

The Referral of De Facto Financial Matters to the Family Law Act.
A Uniform Approach?

Introduction

On 25 June 2008 the Federal Government introduced to the House of Representatives, a Bill entitled the *Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008* ("the Bill"). The Bill amends the *Family Law Act*, principally to provide for financial matters arising from the breakdown of de facto relationships to be dealt with under federal law and consistently with principles applying to the breakdown of a marriage. It also makes consequential amendments to other legislation to implement the primary objective of the Bill. In unrelated amendments, the Bill also takes the opportunity to make other minor amendments to the *Family Law Act* in relation to provisions regarding Financial Agreements and Separation Declarations to such agreements.

The Bill has not yet passed the House of Representatives and has been referred to the Senate Legal and Constitutional Affairs Committee which is due to report on 27 August 2008.

Importantly, the Bill as currently drafted makes equal provision for parties in opposite-sex and same- sex de facto relationships, a provision that is markedly different from the approach of the previous Federal Government, which had intended to leave same-sex relationships within State-based legislation and to only make provision for opposite-sex de facto relationships. This would have led to the unfortunate result of a limited but significant number of cases continuing to be heard in the State Courts.

The Bill largely parallels the current provisions in relation to financial orders consequent upon the breakdown of a marriage and provides for the following matters to be dealt with under Federal law and where relevant an application to be heard in the Family Court or Federal Magistrates Court in relation to:

- The distribution of property (including a superannuation splitting order) and/or a declaration of rights in respect of property;
- A maintenance order in respect of a de facto partner;
- Financial agreements between parties to a de facto relationship (and third parties) whether in contemplation of a de facto relationship, during the course of the relationship or on its breakdown;

In addition, in a provision that does not directly parallel a matrimonial matter, the Court will have the power to make a declaration in respect of the existence or not of a de facto relationship and when such a relationship has commenced or ended.

Background

The history of the Bill is quite protracted as it relies on the referral of powers of certain of the States as the basis of federal jurisdiction, the negotiations for which commenced in or about 2002. New South Wales, Victoria, Queensland and Tasmania have each passed enabling legislation referring State powers to the Commonwealth to legislate in respect of financial matters arising on the breakdown of de facto relationships.¹

As the Bill relies on the referral of powers of the States pursuant to s 51 (xxxvii) of the Constitution as the basis of federal jurisdiction, the terms of the referral from the states has had an effect on the drafting and terminology of the legislation. The referral is limited to include: “financial matters arising from the breakdown of de facto relationships.”

The fact that South Australia and Western Australia have not referred their powers to the federal jurisdiction, has also affected the scheme in that the Bill contains complex arrangements for the relevant de facto relationship to have a geographical connection to one of the referring states and there are arrangements for a state to refer its powers after the commencement of the Bill.²

There are transitional provisions for matters where parties already have arrangements, such as a cohabitation agreement under a state act, for those agreements to be recognised under the federal scheme once the Bill comes into force.

The Federal Attorney-General in the Second Reading speech of the Bill to Parliament on 25 June 2008 stated that: “[b]y providing a consistent and uniform approach of de facto relationships, this bill will alleviate the administrative and financial burden currently faced by de facto couples as a result of multiple de facto regimes applying across the states and territories”. While the Bill goes some way to achieving a ‘consistent and uniform approach’, the different positions taken by various states makes the Bill complex and cumbersome in its introduction and drafting.

¹ Commonwealth Powers (De Facto Relationships) Act, (NSW) 2002
Commonwealth Powers (De Facto Relationships) Act, (Qld) 2003
Commonwealth Powers (De Facto Relationships) Act, (Vic) 2004
Commonwealth Powers (De Facto Relationships) Act, (Tas) 2006

² Western Australia has made amendments to its state *Family Court Act* to provide for the Family Court of Western Australia to deal with matters arising for both opposite-sex and same-sex de facto partners under state law.

The Current State-based Systems

For participating states, however, given that each state has its own regime for dealing with financial matters arising from the breakdown of a de facto relationship the Bill will provide a significant degree of uniformity and widely enlarge the scope of matters that can and will be dealt with.

The current provisions of the states differ markedly. See Schedule 1 for a summary of the current regimes now in force in each of the States. For example, the relevant legislation in New South Wales, the *Property (Relationships) Act* provides for an application by a party to a domestic relationship to adjust interests with respect to the property of the parties as seems just and equitable having regard to the financial and non-financial contributions of the parties and any contributions made in the capacity of homemaker or parent or to the welfare of the family.³ The *Property (Relationships) Act* does not, however, take into account a party's future needs and the capacity to apply for a maintenance order is limited.

By comparison, Part 19 of the *Queensland Property Law Act, 1974* makes provision for a just and equitable property distribution at the end of a de facto relationship in relation to the de facto partners. It takes into account both contributions factors and extensive future needs factors.⁴ It includes de facto couples only and does not cover any other types of relationships which are covered by the NSW legislation.

The NSW Property (Relationships) Act allows adult parties to a close personal relationship, (other than a marriage or a de facto relationship), whether or not related by family, who are living together, and one of whom provides support or personal care to the other to make an application for property adjustment.⁵

As the referring state legislation makes no reference to relationships of this category and is limited to de facto relationships only, the Bill does not include parties in close personal relationships, who presumably will continue to be included under the relevant state legislation. While again providing a separate category of matters that will remain within state jurisdiction the number of cases determined in this category must be relatively small.

³ See s20 Property (Relationships) Act (NSW) 1984.

⁴ See ss 255 to 315 of the Property Law Act (Qld) 1974

⁵ Section 5, Property (Relationships) Act (NSW) 1984

Jurisdictional Issues

Before turning to the detail of the amendments to the *Family Law Act*, it is useful to review the transitional arrangements of what matters will and will not be covered by the Bill and the relevant commencement dates of the Bill.

The Bill does not extend to de facto relationships which broke down before commencement of the (by then) Act and therefore state law will continue to apply to an application for the distribution of property or for maintenance or any proceedings to enforce, discharge or suspend, revive or vary an order. Pending proceedings will not be covered by the Bill and an agreement made under a state law will not be covered by the federal scheme if the relationship broke down prior to the Act commencing.⁶

Agreements that are made under the State law of a participating jurisdiction (i.e. NSW, Vic, Qld, Tas and the Territories) will continue to have effect provided that the parties were provided with independent legal advice as to the effect of the agreement and the advantages and disadvantages of entering into the agreement at the time it was entered into. These include agreements made in contemplation of a de facto relationship or during the course of a de facto relationship. Such agreements will be taken to be agreements under the new Part VIIIAB of the *Family Law Act*.⁷

Clearly an agreement made after the breakdown of a de facto relationship is not included as the relationship itself is not included in the scheme, having broken down before its commencement.

For jurisdictions that may become a participating state at a later date (i.e. South Australia or Western Australia), de facto relationships that break down before they join the scheme will continue to be included under their state laws.⁸ Relationships continuing after the date they join the federal scheme will be covered by the federal scheme. Agreements made in such later participating jurisdictions will come under the federal scheme in the same way as for the earlier participating states provided that appropriate independent legal advice is given in respect of such agreements.⁹

The Act also provides, however, that agreements that are reached between parties in non-participating states and who later move to a participating jurisdiction, their agreements will be recognised under the Act as if they were made in a participating jurisdiction (see s90UA of the Bill). The geographical nexus for the parties must, however, be established.

⁶ Item 86 of the part 2 of Schedule 1 to the Bill

⁷ Item 87 & 88 of the part 2 of Schedule 1 to the Bill

⁸ Item 90 of the part 2 of Schedule 1 to the Bill

⁹ Item 91 & 92 of the part 2 of Schedule 1 to the Bill

It is intended that the Bill once passed shall commence on a date fixed by proclamation or 6 months after the Bill receives Royal assent to allow the opportunity the public, practitioners and the Courts to prepare for the changes.

Jurisdiction is provided under the bill to be exercised by the Family Court, the Federal Magistrates Court and the Supreme Court of the Northern Territory or a court of summary jurisdiction in a participating jurisdiction.¹⁰

Jurisdiction is conferred if one of the parties (which can include third parties) is an Australian citizen, ordinarily resident in Australia or present in Australia on the day the application is filed (unless the application relates to enforcement proceedings).¹¹

In general terms, and with exceptions, the Court will only have jurisdiction to make orders in respect of declarations, maintenance or property in respect of de facto relationships that have been in existence for at least 2 years.

The limitation period for making an application is within 2 years after the end of the de facto relationship. Leave can be granted by the Court if hardship would be caused to a party or a child if leave were not granted (note that this is not limited to a child of the de facto relationship). In the case of a maintenance application, this also includes if the party could not support himself or herself without an income tested pension, allowance or benefit.¹²

New Financial scheme under the *Family Law Act*

Rather than simply expand the current definitions and sections of the *Family Law Act* to include de facto relationships, the Bill introduces to the *Family Law Act* an entirely new Part VIIIAB to deal with de facto financial matters. The definition section at section 4(1) and other sections of the Act are also amended to take into account the new scheme.

Clearly also, if the parties subsequently marry then their property and maintenance proceedings would not be dealt with under this section. Importantly as well, if parties have entered into a Part VIIIAB financial agreement and they subsequently marry then they will need to enter into a separate agreement under Part VIII as their de facto financial agreement will no longer be binding.

¹⁰ New s 39A(1) of the Family Law Act.

¹¹ New s 39(2) of the Family Law Act

¹² New s 44 (5) and (6) of the Family Law Act

The Bill introduces to s 4(1) of the *Family Law Act* a new definition of a de facto financial cause to provide mirror the definition of a matrimonial cause. Unlike a matrimonial cause however, the Act will be limited to dealing with matters arising after the breakdown of a de facto relationship, because of the limited jurisdictional basis from the referring Acts of each of the States.

A de facto financial cause is defined as:

- (a) proceedings between the parties to a de facto relationship with respect to the maintenance of one of them after the breakdown of their de facto relationship; or
- (b) proceedings between:
 - (i) a party to a de facto relationship; and
 - (ii) the bankruptcy trustee of a bankrupt party to the de facto relationship;with respect to the maintenance of the first-mentioned party after the breakdown of the de facto relationship; or
- (c) proceedings between the parties to a de facto relationship with respect to the distribution, after the breakdown of the de facto relationship, of the property of the parties or either of them; or
- (d) proceedings between:
 - (i) a party to a de facto relationship; and
 - (ii) the bankruptcy trustee of a bankrupt party to the de facto relationship;with respect to the distribution, after the breakdown of the de facto relationship, of any vested bankruptcy property in relation to the bankrupt party; or
- (e) without limiting any of the preceding paragraphs, proceedings with respect to a Part VIIIAB financial agreement that are between any combination of:
 - (i) the parties to that agreement; and
 - (ii) the legal personal representatives of any of those parties who have died; (including a combination consisting solely of parties or consisting solely of representatives); or
- (f) third party proceedings (as defined in section 4B) to set aside a Part VIIIAB financial agreement; or
- (g) any other proceedings (including proceedings with respect to the enforcement of a decree or the service of process) in relation to concurrent, pending or completed proceedings of a kind referred to in any of the preceding paragraphs

The Bill also refers to proceedings with respect to the distribution of property in de facto matter as this also reflects the terminology of the referring Acts

The definition of *financial matters* is amended as follows to take de facto matters into account:

financial matters means:

(a) in relation to the parties to a marriage—matters with respect to:

- (i) the maintenance of one of the parties; or
- (ii) the property of those parties or of either of them; or
- (iii) the maintenance of children of the marriage; or

(b) in relation to the parties to a de facto relationship—any or all of the following matters:

- (i) the maintenance of one of the parties;
- (ii) the distribution of the property of the parties or of either of them;
- (iii) the distribution of any other financial resources of the parties or of either of them

A new definition is the inclusion of the term *spouse party*. This does not relate to de facto relationships matters. It is designed to include the arrangements for third parties to be parties to financial agreements (including the new de facto agreements under Part VIIIAB). This provision is designed to distinguish between the primary parties to such agreements and other ‘third parties’ to them.

A further important definition is provided at s 4AA which provides the meaning of a *de facto relationship*. The Act imports the ‘elements’ or indicia of a de facto relationship from the NSW and Victorian state acts as matters to which the court would have reference in determining whether a de facto relationship exists. No one of these indicia should be considered essential for finding the existence of a de facto relationship. The section also makes it clear that there can be concurrent de facto relationships or a concurrent de facto relationship and a marriage. It is this section that also includes same-sex de facto relationships in the new regime.

Section 4AA provides:

(1) A person is in a de facto relationship with another person if:

- (a) the persons are not legally married to each other; and
- (b) the persons are not related by family (see subsection (6)); and
- (c) having regard to all the circumstances of their relationship, they have a relationship as a couple living together on a genuine domestic basis.

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

- (2) Those circumstances may include any or all of the following:
- (a) the duration of the relationship;
 - (b) the nature and extent of their common residence;
 - (c) whether a sexual relationship exists;
 - (d) the degree of financial dependence or interdependence, and any arrangements for financial support, between them;
 - (e) the ownership, use and acquisition of their property;
 - (f) the degree of mutual commitment to a shared life;
 - (g) whether the relationship is or was registered under a prescribed law of a State or Territory as a prescribed kind of relationship;
 - (h) the care and support of children;
 - (i) the reputation and public aspects of the relationship.
- (3) No particular finding in relation to any circumstance is to be regarded as necessary in deciding whether the persons have a de facto relationship.
- (4) A court determining whether a de facto relationship exists is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.
- (5) For the purposes of this Act:
- (a) a de facto relationship can exist between 2 persons of different sexes and between 2 persons of the same sex; and
 - (b) a de facto relationship can exist even if one of the persons is legally married to someone else or in another de facto relationship.
- (6) For the purposes of subsection (1), 2 persons are related by family if:
- (a) one is the child (including an adopted child) of the other; or
 - (b) one is another descendant of the other (even if the relationship between them is traced through an adoptive parent); or
 - (c) they have a parent in common (who may be an adoptive parent of either or both of them).

Section 75(2) of the *Family Law Act* is amended to include the terms of any Part VIIIAB Agreements to be taken into account as a factor the court needs to consider.

Part VIIIAB – Declarations as to the existence of a de facto relationship

While new Part VIIIAB of the Act makes provision for applications largely already provided for married couples, it also includes a new capacity for the court to make a declaration as to the existence of, and length of, a de facto relationship and whether there is a child of the relationship.¹³

This declaration is intended to be made in respect of other 'primary proceedings' under the Act, being a threshold question for proceedings for maintenance, distribution of property or in respect of a financial agreement between the parties.

Part VIIIAB - maintenance and property orders

Division 2 of Part VIIIAB provides for the court to make an order for maintenance or distribution of property of a de facto relationship. It does not apply if the parties later marry.¹⁴ The Court is excluded from making an order if there is a binding Part VIIIAB financial agreement unless the financial agreement proceedings are between a party and a bankruptcy trustee in respect of property or maintenance.¹⁵

A Court may only make an order for maintenance including urgent maintenance or property declarations or distribution if either of the parties have been in a relationship for 2 years or there is a child of the relationship or substantial contributions (including non-financial home maker/parent contributions) have been made and it would cause an injustice to the applicant if the application were not granted. Additionally if the parties' relationship was registered under a state law (as is the case in Tasmania) then the court has jurisdiction to make an order irrespective of the length of the relationship. These provisions reflect an amalgam of current provisions adopted under the respective referring states' legislation.¹⁶

The Court may only make an order for maintenance or urgent maintenance if satisfied that at least one of the parties was ordinarily resident in a participating jurisdiction at the time the application is made and, secondly either both parties were ordinarily resident for a third of the de facto relationship or the applicant made significant contributions, in a participating state jurisdiction. Therefore, for example, if the parties lived for the majority of the relationship in South Australia and then move to NSW and then separate, no application could be made under the federal scheme unless the court was satisfied that the applicant had made significant

¹³ New s 90RD of the Family Law Act

¹⁴ New s 90SC of the Family Law Act

¹⁵ New s 90SA of the Family Law Act

¹⁶ New s 90SB of the Family law Act and cf s 17(2) of the NSW Property (Relationships) Act.

contributions to the relationship while in NSW.¹⁷ This geographical nexus also reflects the provisions of referring state legislation.

New section 90SF(3) reflects the amended terms of section 75(2) and the power of the Court to make an order for maintenance of a de facto partner reflect one of the major changes brought about by this legislation for de facto couples, greatly increasing the scope of a maintenance order irrespective of the existence of, or age of, children.

The provisions in respect of residence in a participating jurisdiction or contributions for maintenance provisions are repeated in respect of property matters. The Court has the power to make both declarations of parties' rights and entitlements¹⁸ or alter property interests¹⁹, reflecting the provisions of ss 78 and 79 of the *Family Law Act*.

The matters the Court must take into account in making an order that 'in all the circumstances ... is just and equitable' are contained in s 90SK(4). This matches the matters that are contained in s 79(4). The Court must consider the matters referred to in s 90SF(3), being the equivalent to the s 75(2) factors.

While the various de facto legislation of the referring states vary in their provisions, certainly the extension to de facto couples of the 'future needs' factors also marks a significant change in the entitlements of parties in jurisdictions such as New South Wales and Victoria.

Part VIIIAB - Financial Agreements

Part VIIIAB also includes under Division 4 the provision for parties to enter into binding Financial Agreements. As with Financial Agreements for married couples, such agreements can be made in contemplation of a de facto relationship²⁰, during a de facto relationship²¹ or at the breakdown of a de facto relationship²².

As the Bill makes it clear that third parties are entitled to be parties to such agreements, the Bill provides that 'spouse parties' must ordinarily be resident in a participating jurisdiction.²³

As with Financial Agreements, a Part VIIIAB Financial Agreement, can deal with how all or any of the property or financial resources of the parties may be distributed at the time the agreement is made or at a later time as well as the maintenance of a spouse party. Such agreements may

¹⁷ New s 90SD of the Family Law Act

¹⁸ New s 90SL of the Family Law Act

¹⁹ New s 90SM of the Family Law Act

²⁰ New s 90UB of the Family Law Act

²¹ New s 90UC of the Family Law Act

²² New s 90UD of the Family Law Act

²³ New s 90UA of the Family Law Act

also contain incidental or ancillary matters. However, s 90UG provides that a binding Part VIIIAB financial agreement, to the extent that it provides for such incidental or ancillary provisions, is of no force or effect unless and until the de facto relationship breaks down. This provision has no equivalent in the Binding Financial Agreement part of the *Family Law Act*.

Section 90UF also provides for a separation declaration to be provided for Part VIIIAB agreements to have effect in relation to property and spousal maintenance. Such agreements also require the same certification arrangements as Financial Agreements to be binding. The Parliament has not made any modification to those requirements as has been recently proposed following the recent case of *Black and Black*.²⁴

As noted above s 90UJ(3) provides that a Part VIIIAB financial agreement ceases to be binding if, after making the agreement, the parties to the agreement marry each other. Practitioners should therefore advise as a matter of course when preparing such an agreement that parties need to consider entering into a separate Financial Agreement pursuant to s 90B of the Act in the event of their marriage.

A Part VIIIAB Financial Agreement may be terminated by making a further Part VIIIAB Financial Agreement or making a Part VIIIAB Termination Agreement. A court has the power to set aside a Part VIIIAB Financial Agreement on the basis of fraud, including non-disclosure both of a party or a creditor, and a new provision that includes defrauding another person who is a party to a de facto relationship with a spouse party or is in a marriage with a spouse party. A Court may also set aside a Part VIIIAB Financial Agreement:

- (a) if the agreement is void, voidable or unenforceable,
- (b) since the agreement was made it is impracticable to carry it out, or
- (c) if a material change has occurred in relation to a child the applicant will suffer hardship,
- (d) provisions in respect of payment flag on a superannuation interest is unlikely to be lifted
or
- (e) if an unsplitable superannuation interest is covered by the agreement .²⁵

A further provision provides one significant additional ground, in relation to an agreement made under state laws where the parties later meet the geographical requirements for federal agreements but their agreement was not compliant with the procedural requirements for Part VIIIAB Termination Agreements. In considering whether to set such an agreement aside, it must

²⁴ [2008] Fam CAFC 7

²⁵ New s 90UM of the Family Law Act

also be unjust and inequitable, having regard to how the agreement deals with the parties' financial arrangements, if the court does not set the agreement aside.²⁶

Superannuation Splitting and other matters

The *Family Law Act* is also amended to provide that superannuation splitting orders may be made in respect of de facto relationships matters. The Bill largely provides amendments to the Family Law Act to ensure that the same arrangements provided in the Act for matrimonial matters apply to de facto matters.

While the Western Australian government has made a referral of its powers over superannuation matters arising from the breakdown of a de facto relationship only and on no other basis, the Bill has not implemented that referral.

The Bill also makes consequential amendments to provide for enforcement of de facto orders and agreements.

Conclusion

In general terms, the Bill makes significant advances in unifying the arrangements and improving the financial entitlements for de facto couples including same-sex couples bringing them largely in line with married couples. The failure for all of the states to refer their powers to the federal government and the consequential transitional and jurisdictional matters make the legislation relatively complex. However, it does represent a vast improvement on the multiplicity of jurisdictions currently in force. No doubt time will tell whether the other jurisdictions can be brought into line to make a truly uniform law.

²⁶ New s 90UM(1)(k) and s 90UM(1)(5)

Schedule 1

Summary of Current State-based provisions for Financial De Facto Property Matters

State	Provisions Re De facto Adjustment of Interest in Property
NSW	<p>S20 The Property (Relationships) Act 1984 (NSW) – court may make an order adjusting interests of parties in the property as seems just and equitable having regard to</p> <ul style="list-style-type: none"> (a) Financial and non financial contributions made directly/indirectly to property as well as financial resources; (b) Contributions including any made in the capacity of homemaker/parent, made by either of the domestic partners to welfare of other partner or to welfare of family and towards one or more of the following <ul style="list-style-type: none"> (i) Child (ii) Child accepted by both partners into household
VIC	<p>S285 Property Law Act 1958 (Vic) – a court may make an order adjusting interests of domestic partners in the property of one or both of them that seems just and equitable having regard to:</p> <ul style="list-style-type: none"> (a) Financial and non financial contributions – directly/indirectly made (b) Contributions including any made in the capacity of homemaker/parent, made by either of the domestic partners to welfare of other partner or to welfare of family and towards one or more of the following <ul style="list-style-type: none"> (iii) Child (iv) Child accepted by both partners into household
QLD	<p>S286 Property Law Act 1974 (QLD) - court may make any order it considers just and equitable. Court will consider financial and non financial contributions—directly/indirectly made. The court must also consider the following:</p> <ul style="list-style-type: none"> (a) contributions, including any homemaking or parenting contributions, made by either of the de facto partners or a child of the de facto partners to the welfare of the de facto partners; or the family constituted by the de facto partners and 1 or more of the following— <ul style="list-style-type: none"> (i) a child of the de facto partners; (ii) a person who is— <ul style="list-style-type: none"> (A) accepted by either of the de facto partners into the household of the de facto partners; and (B) dependent on either of the de facto partners. (b) The court must also consider the effect of any proposed order on the earning capacity of the de facto partners. (c) any child support under the Child Support (Assessment) Act 1989 (Cwlth) provided, or to be provided, by a de facto partner for a child of the de facto partners (d) any other order affecting a de facto partner or a child of the de facto partners made under a law of the Commonwealth or a State

	<p>concerning de facto relationships the court considers should be taken into account.</p> <p>The court must consider the matters mentioned in bsubdivision 4 to the extent they are relevant in deciding what order adjusting interests in property is just and equitable;</p> <ul style="list-style-type: none"> (i) age and state of health of each of the de facto partners. (ii) income, property and financial resources of each of the de facto partners; and the physical and mental capacity of each of them for appropriate gainful employment. (iii) whether either de facto partner has the care of a child of the de facto partners who is under 18 years. (iv) The court must consider the commitments of each of the de facto partners necessary to enable the de facto partner to support— himself or herself; and a child or another person whom the de facto partner has a duty to maintain. (v) responsibility of either de facto partner to support another person (vi) the eligibility of either de facto partner for—an Australian pension, allowance or benefit that is not income tested; or a foreign pension, allowance or benefit; and the amount of any pension, allowance or benefit; (vi) what standard of living is reasonable for each of the de facto partners in all the circumstances. (vii) contributions made by either of the de facto partners to the income and earning capacity of the other de facto partner. (viii) length of the de facto relationship. (ix) extent to which the de facto relationship has affected the earning capacity of each of the de facto partners. (x) If either de facto partner is cohabiting with another person, the court must consider the financial circumstances of the cohabitation. (xi) any payments provided for the maintenance of a child in the care of either de facto partner. (xii) any fact or circumstance the court considers the justice of the case requires to be taken into account.
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<p>SA</p>	<p>S11 De Facto Relationships Act 1996 (SA) Court must consider the financial and non-financial contributions made directly or indirectly made and as well as financial resources; and</p> <ul style="list-style-type: none"> (a) must have regard to the terms of any relevant cohabitation agreement; (b) may have regard to other relevant matters. <p>If a relevant cohabitation agreement—</p> <ul style="list-style-type: none"> (a) is a certificated agreement; and (b) provides for the exclusion of the court’s power to set aside or vary the agreement, an order for the division of property under this Part must be consistent with the terms of the agreement.
<p>TAS</p>	<p>S40 Relationships Act 2003 (Tas) Court may make an order it considers just an equitable having regard to:</p> <ul style="list-style-type: none"> (a) Financial/ non financial contributions made directly/indirectly; (b) Financial resources of parties; (c) Contributions including any made in the capacity of homemaker/parent, made by either of the domestic partners to welfare of other partner or to welfare of family and towards one or more of the following; <ul style="list-style-type: none"> (i) Child (ii) Child accepted by both partners into household (d) Nature and duration of relationship; (e) Relevant matters mentioned in S47 (below); <ul style="list-style-type: none"> (i) income, property and financial resources of each partner as well as physical and mental capacity of each for gainful employment; (ii) the financial needs and obligations; (iii) the responsibilities of either partner to support any other person; (iv) terms of any order made or proposed to be made under section 40; (v) any payments provided for the maintenance of a child in the care and control of either partner; (vi) whether either partner has the care and control of a child of the partner who is under 18; (vii) the age and state of health of each partner; (viii) standard of living that is reasonable for each partner in all the circumstances; (ix) extent to which the payment of maintenance to the partner whose maintenance is under consideration would increase the earning capacity of the partner by enabling the partner – to undertake a course of education or training; or to establish a business; or otherwise to obtain adequate income; (x) extent to which the partner whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other partner; (xi) the length of the personal relationship; (xii) the extent to which the personal relationship has affected the earning capacity of the partner whose maintenance is under consideration; (xiii) any other fact or circumstances the court considers relevant;

ACT	<p>S15 Domestic Relationships Act 1994 (ACT) a court may make an order adjusting the interests in the property of either or both of the parties that seems just and equitable to it having regard to—</p> <ul style="list-style-type: none"> (a) the nature and duration of the relationship; and (b) the financial or non-financial contributions made directly or indirectly by or on behalf of either or both of the parties to the acquisition, conservation or improvement of any of the property or financial resources of either or both of them; and (c) the contributions (including any in the capacity of homemaker or parent) made by either of the parties to the welfare of the other or any child of the parties; and (d) the matters referred to in section 19 (2), as far as they are relevant; <ul style="list-style-type: none"> (i) the income, property and financial resources of each party; and (ii) the physical and mental capacity of each party for appropriate gainful employment; and (iii) the financial needs and obligations of each party; and (iv) the responsibilities of either party to support any other person; and (v) the terms of any order made or proposed to be made under section 15 with respect to the property of either or both of the parties; and (vi) any payments made to the applicant, under an order of a court or otherwise, in respect of the maintenance of a child or children.
NT	<p>S18 De facto Relationships Act 1991 (NT) Court may make an order adjusting the interests of the partners in the property as the court considers just and equitable having regard to –</p> <ul style="list-style-type: none"> (a) the financial and non-financial contributions made directly or indirectly by or on behalf of the partners to the acquisition, conservation or improvement of any of the property or to the financial resources of the partners or either of them; and (b) the contributions (including any made in the capacity of homemaker or parent) made by either of the partners to the welfare of the other partner, or to the welfare of the family constituted by the partners and one or more of the following: <ul style="list-style-type: none"> (i) a child of the partners; (ii) a child accepted by the partners or either of them into the household of the partners, whether or not the child is a child of either of the partners; or (iii) any person dependent on the partners who has been accepted by the partners or either of them into the household of the partners.
WA	<p>205ZG Family Court Act 1997 (WA) –reproduces s79 FLA 1975 (Cth) court shall take into account:</p> <ul style="list-style-type: none"> (a) the financial/non financial contribution made directly or indirectly; and (b) Contributions including any made in the capacity of homemaker/parent, made by either of the domestic partners to welfare of other partner or to welfare of family and towards children of the marriage; and

	<ul style="list-style-type: none"> (c) the effect of any proposed order upon the earning capacity of either party to the marriage; and (d) any other order made under this Act affecting a party to the marriage or a child of the marriage; and (e) any child support under the Child Support (Assessment) Act 1989 that a party to the marriage has provided, is to provide, or might be liable to provide in the future, for a child of the marriage. (f) the matters referred to in section 205ZD(3) so far as they are relevant; <ul style="list-style-type: none"> (i) the age and state of health of each of the de facto partners; (ii) the income, property and financial resources of each of the de facto partners and the physical and mental capacity of each of them for appropriate gainful employment; (iii) whether either de facto partner has the care or control of a child of the de facto relationship who has not attained the age of 18 years; (iv) commitments of each of the de facto partners that are necessary to enable the partner to support- himself or herself; and a child or another person that the party has a duty to maintain; (v) the responsibilities of either party to support any other person; (vi) the eligibility of either party for a pension, allowance or benefit under any law of the Commonwealth, of a State or Territory or of another country; or any superannuation fund or scheme, whether the fund or scheme was established, or operates, within or outside Australia, and the rate of any such pension, allowance or benefit being paid to either party; (vii) a standard of living that in all the circumstances is reasonable; (viii) the extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income; the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party; (ix) duration of the de facto relationship and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration; (x) the need to protect a party who wishes to continue that party's role as a parent; (xi) if either party is cohabiting with another person, the financial circumstances relating to the cohabitation; (xii) the terms of any order made or proposed to be made under section 205ZG in relation to the property of the parties; (xiii) any child support under the Child Support (Assessment) Act that a de facto partner has provided, is to provide, or might be liable to provide in the future, for a child of the de facto relationship;
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	<p>(xiv) any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account; and</p> <p>(xv) the terms of any financial agreement or former financial agreement that is binding on the parties.</p>
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