

South Australia

Domestic Partners Property Act 1996

An Act to facilitate the resolution of property disputes arising on the termination of domestic partnerships; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Domestic Partners Property Act 1996*.

3—Interpretation

(1) In this Act—

certified domestic partnership agreement—see subsection (2);

child of de facto partners means—

- (a) a child of which the domestic partners are the natural parents; or
- (b) a child of the female partner whose male partner is presumed to be the father of the child under an Australian law; or
- (c) a child adopted by the partners;

close personal relationship means the relationship between 2 adult persons (whether or not related by family and irrespective of their gender) who live together as a couple on a genuine domestic basis, but does not include—

- (a) the relationship between a legally married couple; or
- (b) a relationship where 1 of the persons provides the other with domestic support or personal care (or both) for fee or reward, or on behalf of some other person or an organisation of whatever kind;

Note—

Two persons may live together as a couple on a genuine domestic basis whether or not a sexual relationship exists, or has ever existed, between them.

court means—

- (a) the Supreme Court; or
- (b) the District Court; or
- (c) if an application relates to property valued at \$80 000 or less, the Magistrates Court;

domestic partner means a person who lives in a close personal relationship and includes—

- (a) a person who is about to enter a close personal relationship; and
- (b) a person who has lived in a close personal relationship;

domestic partnership agreement means an agreement about—

- (a) the division of property on the termination of a domestic partnership; or
- (b) any other matter (financial or otherwise) related to a domestic partnership;

lawyer means a person who is admitted as a barrister and solicitor of the Supreme Court and holds a current practising certificate;

lawyer's certificate means a certificate signed by a lawyer, and endorsed on an agreement, certifying that—

- (a) the lawyer explained the legal implications of the agreement to a party to the agreement, named in the certificate, in the absence of the other party to the agreement; and
- (b) the party gave the lawyer apparently credible assurances that the party was not acting under coercion or undue influence; and

- (c) the party signed the agreement in the lawyer's presence;

property of a person includes—

- (a) a prospective entitlement or benefit under a superannuation or retirement benefit scheme;
 - (b) property held under a discretionary trust that could, under the terms of the trust, be vested in the person or applied for the person's benefit;
 - (c) property over which the person has a direct or indirect power of disposition and which may be used or applied for the person's benefit;
 - (d) any other valuable benefit.
- (2) For the purposes of this Act, a domestic partnership agreement is a *certified domestic partnership agreement* if—
- (a) the agreement contains a provision (the *warranty of asset disclosure*) under which each party to the agreement warrants that he or she has disclosed all relevant assets to the other; and
 - (b) —
 - (i) the signature of each party to the agreement is attested by a lawyer's certificate; and
 - (ii) each lawyer's certificate is given by a different lawyer.

4—Application of Act

- (1) This Act does not apply to—
- (a) a domestic partnership (other than a domestic partnership that was a de facto relationship) that ended before the commencement of this section; or
 - (b) a de facto relationship that ended before 16 December 1996.

Note—

The *Domestic Partners Property Act 1996* came into operation on 16 December 1996 as the *De Facto Relationships Act 1996*.

- (2) In this section—

de facto relationship means the relationship between a man and a woman, who although not legally married to each other, live together on a genuine domestic basis as husband and wife.

Part 2—Domestic partnership agreements

5—Domestic partnership agreements

- (1) Domestic partners may make a domestic partnership agreement.
- (2) A domestic partnership agreement must—
- (a) be in writing; and
 - (b) be signed by each party to the agreement.

6—Domestic partnership agreement enforceable under law of contract

A domestic partnership agreement is subject to, and enforceable under, the law of contract.

7—Consensual variation or revocation of domestic partnership agreement

- (1) A domestic partnership agreement may be varied or revoked by a written or oral agreement.
- (2) However, if a domestic partnership agreement is a certified domestic partnership agreement, it may only be varied by a certified domestic partnership agreement.

8—Power to set aside or vary domestic partnership agreement

- (1) If a court is satisfied that the enforcement of a domestic partnership agreement would result in serious injustice, the court may set aside or vary the agreement to avoid the injustice.
- (2) A court may exercise its powers under this section—
 - (a) on the court's own initiative; or
 - (b) on the application of either party to the domestic partnership agreement.
- (3) However, a court cannot set aside or vary a domestic partnership agreement under this section if—
 - (a) the agreement provides for the exclusion of the court's power to set aside or vary the agreement; and
 - (b) the agreement is a certified domestic partnership agreement.

Part 3—Adjustment of property interests

9—Property adjustment order

- (1) After a domestic partnership ends, either of the domestic partners may apply to a court for the division of property.
- (2) However, an application for the division of property may only be made if—
 - (a) the applicant or respondent is resident in the State when the application is made; and
 - (b) the applicant and respondent were resident in the State for the whole or a substantial part of the period of the relationship; and
 - (c) the domestic partnership existed for at least 3 years or there is a child of the domestic partners.
- (3) An application for the division of property must be made within one year after the end of the de facto relationship unless the court, after considering the interests of both de facto partners, is satisfied that extension of this period of limitation is necessary to avoid serious injustice to the applicant.
- (4) An application for the division of property may be made or continued by or against the legal personal representative of a deceased de facto partner.

- (5) However, an application against the legal personal representative of a deceased de facto partner may only relate to property that is undistributed at the date of the application.

10—Power to make orders for division of property

- (1) On an application for the division of property after the end of a domestic partnership, the court may make such orders as it considers necessary to divide between the domestic partners the property of either or both partners in a way that is just and equitable.
- (2) For example, the court may make orders for—
- (a) the transfer of property from one domestic partner to the other; or
 - (b) the sale of property and the division of the net proceeds between the domestic partners in proportions decided by the court; or
 - (c) the payment by one domestic partner of a lump sum to the other.

11—Matters for consideration by court

- (1) In deciding whether to make an order for the division of property under this Part, and if so the terms of the order, the court—
- (a) must consider the financial and non-financial contributions made directly or indirectly by or on behalf of the domestic partners to—
 - (i) the acquisition, conservation or improvement of property of either or both partners; or
 - (ii) the financial resources of either or both partners; and
 - (b) must consider the contributions (including homemaking or parenting contributions) made by either of the domestic partners to the other partner or to children of the partners or either of them; and
 - (c) must have regard to the terms of any relevant domestic partnership agreement; and
 - (d) may have regard to other relevant matters.
- (2) If a relevant domestic partnership agreement—
- (a) is a certified domestic partnership 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.

12—Duty of court to resolve all outstanding questions

In proceedings under this Part, the court must (as far as practicable) finally resolve questions about the division of property between the domestic partners and avoid further proceedings between them.

13—Small claims

- (1) If the aggregate amount claimed by the applicant on an application under this Part is \$6 000 or less, the application is a minor statutory proceeding¹.
- (2) To ascertain the amount claimed by an applicant on an application under this Part, all monetary amounts and the value of interests in property claimed must be aggregated.

Note—

- 1 A *minor statutory proceeding* includes a proceeding declared by statute to be a minor statutory proceeding. (See definition of *minor statutory proceeding* in section 3(1) of the *Magistrates Court Act 1991*.) The characterisation of a proceeding as a minor statutory proceeding means that (subject to certain rules stated in section 3 of the *Magistrates Court Act 1991*) the proceeding is to be dealt with under the special rules for minor civil actions prescribed in Division 2 of Part 5 of the *Magistrates Court Act 1991*.

Part 4—Miscellaneous

14—Transactions to defeat claims

- (1) If a court is satisfied that a transaction has been entered into to defeat, or has the effect of defeating, an order, or an anticipated order, for the division of property, the court may set aside the transaction and give consequential orders and directions.
- (2) A court may grant an injunction to restrain a person from entering into a transaction that might defeat an order, or an anticipated order, for the division of property.
- (3) In exercising its powers under this section, the court must have regard to all interests in the property to which the proceedings relate.

14A—Restriction on publication of proceedings

- (1) A person must not publish, by radio, television, newspaper or in any other way—
 - (a) a report of a proceeding, or part of a proceeding, under this Act that identifies or could tend to identify—
 - (i) a party to the proceeding; or
 - (ii) a witness in the proceeding; or
 - (iii) a person who is related to, or associated with, a party to the proceedings or a witness in the proceeding, or is, or is alleged to be, in any other way concerned in the matter to which the proceeding relates; or
 - (b) a list of proceedings under this Act identified by reference to the names of the parties to the proceedings.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (2) Subsection (1) does not apply in relation to—
 - (a) the communication, to persons concerned in proceedings in a court or tribunal established under a law of the Commonwealth or a State or Territory, of any pleading, transcript of evidence or other document for use in connection with those proceedings; or
 - (b) the communication of any pleading, transcript of evidence or other document to—

- (i) a body that is responsible for disciplining members of the legal profession; or
- (ii) a person concerned in disciplinary proceedings against a member of the legal profession before such a body; or
- (c) the communication, to a body that grants legal aid, of any pleading, transcript of evidence or other document for the purpose of facilitating the making of a decision as to whether legal aid should be granted, continued or provided in a particular case; or
- (d) the publishing of a report or notice in accordance with the direction of a court or tribunal established under a law of the Commonwealth or a State or Territory; or
- (e) the publishing, under the authority of a court hearing proceedings under this Act, of a list of those proceedings identified by reference to the names of the parties to the proceedings; or
- (f) the publishing of a report in a publication that—
 - (i) is genuinely intended primarily for use by the members of a profession; and
 - (ii) is a separate volume or part of a series of law reports or other publication of a technical nature; or
- (g) the publishing of a report—
 - (i) to a person who is a member of a profession, in connection with the practice by that person of that profession or in the course of any form of professional training in which that person is involved; or
 - (ii) to an individual who is a party to any proceedings under this Act, in connection with the conduct of those proceedings; or
 - (iii) to a person who is a student, in connection with the studies of that person.
- (3) An offence against this section is an indictable offence.
- (4) Proceedings for an offence against this section must not be commenced except by, or with the written consent of, the Director of Public Prosecutions.

15—Protection of purchaser in good faith, for value and without notice of claim

An order or injunction under this Act cannot prejudice the interests of a person who acquires an interest in property of a domestic partner in good faith, for value, and without notice that the property may be the subject of an application under this Act.

16—Non-exclusivity of remedies

This Act does not exclude other forms of remedy or relief.

17—Regulations

The Governor may make regulations for the purposes of this Act.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Formerly

De Facto Relationships Act 1996

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1996	51	<i>De Facto Relationships Act 1996</i>	1.8.1996	16.12.1996 (<i>Gazette</i> 28.11.1996 p1744)
2001	69	<i>Statutes Amendment (Courts and Judicial Administration) Act 2001</i>	6.12.2001	Pt 5 (ss 9—11)—3.2.2002 (<i>Gazette</i> 24.1.2002 p346)
2004	23	<i>Statutes Amendment (Courts) Act 2004</i>	8.7.2004	Pt 4 (s 7)—1.9.2004 (<i>Gazette</i> 26.8.2004 p3402)
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 26 (ss 72—86)—1.6.2007 (<i>Gazette</i> 26.4.2007 p1352)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 43/2006 s 72	1.6.2007
Pt 1		
s 1	amended by 43/2006 s 73	1.6.2007
<i>s 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.9.2004</i>
s 3		
s 3(1)	s 3 redesignated as s 3(1) by 43/2006 s 74(5)	1.6.2007
<i>certificated agreement</i>	<i>deleted by 43/2006 s 74(1)</i>	<i>1.6.2007</i>
certified domestic partnership agreement	inserted by 43/2006 s 74(1)	1.6.2007
child	amended by 43/2006 s 74(2)	1.6.2007

close personal relationship	inserted by 43/2006 s 74(3)	1.6.2007
court	amended by 69/2001 s 9	3.2.2002
<i>de facto partner</i>	<i>deleted by 43/2006 s 74(4)</i>	<i>1.6.2007</i>
<i>de facto relationship</i>	<i>deleted by 43/2006 s 74(4)</i>	<i>1.6.2007</i>
domestic partner	inserted by 43/2006 s 74(4)	1.6.2007
domestic partnership agreement	inserted by 43/2006 s 74(4)	1.6.2007
s 3(2)	inserted by 43/2006 s 74(5)	1.6.2007
s 4	substituted by 43/2006 s 75	1.6.2007
Pt 2	heading substituted by 43/2006 s 76	1.6.2007
s 5	substituted by 43/2006 s 77	1.6.2007
s 6	amended by 43/2006 s 78	1.6.2007
s 7		
s 7(1)	amended by 43/2006 s 79(1)	1.6.2007
s 7(2)	substituted by 43/2006 s 79(2)	1.6.2007
s 8		
s 8(1)	amended by 43/2006 s 80(1)	1.6.2007
s 8(2)	amended by 43/2006 s 80(2)	1.6.2007
s 8(3)	amended by 43/2006 s 80(3), (4)	1.6.2007
Pt 3		
s 9		
s 9(1)	substituted by 43/2006 s 81(1)	1.6.2007
s 9(2)	amended by 43/2006 s 81(2), (3)	1.6.2007
s 10		
s 10(1)	substituted by 43/2006 s 82(1)	1.6.2007
s 10(2)	amended by 43/2006 s 82(2)	1.6.2007
s 11		
s 11(1)	amended by 43/2006 s 83(1), (2)	1.6.2007
s 11(2)	amended by 43/2006 s 83(3), (4)	1.6.2007
s 12	amended by 43/2006 s 84	1.6.2007
s 13		
s 13(1)	amended by 69/2001 s 10	3.2.2002
Pt 4		
s 14A	inserted by 23/2004 s 7	1.9.2004
s 15	amended by 43/2006 s 85	1.6.2007

Transitional etc provisions associated with Act or amendments

Statutes Amendment (Courts and Judicial Administration) Act 2001

11—Transitional provision

The amendments made to the principal Act by this Part—

- (a) do not apply in respect of proceedings commenced before the commencement of this Part (and those proceedings may continue as if this Act had not been enacted); and
- (b) apply in respect of proceedings commenced after the commencement of this Part (including proceedings in respect of a claim arising before the commencement of this Part).

Statutes Amendment (Domestic Partners) Act 2006

86—Transitional provision

After the commencement of this section, a reference to a *cohabitation agreement* or a *certificated agreement* will, where the context so admits or requires, be taken to be a reference to a *domestic partnership agreement* or a *certified domestic partnership agreement*.

Historical versions

Reprint No 1—3.2.2002

1.9.2004