



Tuvalu

MATRIMONIAL PROCEEDINGS ACT

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Tuvalu

MATRIMONIAL PROCEEDINGS ACT

AN ACT TO MAKE NEW PROVISION FOR DIVORCE, AND FOR RELATED MATTERS¹

Commencement [1 January 1985]²

PART I - PRELIMINARY

1 Short title

This Act may be cited as the Matrimonial Proceedings Act.

2 Purpose of this Act

- (1) The purpose of this Act is to provide for the legal consequences of the final breakdown of a marriage, including divorce, the welfare of children and property rights.
- (2) To minimize the ill-effects of a breakdown, attempts at reconciliation and the lessening (if possible) of the common bitterness resulting from a marriage failure must be given prominence, and if the divorce does go ahead it must be remembered that if there are children what is being broken up is not just a marriage but a family unit, and the children, as members of that unit must be given every care and protection.
- (3) The Act says nothing one way or the other about the moral or religious implications of a marriage failure.

PART II - INTERPRETATION

3 Interpretation

In this Act —

“**associated proceedings**” means any proceedings under Part IV, whether commenced or determined before or after a divorce;

“**matrimonial proceedings**” means —

- (a) proceedings for a divorce, in accordance with Part III; or
- (b) associated proceedings.

PART III - JURISDICTION

4 Ground of jurisdiction

The courts of Tuvalu have jurisdiction, in accordance with this Act, over matrimonial proceedings where —

- (a) both of the parties to the marriage are domiciled in Tuvalu; or
- (b) both of the parties to the marriage are normally resident in Tuvalu and have been so resident for not less than six months; or
- (c) where the parties to the marriage have separated - the applicant is a person to whom paragraph (a) or (b) applies.

5 *Repealed*³

6 Jurisdiction of Magistrates' Courts

- (1) A Magistrate's Court has jurisdiction in all matrimonial proceedings.⁴
- (2) If in any matrimonial proceedings before a Magistrate's Court constituted otherwise than by the Senior Magistrate the Court thinks that a question (whether of law or of fact) of special difficulty has arisen or may arise, the Court may transfer the proceedings to a Magistrate's Court constituted by the Senior Magistrate.

7 Appeal, review, etc.

The provisions of all laws relating to appeals from and reviews of decisions of island courts and Magistrates' Courts apply to and in relation to decisions in matrimonial proceedings.

PART III - DIVORCE PROCEEDINGS

8 Right to divorce in certain cases

If—

- (a) one party to a marriage has wilfully refused to consummate the marriage; or
- (b) the marriage has been induced by fraud, duress or mistake,

the injured party to the marriage is, subject to Part IV, entitled to a divorce.

9 Grounds for divorce

- (1) Subject to section 8, the only ground for divorce is that the marriage has completely broken down.
- (2) Without limiting what may be accepted as evidence that a marriage has broken down, a court may accept as such evidence proof that —
 - (a) the respondent has, since the celebration of the marriage, committed adultery; or
 - (b) the respondent has deserted the applicant without reasonable cause; or
 - (c) the respondent has, since the celebration of the marriage, treated the applicant with cruelty; or
 - (d) the respondent is certified by a medical officer or medical practitioner approved for the purposes of the Mental Treatment Act⁵—
 - (i) to be of unsound mind; and
 - (ii) to be unlikely to recover; or
 - (e) in the circumstances it would be unreasonable to expect one party to continue in the marriage relationship with the other,

but no such evidence relieves the court from the duty to determine whether or not the marriage has completely broken down.

10 Conciliation, etc.

Where proceedings are brought under section 9, unless the court certifies that —

- (a) in its opinion no attempt to reconcile the parties is likely to succeed; or
- (b) there are in the circumstances of the case special reasons why a divorce should be granted immediately,

the court shall, at some convenient stage of the proceedings and before giving judgment, adjourn the proceedings for a period fixed by the court (not being less than 3 months) in order to allow the parties to settle their differences.

11 Grant of divorce

- (1) Subject to this Act and in particular to Part IV, a court may, upon being satisfied as to any matter referred to in section 8(a) or (b) or section 9(1), grant a divorce.
- (2) On the grant of a divorce the court shall —
 - (a) forward to the Registrar-General a certificate of divorce in the form in the Schedule; and
 - (b) issue to each of the parties, on request, a copy of the certificate.
- (3) On receipt of a certificate of divorce the Registrar-General shall, in such manner as he thinks proper —
 - (a) enter the certificate in a Register of Divorces; and
 - (b) annotate any relevant entry in the Register of Marriages accordingly.

PART IV - RELATED MATTERS

12 Children

- (1) In any matrimonial proceedings concerning a marriage of which there are children (whether natural children, adopted children or step-children), the welfare of the children is of paramount importance, at least equal to that of the parties to the marriage.
- (2) Accordingly, unless the court is satisfied that adequate arrangements have been made or will be made, for the welfare of the children it shall normally refuse to grant a divorce or defer the grant.
- (3) In any matrimonial proceedings the court may make all such orders as it thinks necessary or desirable in the interests of the children.
- (4) An order made under subsection (3) may make provision to take effect —
 - (a) pending the determination of the proceedings; or
 - (b) on the grant of the divorce.
- (5) Orders made under subsection (3) —
 - (a) shall not be inconsistent with any other law, or any applicable Tuvaluan custom; and
 - (b) may include orders relating to —
 - (i) custody, guardianship and access to the children by one or both of the parties to the marriage; and
 - (ii) matters referred to in section 13; and
 - (iii) matters referred to in section 14.

13 Property rights

- (1) In any matrimonial proceedings the court may make all such orders as it thinks necessary or desirable to adjust the property rights of —
 - (a) the parties to the marriage; or
 - (b) any children to whom section 12 applies; or
 - (c) any other persons affected.
- (2) An order made under subsection (1) may make provision to take effect —
 - (a) pending the determination of the proceedings; or
 - (b) on the grant of the divorce.
- (3) Orders made under subsection (1) —
 - (a) shall not be unreasonable or inconsistent with any other law, or any applicable Tuvaluan custom; and
 - (b) may include orders relating to —
 - (i) the division of property; and
 - (ii) the transfer of property; and
 - (iii) the vesting of property; and
 - (iv) maintenance, whether of a party to the marriage, a child or any other person affected.
- (4) In order to limit as far as possible the continuing bad effects of the breakdown of a marriage, the court shall use its best endeavours to finally conclude all matters to which this section relates before the divorce is granted, and as far as practicable by consent.

14 Other orders

- (1) In any matrimonial proceedings the court may make any other order, direction or arrangement that it considers necessary or desirable for the purposes of this Act.
- (2) Orders made under subsection (1) shall not be unreasonable or inconsistent with any other law, or any applicable Tuvaluan custom.

15 Orders after divorce

If —

- (a) any matter as to which an order under this Part might be made has not been finally settled before a divorce is granted; or
- (b) relevant circumstances change significantly,

a Magistrate's Court may, at any time after a divorce is granted, on application by or on behalf of any interested person —

- (c) make any order that it might make under this Part if the matrimonial proceedings had not been terminated; or
- (d) vary or unmake —
 - (i) any order made under this Part; or
 - (ii) any order made under paragraph (c).

PART V - MISCELLANEOUS

16 Technical rules

- (1) Subject to subsection (2), the former bars to divorce known as condonation, connivance, conduct conducing, and collusion, as well as other technical rules (such as the requirement of corroboration in certain cases), are abolished.
- (2) Notwithstanding subsection (1), any matter to which that subsection applies may be relevant to evidence establishing a ground for divorce under this Act.

17 King's Proctor

Notwithstanding section 59(2) of the Interpretation and General Clauses Act⁶, there shall be no office of King's Proctor, or any similar or analogous office, for Tuvalu.

18 Rules of Court

In addition to rules of court that may be made under any other law, the Chief Justice may make rules —

- (a) to provide for the service of process under this Act and for dispensing with such service;
- (b) to prescribe forms to be used for the purposes of this Act;
- (c) to regulate practice and procedure under this Act;
- (d) generally, for the better carrying into effect of the purpose of this Act.

SCHEDULE

(Section 11(2))

CERTIFICATE OF DIVORCE

IN THE SENIOR MAGISTRATE’S COURT/ MAGISTRATE’S COURT

AT..... No.

The marriage of
 and

celebrated at..... on

is dissolved under the Matrimonial Proceedings Act.

.....
Senior Magistrate/Magistrate/

.....
Seal of the Court

*Delete as appropriate

ENDNOTES

¹ 1990 Revised Edition, Cap. 21 – Act 8 of 1984

Amended by Act 9 of 2021, commencement 3 June 2022 by LN 26/2022; This amending Act contained a section that provided that orders, rulings, decisions, or judgments of an Island Court concerning the repealed section 5 of this Act, are saved, remain valid and continue in force; and likewise certain pending matters before the Island Court continue for determination by the Magistrate’s Court

² LN 13/86

³ Repealed by Act 9 of 2021

⁴ Amended by Act 9 of 2021

⁵ Cap. 28.16

⁶ Cap. 1.04