

# Matrimonial Causes Act 1963

Chapter 282.

[Matrimonial Causes Act 1963.](#)

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

Chapter 282.

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## **INDEPENDENT STATE OF PAPUA NEW GUINEA.**

AN ACT

entitled

[Matrimonial Causes Act 1963](#),

Being an Act relating to divorce and causes, and, in relation to such matters, parental rights and the custody and guardianship of infants and for related purposes.

[PART I](#) – PRELIMINARY.

**1. INTERPRETATION.**

(1) In this Act, unless the contrary intention appears–

“adopted”, in relation to a child, means adopted under the law (whether of Papua New Guinea or elsewhere) relating to the adoption of children;

“appeal” includes an application for a rehearing;

“approved marriage guidance organization”, means a marriage guidance organization approved by the Minister under Section 5;

“the commencement date” means 8 July 1965 (being the date of commencement of the pre-Independence [Matrimonial Causes Act 1963](#));

“the Court” means the National Court;

“crime” means an offence punishable by death or imprisonment;

“cross-petition” includes an answer in which the respondent to a petition seeks a decree or declaration of a kind referred to in Paragraph (a) or (b) of the definition “matrimonial cause” in this subsection;

“customary marriage” means a marriage of a kind referred to in [Part II](#) of the [Marriage Act 1963](#);

“decree” means a decree, judgement or order, and includes a decree nisi and an order dismissing a petition or application or refusing to make a decree or order;

“marriage conciliator” means–

(a) a person authorized by an approved marriage guidance organization to endeavour to effect marital reconciliations; or

(b) a person nominated by a Judge, under Section 10, to endeavour to effect a reconciliation;

“marriage guidance counsellor” means a person authorized by an approved marriage guidance organization to offer marriage guidance on behalf of the organization;

“matrimonial cause” means–

(a) proceedings for a decree of–

(i) dissolution of marriage; or

(ii) nullity of marriage; or

(iii) judicial separation; or

(iv) restitution of conjugal rights; or

(v) jactitation of marriage; or

(b) proceedings for—

(i) a declaration of the validity of—

(A) the dissolution or annulment of a marriage, by decree or otherwise; or

(B) a decree of judicial separation; or

(ii) a declaration of the continued operation of a decree of judicial separation; or

(iii) an order discharging a decree of judicial separation; or

(c) proceedings with respect to—

(i) the maintenance of a party to any proceedings; or

(ii) settlements; or

(iii) damages in respect of adultery; or

(iv) the custody or guardianship of infant children of a marriage; or

(v) the maintenance, welfare, advancement or education of children of a marriage,

being proceedings in relation to concurrent, pending or completed proceedings of a kind referred to in Paragraph (a) or (b) (including proceedings of such a kind pending at, or completed before, the commencement date); or

(d) any other proceedings (including proceedings with respect to the enforcement of a decree, the service of process or costs) in relation to concurrent, pending or completed proceedings of a kind referred to in Paragraph (a), (b) or (c) (including proceedings of such a kind pending at, or completed before, the commencement date); or

(e) proceedings seeking leave to institute proceedings for a decree of dissolution of marriage or of judicial separation, or proceedings in relation to proceedings seeking such leave;

“petition” includes a cross-petition;

“petitioner” includes a cross-petitioner;

“proceedings” includes cross-proceedings;

“respondent” includes a petitioner against whom there is a cross-petition;

“the Rules” means the Matrimonial Causes Rules;

“welfare officer” means a welfare officer or honorary welfare officer within the meaning of the [Child Welfare Act 1961](#).

(2) For the purposes of this Act, the date of a petition shall be taken to be the date on which the petition was filed in the Court.

## 2. APPLICATION OF ACT IN RELATION TO CERTAIN CHILDREN.

(1) For the purpose of the application of this Act in relation to a marriage—

- (a) a child adopted since the marriage by the husband and wife or by either of them with the consent of the other; and
- (b) a child of the husband and wife born before the marriage, whether legitimated by the marriage or not; and
- (c) a child of either the husband or wife (including an illegitimate child of either of them and a child adopted by either of them) if, at the relevant time, the child was ordinarily a member of the household of the husband and wife,

shall be deemed to be a child of the marriage, and a child of the husband and wife (including a child born before the marriage, whether legitimated by the marriage or not) who has been adopted by another person or other persons shall be deemed not to be a child of the marriage.

(2) For the purposes of Subsection (1), in relation to any proceedings the relevant time is—

- (a) the time immediately preceding the time when the husband and wife ceased to live together, or, if they have ceased on more than one occasion to live together the time immediately preceding the time when they last ceased to live together before the institution of the proceedings; or
- (b) if the husband and wife were living together at the time when the proceedings were instituted, the time immediately preceding the institution of the proceedings.

(3) Subsections (1) and (2) apply in relation to a purported marriage that is void as if it were a marriage.

### 3. APPLICATION OF OTHER LAWS.

(1) Subject to Subsection (2), where a matrimonial cause has been instituted, whether before or after the commencement date then, whether or not it has been completed, proceedings for any relief or order of a kind that could be sought under this Act in proceedings in relation to that matrimonial cause shall not be instituted except under this Act.

(2) Subject to the succeeding provisions of this section—

(a) the jurisdiction of a court of summary jurisdiction, or of a court on appeal from such a court, to make—

- (i) orders with respect to the maintenance of wives or children or the custody of or access to children; or
- (ii) separation orders or other orders having the effect of relieving a party to a marriage from any obligation to cohabit with the other party, is not affected by this Act or any proceedings under this Act; and

(b) proceedings for or in respect of such an order, or for the enforcement of such an order, may be continued or instituted as if this Act had not been passed.

(3) Where a marriage is dissolved or annulled by a decree under this Act—

(a) any jurisdiction of a court of summary jurisdiction, or of a court on appeal from such a court, to make orders of the kind specified in Subsection (2)(a) ceases, by force of this subsection, to be applicable in relation to the parties to the marriage or the children of the marriage; and  
(b) an order of that kind made by such a court in relation to those parties or children ceases, subject to Subsection (5), to have effect.

(4) The Court may at any time order that an order of the kind specified in Subsection (2)(a) made by a court of summary jurisdiction, or by a court on appeal from such a court, cease to have effect.

(5) Where, by virtue of this section, an order with respect to the maintenance of a wife or of children ceases to have effect, this Act does not prevent the enforcement of that order, so far as it relates to a period before it ceased to have effect, as if this Act had not been passed.

#### **4. CUSTOMARY MARRIAGES.**

This Act does not apply to or in relation to a customary marriage.

#### **PART II. – MARRIAGE GUIDANCE ORGANIZATIONS.**

#### **5. APPROVAL OF MARRIAGE GUIDANCE ORGANIZATIONS.**

(1) A voluntary organization may apply to the Minister for approval under this Part as a marriage guidance organization.

(2) Where the Minister is satisfied–

(a) that a voluntary organization is willing and able to engage in marriage guidance; and  
(b) that marriage guidance constitutes or will constitute the whole or the major part of its activities,

he may approve the organization as a marriage guidance organization.

(3) The approval of an organization under this section may be given subject to such conditions as the Minister determines.

(4) Where the approval of an organization has been given subject to conditions, the Minister may revoke or vary all or any of those conditions, or add further conditions.

(5) The Minister may revoke the approval of an organization if–

(a) it has not complied with a condition of the approval of the organization; or  
(b) it has not furnished, in accordance with Section 7, a statement or report that it was required by that section to furnish; or  
(c) he is satisfied that it is not adequately carrying out marriage guidance.

(6) Notice of the approval of an organization under this section, and of the revocation of any such approval, shall be published in the National Gazette.

## **6. GRANTS TO APPROVED MARRIAGE GUIDANCE ORGANIZATIONS.**

The Minister may, out of moneys appropriated by the Parliament for the purposes of this Part, grant to an approved marriage guidance organization, on such conditions as he thinks fit, such sums by way of financial assistance as he determines.

## **7. REPORTS, ETC., BY APPROVED MARRIAGE GUIDANCE ORGANIZATIONS.**

(1) As soon as practicable after 30 June in each year, an approved marriage guidance organization shall supply to the Minister, in respect of the year that ended on that day—

(a) an audited financial statement of its receipts and expenditure, in which receipts and expenditure in respect of its marriage guidance activities are shown separately from other receipts and expenditure; and

(b) a report on its marriage guidance activities, including information as to the number of cases dealt with by it during that year.

(2) Where the Minister is satisfied that it would be impracticable for an organization to comply with the requirements of Subsection (1) or that the application of those requirements to an organization would be unduly onerous, he may, by writing under his hand, exempt the organization, wholly or in part, from those requirements.

## **8. MARRIAGE GUIDANCE COUNSELLOR.**

(1) Before entering on the performance of his functions as a counsellor, a marriage guidance counsellor shall make and subscribe, before a person authorized to take affidavits, an oath or affirmation of secrecy in the form in Schedule 1.

(2) A marriage guidance counsellor is not competent or compellable, in any proceedings before a court or before a person authorized by a law or by consent of parties to hear, receive and examine evidence, to disclose an admission or communication made to him in his capacity as a marriage guidance counsellor.

## **9. BRANCHES OF VOLUNTARY ORGANIZATIONS.**

A reference in this Part to a voluntary organization includes a reference to a branch or section of such an organization, being a branch or section identified by a distinct name and in respect of which separate financial accounts are maintained.

## **PART III. – RECONCILIATION.**

## **10. RECONCILIATION.**

(1) Where a matrimonial cause has been instituted in the Court, it is the duty of the Court to give consideration, from time to time, to the possibility of a reconciliation of the parties to the marriage unless the proceedings are of such a nature that it would not be appropriate to do so.

(2) If at any time it appears to the Judge constituting the Court, from the nature of the case, the evidence in the proceedings or the attitude of the parties or of either of them, or of counsel, that



there is a reasonable possibility of a reconciliation, the Judge may do all or any of the following things—

(a) adjourn the proceedings—

(i) to afford the parties an opportunity of becoming reconciled; or

(ii) to enable anything to be done in accordance with Paragraph (b) or (c); and

(b) with the consent of the parties, interview them in chambers, with or without counsel, as the Judge thinks proper, with a view to affecting a reconciliation; and

(c) nominate—

(i) an approved marriage guidance organization or a person with experience or training in marriage conciliation; or

(ii) in special circumstances, some other suitable person,

to endeavour, with the consent of the parties, to effect a reconciliation.

(2) If, not less than 14 days after an adjournment under Subsection (1) has taken place, either of the parties to the marriage requests that the hearing be proceeded with—

(a) the Judge shall resume the hearing; or

(b) arrangements shall be made for the proceedings to be dealt with by another Judge,

as the case requires, as soon as practicable.

## **11. HEARING WHERE RECONCILIATION FAILS.**

Where a Judge has acted as conciliator under Section 10(1)(b) but the attempt to effect a reconciliation has failed, the Judge shall not, except at the request of the parties to the proceedings, continue to hear the proceedings or determine the proceedings, and in the absence of such a request arrangements shall be made for the proceedings to be dealt with by another Judge.

## **12. EVIDENCE OF STATEMENTS, ETC., AT RECONCILIATION ATTEMPTS.**

Evidence of anything said or of an admission made in the course of an endeavour to effect a reconciliation under this Part is not admissible in a court or in proceedings before a person authorized by a law or by consent of parties to hear, receive and examine evidence.

## **13. OATH OF SECRECY.**

Before entering on the performance of his functions as a conciliator, a marriage conciliator shall make and subscribe, before a person authorized to take affidavits, an oath or affirmation of secrecy in the form in Schedule 1.

## **PART IV. – JURISDICTION.**

## **14. JURISDICTION IN MATRIMONIAL CAUSES.**

(1) Subject to this Act, a person may institute a matrimonial cause under this Act in the Court.

(2) Subject to the succeeding provisions of this section, the Court has jurisdiction to hear and determine matrimonial causes instituted under this Act.

(3) Proceedings for a decree of dissolution of marriage or for a decree of nullity of a voidable marriage shall not be instituted under this Act except by a person domiciled in Papua New Guinea.

(4) Proceedings for a decree of nullity of a void marriage or for a decree of judicial separation, restitution of conjugal rights or jactitation of marriage shall not be instituted under this Act except by a person domiciled or resident in Papua New Guinea.

(5) Where, in proceedings for a decree of dissolution or nullity of marriage, the Court finds that the parties to the marriage were, or one of the parties was, at the time when the proceedings were instituted, domiciled according to the principles of the common law in Papua New Guinea, it shall include in the decree a statement to that effect.

(6) For the purposes of this Act, a person domiciled in Australia who is resident in Papua New Guinea at the date of instituting proceedings under this Act and has been so resident for the period of six months immediately preceding that date shall be deemed to be domiciled in the country at that date.

#### **15. SPECIAL PROVISIONS AS TO WIFE'S DOMICILE.**

(1) For the purposes of this Act, a deserted wife who was domiciled in Papua New Guinea immediately before her marriage or immediately before the desertion shall be deemed to be domiciled in Papua New Guinea.

(2) For the purposes of this Act, a wife who is resident in Papua New Guinea at the date of instituting proceedings under this Act and has been so resident for the period of three years immediately preceding that date shall be deemed to be domiciled in Papua New Guinea at that date.

(3) The provisions of Subsections (1) and (2) are in addition to, and not in substitution for or derogation of, any other provision of this Act under which jurisdiction is conferred.

#### **16. LAW TO BE APPLIED.**

(1) The jurisdiction of the Court under this Act shall be exercised in accordance with this Act.

(2) Subject to this Act, the Court in exercising jurisdiction under this Act in proceedings for a decree of nullity of marriage, judicial separation, restitution of conjugal rights or jactitation of marriage shall proceed and act and give relief as nearly as possible in conformity with the

principles and rules applied in the ecclesiastical courts in England immediately before the commencement of the Imperial Act known as The Matrimonial Causes Act 1857.

(3) Where it would be in accordance with the common law rules of private international law to apply the laws of a country or place (including a State or Territory of Australia), the Court shall apply the laws of that country or place.

## **PART V. – MATRIMONIAL RELIEF.**

### ***Division 1.***

Dissolution of Marriage.

## **17. GROUNDS FOR DISSOLUTION OF MARRIAGE.**

Subject to this Division, a petition under this Act by a party to a marriage for a decree of dissolution of the marriage may be based on one or more of the following grounds:–

- (a) that, since the marriage, the other party to the marriage has committed adultery;
- (b) that, since the marriage, the other party to the marriage has, without just cause or excuse, wilfully deserted the petitioner for a period of not less than two years;
- (c) that the other party to the marriage has wilfully and persistently refused to consummate the marriage;
- (d) that, since the marriage, the other party to the marriage has, during a period of not less than one year, habitually been guilty of cruelty to the petitioner;
- (e) that, since the marriage, the other party to the marriage has committed rape, sodomy or bestiality;
- (f) that, since the marriage, the other party to the marriage has, for a period of not less than two years–
  - (i) been an habitual drunkard; or
  - (ii) habitually been intoxicated by reason of taking or using to excess any sedative, narcotic or stimulating drug or preparation,

or has, for a part or parts of such a period, been an habitual drunkard and, for the other part or parts of the period, has habitually been so intoxicated;

- (g) that, since the marriage the petitioner's husband has, within a period not exceeding five years–
  - (i) suffered frequent convictions for crime, in respect of which he has been sentenced in the aggregate to imprisonment for not less than three years; and
  - (ii) habitually left the petitioner without reasonable means of support;
- (h) that, since the marriage, the other party to the marriage has been in prison for a period of not less than three years after conviction for an offence punishable by death or imprisonment for life or for a period of five years or more, and is still in prison at the date of the petition;

(i) that, since the marriage and within a period of one year immediately preceding the date of the petition, the other party to the marriage has been convicted, on indictment, of—

(i) having attempted to murder or unlawfully to kill the petitioner; or

(ii) having committed an offence involving the intentional infliction of grievous bodily harm on the petitioner or the intent to inflict grievous bodily harm on the petitioner;

(j) that the other party to the marriage has habitually and wilfully failed, throughout the period of two years immediately preceding the date of the petition, to pay maintenance for the petitioner that has been—

(i) ordered to be paid under an order of, or an order registered in, a court in Papua New Guinea or in Australia; or

(ii) agreed to be paid under an agreement between the parties to the marriage providing for their separation;

(k) that the other party to the marriage has, for a period of not less than one year immediately preceding the date of the petition, failed to comply with a decree of restitution of conjugal rights made under this Act;

(l) that the other party to the marriage—

(i) is, at the date of the petition, of unsound mind and unlikely to recover; and

(ii) since the marriage and within the period of six years immediately preceding the date of the petition, has been confined for a period of, or for periods aggregating, not less than five years in an institution where persons may be confined for unsoundness of mind in accordance with law, or in more than one such institution;

(m) that the parties to the marriage have been separated and afterwards have lived separately and apart for a continuous period of not less than five years immediately preceding the date of the petition, and there is no reasonable likelihood of cohabitation being resumed;

(n) that the other party to the marriage has been absent from the petitioner for such time and in such circumstances as to provide reasonable grounds for presuming that he or she is dead.

## **18. CONSTRUCTIVE DESERTION.**

(1) A married person whose conduct—

(a) constitutes just cause or excuse for the other party to the marriage to live separately or apart; and

(b) occasions the other party to live separately or apart,

shall be deemed to have wilfully deserted that other party without just cause or excuse.

(2) For the purposes of Subsection (1), it is irrelevant that the married person did not intend the conduct to occasion the other party to the marriage to live separately or apart.

## **19. REFUSAL TO RESUME COHABITATION.**

(1) For the purposes of this section, “reasonable justification” means reasonable justification in all the circumstances, including the conduct of the other party to the marriage since the marriage, whether the conduct took place before or after the agreement for separation.

(2) Where husband and wife are parties to an agreement for separation, whether oral, in writing or constituted by conduct, the refusal of one of them, without reasonable justification, to comply with a bona fide request by the other to resume cohabitation constitutes, as from the date of the refusal, wilful desertion without just cause or excuse on the part of the party so refusing.

**20. DESERTION CONTINUING AFTER MENTAL DISORDER.**

Where a party to a marriage has been wilfully deserted by the other party, the desertion shall not be deemed to have been terminated by reason only of the fact that the deserting party has become incapable of forming or having an intention to continue the desertion, if it appears to the Court that the desertion would probably have continued if the deserting party had not become so incapable.

**21. WILFUL REFUSAL TO CONSUMMATE.**

A decree of dissolution of marriage shall not be made on the ground specified in Section 17(c) unless the Court is satisfied that, as at the commencement of the hearing of the petition, the marriage had not been consummated.

**22. AGGREGATION OF CONCURRENT SENTENCES.**

Where—

- (a) a person has been sentenced to imprisonment in respect of each of two or more crimes that, in the opinion of the Court, arose substantially out of the same acts or omissions; and
- (b) the sentences were ordered to be served in whole or in part concurrently,

then, in reckoning, for the purposes of Section 17(g), the period for which that person has been sentenced in the aggregate, any period during which two or more of those sentences were to be served concurrently shall be taken into account once only.

**23. FAILURE TO PAY MAINTENANCE.**

A decree of dissolution of marriage shall not be made on the ground specified in Section 17(j) unless the Court is satisfied that reasonable attempts have been made by the petitioner to enforce the order or agreement under which the maintenance was ordered or agreed to be paid.

**24. UNSOUNDNESS OF MIND.**

A decree of dissolution of marriage shall not be made on the ground specified in Section 17(l) unless the Court is satisfied that, at the commencement of the hearing of the petition, the respondent was still confined to an institution referred to in that paragraph and was unlikely to recover.

**25. SEPARATION.**

(1) In this section, “the ground of separation” means the ground specified in Section 17(m).

(2) For the purposes of Section 17(m), the parties to a marriage may be taken to have separated notwithstanding that the cohabitation was brought to an end by the action or conduct of one only of the parties, whether constituting desertion or not.

(3) A decree of dissolution of marriage may be made on the ground of separation notwithstanding that there was in existence at any relevant time—

- (a) a decree of a court suspending the obligation of the parties to the marriage to cohabit; or
- (b) an agreement between the parties for separation.

(4) Where, on the hearing of a petition for a decree of dissolution of marriage on the ground of separation, the Court is satisfied that, by reason of the conduct of the petitioner, whether before or after the separation commenced, or for any other reason, it would, in the particular circumstances of the case, be harsh and oppressive to the respondent, or contrary to the public interest, to grant a decree on that ground on the petition of the petitioner, the Court shall refuse to make the decree sought.

(5) Where, in proceedings for a decree of dissolution of marriage on the ground of separation, the Court is of opinion that it is just and proper in the circumstances of the case that the petitioner should make provision for the maintenance of the respondent or should make any other provision for the benefit of the respondent, whether by way of settlement of property or otherwise, the Court shall not make a decree on that ground in favour of the petitioner until the petitioner has made arrangements, to the satisfaction of the Court, to provide the maintenance or other benefits on the decree becoming absolute.

(6) The Court may, in its discretion, refuse to make a decree of dissolution of marriage on the ground of separation if the petitioner has, before or after the separation commenced, committed adultery that has not been condoned by the respondent or that having been so condoned, has been revived.

(7) Where petitions by both parties to a marriage for the dissolution of the marriage are before the Court, the Court shall not make, on either of the petitions, a decree on the ground of separation if it is able properly to make a decree on the other petition on any other ground.

## **26. PRESUMPTION OF DEATH.**

(1) Where proceedings are brought on the ground specified in Section 17(n), proof that, for a period of seven years immediately preceding the date of the petition, the other party to the marriage was continually absent from the petitioner and that the petitioner has no reason to believe that the other party was alive at any time within that period is sufficient to establish the ground of the petition, unless it is shown that the other party to the marriage was alive at a time within that period.

(2) A decree on the ground specified in Section 17(n) shall be in the form of a decree of dissolution of marriage by reason of presumption of death.

## **27. CONDONATION OR CONNIVANCE.**

A decree of dissolution of marriage shall not be made on a ground specified in Section 17(a) to (k) if the petitioner has condoned, or has connived at, the ground.

**28. COLLUSION.**

A decree of dissolution of marriage shall not be made if the petitioner, in bringing or prosecuting the proceedings, has been guilty of collusion with intent to cause a perversion of justice.

**29. DISCRETIONARY BARS.**

The Court may in its discretion, refuse to make a decree of dissolution of marriage on a ground specified in Section 17(a) to (l) if, since the marriage—

- (a) the petitioner has committed adultery that has not been condoned by the respondent or that, having been so condoned, has been revived; or
- (b) the petitioner has been guilty of cruelty to the respondent; or
- (c) the petitioner has wilfully deserted the respondent before the happening of matters constituting the ground relied on by the petitioner or, where that ground involves matters occurring during, or extending over, a period, before the expiration of that period; or
- (d) the habits of the petitioner have, or the conduct of the petitioner has, conduced or contributed to the existence of the ground relied on by the petitioner.

**30. DECREE FOR DISSOLUTION WHERE PETITION FOR NULLITY.**

Where both a petition for a decree of nullity of a marriage and a petition for a decree of dissolution of the marriage are before the Court, the Court shall not make a decree of dissolution of the marriage unless it has dismissed the petition for a decree of nullity of the marriage.

**31. PETITION WITHIN THREE YEARS OF MARRIAGE.**

(1) In this section, a reference to the leave of the Court includes a reference to leave granted on appeal.

(2) Subject to this section, proceedings for a decree of dissolution of marriage shall not be instituted within three years after the date of the marriage except by leave of the Court.

(3) This section does not require the leave of the Court to the institution of proceedings for a decree of dissolution of marriage on one or more of the grounds specified in Section 17(a), (c) or (e), and on no other ground, or to the institution of proceedings for a decree of dissolution of marriage by way of cross-proceedings.

(4) The Court shall not grant leave under this section to institute proceedings except on the ground that—

- (a) to refuse to grant leave would impose exceptional hardship on the applicant; or
- (b) the case involves exceptional depravity on the part of the other party to the marriage.

(5) In determining an application for leave to institute proceedings under this section, the Court shall have regard to the interests of any children of the marriage and to the question whether

there is any reasonable probability of a reconciliation between the parties before the expiration of the period of three years after the date of the marriage.

(6) Where, at the hearing of proceedings that have been instituted by leave of the Court under this section, the Court is satisfied that the leave was obtained by misrepresentation or concealment of material facts, the Court may—

- (a) adjourn the hearing for such period as the Court thinks proper; or
- (b) dismiss the petition on the ground that the leave was so obtained.

(7) Where in a case to which Subsection (6) applies there is a cross-petition, if the Court adjourns or dismisses the petition under that subsection it shall also adjourn for the same period or dismiss, as the case may be, the cross-petition, but if the Court, having regard to the provisions of this section, thinks it proper to proceed to hear and determine the cross-petition it may do so, and in that case it shall also proceed to hear and determine the petition.

(8) The dismissal of a petition or a cross-petition under Subsection (6) or (7) does not prejudice any subsequent proceedings on the same, or substantially the same, facts as those constituting the ground on which the dismissed petition or cross-petition was brought.

(9) This section does not prevent the institution of proceedings, after the period of three years from the date of the marriage, based on matters that have occurred within that period.

### **32. CLAIM FOR DAMAGES.**

(1) A party to a marriage may, in a petition for a decree of dissolution of the marriage on the ground that the other party to the marriage has committed adultery with a person, or on grounds including that ground, claim damages from that person on the ground that that person has committed adultery with the other party to the marriage, and subject to this section the Court may award damages.

(2) The Court shall not award damages against a person—

- (a) where the adultery of the respondent with that person has been condoned, whether subsequently revived or not; or
- (b) if a decree of dissolution of the marriage on the ground of adultery of the respondent with that person, or on grounds including that ground, is not made.

(3) Damages shall not be awarded under this Act in respect of an act of adultery committed more than three years before the date of the petition.

(4) The Court may direct in what manner the damages awarded shall be paid or applied and, if it thinks fit, may direct that they be settled for the benefit of the respondent or the children of the marriage.

(5) No action for criminal conversation lies, whether under this Act or otherwise.

### **33. JOINDER OF ADULTERER, ETC.**



(1) Where, in a petition for a decree of dissolution of marriage or in answer to such a petition, a party to the marriage is alleged to have committed adultery with a specified person, whether or not a decree of dissolution of marriage is sought on the ground of the adultery, that person shall, except as provided by the Rules, be made a party to the proceedings.

(2) Where, in a petition for a decree of dissolution of marriage or in answer to such a petition, a party to the marriage is alleged to have committed rape or sodomy on or with a specified person, whether or not a decree of dissolution of marriage is sought on the ground of the rape or sodomy, that person shall, except as provided by the Rules, be served with notice that the allegation has been made, and is then entitled to intervene in the proceedings.

(3) Where a person has been made a party to proceedings for a decree of dissolution of marriage under Subsection (1), the Court may, on the application of the person, after the close of the case for the party to the marriage who alleged the adultery, dismiss that person from the proceedings if it is satisfied that there is not sufficient evidence to establish that that person committed adultery with the other party to the marriage.

#### **34. RE-MARRIAGE.**

Where a decree of dissolution of marriage under this Act has become absolute, a party to the marriage may marry again as if the marriage had been dissolved by death.

##### ***Division 2.***

Nullity of Marriage.

#### **35. GROUND FOR DECREE OF NULLITY OF MARRIAGE.**

Subject to this Division, a petition under this Act for a decree of nullity of marriage may be based on the ground that the marriage is void or on the ground that the marriage is voidable at the suit of the petitioner.

#### **36. INSTITUTION OF PROCEEDINGS.**

A decree of nullity of marriage shall not be made—

- (a) on the ground that the marriage is voidable because of the incapacity of a Party to the marriage to consummate the marriage—on the petition of the party suffering from the incapacity, unless he was not aware of the existence of the incapacity at the time of the marriage; or
- (b) on the ground that the marriage is voidable because a party to the marriage was, at the time at the marriage, of unsound mind or a mental defective, or was at that time suffering from a venereal disease in a communicable form—on the petition of the party suffering from the disability or disease; or
- (c) on the ground that the marriage is voidable because at the time of the marriage the wife was pregnant by a person other than the husband—on the petition of the wife.

#### **37. INCAPACITY TO CONSUMMATE MARRIAGE.**

(1) A decree of nullity of marriage shall not be made on the ground specified in Section 36(a) unless the Court is satisfied that the incapacity also existed at the time when the hearing of the petition commenced and that—

- (a) the incapacity is not curable; or
- (b) the respondent refuses to submit to such medical examination as the Court thinks necessary for the purpose of determining whether the incapacity is curable; or
- (c) the respondent refuses to submit to proper treatment for the purpose of curing the incapacity.

(2) A decree of nullity of marriage shall not be made on the ground specified in Section 36(a) where the Court is of opinion that—

- (a) by reason of—
  - (i) the petitioner's knowledge of the incapacity at the time of the marriage; or
  - (ii) the conduct of the petitioner since the marriage; or
  - (iii) the lapse of time; or
- (b) for any other reason,

it would, in the particular circumstances of the case, be harsh and oppressive to the respondent, or contrary to the public interest, to make a decree.

### **38. RESTRICTIONS ON CERTAIN GROUNDS.**

A decree of nullity of marriage shall not be made on a ground specified in Section 36(b) or (c) unless the Court is satisfied that—

- (a) the petitioner was, at the time of the marriage, ignorant of the facts constituting the ground; and
- (b) the petition was filed not later than 12 months after the date of the marriage; and
- (c) marital intercourse has not taken place with the consent of the petitioner since the petitioner discovered the existence of the facts constituting the ground.

### **39. EFFECT OF DECREE OF NULLITY OF A VOIDABLE MARRIAGE.**

(1) A decree of nullity of a voidable marriage annuls the marriage from and including the date on which the decree becomes absolute.

(2) Without prejudice to the operation of Subsection (1) in other respects, a decree of nullity under this Act of a voidable marriage does not make illegitimate a child of the parties born since, or legitimated by or during the marriage.

#### ***Division 3.***

Judicial Separation.

### **40. GROUNDS FOR JUDICIAL SEPARATION.**

Subject to this Division, a petition under this Act by a party to a marriage for a decree of judicial separation may be based on one or more of the grounds specified in Section 17(a) to (l).

#### **41. APPLICATION OF DIVISION 1 TO DIVISION 3.**

Sections 18 to 24 and 27 to 33 apply to and in relation to a decree of judicial separation and proceedings for such a decree, and for the purposes of those sections as so applying a reference in any of them to a decree of dissolution of marriage shall be read as a reference to a decree of judicial separation.

#### **42. EFFECT OF DECREE.**

A decree of judicial separation relieves the petitioner from the obligation to cohabit with the other party to the marriage while the decree remains in operation, but, except as provided by this Division, does not otherwise affect the marriage or the status, rights and obligations of the parties to the marriage.

#### **43. EFFECT ON RIGHTS TO SUE, DEVOLUTION OF PROPERTY, ETC.**

(1) While a decree of judicial separation is in operation, either party to the marriage may bring proceedings in contract or in tort against the other party.

(2) Where a party to a marriage dies intestate as to any property while a decree of judicial separation is in operation, the property devolves as if he had survived the other party to the marriage.

(3) Where on, or in consequence of, the making of a decree of judicial separation a husband is ordered to pay maintenance to his wife and the maintenance is not duly paid, the husband is liable for necessaries supplied for the wife's use.

#### **44. EXERCISE OF JOINT POWERS.**

This Division does not prevent a wife, during separation under a decree of judicial separation, from joining in the exercise of any power given to herself and her husband jointly.

#### **45. DISSOLUTION AFTER JUDICIAL SEPARATION.**

(1) A decree of judicial separation does not prevent the institution by either party to the marriage of proceedings for a decree of dissolution of marriage.

(2) In any proceedings for a decree of dissolution of marriage on the same, or substantially the same, facts as those on which a decree of judicial separation has been made, the Court may treat the decree of judicial separation as sufficient proof of the facts constituting the grounds on which that decree was made.

(3) Notwithstanding Subsection (2), the Court shall not grant a decree of dissolution of marriage without receiving evidence by the petitioner in support of the petition.

#### **46. DISCHARGE OF DECREE ON RESUMPTION OF COHABITATION.**

(1) Where, after a decree of judicial separation has been made, the parties have voluntarily resumed cohabitation, either party may apply for an order discharging the decree.

(2) On an application under Subsection (1), the Court shall, if both parties consent to the order, or if the Court is otherwise satisfied that the parties have voluntarily resumed cohabitation, make an order discharging the decree.

#### **47. APPLICATION OF SECTIONS 43 TO 46.**

Sections 43 to 46 apply to and in relation to a decree of judicial separation made before the commencement date by a court in the country as well as to such a decree made after that date.

##### ***Division 4.***

Restitution of Conjugal Rights.

#### **48. GROUNDS FOR DECREE OF RESTITUTION OF CONJUGAL RIGHTS.**

A petition under this Act by a Party to a marriage for a decree of restitution of conjugal rights may be based on the ground that the parties to the marriage, whether or not they have at any time cohabited, are not cohabiting and that, without just cause or excuse, the party against whom the decree is sought refuses to cohabit with, and render conjugal rights to, the petitioner.

#### **49. AGREEMENT FOR SEPARATION.**

An agreement for separation, whether entered into before or after the commencement date, does not constitute a defence to proceedings under this Act for a decree of restitution of conjugal rights.

#### **50. SINCERITY OF PETITIONER.**

The Court shall not make a decree of restitution of conjugal rights unless it is satisfied—

- (a) that the petitioner sincerely desires conjugal rights to be rendered by the respondent and is willing to render conjugal rights to the respondent; and
- (b) that a written request for cohabitation, expressed in conciliatory language, was made to the respondent before the institution of the proceedings, or that there are special circumstances that justify the making of a decree notwithstanding that such a request was not made.

#### **51. NOTICE AS TO HOME.**

Where the Court makes a decree of restitution of conjugal rights on the petition of a husband the petitioner shall, as soon as practicable after the making of the decree, and at such other times as the Rules require, give to the respondent notice, in accordance with the Rules, of the provision made by the petitioner, or that the petitioner is willing to make, with respect to a home for the purpose of enabling the respondent to comply with the decree.

#### **52. ENFORCEMENT OF DECREE.**

A decree of restitution of conjugal rights is not enforceable by attachment.

##### ***Division 5.***

Jactitation of Marriage.

**53. GROUNDS FOR DECREE OF JACTITATION OF MARRIAGE.**

A petition under this Act for a decree of jactitation of marriage may be based on the ground that the respondent has falsely boasted and persistently asserted that a marriage has taken place between the respondent and the petitioner.

**54. DECREE.**

Notwithstanding anything in this Act, the Court may, in its discretion, refuse to make a decree of jactitation of marriage.

***Division 6.***

General.

**55. FACTS, ETC., OCCURRING OUTSIDE THE COUNTRY, ETC.**

(1) A decree may be made, or refused, under this Part by reason of facts and circumstances notwithstanding that those facts and circumstances, or some of them, took place before the commencement date, or outside Papua New Guinea.

(2) For the purposes of this section, Sections 18, 19 and 20 extend to matters that occurred before the commencement date.

**56. INSTITUTION OF PROCEEDINGS.**

(1) Subject to Subsection (2), a matrimonial cause of a kind referred to in Paragraph (a) or (b) of the definition “matrimonial cause” in Section 1(1) shall be instituted by petition.

(2) In the answer to the petition, a respondent may seek any decree or declaration that the respondent could have sought in a petition.

(3) Proceedings of a kind referred to in Paragraph (c) of the definition “matrimonial cause” in Section 1(1) that are in relation to proceedings under this Act for a decree or declaration of a kind referred to in Paragraph (a) or (b) of that definition—

(a) may be instituted by the same petition as that by which the proceedings for the decree or declaration are instituted; and

(b) except as permitted by the Rules, or by leave of the Court, shall not be instituted in any other manner.

(4) As far as practicable the Court shall hear and determine at the same time all proceedings instituted by the one petition.

**57. ENTITLEMENT TO DECREE.**

Except as provided by this Act, the Court shall, on being satisfied of the existence of a ground in respect of which relief is sought, make the appropriate decree.

**58. DECREE NISI IN FIRST INSTANCE.**

A decree of dissolution of marriage or of nullity of a voidable marriage under this Act shall, in the first instance, be a decree nisi.

**59. DECREE ABSOLUTE WHERE CHILDREN UNDER 16, ETC.**

(1) In this section, “children of the marriage in relation to whom this section applies” means—

(a) the children of the marriage who are under the age of 16 years at the date of the decree nisi; and

(b) any children of the marriage in relation to whom the Court has, under Subsection (3) ordered that this section applies.

(2) Unless the Court declares that it is satisfied that there are no children of the marriage in relation to whom this section applies, a decree nisi does not become absolute unless the Court has, by order, declared that—

(a) it is satisfied that proper arrangements in all the circumstances have been made for the welfare and, where appropriate, advancement and education for the children of the marriage in relation to whom this section applies; or

(b) there are such special circumstances that the decree nisi should become absolute notwithstanding that the Court is not satisfied that such arrangements have been made.

(3) If in a particular case the Court is of opinion that there are special circumstances that justify its so doing, it may order that this section applies in relation to a child of the marriage who has attained the age of 16 years at the date of the decree nisi.

**60. TIME OF DECREE ABSOLUTE.**

(1) In this section, “appeal”, in relation to a decree nisi, means—

(a) an appeal, an application for leave to appeal or an intervention, against or arising out of—

(i) the decree nisi; or

(ii) an order under Section 59 in relation to the proceedings in which a decree nisi was made; or

(b) an application under Section 62 or 63 for rescission of the decree, or an appeal or application for leave to appeal arising out of such an application.

(2) Subject to this section, where Section 59 applies in relation to a decree nisi the decree nisi becomes absolute by force of this section at the expiration of—

(a) a period of three months after the making of the decree; or

(b) a period of 28 days after the making of an order under Section 59(2),

whichever is the later.

(3) Subject to this section, where Section 59 does not apply in relation to a decree nisi the decree nisi becomes absolute by force of this section on the expiration of a period of three months after the making of the decree.

(4) Where a decree nisi has been made in any proceedings, the Court or a court in which an appeal has been instituted may, whether before or after it has disposed of the proceedings or appeal and whether or not a previous order has been made under this subsection—

(a) having regard to the possibility of an appeal or further appeal—make an order extending the period at the expiration of which the decree nisi will become absolute; or

(b) if it is satisfied that there are special circumstances that justify its so doing—make an order reducing the period at the expiration of which the decree nisi will become absolute.

(5) Where an appeal is instituted (whether or not it is the first appeal) before a decree nisi has become absolute, then, notwithstanding any order in force under Subsection (4) at the time of the institution of the appeal but subject to any such order made after the institution of the appeal, the decree nisi, unless reversed or rescinded, becomes absolute by force of this section—

(a) at the expiration of a period of 28 days after the day on which the appeal is determined or discontinued; or

(b) on the day on which the decree would have become absolute under Subsection (2) or (3) if no appeal had been instituted,

whichever is the later.

(6) A decree nisi does not become absolute by force of this section where either of the parties to the marriage has died.

#### **61. CERTIFICATE AS TO DECREE ABSOLUTE.**

(1) When a decree nisi becomes absolute, the Registrar of the Court shall prepare and file a memorandum of the fact and of the date on which the decree became absolute.

(2) When a decree nisi has become absolute, any person is entitled on application to the Registrar of the Court, and on payment of the appropriate fee, to receive a certificate signed by the Registrar that the decree nisi has become absolute.

(3) A certificate given under Subsection (2) is, in all courts and for all purposes, evidence of the matters specified in the certificate.

#### **62. RESCISSION OF DECREE NISI WHERE PARTIES RECONCILED, ETC.**

Notwithstanding anything in this Division, where a decree nisi has been made in proceedings for a decree of dissolution of marriage, the Court may, at any time before the decree becomes absolute, on the application of either of the parties to the marriage, rescind the decree on the ground that the parties to the marriage have become reconciled.

#### **63. RESCISSION OF DECREE NISI ON GROUND OF MISCARRIAGE OF JUSTICE.**

Where a decree nisi has been made but has not become absolute, if the Court, on the application of a party to the proceedings, is satisfied that there has been a miscarriage of justice by reason of fraud, perjury, suppression of evidence or any other circumstance, it may rescind the decree and, if it thinks fit, order that the proceedings be reheard.

**64. APPEAL AFTER DECREE ABSOLUTE.**

An appeal does not lie from a decree of dissolution of marriage or nullity of a voidable marriage after the decree has become absolute.

**PART VI. – INTERVENTION.**

**65. INTERVENTION BY ATTORNEY-GENERAL ON REQUEST OF COURT.**

In proceedings under this Act, where the Court requests him to do so the Attorney-General may intervene in, and contest or argue any question arising in, the proceedings.

**66. INTERVENTION BY ATTORNEY-GENERAL IN OTHER CASES.**

In proceedings under this Act–

- (a) for a decree of dissolution or nullity of marriage, judicial separation or restitution of conjugal rights; or
- (b) in relation to the custody or guardianship of children,

where the Attorney-General has reason to believe that there are matters relevant to the proceedings that have not been or may not be, but ought to be, made known to the Court, he may, at any time before the proceedings are finally disposed of, intervene in the proceedings.

**67. DELEGATION BY ATTORNEY-GENERAL.**

The Attorney-General may, by writing under his hand, delegate all or any of his powers and functions under this Part (except this power of delegation) to the person occupying a prescribed office.

**68. INTERVENTION BY OTHER PERSONS.**

(1) In proceedings under this Act for a decree of dissolution or nullity of marriage, judicial separation or restitution of conjugal rights, where a person applies to the Court for leave to intervene in the proceedings and the Court is satisfied that he may be able to prove facts relevant to the proceedings that have not been or may not be, but ought to be, made known to the Court, the Court may, at any time before the proceedings are finally disposed of, make an order entitling him to intervene in the proceedings.

(2) An order under Subsection (1) may be made on such conditions as the Court thinks proper, including the giving of security for costs.

**69. RESCISSION OF DECREE NISI ON INTERVENTION.**

Where an intervention takes place under this Part after a decree nisi has been made and it is proved that–

- (a) the petitioner has been guilty of collusion with intent to cause a perversion of justice; or
- (b) material facts have not been brought before the Court,



the Court may rescind the decree.

#### **70. OPERATION OF PART VI.**

For the purposes of this Part, where a decree nisi has been made in any proceedings the proceedings shall not be taken to have been finally disposed of until the decree nisi has become absolute.

#### **71. STATUS OF INTERVENERS.**

A person intervening under this Part or Part V. shall be deemed to be a party in the proceedings, with all the rights, duties and liabilities of a party.

#### **PART VII. – MAINTENANCE, CUSTODY AND SETTLEMENTS.**

#### **72. INTERPRETATION OF PART VII.**

In this Part, “marriage” includes a purported marriage that is void.

#### **73. POWERS OF COURT IN MAINTENANCE PROCEEDINGS.**

(1) Subject to this section, in proceedings with respect to the maintenance of a party to a marriage or of children of the marriage, other than proceedings for an order for maintenance pending the disposal of proceedings the Court may make such order as it thinks proper, having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances.

(2) Subject to this section and to the Rules, in proceedings for an order for the maintenance of a party to a marriage or of children of the marriage pending the disposal of proceedings, the Court may make such order as it thinks proper, having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances.

(3) The Court may make an order for the maintenance of a party notwithstanding that a decree is or has been made against that party in the proceedings to which the proceedings with respect to maintenance are related.

(4) The power of the Court to make an order with respect to the maintenance of children of the marriage shall not be exercised for the benefit of a child who has attained the age of 21 years unless the Court is of opinion that there are special circumstances that justify the making of such an order for his benefit.

#### **74. POWERS OF COURT IN CUSTODY, ETC., PROCEEDINGS.**

(1) In proceedings with respect to the custody, guardianship, welfare, advancement or education of children of a marriage—

- (a) the Court shall regard the interests of the children as the paramount consideration; and
- (b) subject to Paragraph (a), the Court may make such order in respect of those matters as it thinks proper.

(2) The Court may adjourn any proceedings referred to in Subsection (1) until a report has been obtained from a welfare officer on such matters relevant to the proceedings as the Court thinks desirable, and the Court may receive the report in evidence.

(3) In proceedings with respect to the custody of children of a marriage, if the Court is satisfied that it is desirable it may make an order placing the children, or such of them as it thinks fit, in the custody of a person other than a party to the marriage.

(4) Where the Court makes an order placing a child of a marriage in the custody of a person, it may include in the order such provision as it thinks proper for access to the child by parties or a party to the marriage.

#### **75. POWERS OF COURT WITH RESPECT TO SETTLEMENT OF PROPERTY.**

(1) In proceedings under this Act, the Court may by order require the parties to the marriage, or either of them, to make, for the benefit of all or any of the parties to, and the children of, the marriage, such settlement of property to which the parties are, or either of them is, entitled (whether in possession or in reversion) as the Court thinks just and equitable in the circumstances.

(2) In proceedings under this Act, the Court may make such order as the Court thinks just and equitable with respect to the application, for the benefit of all or any of the parties to, and the children of, the marriage, of the whole or part of property dealt with by ante-nuptial or post-nuptial settlements on the parties to the marriage, or either of them.

(3) The power of the Court to make orders of a kind referred to in this section shall not be exercised for the benefit of a child who has attained the age of 21 years unless the Court is of opinion that there are special circumstances that justify the making of such an order for his benefit.

#### **76. GENERAL POWERS OF COURT.**

(1) In exercising its power under this Part the Court may do any or all of the following:—

- (a) order that a lump sum or weekly, monthly, yearly or other periodical sum be paid;
- (b) order that a lump sum or a weekly, monthly, yearly or other periodical sum be secured;
- (c) where a periodical sum is ordered to be paid, order that its payment be wholly or partly secured in such a manner as the Court directs;
- (d) order that any necessary deed or instrument be executed and that such documents of title be produced or such other things be done as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;
- (e) appoint or remove trustees;
- (f) order that payments be made direct to a party to the marriage, or to a trustee to be appointed or to a public authority for the benefit of a party to the marriage;
- (g) order that payment of maintenance in respect of a child be made to such person or public authority as the Court specifies;
- (h) make a permanent order, an order pending the disposal of proceedings or an order for a fixed term or for a life or during joint lives, or an order until further order;

- (i) impose terms and conditions;
- (j) in relation to an order made in respect of a matter referred to in Section 73, 74 or 75, whether made before or after the commencement date—
  - (i) discharge the order if the party in whose favour it was made marries again or if there is any other just cause for so doing; or
  - (ii) modify the effect of the order or suspend its operation wholly or in part, and until further order or until a fixed time or the happening of some future event; or
  - (iii) revive wholly or in part an order suspended under Subparagraph (ii); or
  - (iv) subject to Subsection (2), vary the order so as to increase or decrease any amount ordered to be paid by the order;
- (k) sanction an agreement for the acceptance of a lump sum or periodical sums or other benefits in place of rights under an order made in respect of a matter referred to in Section 73, 74 or 75, or any right to seek such an order;
- (l) make any other order (whether or not of the same nature as the orders specified in the preceding paragraphs of this subsection, and whether or not it is in accordance with the practice under other laws before the commencement date) that it thinks necessary to make in order to do justice;
- (m) include its order under this Part in a decree under another Part;
- (n) subject to this Act, make an order under this part at any time before or after the making of a decree under another Part.

(2) The Court shall not make an order increasing or decreasing an amount ordered to be paid under Subsection (1) unless it is satisfied—

- (a) that, since the order was made or last varied, the circumstances of the parties or either of them, or of a child for whose benefit the order was made, have changed to such an extent as to justify its so doing; or
- (b) that material facts were withheld from the court that made the order or from a court that varied the order, or material evidence previously given before such a court was false.

(3) The Court shall not make an order increasing or decreasing—

- (a) the security for the payment of a periodical sum ordered to be paid; or
- (b) the amount of a lump sum or periodical sum ordered to be secured,

unless it is satisfied that material facts were withheld from the court that made the order or from a court that varied the order, or that material evidence given before such a court was false.

## **77. EXECUTION OF DEEDS, ETC., BY ORDER OF COURT.**

(1) Where a person who is directed by an order under this Part to execute a deed or instrument refuses or neglects to do so, or where service of any such order on any such person is dispensed with under Section 94, the Court may appoint an officer of the Court or other person to execute the deed or instrument in his own name in the place of that person, and to do all acts and things necessary to give validity and operation to the deed or instrument.

(2) The execution of a deed or instrument by a person appointed under Subsection (1) has the same force and validity as if it had been executed by the person directed by the order to execute it.

(3) The Court may make such order as it thinks just as to the payment of the costs and expenses of and incidental to the preparation of the deed or instrument and its execution.

#### **78. ORDERS WHERE PETITION DISMISSED.**

(1) In this section, “principal relief” means relief of a kind specified in Paragraph (a) or (b) of the definition “matrimonial cause” in Section 1(1).

(2) Except as provided by this section, the Court shall not make an order under this Part where the petition for the principal relief has been dismissed.

(3) Where—

(a) the petition for the principal relief has been dismissed after a hearing on the merits; and

(b) the Court is satisfied that—

(i) the proceedings for the principal relief were instituted in good faith to obtain that relief; and

(ii) there is no reasonable likelihood of the parties becoming reconciled,

the Court may, if it thinks it desirable, make an order under this Part, other than an order under Section 75.

(4) The Court shall not make an order under Subsection (3) unless it has heard the proceedings for the order at the same time as, or immediately after, the proceedings for the principal relief.

#### **PART VIII. – RECOGNITION OF FOREIGN DECREES.**

#### **79. RECOGNITION OF FOREIGN DECREES.**

(1) In this section, “foreign country” means a country, or part of a country other than Papua New Guinea and Australia and the Territories of Australia.

(2) A dissolution or annulment of a marriage effected in accordance with the law of a foreign country shall be recognized as valid in Papua New Guinea where, at the date of the institution of the proceedings that result in the dissolution or annulment, the party at whose instance the dissolution or annulment was effected (or, if it were effected at the instance of both parties, either of those parties) was—

(a) in the case of the dissolution of a marriage or the annulment of a voidable marriage—domiciled in the foreign country; or

(b) in the case of the annulment of a void marriage—domiciled or resident in the foreign country.

(3) For the purposes of Subsection (2)—

(a) where a dissolution of marriage was effected in accordance with the law of a foreign country at the instance of a deserted wife who was domiciled in the foreign country immediately before

her marriage or immediately before the desertion, she shall be deemed to have been domiciled in the foreign country at the date of the institution of the proceedings that resulted in the dissolution; and

(b) a wife who, at the date of the institution of the proceedings that resulted in a dissolution or annulment of her marriage in accordance with the law of a foreign country, was resident in the foreign country and had been so resident for a period of three years immediately preceding that date shall be deemed to have been domiciled in the foreign country at that date.

(4) A dissolution or annulment of a marriage effected in accordance with the law of a foreign country, not being a dissolution or annulment to which Subsection (2) applies, shall be recognized as valid in Papua New Guinea if its validity would have been recognized under the law of the foreign country in which, in the case of a dissolution, the parties were domiciled at the date of the dissolution or in which, in the case of an annulment, either party was domiciled at the date of the annulment.

(5) A dissolution or annulment of a marriage that would be recognized as valid under the common law rules of private international law but to which the preceding provisions of this section do not apply shall be recognized as valid in Papua New Guinea, and the operation of this subsection shall not be limited by any implication from those provisions.

(6) For the purposes of this section, a court in Papua New Guinea, in considering the validity of a dissolution or annulment effected under the law of a foreign country, may treat as proved any facts found by a court of the foreign country or otherwise established for the purpose of the law of the foreign country.

(7) A dissolution or annulment of a marriage shall not be recognized as valid by virtue of Subsection (2) or (4) where, under the common law rules of private international law, recognition of its validity would be refused on the ground that a party to the marriage had been denied natural justice.

(8) This section applies in relation to dissolutions and annulments made, whether by decree, legislation or otherwise, before or after the commencement date.

#### **PART IX. – EVIDENCE.**

##### **80. STANDARD OF PROOF.**

(1) For the purposes of this Act, a matter of fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court.

(2) Where a provision of this Act requires the Court to be satisfied of the existence of any ground or fact or as to any other matter, it is sufficient if the Court is reasonably satisfied of the existence of that ground or fact or as to that other matter.

##### **81. EVIDENCE OF HUSBANDS AND WIVES.**

(1) Subject to this Part, all parties and the wives and husbands of all parties are competent and compellable witnesses in proceedings under this Act.

(2) Subject to Subsection (3), in proceedings under this Act either spouse is competent, but not compellable, to disclose communications made between them during the marriage.

(3) Where a husband and wife are both parties to proceedings under this Act, each of them is competent and compellable to disclose communications made between them during the marriage.

(4) Subsections (2) and (3) apply to communications made before as well as after the commencement date.

## **82. EVIDENCE OF NON-ACCESS.**

In proceedings under this Act, either party to a marriage is competent to give evidence proving or tending to prove that the parties to the marriage did not have sexual relations with each other at any particular time, but is not compellable to give such evidence if it would show or tend to show that a child born to the wife during the marriage was illegitimate.

## **83. EVIDENCE AS TO ADULTERY.**

(1) A witness in proceedings under this Act, who—

- (a) being a party, voluntarily gives evidence on his own behalf; or
- (b) whether he is a party or not, is called by a party,

may be asked, and is bound to answer, a question the answer to which may show, or tend to show, adultery by or with the witness where proof of the adultery would be material to the decision of the case.

(2) Except as provided by Subsection (1), a witness in proceedings under this Act (whether a party to the proceedings or not) is not liable to be asked, or bound to answer, a question the answer to which may show, or tend to show, that he has committed adultery.

## **84. PROOF OF MARRIAGE, ETC.**

In proceedings under this Act, the Court may receive as evidence of the facts stated in it a document purporting to be the original or a certified copy of the certificate, entry or record of a birth, death or marriage alleged to have taken place in Papua New Guinea or elsewhere.

## **85. EVIDENCE OF RAPE, ETC.**

(1) In proceedings under this Act—

- (a) evidence that a person, being a party to a marriage, was, after the marriage, convicted (whether in Papua New Guinea or elsewhere) of rape, or of any other offence of which sexual intercourse with a person of the opposite sex is an element, is evidence that he committed adultery with the person on whom the rape or other offence was committed; and
- (b) evidence that a person, being a party to a marriage was, after the marriage, convicted

(whether in Papua New Guinea or elsewhere) of sodomy or bestiality is evidence that he committed sodomy or bestiality, as the case may be.

(2) In proceedings under this Act, a certificate of the conviction of a person for an offence, on a date specified in the certificate, by a court of a State or Territory of Australia or of any part of the Queen's dominions, being a certificate purporting to be signed by the registrar or other appropriate officer of that court, is evidence of the fact and date of the conviction and, if the certificate shows that a sentence of imprisonment was imposed, of the fact that that sentence was imposed.

#### **PART X. – ENFORCEMENT OF DECREES.**

#### **86. ATTACHMENT.**

(1) Subject to the Rules, the Court may enforce by attachment or by sequestration an order made by it under this Act for payment of maintenance or costs, or in respect of custody of or access to children.

(2) The Court shall order the release from custody of a person who has been attached under this section on being satisfied that he has complied with the order in respect of which he was attached and may at any time, if the Court is satisfied that it is just and equitable to do so, order the release of such a person notwithstanding that he has not complied with the order.

(3) Where a person who has been attached under this section in consequence of his failure to comply with an order for the payment of maintenance or costs becomes a bankrupt, he shall not be kept in custody under the attachment for more than six months after he becomes a bankrupt, unless the Court otherwise orders.

#### **87. RECOVERY UNDER DECREES.**

(1) Where a decree made under this Act orders the payment of money to a person, money payable under the decree may be recovered as a judgement debt in a court of competent jurisdiction.

(2) A decree made under this Act may be enforced, by leave of the Court and on such terms and conditions as the Court thinks proper, against the estate of a deceased party.

#### **88. SUMMARY ENFORCEMENT OF ORDERS FOR MAINTENANCE.**

Where the Court has made an order for payment of maintenance under this Act, the order may be registered, in accordance with the Rules, in a court of summary jurisdiction, and an order so registered may, subject to the Rules, be enforced in the same manner as if it were an order for maintenance of a deserted wife made by the court of summary jurisdiction.

#### **89. ENFORCEMENT OF MAINTENANCE ORDERS BY ATTACHMENT OF EARNINGS.**

An order under this Act for the payment of maintenance may be enforced in accordance with Schedule 2, and the provisions of that Schedule have effect in relation to the enforcement of such orders.

**90. ENFORCEMENT OF DECREES BY OTHER MEANS.**

Subject to this Act, the Rules may make provision for the enforcement of decrees made under this Act by means other than those specified in the preceding provisions of this Part.

**91. ENFORCEMENT OF EXISTING DECREES.**

A decree made in the country in a matrimonial cause before the commencement date may be enforced—

- (a) in any manner in which it could be enforced if this Act had not been made; or
- (b) subject to the Rules, in any manner in which a similar decree made by the Court under this Act may be enforced.

**PART XI. – MISCELLANEOUS.**

**92. HEARINGS TO BE IN OPEN COURT.**

(1) Except to the extent to which the Rules make provision for proceedings, or part of proceedings, to be heard in chambers, the jurisdiction of the Court under this Act shall, subject to Subsection (2), be exercised in open court.

(2) Where, in proceedings under this Act, the Court is satisfied that there are special circumstances that make it desirable in the interests of the proper administration of justice that the proceedings, or part of the proceedings, should not be heard in open court, the Court may order that any persons not being—

- (a) parties to the proceedings; or
- (b) their lawyers,

be excluded during the hearing of the proceedings or the part of the proceedings, as the case may be.

**93. TRANSACTIONS INTENDED TO DEFEAT CLAIMS.**

(1) In this section, “disposition” includes a sale and a gift.

(2) In proceedings under this Act, the Court may set aside or restrain the making of an instrument or disposition by or on behalf of, or by direction or in the interests of, a party, if it is made or proposed to be made to defeat an existing or anticipated order in the proceedings for costs, damages, maintenance or the making or variation of a settlement.

(3) The Court may order that money or property dealt with by an instrument or disposition referred to in Subsection (2) may be taken in execution or charged with the payment of such sums for costs, damages or maintenance as the Court directs, or that the proceeds of a sale shall be paid into court to abide its order.



(4) In making an order or setting aside or restraining the making of an instrument or disposition under this section, the Court shall have regard to the interests of, and shall make any order proper for the protection of, a bona fide purchaser or other person interested.

(5) A party or a person acting in collusion with a party may be ordered to pay the costs of any other party, or of a bona fide purchaser or other person interested, of and incidental to an instrument or disposition referred to in this section and the setting aside or restraining of it.

#### **94. SERVICE OF PROCESS.**

(1) Service of process of a court under this Act may be effected in or outside Papua New Guinea in accordance with the Rules.

(2) The Court may dispense with service where the Court thinks it necessary or expedient.

#### **95. RESTRICTIONS ON PUBLICATION OF EVIDENCE.**

(1) In this section—

“court” includes an officer of a court investigating a matter in accordance with the Rules;  
“judgement of the court” includes a report made to the court by such an officer.

(2) Except as provided in this section, a person who, in relation to any proceedings under this Act, prints or publishes, or causes to be printed or published, any account of evidence in the proceedings, or any other account or particulars of the proceedings, other than—

(a) the names, addresses and occupations of the parties and witnesses, and the name or names of the member or members of the court and of the lawyers; and

(b) a concise statement of the nature and grounds of the proceedings and of the charges, defences and countercharges in support of which evidence has been given; and

(c) submissions on any points of law arising in the course of the proceedings, and the decision of the court on those points; and

(d) the judgement of the court and observations made by the court in giving judgement,

is guilty of an offence.

(3) The court may, if it thinks fit in any particular proceedings, order that none of the matters referred to in Subsection (2)(a), (b), (c) or (d) shall be printed or published, or that any such matter or part of a matter shall not be printed or published.

(4) A person who contravenes Subsection (2), or prints or publishes, or causes to be printed or published, anything in contravention of an order of the court under Subsection (3), is guilty of an offence.

Penalty: For a first offence, or a second or subsequent offence prosecuted summarily—a fine not exceeding K1,000 or imprisonment for a term not exceeding six months.

For a second, or subsequent offence prosecuted on indictment—a fine not exceeding K2,000 or imprisonment for a term not exceeding 12 months.

(5) Proceedings for an offence against this section shall not be commenced except by, or with the written consent of, the Public Prosecutor.

(6) This section does not apply to or in relation to—

(a) the printing of any pleading, transcript of evidence or other document for use in connection with proceedings in a court, or the communication of any such document to persons concerned in the proceedings; or

(b) the printing or publishing of a notice or report under the direction of a court; or

(c) the printing or publishing of a publication bona fide intended primarily for the use of members of the legal or medical profession, being—

(i) a separate volume or part of a series of law reports; or

(ii) any other publication of a technical character; or

(d) the printing or publishing of a photograph of a person, not being a photograph forming part of the evidence in proceedings under this Act.

## **96. INJUNCTIONS.**

The Court may grant an injunction, by interlocutory order or otherwise (including an injunction in aid of the enforcement of a decree), where it appears to the Court to be just or convenient, and either unconditionally or on such terms and conditions as the Court thinks just.

## **97. COSTS.**

Subject to the Rules, in proceedings under this Act the Court may make such orders as to costs and security for costs, whether by way of interlocutory order or otherwise, as the Court thinks just.

## **98. FRIVOLOUS OR VEXATIOUS PROCEEDINGS.**

(1) At any stage of proceedings under this Act, if the Court is satisfied that the proceedings are frivolous or vexatious it may dismiss the proceedings.

(2) At any stage of proceedings under this Act, if the Court is satisfied that the allegations made in respect of a party to the proceedings are frivolous or vexatious it may order that the party be dismissed from the proceedings.

## **SCHEDULE 1 – OATH AND AFFIRMATION OF SECRECY.**

Sec. 8(1), 13.

Oath.

I, . . . , do swear that I will not disclose to any person any communication or admission made to me in my capacity as a marriage guidance counsellor (or marriage conciliator) except so far as it

is necessary for me to do so for the proper discharge of my functions as a marriage guidance counsellor (or marriage conciliator).

So help me God!

Affirmation.

I, . . . , do solemnly and sincerely affirm and declare that I will not disclose to any person any communication or admission made to me in my capacity as a marriage guidance counsellor (or marriage conciliator) except so far as it is necessary for me to do so for the proper discharge of my functions as a marriage guidance counsellor (or marriage conciliator).

## SCHEDULE 2 – ENFORCEMENT OF ORDERS FOR MAINTENANCE.

Sec. 89.

### PART I – PRELIMINARY.

#### Sch. 2.I.1. Interpretation of Schedule 2.

(1) In this Schedule, unless the contrary intention appears—

“attachment of earnings order” means an order under Section Sch. 2.4 or Sch. 2.5;

“the court”, in relation to any proceedings, means the court exercising jurisdiction in those proceedings.

“defendant”, in relation to a maintenance order, means the person liable to make payments under the order;

“earnings”, in relation to a defendant, means any sums payable to the defendant—

(a) by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary); or

(b) by way of pension, including—

(i) an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity; and

(ii) periodical payments by way of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments of any office or employment,

but not including—

(iii) pension payable to the defendant under the Social Services Act 1947-1975, the Repatriation Act 1920-1975 or the Seamen’s War Pensions and Allowances Act 1940-1975, all of Australia and all as in force from time to time; or

(iv) pension payable to the defendant in respect of injury, disablement or disability;

“employer”, in relation to a defendant, means a person (including the State, the Crown in right of Australia or of a State of Australia and any authority of the Government or of Australia) by whom, as a principal and not as a servant or agent, earnings are payable or are likely to become payable to the defendant;

“maintenance order” means an order under this Act for the payment of maintenance and includes such an order that has been discharged if arrears are recoverable under it;

“net earnings”, in relation to a pay-day, means the amount of earnings becoming payable on that pay-day, after the deduction of any sum deducted from them under Division VI.2 of the [Income Tax Act 1959](#),

“normal deduction”, in relation to an attachment of earnings order and in relation to a pay-day, means an amount representing a payment at the normal deduction rate specified in the order in respect of the period between that pay-day and the previous pay-day, or where there is no earlier pay-day the date on which the employer became, or last became, the defendant’s employer;

“pay-day” means an occasion on which earnings to which an attachment of earnings order relates become payable;

“protected earnings”, in relation to an attachment of earnings order and in relation to a pay-day, means the amount representing a payment at the protected earnings rate specified in the order in respect of the period between that pay-day and the previous pay-day or where there is no last preceding pay-day the date on which the employer became, or last became, the defendant’s employer;

“protected earnings rate”, in relation to an attachment of earnings order, means the rate below which, having regard to the resources and needs of the defendant and of any person for whom he must or reasonably may provide, the court considers it to be reasonable that the net earnings of the defendant should not be reduced by a payment under the order.

(2) In this Schedule—

(a) a reference to a person entitled to receive payments under a maintenance order is a reference to a person entitled to receive payments under the maintenance order directly or through another person or for transmission to another person; and

(b) a reference to proceedings relating to an order includes a reference to proceedings in which the order may be made; and

(c) a reference to costs incurred in proceedings relating to a maintenance order shall be read, in the case of a maintenance order made by the National Court, as a reference to such costs as are included in an order for costs relating solely to that maintenance order.

**Sch. 2.I.2.**Effect of Schedule 2.

This Schedule has effect in relation to a defendant notwithstanding any law that would otherwise prevent the attachment of his earnings or limit the amount capable of being attached.

## **PART II** – ATTACHMENT OF EARNINGS ORDERS.

**Sch. 2.II.3.** Application for order.

Subject to this Schedule, a person entitled to receive payments under a maintenance order may apply to—

- (a) the National Court; or
- (b) a court in which the order is for the time being registered under Section 88, for an attachment of earnings order.

**Sch. 2.II.4.**Making of orders on application.

If the court is satisfied that the defendant is a person to whom earnings are payable or are likely to become payable and that—

(a) at the time when the application was made, there was due under the maintenance order and unpaid an amount equal to not less than—

- (i) in the case of an order for weekly payments—four payments; or
- (ii) in any other case—two payments; or

(b) the defendant has wilfully and persistently failed to comply with the requirements of the order,

the court may, in its discretion, by order require a person who appears to the court to be the defendant's employer in respect of those earnings or a part of those earnings to make out of them or that part of them payments in accordance with Section Sch. 2.14(1).

**Sch. 2.II.5.**Making of orders on other occasions.

Where the proceedings for attachment are brought in the National Court under Section 86, or where proceedings are taken in a court of summary jurisdiction to enforce an order registered in that court under Section 88, the National Court or the court of summary jurisdiction, as the case may be, may, instead of making any other order, make an attachment of earnings order.

**Sch. 2.II.6.**Contents, etc., of orders.

(1) The court shall not make an attachment of earnings order if it appears to the court, in a case to which Section Sch. 2.4(a) applies, that the failure of the defendant to make payments under the maintenance order was not due to his wilful refusal or culpable neglect.

(2) An attachment of earnings order shall specify the normal deduction rate, that is to say, the rate at which the court thinks it reasonable that the earnings to which the order relates should be applied in satisfying the requirements of the maintenance order, but not exceeding the rate that appears to the court to be necessary for the purpose of—

- (a) securing payment of the sums from time to time falling due under the maintenance order; and
- (b) securing payment within a reasonable time of any sums already due and unpaid under the maintenance order and of any costs incurred in proceedings relating to the maintenance order that are payable by the defendant.

(3) An attachment of earnings order shall also specify the protected earnings rate.

(4) An attachment of earnings order shall provide that payments under the order are to be made to an officer of the court specified in the order.

(5) An attachment of earnings order shall contain such particulars as the court thinks proper for the purpose of enabling the person to whom the order is directed to identify the defendant.

(6) An attachment of earnings order does not come into force until the expiration of seven days after the day on which a copy of the order is served on the person to whom the order is directed.

**Sch. 2.II.7.**Statement by defendant as to employment.

(1) Where proceedings relating to an attachment of earnings order are brought in a court, the court may, before or after the hearing—

(a) order the defendant to furnish to the court, within a specified period, a statement signed by him specifying—

(i) the name and address of his employer, or if he has more than one employer each of his employers; and

(ii) particulars as to his earnings; and

(iii) such particulars as are necessary to enable him to be identified by any of his employers; and

(b) order any person who appears to the court to be an employer of the defendant to give to the court, within a specified period, a statement signed by him or on his behalf containing such particulars as are specified in the order of all earnings of the defendant that become payable by that person during a specified period.

(2) In any proceedings relating to an attachment of earnings order, a document purporting to be a statement referred to in Subsection (1) shall be received in evidence and shall, unless the contrary is shown, be deemed without further proof to be such a statement.

**Sch. 2.II.8.**Notice denying employment.

A person to whom an attachment of earnings order is directed, who, at the time when a copy of the order is served on him or at any time after that time, has not on any occasion during the period of four weeks immediately preceding that time been, the defendant's employer shall immediately give notice in writing accordingly to the proper officer of the court which made the order.

**Sch. 2.II.9.**Effect of order on enforcement of maintenance order.

Where an attachment of earnings order has been made, no writ, order or warrant of commitment or attachment shall be issued or made in proceedings for the enforcement of the maintenance order that were begun before the making of the attachment of earnings order.

**Sch. 2.II.10.**Application for interpretation of order.

(1) On the application of—

(a) the person to whom an attachment of earnings order is directed; or

(b) the defendant; or

(c) the person in whose favour the order was made,

the court by which an attachment of earnings order was made shall determine whether payments to the defendant of a particular class or description specified in the application are earnings for the purposes of that order.

(2) A person to whom an attachment of earnings order is directed who makes an application under Subsection (1) does not incur any liability for failing to comply with the order with respect to payments of the class or description specified in the application that are made by him to the defendant while the application, or an appeal from a determination made on the application, is pending.

(3) Subsection (2) does not apply in respect of a payment made after—

(a) the application has been withdrawn; or

(b) an appeal from a determination made on the application has been abandoned.

#### **Sch. 2.II.11.** Discharge, variation, etc.

(1) On the application of the defendant or of a person entitled to receive payments under the maintenance order, the court by which an attachment of earnings order was made may, in its discretion, make an order discharging or varying the attachment of earnings order.

(2) An order varying an attachment of earnings order shall not come into force until the expiration of seven days after the date on which the order is served on the person to whom the attachment of earnings order is directed.

#### **Sch. 2.II.12.** Cessation of orders.

(1) An attachment of earnings order ceases to have effect—

(a) on the issuing or making of a writ, order or warrant of commitment or attachment for the enforcement of the maintenance order in relation to which the attachment of earnings order applies; or

(b) subject to Subsection (2), on its discharge or variation.

(2) Where it appears to the court on the discharge of a maintenance order that arrears under it will remain to be recovered under it, the court may, in its discretion, direct that it shall not cease to have effect until the arrears have been paid.

(3) Where an attachment of earnings order ceases to have effect, the proper officer of the court by which the order was made shall immediately give notice to the person to whom the order was directed.

### **PART III** – PAYMENTS UNDER ORDERS.

#### **Sch. 2.III.13.** Compliance with orders.

(1) Notwithstanding any other law, but subject to this Schedule, a person to whom an attachment of earnings order is directed shall comply with the order or, if the order is varied, with the order as varied.

(2) Where on any occasion on which earnings become payable to a defendant there are in force two or more attachments of earnings orders in relation to the earnings, the person to whom the orders are directed—

(a) shall comply with those orders according to the respective dates on which they came into force, and shall disregard an order until any earlier order has been complied with; and

(b) shall comply with any order as if the earnings to which the order relates were the residue of the defendant's earnings after making any payment under any earlier order.

#### **Sch. 2.III.14.**Payments by employer.

(1) An employer to whom an attachment of earnings order is directed, being an attachment of earning order that is in force, shall, in respect of each pay-day, if the net earnings of the defendant exceed the sum of—

(a) the protected earnings of the defendant; and

(b) so much of the amount by which the net earnings that become payable on any previous pay-day were less than the protected earnings for the purposes of that pay-day as has not been made good on any other previous pay-day,

pay, so far as the excess permits, to the officer specified for the purpose in the order—

(c) the normal deduction; and

(d) so much of the normal deduction for the purposes of any previous pay-day as was not paid on that pay-day and has not been paid on any other previous pay-day.

(2) A payment made by the employer under Subsection (1) is a valid discharge to him as against the defendant to the extent of the amount paid.

(3) Where an attachment of earnings order ceases to have effect or is discharged, the person to whom the attachment of earnings order is directed does not incur any liability in consequence of his treating the order as still in force at any time before the expiration of seven days after the date on which the notice required by Section Sch. 2.12(3) or a copy of the discharging order, as the case may be, is served on him.

(4) On each occasion on which an employer makes a payment under this Schedule in respect of a defendant, the employer may retain for his own use out of any balance of the defendant's earnings remaining after the making of that payment the sum of 5t, or, if on that occasion the employer makes payments under two or more attachments of earnings orders relating to the defendant, the sum of 5t in respect of each sum payment.

(5) A person who makes a payment in compliance with an attachment of earnings order shall give to the defendant a notice specifying particulars of the payment.



**Sch. 2.III.15.**Payments out.

The officer to whom an employer pays a sum under an attachment of earnings order shall pay it to such person entitled to receive payments under the maintenance order as is specified by the attachment of earnings order.

**Sch. 2.III.16.**Effect of payments.

A sum received by virtue of an attachment of earnings order by the person entitled to receive it shall be deemed to be a payment made by the defendant to that person, so as to discharge first any sums due and unpaid under the maintenance order (a sum due at an earlier date being discharged before a sum due at a later date) and secondly any costs incurred in proceedings relating to the maintenance order that were payable by the defendant when the attachment of earnings order was made or last varied.

**PART IV** – OFFENCES.

**Sch. 2.IV.17.** Failure to comply, false statements, etc.

(1) A person who—

(a) fails to comply with a requirement of this Schedule, or of an order made under this Schedule, that is applicable to him; or

(b) in a statement or notice furnished to a court under this Schedule, or in compliance with an order made under this Schedule, makes a statement that he knows to be false or misleading in a material particular; or

(c) recklessly furnishes such a statement or notice that is false or misleading in a material particular,

is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(2) It is a defence to a charge of an offence against Subsection (1) if the defendant proves that he took all reasonable steps to comply with the requirements or order.

**Sch. 2.IV.18.**Prejudicing on account of order.

(1) A person who—

(a) dismisses an employee; or

(b) injures him in his employment; or

(c) alters his position to his prejudice,

by reason of the circumstance—

(d) that an attachment of earnings order has been made in relation to the employee; or

(e) that the person is required to make payments under such an order in relation to the employee,

is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(2) If in any proceedings for an offence against Subsection (1) all the facts and circumstances constituting the offence, other than the reason for the action of the person charged with having committed the offence, are proved, the burden of proving that he was not actuated by the reason alleged in the charge is on the person charged.

(3) Where a person is convicted of an offence against Subsection (1), the court by which he is convicted may order that the employee be reimbursed any wages lost by him, and may also direct that the employee be re-instated in his old position or in a similar position.

Office of Legislative Counsel, PNG