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## Submission to ALRC Family Law Review

Thank you for this opportunity to make a submission to this inquiry. I am a researcher in Law and Senior Lecturer at the University of Technology Sydney.

I have made a joint submission with my colleagues, Jane Wangmann and Tracey Booth in relation to wider matters. This personal submission solely addresses the issue of Binding Financial Agreements.

### Question 19:

What changes could be made to the provisions in the Family Law Act governing binding financial agreements to improve the clarity and comprehensibility of the law for parties and to promote fair outcomes?

One way to improve fair outcomes would be to repeal Part VIIIA of the *Family Law Act* at least in relation to agreements made before relationships. As Sharon Thompson has written after extensive research into prenuptial agreements in the United States, "there is always inequality of power between parties entering prenups". Indeed she argues that usually such an "agreement is created *because* there is inequality of bargaining power."<sup>1</sup>

The current law provides neither clarity, comprehensibility nor fair outcomes for either party to the agreement. The rationale of a prenuptial binding agreement circumventing the uncertainty of the law is not being realised. The legislation allows parties to contract out of the underlying purpose of the Family Law Act – that is to promote a just and equitable property distribution at the end of a relationship. Allowing parties to avoid such equitable considerations sends a message that the limited legal protections given by the *Family Law Act* are unimportant.

Please do contact me if you require any further detail.

Miranda Kaye

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<sup>1</sup> Sharon Thompson, 'Conclusion' in *Prenuptial Agreements and the Presumption of Free Choice: Issues of power in theory and practice* (Hart Publishing, 2015) 201.