





# **Federal Justice System Amendment (Efficiency Measures) Act (No. 1) 2009**

**No. 122, 2009**

**An Act to amend various Acts relating to law and  
justice, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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## **An Act to amend various Acts relating to law and justice, and for related purposes**

*[Assented to 7 December 2009]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Federal Justice System Amendment  
(Efficiency Measures) Act (No. 1) 2009*.

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## 2 Commencement

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

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	7 December 2009
2. Schedules 1, 2, 3 and 4	The day on which this Act receives the Royal Assent.	7 December 2009
3. Schedule 5	The 28th day after this Act receives the Royal Assent.	

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

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Federal Court powers**

### *Federal Court of Australia Act 1976*

#### **1 Section 4**

Insert:

*referee* means a person to whom a question is referred for inquiry and report under section 54A.

#### **2 After paragraph 20(5)(a)**

Insert:

(aa) make an interlocutory order pending, or after, the determination of the matter by a Full Court; or

#### **3 Paragraph 20(5)(da)**

After “paragraph”, insert “(aa),”.

#### **4 After paragraph 25(2B)(aa)**

Insert:

(ab) make an interlocutory order pending, or after, the determination of an appeal to the Court; or

#### **5 Paragraph 25(2B)(bc)**

After “paragraph”, insert “(ab),”.

#### **6 After section 54**

Insert:

#### **54A Referral of questions to a referee**

- (1) Subject to the Rules of Court, the Court may by order refer:
  - (a) a proceeding in the Court; or
  - (b) one or more questions arising in a proceeding in the Court; to a referee for inquiry and report in accordance with the Rules of Court.

- (2) A referral under subsection (1) may be made at any stage of a proceeding.
- (3) If a report of a referee under subsection (1) is provided to the Court, the Court may deal with the report as it thinks fit, including by doing the following:
  - (a) adopting the report in whole or in part;
  - (b) varying the report;
  - (c) rejecting the report;
  - (d) making such orders as the Court thinks fit in respect of any proceeding or question referred to the referee.

#### **54B Protection of referees**

A referee has, in inquiring or reporting on a proceeding or question referred under section 54A, the same protection and immunity as a Judge has in performing the functions of a Judge.

#### **7 After subsection 59(2B)**

Insert:

- (2C) Without limiting subsections (2), (2A) and (2B), the Rules of Court may make provision for, or with respect to, the following matters in relation to referrals of proceedings or questions to a referee under section 54A:
  - (a) the cases in which a proceeding, or a question arising in a proceeding, may be referred by the Court to a referee for inquiry and report to the Court;
  - (b) the appointment of a Judge, the Registrar or other officer of the Court or other person as a referee;
  - (c) the procedures to be followed by a referee in inquiring into and reporting on a proceeding, or a question arising in a proceeding, that has been referred to the referee;
  - (d) the participation (including attendance) of persons in an inquiry by a referee;
  - (e) the procedures to be followed by a referee after an inquiry by the referee has ended (whether or not a report has been provided to the Court);
  - (f) the manner in which a report by a referee may be called in question;

- (g) the provision of the services of officers of the Court and the provision of court rooms and other facilities for the purpose of an inquiry by a referee;
  - (h) the fees payable to a referee;
  - (i) time limits to be observed by the parties to the proceeding to which an inquiry by a referee relates, in relation to any matter connected with the inquiry;
  - (j) any other matters associated with an inquiry or report by a referee.
- (2D) Without limiting subsection (2C), the Rules of Court may empower:
- (a) the Court or a referee to require that evidence be given on oath or affirmation in an inquiry by a referee; or
  - (b) a referee to administer an oath or affirmation.

## **8 Application of amendments**

The amendments made by this Schedule apply to matters commenced before, on or after the commencement of this Schedule.

## Schedule 2—International arbitration

### *International Arbitration Act 1974*

#### **1 Subsection 3(1) (definition of court)**

Omit all the words after “including”, substitute “, but not limited to, the Federal Court of Australia and a court of a State or Territory.”.

#### **2 After subsection 8(2)**

Insert:

- (3) Subject to this Part, a foreign award may, with the leave of the Federal Court of Australia, be enforced in the Federal Court of Australia as if the award were a judgment or order of the Federal Court of Australia.

#### **3 At the end of section 18**

Add:

- ; (c) in any case—the Federal Court of Australia.

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

Add:

- (3) The Federal Court of Australia is designated for the purposes of Article 54.
- (4) An award may, with the leave of the Federal Court of Australia, be enforced in the Federal Court of Australia as if the award were a judgment or order of the Federal Court of Australia.

## **Schedule 3—Land acquisition**

### *Administrative Appeals Tribunal Act 1975*

#### **1 Subsection 24A(4)**

Repeal the subsection, substitute:

- (4) Subsection (2) does not authorise the President to enter into a contract under which the Commonwealth is to pay or receive an amount exceeding \$250,000 or, if a higher amount is prescribed, that higher amount, except with the approval of the Minister.

### *Family Law Act 1975*

#### **2 Subsection 38A(4)**

Repeal the subsection, substitute:

- (4) Subsection (2) does not authorise the Chief Judge to enter into a contract under which the Commonwealth is to pay or receive an amount exceeding \$250,000 or, if a higher amount is prescribed, that higher amount, except with the approval of the Attorney-General.

### *Federal Court of Australia Act 1976*

#### **3 Subsection 18A(4)**

Repeal the subsection, substitute:

- (4) Subsection (2) does not authorise the Chief Justice to enter into a contract under which the Commonwealth is to pay or receive an amount exceeding \$250,000 or, if a higher amount is prescribed, that higher amount, except with the approval of the Attorney-General.

### *Native Title Act 1993*

#### **4 Subsection 128(4)**

Repeal the subsection, substitute:

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- (4) Subsection (2) does not authorise the President to enter into a contract under which the Commonwealth is to pay or receive an amount exceeding \$250,000 or, if a higher amount is prescribed, that higher amount, except with the approval of the Commonwealth Minister.

## 5 Saving of regulations

- (1) Despite the repeal of a provision that is specified in column 2 of the following table, as in force immediately before commencement, regulations that:
- (a) were made for the purposes of that provision; and
  - (b) were in force immediately before commencement;
- continue to have effect on and after commencement as if those regulations had been made for the purposes of the corresponding provision, as in force after commencement, that is specified in column 3 of the table in relation to that provision:

<b>Saving of regulations</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Provision</b>	<b>Corresponding provision</b>
1	paragraph 24A(4)(b) of the <i>Administrative Appeals Tribunal Act 1975</i>	subsection 24A(4) of the <i>Administrative Appeals Tribunal Act 1975</i>
2	paragraph 38A(4)(b) of the <i>Family Law Act 1975</i>	subsection 38A(4) of the <i>Family Law Act 1975</i>
3	paragraph 18A(4)(b) of the <i>Federal Court of Australia Act 1976</i>	subsection 18A(4) of the <i>Federal Court of Australia Act 1976</i>
4	paragraph 128(4)(b) of the <i>Native Title Act 1993</i>	subsection 128(4) of the <i>Native Title Act 1993</i>

- (2) In this item:  
**commencement** means the commencement of this item.

## **Schedule 4—Court premises**

### ***Public Order (Protection of Persons and Property) Act 1971***

#### **1 Section 13A (definition of *court premises*)**

Repeal the definition, substitute:

***court premises*** means:

- (a) in relation to any court, including the Federal Court—any premises occupied or used (whether permanently or temporarily or under a lease or otherwise) in connection with the sittings, or any other operations, of the court; and
- (b) in relation to the Federal Court—premises in respect of which a court premises order (within the meaning of section 13AA) is in effect.

#### **2 After section 13A**

Insert:

#### **13AA Orders relating to court premises in relation to the Federal Court**

- (1) An authorised court official may make a written order (a ***court premises order***) specifying particular premises for the purposes of paragraph (b) of the definition of ***court premises***.
- (2) An authorised court official may make a court premises order in respect of particular premises only if the authorised court official is satisfied that the premises are likely to be occupied or used (whether permanently or temporarily or under a lease or otherwise) in connection with a sitting, proceeding or any other operation, of the Federal Court.
- (3) A court premises order:
  - (a) must describe the premises to which it relates; and
  - (b) has effect:
    - (i) for the period specified in the order (unless it is revoked before the end of that period); or
    - (ii) if no period is so specified, until it is revoked.

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* deals with revocation.

- (4) If an authorised court official makes a court premises order, the authorised court official must give notice of the order to any person likely to be directly affected by the order.
- (5) An authorised court official may give notice of a court premises order as required by subsection (4):
  - (a) by doing both of the following:
    - (i) ensuring that, before the premises to which the order relates are occupied or used as mentioned in subsection (2), a copy of the order is posted in a prominent place in the vicinity of the premises;
    - (ii) ensuring that, if the premises are occupied or used for the purposes of a sitting or proceeding, an announcement is made at the beginning of, or during, the sitting or proceeding describing the order and the effect of the order; and
  - (b) if regulations of a kind mentioned in subsection (6) are in force in relation to the giving of such notice—by complying with the requirements prescribed by the regulations.
- (6) The regulations may make provision for one or more of the following in relation to the giving of notice as required by subsection (4):
  - (a) the form of the notice;
  - (b) the manner of giving the notice;
  - (c) the content of the notice.
- (7) A court premises order is not a legislative instrument.
- (8) In this section:

***authorised court official*** means:

- (a) the Registrar of the Federal Court; or
- (b) a Federal Court officer authorised in writing by the Registrar of the Federal Court for the purposes of this section.

***Federal Court*** means the Federal Court of Australia.

***Federal Court officer*** means an officer of the Federal Court within the meaning of subsection 18N(1) of the *Federal Court of Australia Act 1976*.

## Schedule 5—Binding financial agreements

### Part 1—Financial agreements

#### *Family Law Act 1975*

#### **1 Subsection 4(1) (after paragraph (a) of the definition of spouse party)**

Insert:

- (aa) in relation to a termination agreement referred to in paragraph 90J(1)(b)—a party covered by paragraph (a) of this definition in relation to the financial agreement concerned; or

#### **1A Subsection 90G(1)**

Omit “A”, substitute “Subject to subsection (1A), a”.

#### **2 Paragraphs 90G(1)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) before signing the agreement, each spouse party was provided with independent legal advice from a legal practitioner about the effect of the agreement on the rights of that party and about the advantages and disadvantages, at the time that the advice was provided, to that party of making the agreement; and
- (c) either before or after signing the agreement, each spouse party was provided with a signed statement by the legal practitioner stating that the advice referred to in paragraph (b) was provided to that party (whether or not the statement is annexed to the agreement); and
- (ca) a copy of the statement referred to in paragraph (c) that was provided to a spouse party is given to the other spouse party or to a legal practitioner for the other spouse party; and

#### **3 Paragraph 90G(1)(d)**

Omit “court; and”, substitute “court.”.

#### **4 Paragraph 90G(1)(e)**

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Repeal the paragraph.

#### **4A After subsection 90G(1)**

Insert:

- (1A) A financial agreement is binding on the parties to the agreement if:
- (a) the agreement is signed by all parties; and
  - (b) one or more of paragraphs (1)(b), (c) and (ca) are not satisfied in relation to the agreement; and
  - (c) a court is satisfied that it would be unjust and inequitable if the agreement were not binding on the spouse parties to the agreement (disregarding any changes in circumstances from the time the agreement was made); and
  - (d) the court makes an order under subsection (1B) declaring that the agreement is binding on the parties to the agreement; and
  - (e) the agreement has not been terminated and has not been set aside by a court.
- (1B) For the purposes of paragraph (1A)(d), a court may make an order declaring that a financial agreement is binding on the parties to the agreement, upon application (the *enforcement application*) by a spouse party seeking to enforce the agreement.
- (1C) To avoid doubt, section 90KA applies in relation to the enforcement application.

#### **4B Subsection 90J(2)**

Omit “A”, substitute “Subject to subsection (2A), a”.

#### **5 Paragraphs 90J(2)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) before signing the agreement, each spouse party was provided with independent legal advice from a legal practitioner about the effect of the agreement on the rights of that party and about the advantages and disadvantages, at the time that the advice was provided, to that party of making the agreement; and
- (c) either before or after signing the agreement, each spouse party was provided with a signed statement by the legal practitioner stating that the advice referred to in paragraph (b)

was provided to that party (whether or not the statement is annexed to the agreement); and

- (ca) a copy of the statement referred to in paragraph (c) that was provided to a spouse party is given to the other spouse party or to a legal practitioner for the other spouse party; and

## 6 Paragraph 90J(2)(d)

Omit “court; and”, substitute “court.”.

## 7 Paragraph 90J(2)(e)

Repeal the paragraph.

## 7A After subsection 90J(2)

Insert:

- (2A) A termination agreement is binding on the parties if:
- (a) the agreement is signed by all parties to the agreement; and
  - (b) one or more of paragraphs (2)(b), (c) and (ca) are not satisfied in relation to the agreement; and
  - (c) a court is satisfied that it would be unjust and inequitable if the agreement were not binding on the spouse parties to the agreement (disregarding any changes in circumstances from the time the agreement was made); and
  - (d) the court makes an order under subsection (2B) declaring that the agreement is binding on the parties to the agreement; and
  - (e) the agreement has not been set aside by a court.
- (2B) For the purposes of paragraph (2A)(d), a court may make an order declaring that a termination agreement is binding on the parties to the agreement, upon application (the *enforcement application*) by a spouse party seeking to enforce the agreement.
- (2C) To avoid doubt, section 90KA applies in relation to the enforcement application.

## 8 Application

- (1) The amendments made by items 1A to 7A apply in relation to financial agreements, and termination agreements, made on or after 27 December 2000.

- (2) However, those amendments do not apply in relation to an agreement if, before the commencement of this item, a court has made an order setting aside the agreement.
  - (3) If, before the commencement of this item, a court has made an order under section 79 or 83 of the *Family Law Act 1975* on the basis that an agreement did not bind the spouses, then, after the commencement of this item, the agreement is taken not to bind them.
  - (4) For a financial agreement made before 14 January 2004, paragraph 90G(1)(b) of the *Family Law Act 1975*, as inserted by item 2 of this Schedule, does not apply and the following paragraph 90G(1)(b) of that Act is taken to have been inserted by that item and to apply instead:
    - (b) before signing the agreement, each spouse party was provided with independent legal advice from a legal practitioner about:
      - (i) the effect of the agreement on the rights of that party; and
      - (ii) whether or not, at the time when the advice was provided, it was to the advantage, financially or otherwise, of that party to make the agreement; and
      - (iii) whether or not, at that time, it was prudent for that party to make the agreement; and
      - (iv) whether or not, at that time and in the light of such circumstances as were, at that time, reasonably foreseeable, the provisions of the agreement were fair and reasonable; and
  - (5) For a termination agreement made before 14 January 2004, paragraph 90J(2)(b) of the *Family Law Act 1975*, as inserted by item 5 of this Schedule, does not apply and the following paragraph 90J(2)(b) of that Act is taken to have been inserted by that item and to apply instead:
    - (b) before signing the agreement, each spouse party was provided with independent legal advice from a legal practitioner about:
      - (i) the effect of the agreement on the rights of that party; and
      - (ii) whether or not, at the time when the advice was provided, it was to the advantage, financially or otherwise, of that party to make the agreement; and
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**Schedule 5** Binding financial agreements  
**Part 1** Financial agreements

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- (iii) whether or not, at that time, it was prudent for that party to make the agreement; and
  - (iv) whether or not, at that time and in the light of such circumstances as were, at that time, reasonably foreseeable, the provisions of the agreement were fair and reasonable; and
- (6) For a financial agreement made before the commencement of this item, paragraphs 90G(1)(c) and (ca) of the *Family Law Act 1975*, as inserted by item 2 of this Schedule, do not apply.
- (7) For a financial agreement made before the commencement of this item, paragraph 90G(1A)(b) of the *Family Law Act 1975*, as inserted by item 4A of this Schedule, does not apply and the following paragraph 90G(1A)(b) of that Act is taken to have been inserted by that item and to apply instead:
  - (b) paragraph (1)(b) is not satisfied in relation to the agreement; and
- (8) For a termination agreement made before the commencement of this item, paragraphs 90J(2)(c) and (ca) of the *Family Law Act 1975*, as inserted by item 5 of this Schedule, do not apply.
- (9) For a termination agreement made before the commencement of this item, paragraph 90J(2A)(b) of the *Family Law Act 1975*, as inserted by item 7A of this Schedule, does not apply and the following paragraph 90J(2A)(b) of that Act is taken to have been inserted by that item and to apply instead:
  - (b) paragraph (2)(b) is not satisfied in relation to the agreement; and

**8A Transitional—agreements made on or after 14 January 2004 and before commencement**

- (1) Subitems (2) and (3) apply in relation to a financial agreement made on or after 14 January 2004 and before the commencement of this item.
  - (2) Paragraph 90G(1)(b) of the *Family Law Act 1975*, as in force during that period, is also taken to be satisfied in relation to a spouse in relation to the agreement if, before signing the agreement, the spouse party was provided with independent legal advice from a legal practitioner about:
    - (a) the effect of the agreement on the rights of that party; and
-

- (b) whether or not, at the time when the advice was provided, it was to the advantage, financially or otherwise, of that party to make the agreement; and
  - (c) whether or not, at that time, it was prudent for that party to make the agreement; and
  - (d) whether or not, at that time and in the light of such circumstances as were, at that time, reasonably foreseeable, the provisions of the agreement were fair and reasonable.
- (3) Paragraph 90G(1)(c) of the *Family Law Act 1975*, as inserted by this Act, applies in relation to the agreement as if the reference in that paragraph to the advice referred to in paragraph (b) included a reference to the advice referred to in subitem (2) of this item.
- (4) Subitems (5) and (6) apply in relation to a termination agreement made on or after 14 January 2004 and before the commencement of this item.
- (5) Paragraph 90J(2)(b) of the *Family Law Act 1975*, as in force during that period, is also taken to be satisfied in relation to a spouse in relation to the agreement if, before signing the agreement, the spouse party was provided with independent legal advice from a legal practitioner about:
  - (a) the effect of the agreement on the rights of that party; and
  - (b) whether or not, at the time when the advice was provided, it was to the advantage, financially or otherwise, of that party to make the agreement; and
  - (c) whether or not, at that time, it was prudent for that party to make the agreement; and
  - (d) whether or not, at that time and in the light of such circumstances as were, at that time, reasonably foreseeable, the provisions of the agreement were fair and reasonable.
- (6) Paragraph 90J(2)(c) of the *Family Law Act 1975*, as inserted by this Act, applies in relation to the agreement as if the reference in that paragraph to the advice referred to in paragraph (b) included a reference to the advice referred to in subitem (5) of this item.
- (7) This item does not apply in relation to an agreement if, before the commencement of this item, a court has made an order setting aside the agreement.

## **Part 2—Financial matters relating to de facto relationships**

### *Family Law Act 1975*

#### **9 Subsection 4(1) (at the end of the definition of *spouse party*)**

Add:

- ; or (c) in relation to a Part VIIIAB termination agreement—a party covered by paragraph (b) of this definition in relation to the Part VIIIAB financial agreement concerned.

#### **9A Subsection 90UJ(1)**

Omit “A”, substitute “Subject to subsection (1A), a”.

#### **10 Paragraphs 90UJ(1)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) before signing the agreement, each spouse party was provided with independent legal advice from a legal practitioner about the effect of the agreement on the rights of that party and about the advantages and disadvantages, at the time that the advice was provided, to that party of making the agreement; and
- (c) either before or after signing the agreement, each spouse party was provided with a signed statement by the legal practitioner stating that the advice referred to in paragraph (b) was provided to that party (whether or not the statement is annexed to the agreement); and
- (ca) a copy of the statement referred to in paragraph (c) that was provided to a spouse party is given to the other spouse party or to a legal practitioner for the other spouse party; and

#### **11 Paragraph 90UJ(1)(d)**

Omit “court; and”, substitute “court.”.

#### **12 Paragraph 90UJ(1)(e)**

Repeal the paragraph.

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## **12A After subsection 90UJ(1)**

Insert:

- (1A) A Part VIIIAB financial agreement (other than an agreement covered by section 90UE) is binding on the parties to the agreement if:
- (a) the agreement is signed by all parties; and
  - (b) one or more of paragraphs (1)(b), (c) and (ca) are not satisfied in relation to the agreement; and
  - (c) a court is satisfied that it would be unjust and inequitable if the agreement were not binding on the spouse parties to the agreement (disregarding any changes in circumstances from the time the agreement was made); and
  - (d) the court makes an order under subsection (1B) declaring that the agreement is binding on the parties to the agreement; and
  - (e) the agreement has not been terminated and has not been set aside by a court.
- (1B) For the purposes of paragraph (1A)(d), a court may make an order declaring that a Part VIIIAB financial agreement is binding on the parties to the agreement, upon application (the ***enforcement application***) by a spouse party seeking to enforce the agreement.
- (1C) To avoid doubt, section 90UN applies in relation to the enforcement application.

## **12B Subsection 90UL(2)**

Omit “A”, substitute “Subject to subsection (2A), a”.

## **13 Paragraphs 90UL(2)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) before signing the termination agreement, each spouse party was provided with independent legal advice from a legal practitioner about the effect of the termination agreement on the rights of that party and about the advantages and disadvantages, at the time that the advice was provided, to that party of making the termination agreement; and
- (c) either before or after signing the agreement, each spouse party was provided with a signed statement by the legal practitioner stating that the advice referred to in paragraph (b)

- was provided to that party (whether or not the statement is annexed to the termination agreement); and
- (ca) a copy of the statement referred to in paragraph (c) that was provided to a spouse party is given to the other spouse party or to a legal practitioner for the other spouse party; and

**14 Paragraph 90UL(2)(d)**

Omit “court; and”, substitute “court.”.

**15 Paragraph 90UL(2)(e)**

Repeal the paragraph.

**15A After subsection 90UL(2)**

Insert:

- (2A) A Part VIIIAB termination agreement is binding on the parties if:
- (a) the termination agreement is signed by all parties to the Part VIIIAB financial agreement; and
  - (b) one or more of paragraphs (2)(b), (c) and (ca) are not satisfied in relation to the termination agreement; and
  - (c) a court is satisfied that it would be unjust and inequitable if the termination agreement were not binding on the spouse parties to the agreement (disregarding any changes in circumstances from the time the agreement was made); and
  - (d) the court makes an order under subsection (2B) declaring that the termination agreement is binding on the parties to the agreement; and
  - (e) the termination agreement has not been set aside by a court.
- (2B) For the purposes of paragraph (2A)(d), a court may make an order declaring that a Part VIIIAB termination agreement is binding on the parties to the agreement, upon application (the *enforcement application*) by a spouse party seeking to enforce the agreement.
- (2C) To avoid doubt, section 90UN applies in relation to the enforcement application.

**16 Subsection 90UM(5)**

Repeal the subsection, substitute:

- (5) This subsection applies if:
-

- (a) at least one of the spouse parties to the agreement was not provided, before signing the agreement, with independent legal advice from a legal practitioner about the effect of the agreement on the rights of that party and about the advantages and disadvantages to that party of making the agreement; or
  - (b) if this advice was provided to at least one of the spouse parties to the agreement—that party was not provided with a signed statement by the legal practitioner stating that this advice was given to that party;
- and it would be unjust and inequitable, having regard to the eligible agreed matters (within the meaning of section 90UE) for the agreement, if the court does not set the agreement aside.

## 17 Application

- (1) The amendments made by items 9A to 15A apply in relation to agreements made under section 90UB, 90UC or 90UD of the *Family Law Act 1975*, and Part VIIIAB termination agreements, made on or after the day on which item 1 of Schedule 1 to the *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008* commences.
- (2) However, those amendments do not apply in relation to an agreement if, before the commencement of this item, a court has made an order setting aside the agreement.
- (3) If, before the commencement of this item, a court has made an order under section 90SI or 90SM of the *Family Law Act 1975* on the basis that an agreement did not bind the spouse parties, then, after the commencement of this item, the agreement is taken not to bind them.
- (4) For an agreement made under section 90UB, 90UC or 90UD of the *Family Law Act 1975* before the commencement of this item, paragraphs 90UJ(1)(c) and (ca) of the *Family Law Act 1975*, as inserted by item 10 of this Schedule, do not apply.
- (5) For an agreement made under section 90UB, 90UC or 90UD of the *Family Law Act 1975* before the commencement of this item, paragraph 90UJ(1A)(b) of the *Family Law Act 1975*, as inserted by item 12A of this Schedule, does not apply and the following paragraph 90UJ(1A)(b) of that Act is taken to have been inserted by that item and to apply instead:

**Schedule 5** Binding financial agreements

**Part 2** Financial matters relating to de facto relationships

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- (b) paragraph (1)(b) is not satisfied in relation to the agreement;  
and
- (6) For a Part VIIIAB termination agreement made before the commencement of this item, paragraphs 90UL(2)(c) and (ca) of the *Family Law Act 1975*, as inserted by item 13 of this Schedule, do not apply.
- (7) For a Part VIIIAB termination agreement made before the commencement of this item, paragraph 90UL(2A)(b) of the *Family Law Act 1975*, as inserted by item 15A of this Schedule, does not apply and the following paragraph 90UL(2A)(b) of that Act is taken to have been inserted by that item and to apply instead:
- (b) paragraph (2)(b) is not satisfied in relation to the agreement;  
and
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*[Minister's second reading speech made in—  
House of Representatives on 3 December 2008  
Senate on 5 February 2009]*