

NOTICE 36 OF 2008**DEPARTMENT OF HOME AFFAIRS
DOMESTIC PARTNERSHIPS BILL, 2008****PUBLICATION OF THE DRAFT DOMESTIC PARTNERSHIPS BILL, 2008 FOR COMMENTS**

The Department of Home Affairs ("DHA") invites public comments on the draft Domestic Partnerships Bill of 2008.

Written submissions should reach the DHA **on or before 15 February 2008**. Submissions should be addressed to the Acting Chief Director: Legal Services and may be forwarded to the DHA in any of the following ways:

- (a) delivered by hand to the DHA, c/o Maggs and Petroleum Streets, Waltloo, Pretoria, 0186;
- (b) mailed to the DHA at Private Bag X114, Pretoria, 0001;
- (c) faxed to (012) 810-7044 / 0866 113 479; or
- (d) e-mailed to Agnes.Lengoabala@dha.gov.za and Yolande.vanAswegen@dha.gov.za

Any enquiries should be directed to **Mrs Agnes Lengoabala** or **Adv Yolandé van Aswegen** at **(012) 810-7142** or **(012) 810-8967**.

REPUBLIC OF SOUTH AFRICA

DOMESTIC PARTNERSHIPS BILL

(Draft)

(MINISTER OF HOME AFFAIRS)

[B—2008]

BILL

To provide for the legal recognition of domestic partnerships; the enforcement of the legal consequences of domestic partnerships; and to provide for matters incidental thereto.

PREAMBLE

WHEREAS section 9(1) of the Constitution of the Republic of South Africa, 1996, provides that everyone is equal before the law and has the right to equal protection and benefit of the law;

AND NOTING that there is no legal recognition or protection for opposite-sex couples in permanent domestic partnerships,

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

CHAPTER 1

INTRODUCTORY PROVISIONS

Definitions

1. In this Act, unless the context otherwise indicates—

“Administration of Estates Act” means the Administration of Estates Act, 1965 (Act No. 66 of 1965);

“child of a domestic partnership” includes—

- (a) any child born as a result of sexual relations between the domestic partners;
- (b) any child of either domestic partner;
- (c) any child adopted by the domestic partners jointly; or
- (d) any other child who was a dependant of the domestic partners—
 - (i) at the time when the domestic partners ceased to live together;

- (ii) if the domestic partners had not ceased to live together, at the time immediately before an application under this Act; or
- (iii) at the date of the death of one of the domestic partners;

“**Civil Union Act**” means the Civil Union Act, 2006 (Act No. 17 of 2006);

“**Compensation for Occupational Injuries and Diseases Act**” means the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);

“**contribution**” means—

- (a) the financial and non-financial contributions made directly or indirectly by the domestic partners—
 - (i) to the acquisition, maintenance or improvement of any joint property, or separate property of either of the domestic partners or to the financial resources of either or both of them; or
 - (ii) in terms of a registered partnership agreement; and
- (b) the contributions, including any contributions made in the capacity of homemaker or parent, made by either domestic partner to the welfare of the other domestic partner or to the welfare of the family constituted by them and a child of the domestic partners: Provided that there is no presumption that a contribution referred to in paragraph (a) is of greater value than a contribution referred to in paragraph (b);

“**court**” means a High Court or a family court established under section 2(k) of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);

“**domestic partner**” means a partner in a domestic partnership and includes a former domestic partner;

“**domestic partnership**” means a registered domestic partnership or unregistered domestic partnership between two persons who are both 18 years of age or older and includes a former domestic partnership;

“**duty of support**” means the responsibility of each registered domestic partner to provide for the other partner’s basic living expenses while the registered partnership exists;

“**family**” includes partners in a domestic partnership and their dependants;

“**family home**” means the dwelling used by either or both domestic partners as the only or principal family residence, together with any land, buildings or improvements attached

to that dwelling and used wholly or principally for the purposes of the domestic partnership household;

“**financial matters**” in relation to parties to a registered partnership agreement, means matters with respect to—

- (a) the property of either or both of the parties; or
- (b) the financial resources of either or both of the parties;

“**financial resources**” in relation to either or both of the domestic partners includes—

- (a) a prospective claim or entitlement in respect of a scheme, fund or arrangement under which pension, retirement or similar benefits are provided;
- (b) property which, pursuant to the provisions of a discretionary trust, may become vested in or used or applied in or towards the purposes of the partners or either of them;
- (c) property, the alienation or disposal of which is wholly or partly under the control of the partners or of either of them and which is lawfully capable of being used or applied by or on behalf of the partners or by either of them in or towards their or his or her own purposes; and
- (d) any other benefit with a value;

“**household goods**” means corporeal property intended and used for the joint household, where such movable goods are owned separately or jointly by the domestic partners, or in the possession of either or both domestic partners under a credit agreement or conditional sale agreement or an agreement for lease or hire, and includes movable goods of the following kind—

- (a) Household furniture;
- (b) household appliances, effects or equipment;
- (c) household articles for family use or amenity or household ornaments, including tools, garden effects and equipment;
- (d) motor vehicles, caravans, trailers or boats, used wholly or principally, in each case, for family purposes;
- (e) accessories of goods to which subparagraph (d) applies; and
- (f) household pets;

but excludes—

- (a) movable goods used wholly or principally for business purposes;
- (b) money or securities for money; and

(c) heirlooms;

“**interested party**” means any party with an interest in, or who could reasonably be expected to have an interest in—

- (a) the joint property of the domestic partners;
- (b) the separate property of either of the domestic partners; or
- (c) the partnership debt of the domestic partners;

“**Identification Act**” means the Identification Act, 1997 (Act No. 68 of 1997);

“**Intestate Succession Act**” means the Intestate Succession Act, 1987 (Act No. 81 of 1987);

“**joint property**” means household goods and property owned jointly in equal or unequal shares by the domestic partners;

“**Maintenance of Surviving Spouses Act**” means the Maintenance of Surviving Spouses Act, 1990 (Act No. 27 of 1990);

“**maintenance order**” means an order for the payment, including the periodical payment, by a domestic partner of sums of money towards the maintenance of the other domestic partner;

“**Marriage Act**” means the Marriage Act, 1961 (Act No. 25 of 1961);

“**Mediation in Certain Divorce Matters Act**” means the Mediation in Divorce Matters Act, 1987 (Act No. 24 of 1987);

“**Minister**” means the Minister of Home Affairs;

“**partnership debt**” means a debt that has been incurred, to the extent that it has been incurred—

- (a) by the domestic partners jointly;
- (b) in the course of a common enterprise of the domestic partnership carried on by the partners, whether individually, together or with another person;
- (c) for the purpose of acquiring, improving, or maintaining joint property of the domestic partners;
- (d) for the benefit of both domestic partners in the course of managing the affairs of the common household; or
- (e) for the purpose of bringing up any child of a domestic partner or partners;

“**periodic maintenance order**” means an order for the payment of periodic sums of money by a domestic partner towards the maintenance of the other domestic partner;

“**prescribed**” means prescribed by regulation made under this Act;

“property” means any movable or immovable property and includes any present, future or contingent right or interest in or to movable or immovable, corporeal or incorporeal property, money, and a debt;

“Recognition of Customary Marriages Act” means the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998);

“registered domestic partner” means a domestic partner in a registered domestic partnership;

“registered domestic partnership” means a partnership registered as a domestic partnership under Chapter 3 of this Act;

“registered partnership agreement” means a written agreement concluded between and undersigned by prospective registered domestic partners to regulate the financial matters pertaining to their partnership;

“registration officer” means any person who has been designated to be a registration officer under section 5 of this Act;

“separate property” means property of domestic partners that is not joint property;

“Supreme Court Act” means the Supreme Court Act, 1959 (Act No. 59 of 1959);

“termination certificate” means a certificate issued by a registration officer to the effect that a registered domestic partnership has been terminated in the manner provided for in Chapter 3 of this Act;

“this Act” includes the regulations;

“unregistered domestic partner” means a domestic partner in an unregistered domestic partnership; and

“unregistered domestic partnership” means a partnership that has not been registered as a domestic partnership under Chapter 3 of this Act.

CHAPTER 2

Objectives of Act

2. The objectives of this Act are to ensure the rights of equality and dignity of the partners in domestic partnerships and to reform family law to comply with the applicable provisions of the Bill of Rights, through the—

- (a) recognition of the legal status of domestic partners;

- (b) regulation of the rights and obligations of domestic partners;
- (c) protection of the interests of both domestic partners and interested parties on the termination of domestic partnerships; and
- (d) final determination of the financial relationships between domestic partners and between domestic partners and interested parties when domestic partnerships terminate.

Relationships to which Act applies

3. This Act applies to relationships between domestic partners and between either one or both domestic partners and another party or other parties.

CHAPTER 3

Registered domestic partnerships

Part I

Registration procedure

Partners in registered domestic partnership

4. (1) A person may only be a partner in one registered domestic partnership at any given time.

(2) A person who is—

- (a) married under the Marriage Act;
 - (b) married under the Recognition of Customary Marriages Act; or
 - (b) a spouse or a partner in a civil union,
- may not register a domestic partnership.

(3) A prospective partner who has previously been married under the Marriage Act or Recognition of Customary Marriages Act or a spouse in a marriage or partner in a civil union partnership under the Civil Union Act or a partner in a registered domestic partnership under this Act, must present a certified copy of the divorce order, or death certificate of the former spouse or partner, or termination certificate, as the case may be,

to the registration officer as proof that the previous marriage, civil union or registered domestic partnership has been terminated.

(4) A registration officer may not proceed with the registration of a domestic partnership of a prospective partner who has previously been married, or a spouse or partner in a civil union, or a partner in a registered domestic partnership, unless in possession of the relevant documentation referred to in subsection (3).

(5) Any persons who would be prohibited by law from concluding a marriage on the basis of consanguinity or affinity may not register a domestic partnership.

(6) A relationship may only be registered as a domestic partnership if at least one of the prospective partners is a South African citizen.

Registration officers

5. (1) The Minister, and any officer in the public service authorised thereto by him or her, may designate any officer or employee in the public service or the diplomatic or consular service of the Republic, to be a registration officer, either generally or for any specified area, by virtue of his or her office and for as long as he or she holds such office.

(2) Every designation of a person as a registration officer shall be in writing and the date as from which it will have effect and any limitation to which it is subject must be specified in that written document.

Registration of domestic partnerships

6. (1) Subject to section 4, any two persons who are both 18 years of age or older, may register their relationship as a domestic partnership as provided for in this section.

(2) A registration officer must conduct the registration procedure on the official premises designated for that purpose and in the manner provided for in this section.

(3) The prospective partners must individually and in writing declare their willingness to register their domestic partnership by signing the prescribed documents in the presence of the registration officer.

(4) The registration officer must sign the prescribed documents to certify that the declaration referred to in subsection (3) was made voluntarily and in his or her presence.

(5) The registration officer must indicate the existence of a registered domestic partnership agreement, where applicable, on the registration certificate.

(6) The registration officer must issue the partners with a registration certificate stating that they have registered their domestic partnership and, where applicable, attach a certified copy of the registered domestic partnership agreement to the registration certificate.

(7) The registration certificate issued by the registration officer is *prima facie* proof of the existence of a registered domestic partnership between the partners.

(8) Each registration officer must keep a register of all registrations of domestic partnerships conducted by him or her and indicate the existence of a registered domestic partnership agreement, where applicable, in the register.

(9) The registration officer must transmit the said register to the officer in the public service with the delegated responsibility for the population register in his or her district of responsibility.

(10) Upon receipt of the said register the officer contemplated in subsection (9) responsible for the population register must cause the particulars of the registered domestic partnership concerned to be included in the population register in accordance with the provisions of section 8(e) of the Identification Act.

Property regime

7. (1) Except as provided in this section, there is no general community of property between partners in a registered domestic partnership.

(2) In the event of a dispute regarding the division of property after a registered domestic partnership has ended, section 21 of this Act applies.

(3) Registered partners may conclude a registered domestic partnership agreement.

(4) Where no indication of the existence of a registered domestic partnership agreement has been effected on, or no copy of such registered domestic partnership agreement has been attached to, a registration certificate as required in terms of section 6(5) and (6) of this Act, and where no indication of the existence of such a registered domestic partnership agreement has been made as required in terms of section 6(8) of this Act, such agreement binds only the parties to the agreement.

Registered domestic partnership agreement

8. (1) In proceedings regarding the division of property between registered partners under this Act, a court may consider the fact that parties have concluded a registered domestic partnership agreement: Provided that the registered domestic partnership agreement has been indicated on and attached to the registration certificate.

(2) If the court, having regard to all the circumstances, is satisfied that giving effect to a registered domestic partnership agreement would cause serious injustice, it may set aside the registered domestic partnership agreement or parts thereof.

(3) The court may, in deciding in terms of subsection (2) whether giving effect to a registered domestic partnership agreement would cause serious injustice, have regard to—

- (a) the terms of the registered domestic partnership agreement;
- (b) the time that has elapsed since the registered domestic partnership agreement was concluded;
- (c) whether the registered domestic partnership agreement was unfair or unreasonable in the light of all the circumstances at the time it was made;
- (d) whether the registered domestic partnership agreement has become unfair or unreasonable in the light of any changes in circumstances since it was made and whether those changes were foreseen by the parties or not;
- (e) the fact that the parties wished to achieve certainty as to the status, ownership and division of property by entering into the registered domestic partnership agreement;
- (f) the contributions of the parties to the registered domestic partnership;
and
- (g) any other matter that the court considers relevant.

(4) A court may make an order in terms of this section notwithstanding that the registered domestic partnership agreement purports to exclude the jurisdiction of the court to make that order.

(5) A court may decide any other matter regarding a registered domestic partnership agreement on the applicable principles of the law of contract.

Part II

Legal consequences of registered domestic partnerships

Duty of support

9. Registered domestic partners owe each other a duty of support in accordance with their respective financial means and needs.

Limitation on disposal of joint property

10. A registered domestic partner may not without the written consent of the other registered partner sell, donate, mortgage, let, lease or otherwise dispose of joint property.

Right of occupation of family home

11. (1) Both registered domestic partners are entitled to occupy the family home during the existence of the registered domestic partnership, irrespective of which of the registered partners owns or rents the property.

(2) The registered partner who owns or rents the family home may not evict the other registered partner from the family home during the existence of the registered domestic partnership.

Part III

Termination of registered domestic partnership

Termination of registered domestic partnership

12. (1) A registered domestic partnership terminates upon—
- (a) the death of one or both registered domestic partners;
 - (b) agreement as contemplated in section 14; or

(c) a court order as contemplated in section 15.

(2) A death certificate, or a termination certificate issued in terms of this Act, or a termination order made by the court in terms of this Act, is *prima facie* proof that such a registered domestic partnership has ended.

Registration of a termination agreement

13. (1) A registration officer must conduct the termination procedure on the official premises used for that purpose and in the manner provided for in this section.

(2) Registered domestic partners who intend to terminate their domestic partnership must present the registration officer with a certified copy of the registration certificate as proof that a registered domestic partnership exists between them.

(3) Registered domestic partners must individually and in writing declare their desire to terminate the registered domestic partnership by signing the prescribed documents in the presence of a registration officer.

(4) The registration officer must sign the prescribed documents to certify that the declaration referred to in subsection (3) was made voluntarily and in his or her presence.

(5) The registration officer must issue the registered domestic partners with a certificate stating that their domestic partnership has been terminated and make a notification of the existence of a termination agreement, where applicable, on the certificate.

(6) Each registration officer must keep a register of all registered domestic partnerships terminated by him or her and indicate the existence of a termination agreement, where applicable, in the register.

(7) The registration officer must transmit the register contemplated in subsection (6) and the documents concerned to the officer in the public service with the delegated responsibility for the population register in his or her district of responsibility.

(8) Upon receipt of the register contemplated in subsection (6) the officer with the delegated responsibility for the population register as contemplated in subsection (7) must cause the particulars of the terminated domestic partnership to be included in the population register in accordance with the provisions of section 8(e) of the Identification Act.

Termination agreement

14. (1) Registered domestic partners who want to terminate their registered domestic partnership may conclude a termination agreement to regulate the financial consequences of the termination of their registered domestic partnership.

(2) A termination agreement must be in writing, signed by both registered domestic partners and must declare that it is entered into voluntarily by both partners.

(3) A termination agreement may provide for—

- (a) the division of joint and separate property;
- (b) the payment of maintenance to the other registered domestic partner;
- (c) arrangements regarding the family home; and
- (d) any other matter relevant to the financial consequences of the termination of the registered domestic partnership.

Termination by court order

15. (1) Registered domestic partners who have minor children from the registered domestic partnership, and who intend to terminate the registered domestic partnership must apply to the court for a termination order.

(2) An application for the termination of a registered domestic partnership must be made to the court in accordance with the provisions of the Supreme Court Act.

Welfare of minor children

16. (1) A court may not order the termination of a registered domestic partnership unless the court is satisfied that the provisions made or contemplated with regard to the welfare of any minor child or dependent child of the registered domestic partnership are in the best interests of such child.

(2) In order to determine that the circumstances set out in subsection (1) exist, the court may order that an investigation be instituted and for that purposes the provisions of section 4 of the Mediation in Certain Divorce Matters Act apply, with such changes as may be required by the context.

(3) Before making the termination order, the court may consider the report and recommendations referred to in section 4(1) of the Mediation in Certain Divorce Matters Act.

(4) In order to determine that the circumstances set out in subsection (1) exist, the court may order any person to appear before it and may order either or both the registered domestic partners to pay the costs of an investigation and appearance.

(5) A court granting an order to terminate a registered domestic partnership may, in regard to—

(a) the maintenance and education of a dependent child of the registered domestic partnership; or

(b) the custody or guardianship of, or access to, a minor child of the registered domestic partnership,

make any order which it deems fit in the best interest of such minor child.

(6) Unless otherwise ordered by a court, the rights of and obligations towards children of a registered domestic partner under any other law are not affected by the termination of the registered domestic partnership.

(7) For the purposes of this section, the court may appoint a legal practitioner to represent a child at the proceedings and may order either or both the registered partners to pay the costs of the representation.

Children of registered partners of opposite sex

17. Where a child is born into a registered domestic partnership between persons of the opposite sex, the male partners in the registered domestic partnership is deemed to be the biological father of that child and has the legal rights and responsibilities in respect of that child that would have been conferred upon him if he had been married to the biological mother of the child.

Part IV

Maintenance after termination of registered domestic partnership

Maintenance after termination

18. (1) In the absence of a maintenance agreement, a court may, after termination of a registered domestic partnership as provided for in section 12(1)(b) and (c), upon application, make an order which is just and equitable in respect of the payment of maintenance by one registered domestic partner to the other for any specified period or until the registered partner in whose favour the order is given—

- (a) dies;
- (b) marries under the Marriage Act;
- (c) marries under the Recognition of Customary Marriages Act;
- (c) enters into a civil union; or
- (d) enters into a registered domestic partnership.

(2) When deciding whether to order the payment of maintenance and the amount and nature of such maintenance, the court must have regard to—

- (a) the respective contributions of each partner to the registered domestic partnership;
- (b) the existing and prospective means of each of the registered domestic partners;
- (c) the respective earning capacities, future financial needs and obligations of each of the registered partners;
- (d) the age of the registered partners;
- (e) the duration of the registered domestic partnership;
- (f) the standard of living of the registered domestic partners prior to the termination of the registered domestic partnership; and
- (g) any other factor which in the opinion of the court should be taken into account.

Maintenance after death

19. For purposes of this Act, a reference to "spouse" in the Maintenance of Surviving Spouses Act must be construed to include a registered domestic partner.

Intestate succession

20. For purposes of this Act, a reference to "spouse" in the Intestate Succession Act must be construed to include a registered domestic partner.

Delictual claims

21. (1) For the purpose of claiming damages in a delictual claim, partners in a registered domestic partnership are deemed to be spouses in a legally valid marriage.

(2) A partner in a registered domestic partnership is not excluded from instituting a delictual claim for damages based on the wrongful death of the other partner merely on the ground that the partners have not been legally married.

(3) A partner in a registered domestic partnership is a dependant for purposes of the Compensation for Occupational Injuries and Diseases Act.

Part V***Property division after termination of registered domestic partnership*****Property division**

22. (1) In the event of a dispute regarding the division of property after a registered domestic partnership has terminated, one or both of the registered domestic partners may apply to court for an order to divide their joint property or separate property, as the court may deem fit.

(2) Upon an application for the division of joint property, a court must order the division of that property which it regards just and equitable with due regard to all relevant factors.

(3) Upon an application for the division of separate property or part of the separate property, a court may order that the separate property or part thereof of the other registered domestic partner as the court regard just and equitable, be transferred to the applicant.

(4) A court considering an order contemplated in subsections (2) and (3) must take into account—

- (a) the existing means and obligations of the registered domestic partners;
- (b) any donation made by one registered domestic partner to the other during the subsistence of the registered domestic partnership;
- (c) the circumstances of the registered domestic partnership;
- (d) the vested rights of interested parties in the joint and separate property of the registered domestic partners;
- (e) the existence and terms of a registered domestic partnerships agreement, if any between the registered domestic partners; and
- (f) any other relevant factors.

(5) A court granting an order contemplated in subsection (3) must be satisfied that it is just and equitable to do so by reason of the fact that the registered domestic partner in whose favour the order is granted, made direct or indirect contributions to the maintenance or increase of the separate property or part of the separate property of the other registered domestic partner during the existence of the registered domestic partnership.

Application to be made within two years after termination of a registered domestic partnership

23. (1) Except as otherwise provided for by this section, an application to a court for an order under section 21 of this Act must be made within two years after the termination of the registered domestic partnership.

(2) A court may, at any time after the expiration of the period referred to in subsection (1), grant leave to an applicant to apply to the court for an order under section 21 of this Act, if the court is satisfied, having regard to such matters as it considers relevant, that greater hardship would be caused to that applicant if the leave was not granted than would be caused to the respondent if the leave was granted.

Notification of termination of a registered domestic partnership

24. (1) When a registered domestic partnership is terminated, both registered partners are liable to give written notice of the termination to interested parties.

(2) When one or both registered domestic partners die, the surviving registered partner or the executor of the estate of either registered domestic partner as the case may be, is liable to give written notice of the termination of the registered domestic partnership to interested parties.

Interests of other parties

25. (1) A court considering an application under section 21 of this Act must have regard to the interests of a *bona fide* purchaser of, or other person with an interest or vested right in, the property concerned.

(2) A court may make any order proper for the protection of the rights of interested parties.

CHAPTER 4

Unregistered domestic partnerships

Part I

Property division after termination of unregistered domestic partnership

Court application

26. (1) One or both unregistered domestic partners may, after the unregistered domestic partnership has ended through death or separation, apply to a court for a maintenance order, an intestate succession order or a property division order.

(2) When deciding on an application for an order under section 26 of this Act, a court must have regard to all the circumstances of the relationship, including the following matters as may be relevant in a particular case:

- (a) the duration and nature of the relationship;

- (b) the nature and extent of common residence;
- (c) the degree of financial dependence or interdependence, and any arrangements for financial support, between the unregistered domestic partners;
- (d) the ownership, use and acquisition of property;
- (e) the degree of mutual commitment to a shared life;
- (f) the care and support of children of the unregistered domestic partnership;
- (g) the performance of household duties;
- (h) the reputation and public aspects of the relationship; and
- (i) the relationship status of the unregistered domestic partners with third parties.

(3) A finding in respect of any of the matters mentioned in subsection (2), or in respect of any combination of them, is not essential before a court may make an order under this Act, and regard may be had to further matters and weight to be attached to such matters as may seem appropriate in the circumstances of the case.

(4) A court may not make an order under this Act regarding a relationship of a person who, at the time of that relationship, was also a spouse in a civil marriage or a partner in a civil union or a registered domestic partnership with a third party.

(5) A court may only make an order under this Act regarding a relationship where at least one of the parties to the relationship is a South African citizen or a permanent resident.

Part II

Maintenance after termination of unregistered domestic partnership

Maintenance

27. Unregistered domestic partners are not liable to maintain one another and neither partner is entitled to claim maintenance from the other, except as provided for in this Act.

Application for maintenance order after separation

28. (1) After the separation of unregistered domestic partners, a court may, upon application of one or both of them, make an order which is just and equitable in respect of the payment of maintenance by one unregistered domestic partner to the other for a specified period.

(2) When deciding whether to order the payment of maintenance and the amount and nature of such maintenance, the court must have regard to the following matters:

- (a) the age of the unregistered domestic partners;
- (b) the duration of the unregistered domestic partnership;
- (c) the standard of living of the unregistered domestic partners prior to separation;
- (d) the ability of the applicant to support himself or herself adequately in view of him or her having custody of a minor child of the unregistered domestic partnership;
- (e) the respective contributions of each unregistered domestic partner to the unregistered domestic partnership;
- (f) the existing and prospective means of each unregistered domestic partner;
- (g) the respective earning capacities, future financial needs and obligations of each unregistered domestic partner; and
- (h) the relevant circumstances of another unregistered domestic partnership or customary marriage of one or both unregistered domestic partners, where applicable, insofar as they are connected to the existence and circumstances of the unregistered domestic partnership, and any other factor which, in the opinion of the court, should be taken into account.

Application for a maintenance order after death of unregistered domestic partner

29. (1) A surviving unregistered domestic partner may after the death of the other unregistered domestic partner, bring an application to a court for an order for the

provision of his or her reasonable maintenance needs from the estate of the deceased until his or her death, remarriage or registration of another registered domestic partnership, insofar as he or she is not able to provide therefore from his or her own means and earnings.

(2) The surviving unregistered domestic partner will not, in respect of a claim for maintenance, have a right of recourse against any person to whom money or property has been paid, delivered or transferred in terms of section 34(11) or 35(12) of the Administration of Estates Act, or pursuant to an instruction of the Master in terms of section 18(3) or 25(1)(a)(ii) of that Act.

(3) The provisions of the Administration of Estates Act apply with the changes required by the context to a claim for maintenance of a surviving unregistered domestic partner, subject to the following:

- (a) the claim for maintenance of the surviving unregistered domestic partner must have the same order of preference in respect of other claims against the estate of the deceased as a claim for maintenance of a dependent child of the deceased has or would have against the estate if there were such a claim;
- (b) in the event of competing claims of the surviving unregistered domestic partner and that of a dependent child of the deceased, the court may make an order that it regards just and equitable with reference to all the relevant circumstances of the unregistered domestic partnership;
- (c) in the event of competing claims of an unregistered domestic partner and that of a surviving customary spouse, the court must make an order that it regards just and equitable with reference to the existence and circumstances of multiple relationships between the deceased and an unregistered domestic partner, and between the deceased and a customary spouse;
- (d) in the event of a conflict between the interests of the surviving unregistered domestic partner in his or her capacity as claimant against the estate of the deceased and the interests in his or her capacity as guardian of a minor dependent child or children of the unregistered domestic partnership, the court must make an order that

- it regards just and equitable with reference to all the relevant circumstances of the unregistered domestic partnership; and
- (e) the executor of the estate of a deceased spouse has the power to enter into an agreement with the surviving unregistered domestic partner and the heirs and legatees having an interest in the agreement, including the creation of a trust, and in terms of the agreement to transfer assets of the deceased estate, or a right in the assets, to the surviving unregistered domestic partner, or to impose an obligation on an heir or legatee, in settlement of the claim of the surviving unregistered partner or part thereof.

Determination of reasonable maintenance needs of surviving unregistered domestic partner

30. When determining the reasonable maintenance needs of the surviving unregistered domestic partner, the court may consider—

- (a) the amount in the estate of the deceased available for distribution to heirs and legatees;
- (b) the existing and expected means, earning capacity, financial needs and obligations of the surviving unregistered domestic partner;
- (c) the standard of living of the surviving unregistered domestic partner during the subsistence of the unregistered domestic partnership and his or her age at the time of death of the deceased;
- (d) the existence and circumstances of multiple relationships between the deceased and an unregistered domestic partner, and between the deceased and a customary spouse; and
- (e) any other factor that it regards relevant.

Intestate succession

31. (1) Where an unregistered domestic partner dies intestate, his or her surviving unregistered domestic partner may bring an application to court, subject to subsections (2) and (3), for an order that he or she may inherit the intestate estate.

(2) Where the deceased is survived by an unregistered domestic partner as well as a descendant, such unregistered domestic partner inherits a child's share of the intestate estate or so much of the intestate estate as does not exceed in value the amount fixed from time to time by the Cabinet member responsible for the administration of Justice by notice in the *Gazette*, whichever is the greater, as provided for in the Intestate Succession Act.

(3) In the event of a dispute between a surviving unregistered domestic partner and the customary spouse of a deceased partner regarding the benefits to be awarded, a court may, upon application by either the unregistered domestic partner or the customary spouse, make an order that it regards just and equitable with reference to all the relevant circumstances of both relationships.

Part III

Property division after termination of unregistered domestic partnership

Property division

32. (1) In the absence of an agreement, one or both unregistered domestic partners may apply to court for an order to divide their joint property or the separate property, or part of the separate property of the other unregistered domestic partner.

(2) Upon an application for the division of joint property, a court may order the division of that property which it deems just and equitable with due regard to all relevant circumstances.

(3) Upon an application for the division of separate property or part of the separate property, a court may order that the separate property or such part of the separate property of the other unregistered domestic partner as the court regard just and equitable, be transferred to the applicant.

(4) A court considering an order as contemplated in subsections (2) and (3) must take into account—

- (a) the existing means and obligations of the unregistered domestic partners;
- (b) any donation made by one unregistered domestic partner to the other during the subsistence of the unregistered domestic partnership;

- (c) the circumstances of the unregistered domestic partnership;
- (d) the vested rights of interested parties in the joint and separate property of the unregistered domestic partnership; and
- (e) any other relevant factors.

(5) A court granting an order contemplated in subsection (3) must be satisfied that it is just and equitable to do so by reason of the fact that the unregistered domestic partner in whose favour the order is granted, made direct or indirect contributions to the maintenance or increase of the separate property or part of the separate property of the other unregistered domestic partner during the existence of the unregistered domestic partnership.

(6) A court granting an order contemplated in subsection (3) may, on application by the unregistered domestic partner against whom the order is granted, order that satisfaction of the order be deferred on such conditions, including conditions relating to the furnishing of security, the payment of interest, the payment of instalments, and the delivery or transfer of specified assets, as the court regards just and equitable.

(7) A court may make any order proper for the protection of the rights of interested parties.

Application to be made within two years after termination of unregistered domestic partnership

33. (1) Except as otherwise provided for by this section, an application to a court for an order in terms of section 31 of this Act must be made within two years after the date on which an unregistered domestic partnership has terminated through separation or death.

(2) A court may, at any time after the expiration of the period referred to in subsection (1), grant leave to an applicant to apply to the court for an order in terms of section 31 of this Act, where the court is satisfied, having regard to such matters as it considers relevant, that greater hardship would be caused to the applicant if the leave was not granted than would be caused to the respondent if the leave was granted.

CHAPTER 5

MISCELLANEOUS

Offences and penalties

34. (1) Any registration officer who knowingly registers a domestic partnership in contravention of the provisions of this Act, shall be guilty of an offence and liable on conviction to a fine or, in default of payment, to imprisonment for a period not exceeding six months.

(2) Any person who makes for any of the purposes of this Act any false representation or false statement knowing it to be false, shall be guilty of an offence and liable on conviction to the penalties prescribed by law for perjury.

Regulations

35. (1) The Minister may make regulations relating to—

- (a) the form and contents of certificates, notices, affidavits and declarations for the purposes of this Act;
- (b) the fees payable for any certificate issued or any other act performed in terms of this Act; and
- (c) generally, any matter which by this Act is required or permitted to be prescribed or which he or she considers necessary or expedient to prescribe in order that the purposes of this Act may be achieved or that the provisions of this Act may be effectively administered.

(2) Such regulations may also prescribe penalties for a contravention thereof—

- (a) for a fine not exceeding the amount that, in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), may be imposed as an alternative to imprisonment for a period of twelve months; or
- (b) *in lieu* of payment of a fine referred to in paragraph (a), of imprisonment for a period not exceeding twelve months.

Short title and commencement

36. This Act is called the Domestic Partnerships Act, 2008, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.
