

**For information**

**Bills Committee on  
Matrimonial Proceedings and Property (Amendment) Bill 2010**

**Background**

At the meeting of the Bills Committee held on 10 September 2010, the Administration was requested to provide the Bills Committee with further information on various provisions of the draft Bill.

**Restriction to apply after remarriage under new section 29AB**

2. New section 29AB(2) of the Bill provides that “If after a marriage has been dissolved or annulled in a place outside Hong Kong, one of the parties to the marriage remarries, that party is not entitled to make an application in relation to that marriage.” A similar provision can be found in s.12(2) of the English Matrimonial and Family Proceedings Act 1984 (“1984 Act”).

3. In the Explanatory Notes on the draft Bill enclosed in the English Law Commission’s Report on “Family Law – Financial Relief after Foreign Divorce” (“the Report”)<sup>1</sup>, it was stated that the relevant subsection [the equivalent of section 12 (2) of the 1984 Act], which prevented application under the Bill after the applicant was remarried, corresponded to a similar restriction in divorce proceedings in England and Wales, namely, s.28(3) of the Matrimonial Causes Act 1973 (“MCA 1973”).

4. The ceasing of periodical payments to an ex-spouse who later remarries under the MCA 1973 appears to be based on a recommendation of the Law Commission in its report published in 1969: “Family Law – Report on Financial

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<sup>1</sup> Law Com. No. 117

Provision in Matrimonial Proceedings”<sup>2</sup>. One of the issues considered at the time was whether periodical payments should cease and for all time on remarriage of the payee. In the 1969 report, the Commission revealed that the consultations suggested that there was almost unanimous support (which included that of the various women’s organizations) for the view that periodical payment should finally cease on remarriage.<sup>3</sup>

5. It was further stated (in para. 14 the 1969 Report) that “a wife who has gone through a form of marriage with a second ‘husband’ should not be entitled to revive her rights against her first husband by having her second ‘marriage’ annulled. If the annulment was in England the English courts have power to order financial provision from the second ‘husband’.” The Law Commission acknowledged that it could be the case if the divorce took place in a foreign country and the courts of that country might not have similar power to order financial provision from the second husband leaving the wife without rights against either husband. It nevertheless took the view that the principle must be that once another marriage had been contracted, that destroyed any claim against a former spouse. The Law Commission further recommended that “remarriage” should include a foreign marriage or a void or voidable marriage.

6. Provisions having similar effect of s.28 of the MCA 1973 can be found in s.9 of the Matrimonial Proceedings and Property Ordinance (Cap. 192) (“the Ordinance”). Under s.9(2)(a) and (b) of the Ordinance, the remarriage of a payee of periodical payments after divorce will put an end to either secured or unsecured periodical payments as may be ordered by the court under s.4(1)(a) or (b) of the Ordinance. Section 9(4) of the Ordinance further restricts an ex-spouse who has remarried from applying for financial provisions against a party to whom he/she was formerly married. Section 9(4) corresponds to s.28(3) of the MCA 1973.

7. On the basis of the above discussion, it would seem that the bar to apply for financial relief against a former spouse whom the applicant has

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<sup>2</sup> Law Com. No. 25

<sup>3</sup> Para. 14 of the Law Commission Report No.25 (Report on Financial Provision in Matrimonial Proceedings) 1969 p.7

divorced may well have drawn reference to the provisions in the MCA 1973, which in turn is based on the Law Commission's 1969 report. There is however no suggestion that this position should be changed, whether in England or in Hong Kong.

8. In the consultation exercise conducted in the first quarter of 2010, the Hong Kong Bar Association also queried the need for retaining such a provision. However, the Judiciary took a different view. The Judiciary considered that 'remarriage' has always been an automatic bar to applications for ancillary relief in 'local' divorce proceedings in Hong Kong, as in England. The Judiciary saw no reason why the bar should not apply to applications for financial relief after a foreign divorce.

9. After reviewing the background of the relevant provisions and the views of the consultees, the Administration submits that the new section 29AB(2) should be retained. In the judgment of *Agbaje v Agbaje*<sup>4</sup>, the UK Supreme Court pointed out that parties should not be allowed to take advantage of the potentially more generous approach of the English court to financial provision. Since parties to divorce proceedings initiated in Hong Kong will be subject to the same restriction, there is no justification to adopt a more generous approach towards parties who have divorced in other jurisdictions but seeking financial relief in Hong Kong.

10. The bar against an application for financial relief by a party who has remarried applies to a marriage which is "void" or "voidable". The position is similar to divorce proceedings which take place in Hong Kong. A "void" or "voidable" marriage is defined by s.20 of the Matrimonial Causes Ordinance, Cap. 179. There is no specific explanation offered for the inclusion of a void or voidable marriage in the case of a remarriage. The new section 29AB(2) corresponds to s.9(4) of the Ordinance. The Administration does not propose to change the existing provisions until the matter has been duly discussed and a consensus reached among the stakeholders. For the same reason, we propose that the new section 29AB(2) should be retained.

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<sup>4</sup> [2010] UKSC 13. The relevant parts of the judgment have been quoted in paragraphs 22 and 23 of LC Paper No. CB(2) 2228/09-10(01)

11. Our research indicated that in some other jurisdictions, remarriage (including a marriage which is “void” or “voidable”) continues to operate as a bar against application for financial relief against a former spouse, for instance, under s.70A of the Family Proceedings Act 1980 of New Zealand. It is submitted that if the new section 29AB(2) were to be removed, this may encourage parties who would otherwise be restricted from applying for financial relief against his/her former spouse in their home jurisdiction to apply to the Hong Kong court for such relief. This is not the intent for the introduction of Part IIA of the Ordinance and may also result in an increase of caseloads in our courts.

### **Leave to apply for financial relief under new section 29AC**

#### I. “Substantial Ground” for making an application

12. The new section 29AC of the Bill requires a person to obtain the leave of the court before applying for financial relief and sub-section (2) provides that leave will only be granted if the court considers that there is *substantial ground* for the making of an application for such an order. Section 29AC is similar to s.13 of the 1984 Act.

13. Section 13 of the 1984 Act was introduced in accordance with the Law Commission’s recommendation. In paragraph 2.5 of the 1982 Report, it was stated that –

“The issue before the court on the hearing of an application for leave will be whether the applicant has established a substantial ground for the making of an application. Essentially this will involve the court in estimating, on the basis of the applicant’s uncontroverted statements, his prospects of success in satisfying the court that it would be appropriate for an order for financial relief to be made. The essential difference between application for leave and the hearing of the substantive application will be two-fold. First, on the application the court will normally only have one side of the story before it, and will have to proceed on the basis of the

applicant's evidence alone; on the hearing of the substantive application the court will hear both sides (unless the respondent decides not to attend). Secondly, the burden on the applicant will inevitably be somewhat lower at the stage of the application for leave than will be the case on the hearing of the substantive application. At the first stage the applicant will merely have to satisfy the court that there is 'substantial ground' for making the application; at the final stage he will have to satisfy the court that it is in all the circumstances appropriate that an order be made."

14. The various cases mentioned in LC Paper No. CB(2)2228/09-10(01) seemed to support the view that when considering whether there is "substantial ground" for the making of an application for financial relief, the provisions of s.16 of the 1984 Act must be taken into account.<sup>5</sup>

15. In *Holmes v Holmes*<sup>6</sup>, the Court of Appeal ("the CA") held that in determining, for the purposes of s.13(1) of the 1984 Act, whether there was substantial ground for the making of an application for financial relief, the provisions of that Act had to be taken into account. Accordingly, if on the application for leave to apply it was clear that if leave was given the application for relief would fail because it would not be appropriate for an order for such relief to be made by a court in England and Wales, then it would be wrong for the court to grant leave.

16. In *Moore v Moore*<sup>7</sup>, the CA held that in considering an application under Part III of the 1984 Act, ss. 13 and 16 have to be taken in conjunction. In considering whether there was "substantial ground" for the application, the judge should have regarded to all the matters referred to in s.16(2). The CA confirmed the decision in *Jordan v Jordan*<sup>8</sup> that it was not necessary for the applicant to establish hardship or injustice in order to obtain leave.

17. The issue of "proper scope and role of the application for leave" was discussed by the CA in *Agbaje v Agbaje* [2009] EWCA Civ. 1 (paragraphs

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<sup>5</sup> See also Halsbury's Laws of England, Vol.29(3) Matrimonial Law paragraph 895 footnote number 4.

<sup>6</sup> [1989] 3 All ER 786

<sup>7</sup> [2007] EWCA Civ. 361, [2007] 2FLR 339 at 361

<sup>8</sup> [2000] 1WLR 210

29–30). The CA opined that, as made plain by the Law Commission, the application for leave was to act as a “filter”. The object was to give the potential respondent adequate protection against having to present a strong defence at substantial cost particularly if he was resident abroad. The intention was to provide some measure of protection against the possibility of applications being used to exert improper pressure to settle in order to avoid the expense of contesting an application.

18. The CA further held that the prescribed rules cast the burden on the applicant to give full and frank disclosure of all relevant matters. The task of the judge was then to consider whether there was substantial ground for making an order, pursuant to s.13(1) of the 1984 Act, which was undoubtedly a higher threshold than one operating in the Court of Appeal, namely, whether there was a realistic rather than fanciful prospect of success. The CA added that although the hurdle was set somewhat higher, the judicial task remained essentially a quick impressionistic assessment of the merits bearing in mind the object of the exercise was to weed out the weak case.

19. The CA’s decision was overturned by the U.K. Supreme Court (“the SC”) and the issue of application for leave was also mentioned in its judgement (paragraphs 23–33) but the SC did not seem to have taken a different view on s.13(2). On the proper application of the threshold of “substantial ground”, the SC accepted that the term “substantial” may lack precision. The SC further commented that –

“In the present context the principal object of the filter mechanism is to prevent wholly unmeritorious claims being pursued to oppress or blackmail a former spouse. The threshold is not high, but is higher than ‘serious issue to be tried’ or ‘good arguable case’ found in other contexts. It is perhaps best expressed by saying that in this context ‘substantial’ means ‘solid’...” (paragraph 33)

20. By reference to the 1982 Report and the case precedents, it would seem that the Law Commission has deliberately set a relatively high threshold to filter applications for financial relief under Part III of the 1984 Act. Such an approach was adopted in order to offer sufficient protection to prospective

respondents in view of the possibility that an application under Part III may be abused to exert improper pressure on the other side. The various cases discussed also demonstrate that while the threshold for granting leave under s.13 (the equivalent of section 29AC of the Bill) may seem high, the burden is lower than the application for financial relief under s.16 (the equivalent of section 29 AF of the Bill).

21. As the new Part IIA to be added to the Ordinance is modelled on Part III of the 1984 Act, the Administration considers that the “substantial ground” test provided in the new section 29AC(2) should be retained to safeguard the interests of respondents given that applications under the new section 29AB is to be made *ex parte*. It is further submitted that the relevant English cases considered by the UKSC and CA should serve as useful references when similar arguments are presented to the courts of Hong Kong.

## II. Foreign court’s order for making payment or transfer of property

22. The new section 29AC(3) provides that “the court may grant leave under this section despite the fact an order has been made by a competent authority outside Hong Kong requiring the other party to the marriage to make any payment or transfer any property to, or for the benefit of, the applicant or a child of the family”

23. The new section 29AC(3) is similar to s.13(2) of the 1984 Act. It was stated that in the Explanatory Notes on the draft Bill<sup>9</sup> enclosed in the 1982 Report that “this subsection makes it clear that the existence of a financial or property adjustment order made in any country outside England and Wales is not, in itself, a bar to the granting of leave under this clause.”

24. Some members were concerned whether the expression “make any payment or transfer of any property” would be adequate to cover any order of financial provisions made by the court, whatever the nature of the property concerned.

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<sup>9</sup> Law Com. No. 117, see p. 23

25. “Property” is defined in s.2(1) of the Ordinance to mean “any real or personal property, any estate or interest in real or personal property, any money, any negotiable instrument, any prescribed instrument with the meaning of section 137B of the Banking Ordinance (Cap 155), debt or other chose in action, and any other right or interest whether in possession or not.”

26. Under s.137B of the Banking Ordinance (Cap 155), “prescribed instrument” is defined to mean, inter alia, an instrument specified in the Sixth Schedule of Cap. 155, and includes any right or interest (i) arising directly or indirectly under, or in respect of the instrument, and (ii) which may be evidenced by a written document, information recorded in the form of any entry in a book of account, or recorded in a non-legible form but which is capable of being reproduced in a legible form.

27. In view of the broad definition of “property”, the Administration submits that the wording of new section 29AC(3) should be able to cover any property included in an order for financial relief as may be made by a foreign court.

28. It should be noted that s.6(1)(a) of the Ordinance also provides that on granting a decree of divorce, the court of Hong Kong may make “an order that a party to the marriage shall transfer to the other party, to any child of the family ... such property as may be so specified, being property to which the first-mentioned party is entitled, either in possession or reversion”. The concept of transfer of property is therefore not novel in the Ordinance. The Administration therefore submits that no change should be made to the wording of new section 29AC(3).

### **Financial Relief to parties of a foreign divorce in other jurisdictions**

#### **I. Australia**

29. Australia has not included in its legislation a specific part or chapter similar to Part III of the 1984 Act which is dedicated to deal with applications for financial relief after recognition of a foreign divorce. Under the Family Law



Act 1975 (“FLA 1975”), “matrimonial causes” is given a broad meaning which includes –

- proceedings between the parties to a marriage with respect to the maintenance of one of the parties to the marriage (s. 4(1)(c));
- proceedings between the parties to a marriage with respect to the property of the parties to the marriage or either of them, including proceedings in relation to the divorce of the parties, the annulment of that marriage or the legal separation of the parties to that marriage in accordance with the law of an overseas jurisdiction which is recognized as valid in Australia (s.4(1)(ca)(iii)).

30. The FLA 1975 further provides that “a party to a marriage” includes a person who was a party to a marriage that has been terminated by divorce or annulled, whether in Australia or elsewhere (s.4(2)). Reading s.4(1) and (2) together, a party to a marriage which has been terminated or annulled outside Australia may institute proceedings for an order for spousal maintenance. Similarly, under the FLA 1975, a child to a marriage is defined to include “child to a marriage which has been terminated by divorce or annulled in Australia or elsewhere” (s.60F(2)(a)) and application for child maintenance after a foreign divorce seems permissible.

31. The Family Court may have jurisdiction in respect of the relevant matrimonial causes proceedings if, (i) either party to the marriage (in the case of any proceedings between the parties to a marriage); or (ii) in any other cases, any party to the proceedings, is an Australian citizen; ordinarily resident in Australia or present in Australia (s.39(4)). [A copy of the relevant provisions of the FLA 1975 is at Annex 1.]

## II. New Zealand

32. Like Australia, an application for financial provisions after a foreign divorce is subject to the general provisions of the Family Proceedings Act 1980 (“FPA 1980”) as the Act contains no dedicated part on financial relief after foreign divorce. Under s.70(4) of the FPA 1980, a reference to an order

dissolving a marriage includes a reference to a decree or order or legislative enactment recognised in New Zealand. For the New Zealand courts to exercise jurisdiction in maintenance proceedings, it is necessary to prove that any party to the proceedings resides or is domiciled in the country (s.4(a)).

33. The FPA 1980 does not seem to specifically provide for application for child maintenance after a foreign divorce. A person under 19 years who is a New Zealand citizen or is ordinarily resident in New Zealand, not living with another person in a marriage and is not financially independent, may qualify for child support under the Child Support Act 1991 (“CSA 1991”) (s.5). Child support may be sought from a parent of the child (as defined by s.7 of the Act) and who is a New Zealand citizen or is ordinarily resident in New Zealand or in a country with which New Zealand has entered into a reciprocal agreement for enforcement of child support (s.6(1)). The CSA 1991 does not seem to have made any reference to the marital status of the parents, whether within New Zealand or elsewhere. [A copy of the relevant provisions of the FPA 1980 and CSA 1991 is at Annex 2.]

### III. Canada

34. No specific legislation governing applications for financial relief after a foreign divorce can be found. The relevance of the Divorce Act 1985 (“DA 1985”) was discussed in *Okmyansky v Okmyansky* [2007] ONCA 427 in which the couple were formerly married in the USSR but divorced by a Russian court in 2004. The wife claimed spousal support under the Act and also sought division of assets under the Family Law Act.

35. The Ontario Court of Appeal ruled that the court (in Ontario) did not have jurisdiction to hear and determine a corollary relief proceedings under the DA 1985 following a valid divorce in a foreign jurisdiction (para. 41).

### IV. Singapore

36. In July 2009, the Law Reform Committee of Singapore issued the

“Report of The Law Reform Committee on Ancillary Orders after Foreign Divorce or Annulment”. The Committee recommended that the ancillary matrimonial jurisdiction of the Singapore court be expanded, along the lines of the law reform effected in the United Kingdom, namely, Part III of 1984 Act (paragraph 58).

37. The Committee proposed three levels of safeguards which are similar to those in Part III of the 1984 Act –

- (a) the parties have a genuine connection with Singapore, and
- (b) there are substantial grounds upon which the court could be asked to exercise its new powers, in order to obtain leave to commence proceedings;

and when these jurisdictional requirements are satisfied,

- (c) the court must be satisfied that Singapore is the appropriate venue before it makes the ancillary orders for financial relief.

(paragraph 61).

38. A draft Bill to amend the Women’s Charter (Cap. 353) is also annexed to the Report. The proposed amendments are similar to ss. 12(1), 13, 14, 15 and 16 of the 1984 Act. It is proposed that the Singapore court should have jurisdiction to deal with an application for financial relief if either of the parties to the marriage was domiciled in Singapore or was habitually resident in Singapore for one year immediately preceding the date of the application for leave or on which the divorce etc. took effect.

Legal Policy Division  
Department of Justice  
September 2010

**Family Law Act 1975 (Australia)**

....

**Section 4**

**Interpretation**

(1) In this Act, the standard Rules of Court and the related Federal Magistrates Rules, unless the contrary intention appears:

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*"matrimonial cause"* means

(a) proceedings between the parties to a marriage, or by the parties to a marriage, for:

- (i) a divorce order in relation to the marriage; or
- (ii) a decree of nullity of marriage; or

(b) proceedings for a declaration as to the validity of:

- (i) a marriage; or
- (ii) a divorce; or
- (iii) the annulment of a marriage;

by decree or otherwise; or

(c) proceedings between the parties to a marriage with respect to the maintenance of one of the parties to the marriage; or

(caa) proceedings between:

- (i) a party to a marriage; and
- (ii) the bankruptcy trustee of a bankrupt party to the marriage;

with respect to the maintenance of the first-mentioned party; or

(ca) proceedings between the parties to a marriage with respect to the property of the parties to the marriage or either of them, being proceedings:

- (i) arising out of the marital relationship;
  - (ii) in relation to concurrent, pending or completed divorce or validity of marriage proceedings between those parties; or
  - (iii) in relation to the divorce of the parties to that marriage, the annulment of that marriage or the legal separation of the parties to that marriage, being a divorce, annulment or legal separation effected in accordance with the law of an overseas jurisdiction, where that divorce, annulment or legal separation is recognised as valid in Australia under section 104; or
- (cb) proceedings between:
- (i) a party to a marriage; and
  - (ii) the bankruptcy trustee of a bankrupt party to the marriage;

with respect to any vested bankruptcy property in relation to the bankrupt party, being proceedings:

- (iii) arising out of the marital relationship; or
  - (iv) in relation to concurrent, pending or completed divorce or validity of marriage proceedings between the parties to the marriage; or
  - (v) in relation to the divorce of the parties to the marriage, the annulment of the marriage or the legal separation of the parties to the marriage, being a divorce, annulment or legal separation effected in accordance with the law of an overseas jurisdiction, where that divorce, annulment or legal separation is recognised as valid in Australia under section 104; or
- (d) proceedings between the parties to a marriage for the approval by a court of a maintenance agreement or for the revocation of such an approval or for the registration of a maintenance agreement; or
- (e) proceedings between the parties to a marriage for an order or injunction in circumstances arising out of the marital relationship (other than proceedings under a law of a State or Territory prescribed for the purposes of section 114AB); or
- (ea) proceedings between:

- (i) the parties to a marriage; or
- (ii) if one of the parties to a marriage has died--the other party to the marriage and the legal personal representative of the deceased party to the marriage;

being proceedings:

- (iii) for the enforcement of, or otherwise in relation to, a maintenance agreement that has been approved under section 87 and the approval of which has not been revoked;
- (iv) in relation to a maintenance agreement the approval of which under section 87 has been revoked; or
- (v) with respect to the enforcement under this Act or the applicable Rules of Court of a maintenance agreement that is registered in a court under section 86 or an overseas maintenance agreement that is registered in a court under regulations made pursuant to section 89; or

(eaa) without limiting any of the preceding paragraphs, proceedings with respect to a financial agreement that are between any combination of:

- (i) the parties to that agreement; and
- (ii) the legal personal representatives of any of those parties who have died;

(including a combination consisting solely of parties or consisting solely of representatives); or

(eab) third party proceedings (as defined in section 4A) to set aside a financial agreement; or

(eb) proceedings with respect to the enforcement of a decree made under the law of an overseas jurisdiction in proceedings of a kind referred to in paragraph (c); or

(f) any other proceedings (including proceedings with respect to the enforcement of a decree or the service of process) in relation to concurrent, pending or completed proceedings of a kind referred to in any of paragraphs (a) to (eb), including proceedings of such a kind pending at, or completed before, the commencement of this Act.

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- (2) A reference in this Act, the standard Rules of Court or the related Federal Magistrates Rules to a party to a marriage includes a reference to a person who was a party to a marriage that has been:
- (a) terminated by divorce (in Australia or elsewhere); or
  - (b) annulled (in Australia or elsewhere); or
  - (c) terminated by the death of one party to the marriage.

....

### **Section 39**

#### **Jurisdiction in matrimonial causes**

- (1) Subject to this Part, a matrimonial cause may be instituted under this Act:
- (a) in the Family Court; or
  - (b) in the Supreme Court of a State or a Territory.
- (1A) Subject to this Part, a matrimonial cause (other than proceedings of a kind referred to in subparagraph (a)(ii) or paragraph (b) of the definition of matrimonial cause in subsection 4(1)) may be instituted under this Act in the Federal Magistrates Court.
- (2) Subject to this Part, a matrimonial cause (other than proceedings of a kind referred to in subparagraph (a)(ii) or paragraph (b) of the definition of matrimonial cause in subsection 4(1)) may be instituted under this Act in a Court of summary jurisdiction of a State or Territory.
- (3) Proceedings for a divorce order may be instituted under this Act if, at the date on which the application for the order is filed in a court, either party to the marriage:
- (a) is an Australian citizen;
  - (b) is domiciled in Australia; or

(c) is ordinarily resident in Australia and has been so resident for 1 year immediately preceding that date.

(4) Proceedings of a kind referred to in the definition of matrimonial cause in subsection 4(1), other than proceedings for a divorce order or proceedings referred to in paragraph (f) of that definition, may be instituted under this Act if:

- (a) in the case of proceedings between the parties to a marriage or proceedings of a kind referred to in paragraph (b) of that definition in relation to a marriage--either party to the marriage is an Australian citizen, is ordinarily resident in Australia, or is present in Australia, at the relevant date; and
- (b) in any other case--any party to the proceedings is an Australian citizen, is ordinarily resident in Australia, or is present in Australia, at the relevant date.

(4A) In subsection (4), relevant date, in relation to proceedings, means:

- (a) if the application instituting the proceedings is filed in a court--the date on which the application is so filed; or
- (b) in any other case--the date on which the application instituting the proceedings is made.

(5) Subject to this Part and to section 111AA, the Supreme Court of each State is invested with federal jurisdiction, and jurisdiction is conferred on the Family Court and on the Supreme Court of each Territory, with respect to matters arising under this Act in respect of which:

- (a) matrimonial causes are instituted under this Act; or
- (b) matrimonial causes are continued in accordance with section 9; or
- (d) proceedings are instituted under regulations made for the purposes of section 109, 110, 111, 111A or 111B or of paragraph 125(1)(f) or (g) or under Rules of Court made for the purposes of paragraph 123(1)(r); or
- (da) proceedings are instituted under Division 4 of Part XIII AA or under regulations made for the purposes of section 111CZ; or
- (e) proceedings are instituted under section 117A.



(5AA) Subject to this Part and to section 111AA, the Federal Magistrates Court has, and is taken always to have had, jurisdiction with respect to matters arising under this Act in respect of which matrimonial causes (other than proceedings of a kind referred to in subparagraph (a)(ii) or paragraph (b) of the definition of matrimonial cause in subsection 4(1)) are instituted under this Act.

(5A) Subject to this Part and to section 111AA, the Federal Magistrates Court has jurisdiction with respect to matters arising under this Act in respect of which proceedings are instituted under:

- (a) regulations made for the purposes of section 109, 110, 111, 111A or 111B; or
- (b) regulations made for the purposes of paragraph 125(1)(f) or (g); or
- (c) section 117A; or
- (d) proceedings are instituted under Division 4 of Part XIII AA or under regulations made for the purposes of section 111CZ.

(6) Subject to this Part and to section 111AA, each court of summary jurisdiction of each State is invested with federal jurisdiction, and jurisdiction is conferred on each court of summary jurisdiction of each Territory, with respect to matters arising under this Act in respect of which:

- (a) matrimonial causes (other than proceedings of a kind referred to in subparagraph (a)(ii) or paragraph (b) of the definition of matrimonial cause in subsection 4(1)) are instituted under this Act; or
- (b) matrimonial causes (other than proceedings of a kind referred to in subparagraph (a)(ii) or paragraph (b) of the definition of matrimonial cause in subsection 4(1)) are continued in accordance with section 9; or
- (d) proceedings are instituted under:
  - (i) regulations made for the purposes of section 109, 110, 111, 111A or 111B; or
  - (ii) regulations made for the purposes of paragraph 125(1)(f) or (g); or

(iii) standard Rules of Court made for the purposes of paragraph 123(1)(r); or

(iv) Rules of Court made for the purposes of paragraph 87(1)(j) of the Federal Magistrates Act 1999 ; or

(da) proceedings are instituted under Division 4 of Part XIII AA or under regulations made for the purposes of section 111CZ; or

(e) proceedings are instituted under section 117A.

(7) The Governor-General may, by Proclamation, fix a day as the day on and after which proceedings in relation to matters arising under this Part may not be instituted in, or transferred to, a court of summary jurisdiction in a specified State or Territory.

(7AAA) Without limiting the generality of subsection (7), a Proclamation under that subsection may be expressed to apply only in relation to one or more of the following:

(a) proceedings of specified classes;

(b) the institution of proceedings in, or the transfer of proceedings to, a court of summary jurisdiction in a specified part of a State or Territory;

(c) the institution of proceedings in, or the transfer of proceedings to, a court of summary jurisdiction constituted in a specified way.

(7AA) A court of summary jurisdiction in a State or Territory shall not hear or determine proceedings under this Act instituted in or transferred to that court otherwise than in accordance with any Proclamation in force under subsection (7).

(7A) The Governor-General may, by Proclamation, declare that a Proclamation made under subsection (7) is revoked on and from a specified date and, on and after the specified date, this Act (including subsection (7)) has effect as if the revoked Proclamation had not been made, but without prejudice to the effect of the revoked Proclamation in respect of the jurisdiction of courts before the specified date.

(8) Jurisdiction with respect to a matter arising under this Act in respect of which a matrimonial cause is instituted under this Act is not conferred on a court of a Territory unless at least one of the parties to the proceedings is, at the date of the institution of the proceedings or the date of the transfer of

the proceedings to the court of the Territory, ordinarily resident in the Territory.

(9) The jurisdiction conferred on or invested in a court by this section includes jurisdiction with respect to matters arising under any law of the Commonwealth in respect of which proceedings are transferred to that court in accordance with this Act.

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### **Section 60F**

#### **Certain children are children of marriage etc.**

(1) A reference in this Act to a child of a marriage includes, subject to subsection (3), a reference to each of the following children:

- (a) a child adopted since the marriage by the husband and wife or by either of them with the consent of the other;
- (b) a child of the husband and wife born before the marriage;
- (c) a child who is, under subsection 60H(1) or section 60HB, the child of the husband and wife.

(2) A reference in this Act to a child of a marriage includes a reference to a child of:

- (a) a marriage that has been terminated by divorce or annulled (in Australia or elsewhere); or
- (b) a marriage that has been terminated by the death of one party to the marriage.

(3) A child of a marriage who is adopted by a person who, before the adoption, is not a prescribed adopting parent ceases to be a child of that marriage for the purposes of this Act.

(4) The following provisions apply in relation to a child of a marriage who is adopted by a prescribed adopting parent:

- (a) if a court granted leave under section 60G for the adoption proceedings to be commenced--the child ceases to be a child of the marriage for the purposes of this Act;

(b) in any other case--the child continues to be a child of the marriage for the purposes of this Act.

(4A) To avoid doubt, for the purposes of this Act, a child of a marriage is a child of the husband and of the wife in the marriage.

(5) In this section:

"this Act" includes:

- (a) the standard Rules of Court; and
- (b) the related Federal Magistrates Rules.

**Family Proceedings Act 1980 (New Zealand)**

....

**Section 4**

**Jurisdiction of Courts**

Subject to sections 27, 29, 32, 37, and 48 of this Act, the High Court, District Courts, and Family Courts shall have jurisdiction in proceedings under this Act, only –

- (a) Where at the commencement of the proceedings, any party to the proceedings resides or is domiciled in New Zealand.
- (b) In the case of proceedings relating to a child, where at the commencement of the proceedings—
  - (i) Any party to the proceedings resides or is domiciled in New Zealand; or
  - (ii) The child resides in New Zealand.

....

**Section 70**

**Order for maintenance after marriage or civil union dissolved or de facto relationship ends**

- (1) A Family Court may make an order under subsection (2) -
  - (a) on or at any time after the making of an order dissolving a marriage or civil union:
  - (b) at any time after a de facto relationship ends.
- (2) The Court may do the following under this section:

- (a) order either party to the proceedings, or the personal representative of either party, to pay to the other party for such term as the Court thinks fit (but not exceeding the life of the other party) such periodical sum towards the maintenance of the other party as the Court thinks fit:
  - (b) make any other order referred to in section 69(1), either instead of or in addition to an order under paragraph (a).
- (3) Section 69(2) applies to an order under this section for the payment of a lump sum.
- (4) In this section, a reference to an order dissolving a marriage or civil union includes a reference to a decree or order or legislative enactment recognised in New Zealand by virtue of section 44, as if that decree or order or legislative enactment were an order of a court of competent jurisdiction in New Zealand.
- (5) This section is subject to sections 61, 70A, 70B, and 71.

### **Child Support Act 1991 (New Zealand)**

....

#### **Section 5**

##### **Children who qualify for child support**

A child qualifies for child support if he or she—

- (a) is under 19 years of age; and
- (b) is not living with another person in a marriage, civil union or de facto relationship; and
- (c) is not financially independent; and
- (d) is a New Zealand citizen or is ordinarily resident in New Zealand.

....

## **Section 6**

### **Parents by whom child support payable**

(1) Child support may be sought in respect of a qualifying child from any person—

- (a) who is a parent of the child within the meaning of section 7; and
- (b) who is a New Zealand citizen or is ordinarily resident in New Zealand or in a country with which New Zealand has entered into a reciprocal agreement for enforcement of child support.

(2) Notwithstanding subsection (1), where—

- (a) a child has been adopted under the Adoption Act 1955 or under an adoption to which section 17 of that Act applies; and
- (b) that adoption order has not been discharged,—

child support may not be sought in respect of the child in relation to any period after the time at which the final adoption order became effective from any person who was a parent of the child before that time unless that person is also a person who adopted the child.

## **Section 7**

### **Meaning of parent**

(1) For the purposes of this Act, a person is a parent of a child if—

- (a) the person's name is entered in the Register of Births pursuant to the Births, Deaths, Marriages, and Relationships Registration Act 1995, or is entered in a register of births or parentage information kept under the law of any overseas jurisdiction, as a parent of the child; or
- (b) the person is or was a party to a legal marriage and the child was conceived by or born to the person, or the other party to

the marriage, during the legal marriage; or

- (c) the person adopted the child under the Adoption Act 1955 or under an adoption to which section 17 of that Act applies and that adoption order has not been discharged; or
- (d) a New Zealand court, or a court or public authority of any overseas jurisdiction, has at any time found that the person is a parent of the child, and the finding has not been cancelled or set aside; or
- (e) the person has, at any time in any proceeding before any court in New Zealand, or before any court or public authority in an overseas jurisdiction, or in writing signed by the person, acknowledged that he or she is a parent of the child and a court has not made a finding of paternity of the child that is to the contrary of that acknowledgment; or
- (f) a court has, under the Family Proceedings Act 1980, made a paternity order against the person in respect of the child; or
- (g) the person is the natural mother of the child; or
- (h) the person has been declared to be a step-parent of the child by a Family Court under section 99; or
- (i) a New Zealand court, or a court or public authority of any overseas jurisdiction, has appointed the person to be a guardian of the child, or has declared the person to be a guardian of the child, by reason of being the father of the child, and that appointment has not been cancelled or set aside.

(2) Notwithstanding subsection (1), where the Commissioner is satisfied that a person—

- (a) is not, despite being a person to whom that subsection applies, a parent of a particular child; and
- (b) has not been declared to be a step-parent of that child under section 99,—

that person shall not be a parent of the child for the purposes of this Act.



(3) On being requested to make a determination under subsection (2), the Commissioner may require the production of such evidence as the Commissioner, in his or her discretion, considers appropriate.

(4) Where—

- (a) a child is conceived as a result of any AHR procedure to which Part 2 of the Status of Children Act 1969 applies; and
- (b) a person involved in that procedure is not the mother of the child, or a person who has the rights and liabilities of a parent of the child, in terms of that Act,—

that person shall not be a parent of the child for the purposes of this Act.

(5) [Repealed]