

**Commonwealth Consolidated Acts****FAMILY LAW ACT 1975 - SECT 79 Alteration of property interests****FAMILY LAW ACT 1975 - SECT 79****Alteration of property interests**

(1) In property settlement **proceedings**, the court may make such order as it considers appropriate:

(a) in the case of **proceedings** with respect to the property of the parties to the **marriage** or either of them--altering the **interests** of the parties to the **marriage** in the property; or

(b) in the case of **proceedings** with respect to the vested bankruptcy property in relation to a bankrupt **party** to the **marriage**--altering the **interests** of the bankruptcy **trustee** in the vested bankruptcy property;

including:

(c) an order for a settlement of property in substitution for any **interest** in the property; and

(d) an order requiring:

(i) either or both of the parties to the **marriage**; or

(ii) the relevant bankruptcy **trustee** (if any);

to make, for the benefit of either or both of the parties to the **marriage** or a child of the **marriage**, such settlement or transfer of property as the court determines.

(1A) An order made under **subsection** (1) in property settlement **proceedings** may, after the death of a **party** to the **marriage**, be enforced on behalf of, or against, as the case may be, the estate of the deceased **party**.

(1B) The court may adjourn property settlement **proceedings**, except where the parties to the **marriage** are:

(a) parties to concurrent, pending or completed divorce or validity of [marriage proceedings](#); or

(ba) parties to a [marriage](#) who have divorced under the law of an overseas country, where that divorce is recognised as valid in [Australia](#) under section 104; or

(bb) parties to a [marriage](#) that has been annulled under the law of an overseas country, where that annulment is recognised as valid in [Australia](#) under section 104; or

(c) parties to a [marriage](#) who have been granted a legal separation under the law of an overseas country, where that legal separation is recognized as valid in [Australia](#) under section 104;

on such terms and conditions as it considers appropriate, for such period as it considers necessary to enable the parties to the [marriage](#) to consider the likely effects (if any) of an order under this section on the [marriage](#) or the children of the [marriage](#), but nothing in this subsection shall be taken to limit any other power of the court to adjourn such [proceedings](#).

(1C) Where the period for which a court has adjourned property settlement [proceedings](#) as provided by [subsection](#) (1B) has not expired and:

(a) divorce or validity of [marriage proceedings](#) are [instituted](#) by one or both of the parties to the [marriage](#); or

(ba) the parties to the [marriage](#) have divorced under the law of an overseas country and the divorce is recognised as valid in [Australia](#) under section 104; or

(bb) the [marriage](#) is annulled under the law of an overseas country and the annulment is recognised as valid in [Australia](#) under section 104; or

(c) the parties to the [marriage](#) are granted a legal separation under the law of an overseas country and the legal separation is recognized as valid in [Australia](#) under section 104;

a [party](#) to the first-mentioned [proceedings](#) may apply to the court for the hearing of those [proceedings](#) to be continued.

(2) The court shall not make an order under this section unless it is satisfied that, in all the circumstances, it is just and equitable to make the order.

(4) In considering what order (if any) should be made under this section in property settlement [proceedings](#), the court shall take into account:

(a) the financial contribution made directly or indirectly by or on behalf of a [party](#) to the [marriage](#) or a child of the [marriage](#) to the acquisition, conservation or improvement of any of the property of the parties to the [marriage](#) or either of them, or otherwise in relation to any of that last-mentioned property, whether or not that last-mentioned property has, since the

making of the contribution, ceased to be the property of the parties to the **marriage** or either of them; and

(b) the contribution (other than a financial contribution) made directly or indirectly by or on behalf of a **party** to the **marriage** or a child of the **marriage** to the acquisition, conservation or improvement of any of the property of the parties to the **marriage** or either of them, or otherwise in relation to any of that last-mentioned property, whether or not that last-mentioned property has, since the making of the contribution, ceased to be the property of the parties to the **marriage** or either of them; and

(c) the contribution made by a **party** to the **marriage** to the welfare of the family constituted by the parties to the **marriage** and any children of the **marriage**, including any contribution made in the capacity of homemaker or parent; and

(d) the effect of any proposed order upon the earning capacity of either **party** to the **marriage**; and

(e) the matters referred to in **subsection 75(2)** so far as they are relevant; and

(f) any other order made under this Act affecting a **party** to the **marriage** or a child of the **marriage**; and

(g) 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**.

(5) Without limiting the power of any court to grant an adjournment in **proceedings** under this Act, where, in property settlement **proceedings**, a court is of the opinion:

(a) that there is likely to be a significant change in the financial circumstances of the parties to the **marriage** or either of them and that, having regard to the time when that change is likely to take place, it is reasonable to adjourn the **proceedings**; and

(b) that an order that the court could make with respect to:

(i) the property of the parties to the **marriage** or either of them; or

(ii) the vested bankruptcy property in relation to a bankrupt **party** to the **marriage**;

if that significant change in financial circumstances occurs is more likely to do justice as between the parties to the **marriage** than an order that the court could make immediately with respect to:

(iii) the property of the parties to the **marriage** or either of them; or

(iv) the vested bankruptcy property in relation to a bankrupt **party** to the **marriage**;

the court may, if so requested by either **party** to the **marriage** or the relevant bankruptcy **trustee** (if any), adjourn the **proceedings** until such time, before the expiration of a period specified by the court, as that **party** to the **marriage** or the relevant bankruptcy **trustee**, as the case may be, applies for the **proceedings** to be determined, but nothing in this **subsection** requires the court to adjourn any **proceedings** in any particular circumstances.

(6) Where a court proposes to adjourn **proceedings** as provided by **subsection** (5), the court may, before so adjourning the **proceedings**, make such interim order or orders or such other order or orders (if any) as it considers appropriate with respect to:

(a) any of the property of the parties to the **marriage** or of either of them; or

(b) any of the vested bankruptcy property in relation to a bankrupt **party** to the **marriage**.

(7) The court may, in forming an opinion for the purposes of **subsection** (5) as to whether there is likely to be a significant change in the financial circumstances of either or both of the parties to the **marriage**, have regard to any change in the financial circumstances of a **party** to the **marriage** that may occur by reason that the **party** to the **marriage**:

(a) is a contributor to a superannuation fund or scheme, or participates in any scheme or arrangement that is in the nature of a superannuation scheme; or

(b) may become entitled to property as the result of the exercise in his or her favour, by the **trustee** of a discretionary trust, of a power to distribute trust property;

but nothing in this **subsection** shall be taken to limit the circumstances in which the court may form the opinion that there is likely to be a significant change in the financial circumstances of a **party** to the **marriage**.

(8) Where, before property settlement **proceedings** are completed, a **party** to the **marriage** dies:

(a) the **proceedings** may be continued by or against, as the case may be, the legal personal representative of the deceased **party** and the **applicable Rules of Court** may make provision in relation to the substitution of the legal personal representative as a **party** to the **proceedings**;

(b) if the court is of the opinion:

(i) that it would have made an order with respect to property if the deceased **party** had not died; and

(ii) that it is still appropriate to make an order with respect to property;

the court may make such order as it considers appropriate with respect to:

(iii) any of the property of the parties to the **marriage** or either of them; or

(iv) any of the vested bankruptcy property in relation to a bankrupt **party** to the **marriage**; and

(c) an order made by the court pursuant to **paragraph** (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased **party**.

(9) The Family Court, or a Family Court of a State, shall not make an order under this section in property settlement **proceedings** (other than an order until further order or an order made with the consent of all the parties to the **proceedings**) unless:

(a) the parties to the **proceedings** have attended a conference in relation to the matter to which the **proceedings** relate with a Registrar or Deputy Registrar of the Family Court, or a Registrar or Deputy Registrar of the Family Court of that State, as the case may be;

(b) the court is satisfied that, having regard to the need to make an order urgently, or to any other special circumstance, it is appropriate to make the order notwithstanding that the parties to the **proceedings** have not attended a conference as mentioned in **paragraph** (a); or

(c) the court is satisfied that it is not practicable to require the parties to the **proceedings** to attend a conference as mentioned in **paragraph** (a).

(10) The following are entitled to become a **party** to **proceedings** in which an application is made for an order under this section by a **party** to a **marriage** (the **subject marriage**):

(a) a creditor of a **party** to the **proceedings** if the creditor may not be able to recover his or her debt if the order were made;

(aa) a person:

(i) who is a **party** to a de facto relationship with a **party** to the subject **marriage**; and

(ii) who could apply, or has an application pending, for an order under section 90SM, or a declaration under section 90SL, in relation to the de facto relationship;

(ab) a person who is a **party** to a Part VIIIAB financial agreement (that is binding on the person) with a **party** to the subject **marriage**;

(b) any other person whose **interests** would be affected by the making of the order.

(10A) **Subsection** (10) does not apply to a creditor of a **party** to the **proceedings**:

(a) if the party is a bankrupt--to the extent to which the debt is a provable debt (within the meaning of the *Bankruptcy Act 1966* ); or

(b) if the party is a debtor subject to a personal insolvency agreement--to the extent to which the debt is covered by the personal insolvency agreement.

(10B) If a person becomes a party to proceedings under this section because of paragraph (10)(aa), the person may, in the proceedings, apply for:

(a) an order under section 90SM; or

(b) a declaration under section 90SL;

in relation to the de facto relationship described in that paragraph.

(11) If:

(a) an application is made for an order under this section in proceedings between the parties to a marriage with respect to the property of the parties to the marriage or either of them; and

(b) either of the following subparagraphs apply to a party to the marriage:

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

(ii) after the application was made but before it is finally determined, the party became a bankrupt; and

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

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

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

(12) If a bankruptcy trustee is a party to property settlement proceedings, then, except with the leave of the court, the bankrupt party to the marriage is not entitled to make a submission to the court in connection with any vested bankruptcy property in relation to the bankrupt party.

(13) The court must not grant leave under subsection (12) unless the court is satisfied that there are exceptional circumstances.

(14) If:

(a) an application is made for an order under this section in proceedings between the parties to a marriage with respect to the property of the parties to the marriage or either of them; and

(b) either of the following subparagraphs apply to a party to the marriage (the **debtor party**):

(i) when the application was made, the party was a debtor subject to a personal insolvency agreement; or

(ii) after the application was made but before it is finally determined, the party becomes a debtor subject to a personal insolvency agreement; and

(c) the trustee of the agreement applies to the court to be joined as a party to the proceedings; and

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

the court must join the trustee of the agreement as a party to the proceedings.

(15) If the trustee of a personal insolvency agreement is a party to property settlement proceedings, then, except with the leave of the court, the party to the marriage who is the debtor subject to the agreement is not entitled to make a submission to the court in connection with any property subject to the agreement.

(16) The court must not grant leave under subsection (15) unless the court is satisfied that there are exceptional circumstances.

(17) For the purposes of subsections (11) and (14), an application for an order under this section is taken to be finally determined when:

(a) the application is withdrawn or dismissed; or

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