrar may, on conditions the Registrar considers appropriate—
  - (a) allow a person or organisation that has an adequate reason for wanting access to the Relationships Register access to the Register; or

- 
- (b) provide a person or organisation that has an adequate reason for wanting information from the Relationships Register, with information extracted from the Register.
- (2) In deciding whether an applicant has an adequate reason for wanting access to the Relationships Register, or information extracted from the Register, the Registrar must have regard to—
- (a) the nature of the applicant's interest; and
  - (b) the sensitivity of the information; and
  - (c) the use to be made of the information; and
  - (d) other relevant factors.
- (3) In deciding the conditions on which access to the Relationships Register, or information extracted from the Register, is to be given under this section, the Registrar must, as far as practicable, protect the persons to whom the entries in the Register relate, and any other persons named in those entries, from unreasonable intrusion on their privacy.

## **25 Power to remit fees**

The Registrar may, in appropriate cases, remit the whole or part of a fee under this Chapter.

### **Division 5—Additional information and services**

## **26 Registrar may collect other information**

- (1) Despite anything to the contrary in this Act, the Registrar may maintain records of information, other than registrable information, relating to registered relationships.

- (2) Records maintained under this section must be kept separately from the Relationships Register.
- (3) The Registrar may include information in the records maintained under this section at the request of a person interested in the registered relationship to which it relates or on the Registrar's own motion.
- (4) Sections 20 and 24(3) apply to records maintained under this section as if they were part of the Relationships Register.

**27 Additional services in relation to information in Register and other information**

S. 27(1)  
amended by  
No. 4/2009  
s. 12.

- (1) The Registrar may enter into an arrangement for the provision of additional services in connection with the provision of services relating to the registration of a registrable domestic relationship or registrable caring relationship, including, but not limited to—
  - (a) the provision of information in the form of a decorative certificate or other document;
  - (b) the provision of information from records maintained under section 26 relating to the registered relationship.
- (2) The Registrar may enter into an arrangement for the provision of information from records maintained under section 26 or the Relationships Register including historical or genealogical information.
- (3) If the Registrar provides a service or an additional service under this section, the Registrar may make a charge for the service determined by the Registrar, in his or her absolute discretion, which does not necessarily bear a relation to the cost of providing the service.

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- (4) In providing a service or an additional service, the Registrar must comply with sections 20 and 24(3).
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**PART 2.4—GENERAL POWER OF REVIEW**

**28 Review by VCAT**

- (1) A person whose interests are affected by a decision of the Registrar under this Act may apply to VCAT for review of the decision.
- (2) An application for review must be made within 28 days after the later of—
  - (a) the day on which the decision is made;
  - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

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**PART 2.5—GENERAL**

**29 False representation**

A person must not make a false or misleading representation in an application or document under this Chapter, knowing it to be false or misleading.

Penalty: 20 penalty units.

**30 Unauthorised access to or interference with Register**

A person must not, without the authority of the Registrar or other lawful authority—

- (a) obtain access to the Relationships Register or information contained in the Register; or
- (b) make, alter or delete an entry in the Relationships Register; or
- (c) interfere with the Relationships Register in any other way.

Penalty: 100 penalty units or 2 years imprisonment or both.

**31 Falsification of certificate etc.**

- (1) A person must not forge or falsify a certificate or other document under this Chapter.

Penalty: 100 penalty units or 2 years imprisonment or both.

- (2) The Registrar may impound—

- (a) a certificate or other document purporting to be a certificate or other document under this Chapter which the Registrar has reason to believe has been forged or falsified; or

- (b) a certificate under this Chapter about a registered relationship if the entry in the Relationships Register about the registered relationship has been revoked, corrected or amended since the issue of the certificate.

### **32 Registrar to provide certain information to Minister**

The Registrar must provide to the Minister for the inclusion in the report of operations of the Department of Justice for a financial year under Part 7 of the **Financial Management Act 1994** a report of—

S. 32(a)  
amended by  
No. 4/2009  
s. 13(a).

- (a) the number of registrable domestic relationships and registrable caring relationships registered during that financial year; and

S. 32(b)  
amended by  
No. 4/2009  
s. 13(b).

- (b) the number of registrations of registered domestic relationships and registered caring relationships revoked during that financial year.

### **33 Power to require and take statutory declarations**

The Registrar—

- (a) may require that information be given by statutory declaration; and
- (b) is authorised to take any statutory declarations required for the purposes of this Chapter.

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**CHAPTER 3—RELATIONSHIP AGREEMENTS,  
PROPERTY AND MAINTENANCE**

**PART 3.1—PRELIMINARY**

**34 Purpose**

The purpose of this Chapter is to provide for—

- (a) the effect of relationship agreements made between—
    - (i) domestic partners;
    - (ii) caring partners;
  - (b) the adjustment of interests in property between—
    - (i) domestic partners;
    - (ii) caring partners;
  - (c) the rights to maintenance of—
    - (i) domestic partners;
    - (ii) caring partners.
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**S. 34  
substituted by  
No. 4/2009  
s. 14.**

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**PART 3.2—RELATIONSHIP AGREEMENTS**

**35 Definitions**

(1) In this Part—

S. 35(1) def. of  
*caring partner*  
inserted by  
No. 4/2009  
s. 15(1)(a).

*caring partner* of a person means—

- (a) a person with whom the person is, or has been, in a registered caring relationship;
- (b) a person with whom the person is contemplating entering into a registered caring relationship;

*domestic partner* of a person means—

- (a) a person with whom the person is or has been in a domestic relationship; or
- (b) a person with whom the person is contemplating entering into a domestic relationship;

S. 35(1) def. of  
*domestic relationship*  
amended by  
No. 4/2009  
s. 15(1)(b).

*domestic relationship* means—

- (a) a registered domestic relationship; or
  - (b) a relationship between two persons who are not married to each other but who are living together as a couple on a genuine domestic basis (irrespective of gender); or
  - (c) the relationship between two adult persons who are not married to each other but are a couple where one or each of the persons in the relationship provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a
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relationship in which a person provides domestic support and personal care to the other person—

- (i) for fee or reward; or
- (ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

***financial matters*** means matters relating to any one or more of the following—

- (a) the maintenance of one or both of the domestic partners or caring partners;
- (b) the income or property of one or both of the domestic partners or caring partners;
- (c) the financial resources of one or both of the domestic partners or caring partners;

S. 35(1) def. of ***financial matters*** amended by No. 4/2009 s. 15(1)(c).

***financial resources*** includes—

- (a) a prospective claim or entitlement in respect of a scheme, fund or arrangement under which superannuation, retirement or similar benefits are provided; and
- (b) property that, under a discretionary trust, may become used for the purposes of or vested in one or both of the domestic partners or the caring partners; and

S. 35(1) def. of ***financial resources*** amended by No. 4/2009 s. 15(1)(d).

- (c) property, the alienation or disposition of which is wholly or partly under the control of one or both of the domestic partners or the caring partners and that is lawfully capable of being used for the purposes of one or both of the domestic partners or the caring partners; and
- (d) an indexed pension; and
- (e) any other valuable benefit;

*property* includes—

- (a) real and personal property; and
- (b) any estate or interest in real or personal property; and
- (c) money and any debt; and
- (d) any cause of action for damages (including damages for personal injury); and
- (e) any other thing in action; and
- (f) any right with respect to property;

*relationship agreement* has the meaning given by section 35A.

S. 35(1) def. of *relationship agreement* substituted by No. 4/2009 s. 15(1)(e).

S. 35(2) amended by No. 4/2009 s. 15(2).

- (2) In determining whether a domestic relationship (other than a registered domestic relationship) exists or has existed, all the circumstances of the relationship are to be taken into account, including any one or more of the following matters as may be relevant in a particular case—
  - (a) the degree of mutual commitment to a shared life;

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- (b) the duration of the relationship;
  - (c) the nature and extent of common residence;
  - (d) whether or not a sexual relationship exists;
  - (e) the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties;
  - (f) the ownership, use and acquisition of property;
  - (g) the care and support of children;
  - (h) the reputation and public aspects of the relationship.
- (3) For the purposes of this Part, a person is not a domestic partner of another person only because they are co-tenants.

**35A Relationship agreements**

- (1) For the purposes of this Part, a relationship agreement means an agreement, between two persons, whether or not there are other parties to the agreement, that is made in the circumstances, and provides for the matters, set out in either subsection (2) or (3).
- (2) An agreement that is made between domestic partners before, on or after the commencement of this Act—
  - (a) in contemplation of their entering into a domestic relationship; or
  - (b) during the existence of their domestic relationship; or
  - (c) in contemplation of the termination of their domestic relationship; or

S. 35A  
inserted by  
No. 4/2009  
s. 16.

(d) after the termination of their domestic relationship—

that provides for financial matters, whether or not it provides for other matters.

(3) An agreement that is made between caring partners on or after the commencement of section 16 of the **Relationships Amendment (Caring Relationships) Act 2009**—

(a) in contemplation of their entering into a registered caring relationship; or

(b) during the existence of their registered caring relationship; or

(c) in contemplation of the termination of their registered caring relationship; or

(d) after the termination of their registered caring relationship—

that provides for financial matters, whether or not it provides for other matters.

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

A relationship agreement is subject to, and enforceable in accordance with, the law of contract.

### **37 Varying or setting aside agreements**

(1) A court may vary or set aside a relationship agreement or any term of a relationship agreement if, in the court's opinion, the circumstances of the parties have so changed since the agreement was entered into that it would lead to serious injustice if the agreement or term (as the case requires) were enforced.

S. 37(1)  
amended by  
No. 4/2009  
s. 17.

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- (2) A court may vary or set aside a relationship agreement or any term of a relationship agreement—
    - (a) if the court is of the opinion that the agreement was entered into under duress or by fraud; or
    - (b) on any other ground that would allow a contract to be varied or set aside.
  - (3) A court may vary or set aside a relationship agreement or a term of a relationship agreement under subsection (1) or (2) despite any provision of the agreement to the contrary.
  - (4) This section applies in any proceeding in a court, whether under Part 3.3 or otherwise.

### **38 Effect of death of partner**

- (1) The terms of a relationship agreement requiring a domestic partner or caring partner to pay periodic maintenance to the other partner are—
  - (a) on the death of the first-mentioned partner, unenforceable against his or her estate, unless the agreement provides otherwise; and
  - (b) on the death of the second-mentioned partner, unenforceable by his or her estate.
- (2) Subsection (1) does not affect the recovery of arrears of periodic maintenance due and payable under a relationship agreement at the date of death of either partner.
- (3) Unless a relationship agreement provides otherwise, the terms of the agreement entered into by domestic partners or caring partners relating to property and lump sum payments are, on the death of one of the partners, enforceable on behalf of, or against, the estate of the deceased partner.

S. 38(1)  
amended by  
No. 4/2009  
s. 18(1).

S. 38(3)  
amended by  
No. 4/2009  
s. 18(2).

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**PART 3.3—PROPERTY AND MAINTENANCE**

**Division 1—Preliminary**

**39 Definitions**

(1) In this Part—

*applicant* includes a cross-applicant;

*caring partner* of a person means a person with whom the person is or has been in a registered caring relationship;

S. 39(1) def. of *caring partner* inserted by No. 4/2009 s. 19(1)(a).

*child* in relation to domestic partners means—

- (a) a child born as a result of sexual relations between the partners; or
- (b) a child of one of the partners of whom the other partner is presumed to be the father under Part 2 of the **Status of Children Act 1974**; or
- (c) a child adopted by the partners;

*domestic partner* of a person means a person with whom the person is or has been in a domestic relationship;

S. 39(1) def. of *domestic relationship* amended by No. 4/2009 s. 19(1)(b).

*domestic relationship* means—

- (a) a registered domestic relationship; or
- (b) a relationship between two persons who are not married to each other but who are living together as a couple on a genuine domestic basis (irrespective of gender);

*financial matters* has the meaning given in section 35(1);

*financial resources* has the meaning given in section 35(1);

*legal practitioner's certificate* means a certificate given by a legal practitioner in accordance with section 59(2);

*property* has the meaning given in section 35(1).

- (2) In determining whether a domestic relationship (other than a registered domestic relationship) exists or has existed, all the circumstances of the relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) as may be relevant in a particular case.

S. 39(2)  
amended by  
No. 4/2009  
s. 19(2).

#### **40 Declaration of interests in property**

- (1) In a proceeding between domestic partners or caring partners with respect to existing title or rights in respect of property, a court may declare the title or rights, if any, that a domestic partner or caring partner has in respect of the property.
- (2) The court may make orders to give effect to the declaration, including orders about possession.

S. 40(1)  
amended by  
No. 4/2009  
s. 20.

### **Division 2—Application for orders under this Part**

#### **41 Application for adjustment or maintenance**

- (1) A domestic partner or a caring partner may apply to a court for either or both of the following—
- (a) an order for the adjustment of interests with respect to the property of one or both of the domestic partners or caring partners;
- (b) an order for the granting of maintenance.

S. 41(1)  
amended by  
No. 4/2009  
s. 21(a).

S. 41(1)(a)  
amended by  
No. 4/2009  
s. 21(b).

- (2) An application may be made whether or not any other application for any remedy or relief has been or may be made under this Act or any other Act or any other law.

S. 42  
(Heading)  
amended by  
No. 4/2009  
s. 22(1).

**42 Eligibility for orders—unregistered domestic relationships**

S. 42(1)  
amended by  
No. 4/2009  
s. 22(2).

- (1) This section applies to an application under section 41 by a domestic partner in relation to a domestic relationship other than a registered domestic relationship.
- (2) A court may make an order referred to in section 41(1) on the application only if satisfied—
- (a) that one or both of the domestic partners lived in Victoria on the day on which the application was made; and
  - (b) that—
    - (i) both partners have lived together in Victoria for at least one third of the period of their relationship; or
    - (ii) substantial contributions of the kind referred to in section 45(1)(a) or (b) have been made in Victoria by the partner making the application; and
  - (c) that the domestic partners have lived together in the relationship for a period of at least 2 years, except as provided by subsection (3).
- (3) Despite subsection (2)(c), a court may make an order if satisfied—
- (a) that there is—
    - (i) a child of the domestic partners; or

- (ii) a child accepted by the domestic partners as one of the family, whether or not the child is a child of one or both of the partners; or
- (b) that—
- (i) failure to make the order would result in serious injustice to the domestic partner who applied for the order; and
  - (ii) the partner who applied for the order has made substantial contributions of the kind referred to in section 45(1)(a) or (b) for which that partner would otherwise not be adequately compensated if the order were not made.
- (4) If a court is satisfied about the matters specified in subsection (2)(a) and (b), it may make or refuse to make an order because of facts and circumstances even if those facts and circumstances, or some of them, occurred before the commencement of this Part or outside Victoria or both.

#### **43 Time limit for making applications**

- (1) If domestic partners or caring partners have ended their domestic relationship or registered caring relationship, an application to a court for an order referred to in section 41(1) must be made within 2 years after the day on which the relationship ended.
- (2) A court may grant leave to a domestic partner or a caring partner to apply for an order at any time after the end of the period referred to in subsection (1) if the court is satisfied that greater hardship would be caused to the partner applying if that leave were not granted than would be caused to the other partner if that leave were granted.

S. 43(1)  
amended by  
No. 4/2009  
s. 23(1).

S. 43(2)  
amended by  
No. 4/2009  
s. 23(2).

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

In a proceeding on an application under section 41, a court, so far as is practicable, must make orders that will—

- (a) finally determine the financial relationships between the domestic partners or caring partners; and
- (b) avoid further proceedings between them.

S. 44(a)  
amended by  
No. 4/2009  
s. 24.

#### **Division 3—Adjustment of interests in property**

#### **45 Order for adjustment**

- (1) On an application by a domestic partner under section 41 for an order to adjust interests with respect to the property of one or both of the domestic partners, a court may make an order adjusting the interests of the domestic partners in the property of one or both of them that seems just and equitable to it having regard to—
  - (a) the financial and non-financial contributions made directly or indirectly by or on behalf of the domestic partners to the acquisition, conservation or improvement of any of the property or to the financial resources of one or both of the partners; and
  - (b) the contributions, including any contributions made in the capacity of homemaker or parent, made by either of the domestic partners to the welfare of the other domestic partner or to the welfare of the family constituted by the partners and one or more of the following—
    - (i) a child of the partners;

- (ii) a child accepted by the partners as one of the family, whether or not the child is a child of one or both of the partners; and
  - (c) the nature and duration of the domestic relationship; and
  - (d) any relevant matter referred to in section 51.
- (1A) On an application by a caring partner under section 41 for an order to adjust interests with respect to the property of one or both of the caring partners, a court may make an order adjusting the interests of the caring partners in the property of one or both of them that seems just and equitable having regard to—
- (a) the financial and non-financial contributions made directly or indirectly by or on behalf of the caring partners to the acquisition, conservation or improvement of any of the property or to the financial resources of one or both of the partners; and
  - (b) the contributions made by either of the caring partners to the welfare of the other caring partner; and
  - (c) the nature and duration of the registered caring relationship; and
  - (d) any relevant matter referred to in section 51.
- (2) A court may make the order whether or not it has declared the title or rights of a domestic partner or a caring partner in respect of the property.

S. 45(1A)  
inserted by  
No. 4/2009  
s. 25(1).

S. 45(2)  
amended by  
No. 4/2009  
s. 25(2).

**Note**

See section 59 for the effect of a relationship agreement on the court's power to make an order under this section.

**46 Adjournment of application—likelihood of significant change in circumstances**

S. 46(1)(a)  
amended by  
No. 4/2009  
s. 26(1).

- (1) A court may adjourn an application for an order under section 45, if the court is of the opinion—
- (a) that there is likely to be significant change in the financial circumstances of one or both of the domestic partners or caring partners and that it is reasonable to adjourn the proceeding having regard to the time when that change is likely to take place; and
  - (b) that an order that the court could make with respect to the property if that significant change in financial circumstances occurs is more likely to do justice between the domestic partners or caring partners than an order that the court could make immediately.

S. 46(1)(b)  
amended by  
No. 4/2009  
s. 26(1).

- (2) The court may adjourn the application—
- (a) at the request of either partner; and
  - (b) until any time, before the end of a period specified by the court, that the partner requesting the adjournment applies for the application to be determined.

- (3) Before a court adjourns an application it may make any order that it considers appropriate with respect to the property.

S. 46(4)  
amended by  
No. 4/2009  
s. 26(2).

- (4) In forming an opinion as to whether there is likely to be significant change in the financial circumstances of one or both of the domestic partners or caring partners, a court may have regard to any change in the financial circumstances of a partner that may occur because of a financial resource of one or both of the partners being vested in or used for the purposes of one or both of the partners.

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- (5) Nothing in this section—
- (a) limits the power of the court to grant an adjournment in relation to any proceeding before it; or
  - (b) requires the court to adjourn any application in any particular circumstances; or
  - (c) limits the circumstances in which the court may form the opinion that there is likely to be a significant change in the financial circumstances of one or both of the partners.

**47 Adjournment of application—proceedings in the Family Court**

- (1) If a proceeding in relation to the property of one or both of the domestic partners is commenced in the Family Court at any time before a court has made a final order to adjust interests with respect to the property of one or both of the partners, the court may adjourn its hearing.
- (2) If the hearing of the application has been adjourned, the applicant for the order may apply to the court for the hearing to proceed if the proceeding in the Family Court is delayed.
- (3) Nothing in this section limits the power of the court to grant or refuse an adjournment in relation to any proceeding before it.

**48 Deferment of order**

If a court is of the opinion that a domestic partner or a caring partner is likely, within a short period, to become entitled to property which may be applied in satisfaction of an order under section 45, the court may defer the operation of the order until the date or the occurrence of the event specified in the order.

S. 48  
amended by  
No. 4/2009  
s. 27.

#### **49 Effect of death of party on application**

- (1) If either party to the application dies before an application for an order under section 45 is determined, the application may be continued by or against the legal personal representative of the deceased party.
- (2) A court may make an order if it is of the opinion—
  - (a) that it would have adjusted interests in respect of property if the deceased party had not died; and
  - (b) that, notwithstanding the death of the deceased party, it is still appropriate to adjust those interests.
- (3) The order may be enforced on behalf of, or against, the estate of the deceased party.

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

If a party to an application for an order under section 45 dies after an order is made against the party, the order may be enforced against the estate of the deceased party.

### **Division 4—Maintenance**

#### **51 Order for maintenance**

- (1) On an application by a domestic partner or a caring partner under section 41 for an order for maintenance, a court may make the order if satisfied that the applicant is unable to support himself or herself adequately because—
  - (a) the partner's earning capacity has been adversely affected by the circumstances of the domestic relationship or registered caring relationship; or

S. 51(1)  
amended by  
No. 4/2009  
s. 28(1)(a).

S. 51(1)(a)  
amended by  
No. 4/2009  
s. 28(1)(b).

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- (b) of any other reason arising in whole or part from the circumstances of the domestic relationship or registered caring relationship. **S. 51(1)(b) amended by No. 4/2009 s. 28(1)(b).**
- (2) In determining whether to make an order and in fixing any amount to be paid under the order, a court must have regard to the following—
- (a) the income, property and financial resources of each domestic partner or caring partner (including, subject to subsection (3), the rate of any pension, allowance or benefit paid, payable or entitled to be paid to either partner) and the physical and mental capacity of each partner for appropriate gainful employment; **S. 51(2)(a) amended by No. 4/2009 s. 28(2)(a).**
- (b) the financial needs and obligations of each domestic partner or caring partner; **S. 51(2)(b) amended by No. 4/2009 s. 28(2)(a).**
- (c) the responsibilities of either domestic partner or caring partner to support any other person; **S. 51(2)(c) amended by No. 4/2009 s. 28(2)(a).**
- (d) the terms of any order made or proposed to be made under section 45;
- (e) any payments provided for the maintenance of—
- (i) a child of the domestic partners; or
- (ii) a child accepted by the domestic partners as one of the family, whether or not the child is a child of one or both of the partners;
- (f) the standard of living that is reasonable for each domestic partner or caring partner in all the circumstances; **S. 51(2)(f) amended by No. 4/2009 s. 28(2)(a).**
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Relationships Act 2008  
No. 12 of 2008  
Part 3.3—Property and Maintenance

**s. 51**

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**S. 51(2)(g)**  
amended by  
No. 4/2009  
s. 28(2)(a).

- (g) the extent to which the payment of maintenance to the domestic partner or caring partner whose maintenance is under consideration would increase his or her earning capacity by enabling him or her—
  - (i) to undertake a course of education or training; or
  - (ii) to establish a business; or
  - (iii) otherwise to obtain adequate income;

**S. 51(2)(h)**  
amended by  
No. 4/2009  
s. 28(2)(a).

- (h) the extent to which the domestic partner or caring partner whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other partner;

**S. 51(2)(i)**  
amended by  
No. 4/2009  
s. 28(2)(a).

- (i) the age and state of health of each domestic partner or caring partner;

**S. 51(2)(j)**  
amended by  
No. 4/2009  
s. 28(2)(b).

- (j) the length of the domestic relationship or registered caring relationship;

**S. 51(2)(k)**  
amended by  
No. 4/2009  
s. 28(2)(c).

- (k) the extent to which the domestic relationship or registered caring relationship has affected the earning capacity of the domestic partner or caring partner whose maintenance is under consideration;
- (l) any other facts or circumstances the court considers relevant.

- (3) In making an order for maintenance, a court must disregard any entitlement of the person whose maintenance is under consideration to an income-tested pension, allowance or benefit.

- (4) If, before an application is determined, either party to the application dies, the application abates.

**Note**

See section 59 for the effect of a relationship agreement on the court's power to make an order under this section.

**52 Interim maintenance**

If, on an application by a domestic partner or a caring partner under section 41 for an order for maintenance—

- (a) it appears to a court that the applicant is in immediate need of financial assistance; and
- (b) it is not practicable in the circumstances to determine immediately if any order should be made under section 51—

the court may order the payment by the other partner, pending the determination of the application, of any periodic sum or other sums the court considers reasonable.

**Note**

See section 59 for the effect of a relationship agreement on the court's power to make an order under this section.

**53 Subsequent relationship or marriage**

If domestic partners or caring partners cease to be in a domestic relationship or registered caring relationship, an application to a court for an order for maintenance cannot be made by a domestic partner or caring partner who, at the time of the application is made—

- (a) is in a domestic relationship with another person; or
- (b) is in a registered caring relationship with another person; or
- (c) has married or remarried.

S. 52  
amended by  
No. 4/2009  
s. 29.

S. 53  
substituted by  
No. 4/2009  
s. 30.

## 54 Cessation of order

- (1) An order for maintenance ceases to have effect—
- S. 54(1)(a)**  
amended by  
No. 4/2009  
s. 31(1)(a).

(a) on the death of the domestic partner or caring partner in whose favour the order was made; or
  - S. 54(1)(b)**  
amended by  
No. 4/2009  
s. 31(1)(a).

(b) on the death of the domestic partner or caring partner against whom the order was made; or
  - S. 54(1)(c)**  
amended by  
No. 4/2009  
s. 31(1)(a).

(c) on the marriage or remarriage of the domestic partner or caring partner in whose favour the order was made; or
  - S. 54(1)(d)**  
substituted by  
No. 4/2009  
s. 31(1)(b).

(d) on the registration under this Act of a registrable domestic relationship or a registrable caring relationship of the domestic partner or caring partner in whose favour the order was made.
- (2) If a marriage or remarriage or registration under this Act takes place, the domestic partner or caring partner must notify the partner against whom the order was made of the date of the marriage, remarriage or registration as soon as practicable.
- (3) Any money paid under an order for periodic maintenance in respect of a period occurring after the marriage, remarriage or registration takes place may be recovered as a debt in a court of competent jurisdiction by the domestic partner or caring partner who made the payment.
- (4) If a notification under subsection (2) is not provided or reasonable steps are not taken to provide the notification, interest is payable on any money recovered under subsection (3) with effect from the date of the marriage, remarriage or registration.

- (5) The interest payable under subsection (4) must not be greater than the rate fixed under section 2 of the **Penalty Interest Rates Act 1983** that applies at the time the court makes the order.

### 55 Recovery of arrears

The provisions of this Division do not affect the recovery of any arrears that are due under an order for maintenance when the order ceases to have effect.

### 56 Variation of order for periodic maintenance

- (1) On an application by a domestic partner or a caring partner in respect of whom an order has been made for periodic maintenance, a court may—
- (a) subject to subsection (2), discharge the order; or
  - (b) suspend the operation of the order wholly or in part until—
    - (i) a further order; or
    - (ii) a fixed time; or
    - (iii) the happening of a future event; or
  - (c) revive wholly or in part the operation of an order suspended under paragraph (b); or
  - (d) subject to subsection (2), vary the terms of the order.
- (2) A court must not make an order discharging an order or increasing or decreasing an amount payable under an order unless satisfied that it is justifiable to do so because, since the order was made or last varied—
- (a) the circumstances of the domestic partner or caring partner in whose favour the order was made have changed; or

S. 56(1)  
amended by  
No. 4/2009  
s. 32(1).

S. 56(2)(a)  
amended by  
No. 4/2009  
s. 32(2).

S. 56(2)(b)  
amended by  
No. 4/2009  
s. 32(2).

- (b) the circumstances of the domestic partner or caring partner against whom the order was made have changed; or
- (c) the cost of living has changed.
- (3) In satisfying itself for the purpose of subsection (2)(c), the court must have regard to any changes occurring during the relevant period in the Consumer Price Index (All Groups Index) for Melbourne issued by the Australian Statistician (or, if the regulations prescribe another economic index for the purposes of this section, that other index).
- (4) In considering the variation of an order, a court must not have regard to a change in the cost of living unless at least 12 months have elapsed since the order was made or last varied.
- (5) An order increasing or decreasing the amount of a periodic sum payable under an order may be expressed to be retrospective to any date the court thinks fit.
- (6) For the purposes of this section, a court must have regard to section 51.

**57 Other maintenance orders not to be varied**

Subject to section 62, an order for maintenance, other than for periodic maintenance, cannot be varied.

**Division 5—General provisions for property adjustment and maintenance orders**

**58 Powers of a court**

- (1) In exercising its powers under this Part, a court may do any one or more of the following—
- (a) order the transfer of property;

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- (b) order the sale of property and the distribution of the proceeds of sale in any proportions that the court thinks fit;
  - (c) order that any necessary deed or instrument be executed and that documents of title be produced or other things be done that are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;
  - (d) order payment of a lump sum, whether in one amount or by instalments;
  - (e) order payment of a weekly, fortnightly, monthly, yearly or other periodic sum;
  - (f) order that payment of any sum ordered to be paid be wholly or partly secured in any manner that the court directs;
  - (g) appoint or remove trustees;
  - (h) make an order or grant an injunction for either or both of the following purposes—
    - (i) for the protection of or otherwise relating to the property of one or both of the parties to an application; or
    - (ii) to aid enforcement of any other order made in respect of an application;
  - (i) impose terms and conditions;
  - (j) make an order by consent;
  - (k) make any other order or grant any other injunction to do justice.
- (2) In relation to an application under this Part, a court may—
- (a) make any order or grant any remedy or relief that it is empowered to make or grant under this or any other Act or any other law; and
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- (b) make any order or grant any remedy or relief under this Part in addition to or in conjunction with making any other order or granting any other remedy or relief that it is empowered to make or grant under this Act or any other Act or any other law.
- (3) This section does not take away any other power of the court under this or any other Act or any other law.

**Note**

See section 59 for the effect of a relationship agreement on the court's power to make an order under this section.

**59 Effect of relationship agreements**

S. 59(1)  
amended by  
No. 4/2009  
s. 33(1).

- (1) In exercising its powers under this Part in a proceeding, a court must not make an order or do any other thing that is inconsistent with the terms of a relationship agreement between the domestic partners or caring partners who are parties to the proceeding, if the court is satisfied that—
  - (a) the agreement is in writing; and
  - (b) the agreement is signed by the partner against whom it is sought to be enforced; and
  - (c) each partner was given a legal practitioner's certificate before the time at which the partner signed the agreement; and
  - (d) each legal practitioner's certificate is endorsed on, annexed to or otherwise accompanies the agreement.
- (2) A legal practitioner's certificate—
  - (a) must be signed by the legal practitioner giving it; and

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- (b) must state that the legal practitioner provided legal advice to the party to whom the certificate was given, independently of the other party to the domestic relationship or registered caring relationship, as to the following matters—
- (i) the effect of the agreement on the powers of a court under this Part;
  - (ii) the advantages and disadvantages, at the time that the advice was provided, to the party of making the agreement.
- (3) If the court is satisfied that there is a relationship agreement between the domestic partners or caring partners but it is not satisfied as to any of the matters referred to in subsection (1)(a), (b), (c) or (d), the court may make any order or do any other thing that it could have made or done if there were no relationship agreement between the partners.
- (4) In making an order or doing a thing referred to in subsection (3), the court may have regard to the terms of the relationship agreement.
- (5) Despite subsection (1), a court is not required to give effect to the terms of a relationship agreement if—
- (a) the court is of the opinion that—
    - (i) the partners have, by their words or conduct, revoked or consented to the revocation of the agreement; or
    - (ii) the agreement has otherwise ceased to have effect; or
  - (b) the court varies or sets aside the agreement or the relevant term of the agreement under section 37.

S. 59(2)(b)  
amended by  
No. 4/2009  
s. 33(2).

S. 59(3)  
amended by  
No. 4/2009  
s. 33(3).

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

- (1) If—
- (a) a person has refused or neglected to comply with an order directing the person to execute a deed or instrument; or
  - (b) for any other reason, a court thinks it necessary to exercise the powers conferred on it under this subsection—

the court may appoint an officer of the court or other person to execute the deed or instrument in the name of the person to whom the direction was given and to do everything necessary to give validity and operation to the deed or instrument.

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

**61 Orders and injunctions in the absence of a party**

- (1) In the case of urgency, a court in the absence of a party may make an order or grant an injunction for either or both of the purposes specified in section 58(1)(h).
- (2) An application under this section may be made orally or in writing or in any form the court considers appropriate.
- (3) If an application under this section is not made in writing, the court must not make an order or grant an injunction unless it considers that it is necessary to do so because of the extreme urgency of the case.

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- (4) The court may give any directions with respect to the filing, serving and further hearing of a written application.
  - (5) An order or injunction must be expressed to operate or apply only until a specified time or the further order of the court.
  - (6) The court may give directions with respect to—
    - (a) the service of the order or injunction and any other documents it thinks fit; and
    - (b) the hearing of an application for a further order.

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

If, on the application of a person in respect of whom an order under section 45 or 51 has been made, a court is satisfied that—

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

the court may vary the order or set the order aside and, if it thinks fit, make an order in substitution for the order set aside.

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### **63 Transactions to defeat claims**

- (1) If a court is satisfied that an existing or anticipated order in a proceeding under this Part is likely to be defeated by the making of an instrument or disposition by a party to the proceeding, the court may set aside or restrain the making of the instrument or disposition.
  - (2) The court may order that—
    - (a) any property dealt with by an instrument or disposition referred to in subsection (1) be taken in execution, or used or applied in, or charged with payment of—
      - (i) any sums payable under an order adjusting interests in the property of one or more of the parties to the proceeding; or
      - (ii) costs; or
    - (b) the proceeds of a sale be paid into court to satisfy an order of the court.
  - (3) The court may order a party or a person acting in collusion with a party to pay the costs of any other party, or of a purchaser in good faith or other person interested, of and incidental to the instrument or disposition and the setting aside or restraining of the instrument or disposition.
  - (4) For the purposes of this section—
    - (a) something is made by a person if the thing is made by or on behalf of, or by direction or in the interests of, the person; and
    - (b) it does not matter that the document or disposition is intended to defeat the order concerned.
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(5) In this section—

*disposition* includes a sale and a gift.

#### **64 Interests of other parties**

- (1) In the exercise of its powers under this Part, a court must—
- (a) have regard to the interests of a purchaser in good faith or other person interested; and
  - (b) make any order proper for the protection of such a purchaser or person.
- (2) If it appears to a court that a person may be affected by an order that may be made in a proceeding under this Part, the court—
- (a) may order that the person be given notice of the proceeding; or
  - (b) on application by the person, may order that the person be made a party to the proceeding.
- (3) If the person against whom an order is sought is married, the person applying for the order must give notice of the proceeding to the spouse of the person against whom the order is sought.

#### **Division 6—Jurisdiction and enforcement**

#### **65 Courts having jurisdiction under this Part**

A person may apply to—

- (a) the Supreme Court; or
- (b) the County Court; or
- (c) the Magistrates' Court—

for an order or relief under this Part.

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**66 Transfer of proceedings—jurisdictional limit exceeded**

- (1) If a proceeding is instituted in a court with respect to an interest in property of a value in excess of the court's jurisdictional limit, the court must transfer the proceeding to a court where the value is within the jurisdictional limit unless the parties agree to the first court hearing and determining the proceeding.
- (2) A court may transfer a proceeding under subsection (1) on its own motion, even if the parties agree to the court hearing and determining the proceeding.
- (3) Before transferring a proceeding, a court may make any orders it considers necessary pending the disposal of the proceeding by the court to which the proceeding is transferred.
- (4) If a proceeding is transferred to another court, that court must proceed as if the proceeding had been originally instituted in that court.
- (5) Without prejudice to the duty of a court to comply with this section, failure by the court to comply does not invalidate any order of the court in the proceeding.

**67 Transfer of proceedings—interests of justice**

If a proceeding instituted under this Part is pending in a court and it appears to the court that it is in the interests of justice that the proceeding be dealt with in another court, the court may transfer the proceeding to the other court.

**68 Proceedings in more than one court**

If a proceeding instituted under this Part by or in relation to a person is pending in a court and it appears to the court that another proceeding instituted under this Part by or in relation to the

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same person is pending in another court having jurisdiction under this Part, the first-mentioned court may—

- (a) stay the proceeding pending before it for any period it thinks fit; or
- (b) dismiss the proceeding.

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

The Supreme Court, the County Court and the Magistrates' Court must act in aid of and be auxiliary to each other in all matters under this Part.

### **70 Enforcement of orders**

- (1) If a court having jurisdiction under this Part is satisfied that a person has knowingly and without reasonable cause contravened an order made or injunction granted under this Part (not being an order for the payment of money), the court may do any one or more of the following—
    - (a) order the person to pay a penalty not exceeding an amount that is 20 times the value of a penalty unit fixed by the Treasurer under section 5(3) of the **Monetary Units Act 2004**;
    - (b) require the person to enter into a bond, with or without sureties, for any reasonable amount the court thinks fit, that the person will comply with the order or injunction, or order the person to be imprisoned until the person enters into such bond or until the end of 3 months, whichever first occurs;
    - (c) order the person to give to the court any documents the court thinks fit;
    - (d) make any other orders that the court considers necessary to enforce compliance with the order or injunction.
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- (2) Nothing in subsection (1) affects the power of a court to punish a person for contempt of court.
  - (3) If an act or omission referred to in subsection (1) is an offence against any other law, the person committing the offence may be prosecuted and convicted under that law, but nothing in this section renders any person liable to be punished twice in respect of the same offence.
  - (4) For the purposes of section 5 of the **Crown Proceedings Act 1958** a bond entered into pursuant to this section is to be treated as a recognisance.
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**CHAPTER 4—GENERAL AND TRANSITIONAL  
PROVISIONS AND CONSEQUENTIAL  
AMENDMENTS**

**PART 4.1—GENERAL**

**71 Regulations**

- (1) The Governor in Council may make regulations for or with respect to—
  - (a) prescribing fees or a basis for calculating fees for—
    - (i) making an application to register a registrable domestic relationship or registrable caring relationship;
    - (ii) making a revocation application;
    - (iii) access to the Relationships Register;
    - (iv) a search of the Relationships Register;
    - (v) the issue of a certificate following a search of the Relationships Register;
    - (vi) other services provided by the Registrar;
  - (b) generally prescribing any other matter or thing required or permitted to be prescribed or necessary to be prescribed for the purposes of this Act.
- (2) A regulation may impose a penalty not exceeding 20 penalty units for contravention of the regulations.
- (3) Regulations made under this Act—
  - (a) may be of general or limited application;
  - (b) may differ according to differences in time, place or circumstances;

S. 71(1)(a)(i)  
amended by  
No. 4/2009  
s. 34.

Relationships Act 2008  
No. 12 of 2008  
Part 4.1—General

**s. 71**

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(c) may require the making of a statutory  
declaration.

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**PART 4.2—REPEALS, CONSEQUENTIAL AMENDMENTS  
AND TRANSITIONALS**

**72 Repeal of Part IX of the Property Law Act 1958**

Part IX of the **Property Law Act 1958** is  
repealed.

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**S. 73  
repealed by  
No. 12/2008  
s. 73(2).**

**74 Transitional provisions**

- (1) Subject to this section, any right or entitlement that a person had under Part IX of the **Property Law Act 1958** immediately before the commencement day is taken, on and after that day, to be a right or entitlement of the person under this Act.
- (2) Despite its repeal, section 301 of the **Property Law Act 1958**, as in force immediately before the commencement day, continues to apply on and after that day in relation to any order made or injunction granted under Part IX of that Act before the commencement day.
- (3) If an application for an order under Division 2 of Part IX of the **Property Law Act 1958** was made before the commencement day but had not been determined before that day, the application is to continue to be dealt with on and after that day in accordance with Part IX of that Act as if that Part had not been repealed.
- (4) In this section—  
*commencement day* means the day on which section 72 comes into operation.

s. 74A

S. 74A  
inserted by  
No. 4/2009  
s. 35.

#### 74A Further transitional provision

A relationship that was a registered relationship under Part 2.2 immediately before the commencement of section 35 of the **Relationships Amendment (Caring Relationships) Act 2009**, is taken, on and after that commencement, to be a registered domestic relationship.

#### 75 Interim fees

S. 75(2)  
amended by  
No. 4/2009  
s. 36.

- (1) The fees in this section are taken to be the prescribed fees until regulations are made prescribing fees for the purposes of this Act.
- (2) The fee for making an application under section 6 to register a registrable domestic relationship or registrable caring relationship is \$180.
- (3) The fee for making a revocation application is \$58.80.
- (4) The fee for making an application under section 19(5) to add registrable information to an entry in the Relationships Register is \$58.80.
- (5) The fee for making an application under section 21(1) for a search of the Relationships Register is \$12.90.
- (6) The fee for making an application under section 22(1) for the issue of a certificate certifying the results of a search of the Relationships Register is \$12.90.

Relationships Act 2008  
No. 12 of 2008

Sch. 1

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\* \* \* \* \*

**Sch. 1**  
**amended by**  
**No. 19/2009**  
**s. 30,**  
**repealed by**  
**No. 12/2008**  
**s. 73(2).**

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## ENDNOTES

### 1. General Information

*Minister's second reading speech—*

*Legislative Assembly: 6 December 2007*

*Legislative Council: 13 March 2008*

The long title for the Bill for this Act was "A Bill for an Act to establish a relationships register in Victoria for the registration of domestic relationships, to provide for relationship agreements, to provide for property adjustment between domestic partners and for maintenance, to repeal Part IX of the **Property Law Act 1958**, to make consequential amendments to other Acts and for other purposes."

The **Relationships Act 2008** was assented to on 15 April 2008 and came into operation as follows:

Sections 1–75 and Schedule 1 (other than items 25 and 69) on 1 December 2008: section 2(2); Schedule 1 item 69 never proclaimed, repealed by No. 19/2009 section 30; Schedule 1 item 25 on 1 July 2009: section 2(3).

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## 2. Table of Amendments

This Version incorporates amendments made to the **Relationships Act 2008** by Acts and subordinate instruments.

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### **Relationships Act 2008, No. 12/2008**

*Assent Date:* 15.4.08  
*Commencement Date:* S. 73(2) on 1.12.09: s. 73(2)  
*Current State:* This information relates only to the provision/s amending the **Relationships Act 2008**

### **Relationships Amendment (Caring Relationships) Act 2009, No. 4/2009**

*Assent Date:* 10.2.09  
*Commencement Date:* Ss 4–36 on 1.12.09: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Relationships Act 2008**

### **Fair Trading and Other Acts Amendment Act 2009, No. 19/2009**

*Assent Date:* 10.6.09  
*Commencement Date:* S. 30 on 11.6.09: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Relationships Act 2008**

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**Endnotes**

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**3. Explanatory Details**

No entries at date of publication.