

MATRIMONIAL CAUSES

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The Matrimonial Causes Act 1973 No 21 was certified on 8 November 1973 and commenced on 3 October 1977 (GN No 393/1977; Gaz 66/1977).

Amending Legislation	Certified	Date of Commencement
Statute Law Revision Act 2011 No 8	15 April 2011	Sch 1[93]: 15 April 2011
Interpretation (Consequential Amendments) Act 2011 No 18	3 November 2011	Sch [19]: 3 November 2011
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

An Act to make provisions relating to matrimonial causes, maintenance and declarations of legitimacy.

Enacted by the Parliament of Nauru as follows:

PART 1 — PRELIMINARY

1 Short title and commencement

This Act may be cited as the *Matrimonial Causes Act 1973* and came into effect on 3 October 1977.

2 Interpretation

In this Act:

'decree of nullity' includes:

- (a) a decree declaring that a marriage is void; and
- (b) a decree annulling a marriage;

'divorce' means dissolution of a subsisting marriage;

'marriage' includes a void marriage;

'matrimonial cause' means a suit of any of the types referred to in Section 3;

'petition for nullity' includes:

- (a) a petition for a declaration that a marriage is void; and
- (b) a petition for a marriage to be annulled;

'relevant child' means, in relation to any marriage, a child who is:

- (a) a child of both parties to that marriage; or
- (b) a child of one party to that marriage who has been accepted as one of the family by the other party;

and in paragraphs (a) and (b) of this definition:

'child' includes illegitimate child and adopted child; and

'the court' means the Family Court.

3 Proceedings in matrimonial causes to be in the Family Court

(1) All suits for:

- (a) divorce,
- (b) judicial separation,
- (c) presumption of death and dissolution of marriage,
- (d) annulment of marriage, or
- (e) a declaration that a marriage is void,

shall be commenced in, and heard and, subject to the provisions of Section 48, finally determined by, the Family Court.

(2) Every matrimonial cause shall be commenced by a petition.

PART 2 — DIVORCE

4 Restrictions on divorce petitions within 3 years of marriage

- (1) Subject to the next following subsection, no petition for divorce shall be presented to the Court before the expiration of the period of 3 years from the date of marriage, hereafter in this Section referred to as “*the specified period*”.
- (2) The Chairperson of the court may, on an application made to the Chairperson, allow the presentation of a petition for divorce within the specified period on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent; but in determining the application the Chairperson shall have regard to the interests of any relevant child and to the question whether there is reasonable probability of a reconciliation between the parties during the specified period.

[subs (2) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

- (3) Nothing in this Section shall be deemed to prohibit the presentation of a petition based upon matters which occurred before the expiration of the specified period.
- (4) Where it appears to the court, at the hearing of a petition for divorce presented in pursuance of leave granted under this Section, that the leave was obtained by the petitioner by any misrepresentation or concealment of the nature of the case, the court may:
 - (a) dismiss the petition, without prejudice to any petition which may be brought after the expiration of the period of 3 years from the date of the marriage upon the same facts, or substantially the same facts, as those proved in support of the dismissed petition; or
 - (b) if it grants a decree, direct that the decree shall not become absolute until the expiration of that period.

5 Divorce not precluded by previous judicial separation

- (1) A person shall not be precluded from presenting a petition for divorce, or the court from granting a decree of divorce, by reason only that the petitioner has at any time, on the same facts or substantially the same facts as those proved in support of the petition, been granted a decree of judicial separation under the provisions of this Act.
- (2) On a petition for divorce in such a case as is mentioned in subsection (1), the court may treat the decree of judicial separation as sufficient proof of the facts established as constituting the ground on which it was granted, but shall not grant a decree of divorce without receiving evidence from the petitioner.
- (3) For the purposes of a petition for divorce in such a case as is mentioned in subsection (1), a period of desertion immediately preceding the institution of proceedings for a decree of judicial separation shall, if the parties have not resumed cohabitation and the decree has been continuously in force since it was granted, be deemed immediately to precede the presentation of the petition.

6 Joinder of other parties

(1) Where:

- (a) a party to a suit for divorce alleges in his or her petition or answer that his or her spouse has behaved in such a way that the party cannot reasonably be expected to live with his or her spouse; and
- (b) the behaviour alleged includes an allegedly improper association with any other identified person, the party making the allegation shall serve on such person a copy of the petition or answer containing the allegation together with a notice to such person that the person may apply to the court *ex parte* by summons to be made a party to the suit: Provided that the court may, if it thinks fit, upon application by summons, direct that a copy of the petition or the answer need not be served on any such person if the person is outside the Republic.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

(2) No person other than a spouse of the marriage to which the petition relates shall be joined as a party to a suit for divorce unless the person is a person with whom a spouse of that marriage is alleged to have had an improper association and the person applies to be so joined.

[subs (2) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

(3) Where the person is joined as a party to the suit, the person shall be known as an “*additional party*”.

7 No order to be made against additional party except for costs

(1) No order shall be made in any matrimonial cause against an additional party except for the payment of costs resulting from the additional party’s participation in the suit.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

(2) Nothing in this Section shall be taken, as precluding a person whose marriage has been dissolved under this Act from commencing proceedings against any other person for enticement of such first-mentioned person’s spouse under Section 46.

8 Breakdown of marriage to be sole ground for divorce

The sole ground on which a petition for divorce may be presented to the court by either party to a marriage shall be that the marriage has broken down irretrievably.

9 Proof of breakdown of marriage

(1) The court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless:

- (a) the court is satisfied of one or more of the following facts:
 - (i) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
 - (ii) that the respondent has deserted the petitioner for a continuous period of at least 2 years immediately preceding the presentation of the petition;
 - (iii) that the parties to the marriage have lived apart for a continuous

period of at least 2 years immediately preceding the presentation of the petition and the respondent consents to a decree being granted; or

- (iv) that the parties to the marriage have lived apart for a continuous period of at least 5 years immediately preceding the presentation of the petition; or
 - (b) all the conditions set out in Section 10(1) are fulfilled.
- (2) In subsection (1), references to the petitioner and the respondent respectively shall, where the respondent in his or her answer admits that the marriage has broken down irretrievably but alleges facts establishing the breakdown different from the facts alleged by the petitioner, be taken, in respect of those facts, to refer to the respondent and the petitioner respectively.

[subs (2) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

10 Proof in certain circumstances

- (1) The conditions referred to in Section 9(1)(b) are:
- (a) that the parties to the marriage are living apart at the time of filing the petition and, subject to subsection (2), have lived apart continuously throughout the period between the filing of the petition and the grant of the decree dissolving the marriage;
 - (b) that, subject to subsection (3), the parties have both attended before the court on one or more occasions, as required by the court, in every month for a period of 6 months after presentation of the petition;
 - (c) that, subject to subsection (4), on every occasion on which a person has attended before the court the party has stated that he or she wishes the marriage to be dissolved;
 - (d) that the court is satisfied of the voluntary nature of every statement by a party that the party wishes the marriage to be dissolved and is further satisfied that the party understands the consequences of that statement; and
 - (e) that the court has attempted to promote reconciliation of the parties on every occasion on which either of them has attended before it in the course of the proceedings.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

- (2) For the purpose of subsection (1)(a), where the parties resume living together as the result of attempts by the court to reconcile them, they shall be deemed to have continued to live apart during that time if it does not exceed 3 months:

Provided that, where the parties, having resumed living together as the result of attempts by the court to reconcile them, again separate and live apart, a decree for dissolution of the marriage shall not be granted until 3 months after the last date on which such separation took place and the parties resumed living apart and unless after the said last date the parties have continued to attend before the court once or more, as required by the court, in every month up to the grant of the decree and each has stated on every such occasion that he or she wishes the marriage to be dissolved.

[subs (2) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

- (3) Notwithstanding the provisions of subsection (1)(b), where, as the result of an attempt by the court to reconcile the parties, the parties have resumed living together, it shall not be necessary for them to attend before the court while they are living together.
- (4) Notwithstanding the provisions of subsection (1)(c), it shall not be necessary for any party to have stated that the party wishes the marriage to be dissolved on any occasion when the party has agreed to be reconciled with the other party, whether such agreement is conditional or unconditional:
 Provided that a decree for the dissolution of the marriage shall not be granted unless on every occasion on which the parties have attended before the court during the 3 months immediately preceding such grant both parties have stated that they wish the marriage to be dissolved.

[subs (4) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

11 Evidence in divorce suits

- (1) On the hearing of a suit for divorce it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged by the parties.
- (2) For the purpose of Section 9(1)(a)(ii) the court may treat a period of desertion as having continued at a time when the deserting party was incapable of continuing the necessary intention if the evidence before the court is such that, had that party not been so incapable, the court would have inferred that the desertion continued at that time.

[subs (2) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

- (3) For the purposes of this Act, a husband and wife shall be treated as living apart unless they are living with each other in the same household.
- (4) Where as provided for Section 9(1)(a)(iii) any party attends before the court and consents to a decree being granted, or evidence is given to prove such consent, the court shall not grant the decree unless it is satisfied that that party has been given such information as will enable the party to understand the consequences of his or her consenting to a decree being granted.

[subs (4) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

12 Provisions designed to encourage reconciliation

- (1) Where at any stage of proceedings for divorce, other than proceedings in which the parties rely upon compliance with the provisions of Section 10 to establish that their marriage has broken down irretrievably, it appears to the court that there is a reasonable possibility of a reconciliation between the parties to the marriage, the court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a reconciliation.
- (2) Such power is additional to any other power of the court to adjourn proceedings.
- (3) Where the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent, but the parties to the marriage have lived with each other for a period or periods after the date of the occurrence of the final incident relied on by the petitioner and held by the court to support the petitioner's

allegation, that fact shall be disregarded in determining for the purposes of Section 9(1)(a)(i) whether the petitioner cannot reasonably be expected to live with the respondent if the length of that period or of those periods together was 6 months or less.

[subs (2) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

- (4) In considering for the purposes of Section 9(1)(a) whether the period for which the respondent has deserted the petitioner or the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of anyone period not exceeding 6 months, or of any 2 or more periods not exceeding 6 months in all, during which the parties resumed living with each other, but no period during which the parties lived with each other shall count as part of the period of desertion or of the period for which the parties to the marriage lived apart, as the case may be.
- (5) References in this Section and in Section 10 to the parties to a marriage living with each other shall be construed as references to their living with each other in the same household.

13 Decree of divorce generally to be decree nisi in first instance

- (1) Subject to the provisions of subsection (3), every decree of divorce shall in the first instance be a *decree nisi*.
- (2) Subject to Section 40 and to any direction given under Section 4(4)(b), a *decree nisi* of divorce shall become absolute:
 - (a) if no appeal against the *decree nisi* is commenced within the time limited for such an appeal and no application for financial protection has within that time been made by the respondent under Section 17, on the expiration of that time;
 - (b) if an application for financial protection has been made within that time but no appeal against the *decree nisi* has been commenced within that time:
 - (i) upon the petitioner complying with any order made by the court under Section 17;
 - (ii) on the determination of the application where no order is made for the petitioner to make financial provision or to undertake to do so; or
 - (iii) on the expiration of the time limited for an appeal, whichever is the latter; and
 - (c) if an appeal against the *decree nisi* has been commenced within that time:
 - (i) if it is dismissed, upon such dismissal;
 - (ii) upon its discontinuation; or
 - (iii) upon the expiration of the time originally limited for the commencement of an appeal, whichever is the latter:

Provided that, if an application for financial protection has been made within the time originally limited for commencing an appeal and the application has not been determined or discontinued at the time when the appeal is dismissed or discontinued, the *decree nisi* shall become absolute upon the determination or discontinuation of the application, or as ordered by the court in the determination of the application, and not before.

- (3) Subject to Section 40, where both parties to the marriage:

- (a) are present in court;
 - (b) state that they do not intend to appeal against the decree; and
 - (c) consent to a *decree absolute* being pronounced forthwith,
- then, unless the court has held that the only fact mentioned in Section 9(1) on which the petitioner was entitled to rely in support of the petition was that mentioned in Section 9(1)(a)(iii) or Section 9(1)(a)(iv) or Section 9(1)(b), the decree shall, notwithstanding the provisions of Section(13)(1) but subject to any direction given under Section 4(4)(b), be a *decree absolute* in the first instance.

[subs (3) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

- (4) Upon a decree becoming absolute, or being pronounced as a *decree absolute* under subsection (3), each of the parties to the suit shall, be entitled to receive from the Deputy Registrar of the court upon written application a certificate of the *decree absolute*.

14 Decree to be refused in certain circumstances

- (1) The respondent to a petition for divorce in which the petitioner alleges any such fact as is mentioned in Section 9(1)(a)(iv) may oppose the grant of a *decree nisi* on the ground that the dissolution of the marriage will result in grave financial or other hardship to the respondent and that it would in all the circumstances be wrong to dissolve the marriage.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

- (2) Where the grant of a *decree nisi* is opposed by virtue of this Section, then:
 - (a) if the court is satisfied that the only fact mentioned, Section 9(1)(a) on which the petitioner is entitled to rely in support of the petition is that mentioned in Section 9(1)(a)(iv); and

[subs (2) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

- (b) if apart from this Section it would grant a *decree nisi*, the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if the court is of opinion that the dissolution of the marriage will result in grave financial or other hardship to the respondent, and that it would in all the circumstances be wrong to dissolve the marriage it shall dismiss the petition.
- (3) For the purposes of this Section, hardship shall include the loss of the chance of acquiring any benefit which the respondent might acquire if the marriage were not dissolved.

15 Power to rescind decree nisi in certain cases

Where the court on granting a decree of divorce has held that the only fact mentioned in Section 9(1)(a) on which the petitioner was entitled to rely in support of the petition was that mentioned in Section 9(1)(a)(iii), it may, on an application made by the respondent at any time before the decree becomes absolute, rescind the decree if it is satisfied that the petitioner misled the respondent, whether intentionally or unintentionally, about any matter which the respondent took into account in deciding to consent to the grant of a decree.

[s 15 am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

16 Assistance to the court by the Secretary for Justice

- (1) In any suit for divorce the court may direct that all necessary papers in the matter are to sent to the Secretary for Justice, who shall argue, or instruct

an officer of the Department of Justice or a legal practitioner to argue, before the court any question or matter which the court deems it necessary or expedient to have fully argued, including questions relating to the interests of the children of the marriage.

- (2) The Secretary for Justice or a person appearing on the Secretary's instructions to argue any question or matter before the court under the provisions of subsection (1) may call such witnesses and adduce such evidence as to that question or matter as he or she thinks fit and may cross-examine any witnesses who give evidence in the suit.

[subs (2) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

- (3) The court may order any party to a suit in which the Secretary for Justice, or a person acting on the Secretary's instructions, argues any question or matter before the court to pay, or to contribute towards, the costs of the Secretary for Justice, if the court thinks it just to do so.

[subs (3) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

17 Financial protection for respondent in certain cases

- (1) The following provisions of this Section shall have effect where:
- (a) the respondent to a petition for divorce in which the petitioner alleges any such fact as is mentioned in Section 9(1), Section 9(1)(a)(iii) or Section 9(1)(a)(iv) or Section 9(1)(b), has applied to the court under this Section for it to consider for the purposes of subsection (2) the financial position of the respondent after the divorce; and
 - (b) a *decree nisi* of divorce has been granted on the petition and, except where all the conditions set out in Section 10(1) are fulfilled, the court has held that the only fact mentioned in the said paragraph (a) on which the petitioner was entitled to rely in support of the petition was that mentioned in Section 9(1)(a)(iii) or Section 9(1)(a)(iv) or Section 9(1)(b).

[subs (1) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

- (2) The court hearing an application by the respondent under this Section shall consider all the circumstances, including the age, health, conduct, earning capacity, financial resources and financial obligations of each of the parties, and the financial position of the respondent as, having regard to the divorce, it is likely to be after the death of the petitioner should the petitioner die first; and the court may, if it thinks it just to do so, order the petitioner to make financial provision for the respondent or to undertake to its satisfaction to do so.

18 Rules may enable certain agreements or arrangements to be referred to the court

Provision may be made by rules of court for enabling the parties to a marriage, or either of them, on application made either before or after the presentation of a petition for divorce, to refer to the court any agreement or arrangement made or proposed to be made between them, being an agreement or arrangement which relates to, arises out of, or is connected with, the proceedings for divorce which are contemplated or, as the case may be, have begun, and for enabling the court to express an opinion, should it think it desirable to do so, as to the reasonableness of the agreement or arrangement and to give such directions, if any, in the matter as it thinks fit.

19 Remarriage of divorced persons

Where a *decree nisi* of divorce has become absolute or a *decree absolute* has been pronounced in the first instance, either party to the former marriage may marry again.

PART 3 — NULLITY

20 **Declarations of nullity and annulment of marriage**

- (1) Where a marriage is void, the court shall, upon the application of either party thereto or of any other person having a sufficient interest in obtaining a decree declaring the nullity thereof, grant a decree declaring it to be void.
- (2) Where a marriage is voidable, the court shall, upon the application of any party thereto entitled to make such application or, in the case of a marriage alleged to be voidable on any of the grounds referred to in Section 22(a), (c) and (d), of any other person having a sufficient interest in having the marriage annulled and subject to the other provisions of this Part, grant a decree annulling the marriage.
- (3) Application for a void marriage to be declared, void or, where a marriage is alleged to be voidable on any of the grounds referred to in Section 22(a), (c) and (d) for the marriage to be annulled may be made, and a decree may be granted declaring the marriage to be void or annulling the marriage, notwithstanding that one or both the parties to the marriage have died.
- (4) Nothing in this Act shall be construed as validating a marriage which is by law void but with respect to which a decree declaring that it is void has not been obtained.

21 **Void marriages**

A marriage is void if:

- (a) the marriage was celebrated in the Republic and either party thereto had, at the time when the marriage was solemnised, already been validly married, in the Republic or elsewhere, and such previous marriage was still subsisting at that time; or
- (b) it is provided by any other written law for the time being in force that such a marriage is void.

22 **Voidable marriages**

A marriage is voidable if:

- (a) either party was, at the time of the marriage, suffering from such disease or defect of mind, that the party was unable to understand the nature of the contract and the duties of marriage;
- (b) either party was, at the time of the marriage:
 - (i) suffering from mental impairment of such a kind or to such an extent as to be unfitted for marriage or the procreation of children; or
 - (ii) was subject to recurrent attacks of insanity;
- (c) either party did not freely consent to the marriage, whether such lack of consent was the result of:
 - (i) threats or duress;
 - (ii) mistake as to the identity of the other party or as to the nature of the ceremony; or
 - (iii) inability for any cause to form an intention to marry;
- (d) either party who was at the time of the marriage domiciled or resident in the Republic was, at that time, under the age of 16 years;

- (e) the marriage has not been consummated owing to:
 - (i) the inability of either party thereto to consummate it; or
 - (ii) the wilful refusal of either party thereto to consummate it;
- (f) either party was, at the time of the marriage, suffering from venereal disease in a communicable form; or
- (g) the female party was, at the time of the marriage, pregnant by some person other than the male party.

[s 22 am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

[Mentally-disordered Persons Act 1963 changed to Mental Health Act 1963 by amendment Act No 38 of 2020]

23 Limitations on petitions for annulment

- (1) A marriage shall not be annulled:
 - (a) on any ground referred to in Section 22(a), (b), (c), (f) and (g) upon the petition of either party to the marriage, unless:
 - (i) the court is satisfied that the petitioner, at the time of the marriage, was ignorant of the facts alleged to constitute that ground;
 - (ii) the petition was presented within a year from the date of the marriage; and
 - (iii) marital intercourse with the consent of the petitioner has not taken place since the petitioner discovered the existence of that ground;
 - (b) on the ground referred to Section 22(f), upon the petition of a party who was at the time of the marriage suffering from venereal disease in a communicable form;
 - (c) on the ground referred to Section 22(g), upon the petition of the female party to the marriage; and
 - (d) on the ground referred to Section 22(d):
 - (i) if the marriage took place before the commencement of this Act;
 - (ii) upon the petition of a party thereto who was of, or over, the age of 16 years at the time of the marriage; or
 - (iii) if the petition is not presented until after the petitioner's 18th birthday.
- (2) A marriage shall not be annulled upon the petition of a person who is not a party thereto unless the petition is presented within 1 year of the marriage.

24 Parties to nullity proceedings

Save as is provided by Section 20, no person other than a party to the marriage or, where the party is dead, the party's personal representative, shall be a party to proceedings for a marriage to be declared void or to be annulled.

[s 24 am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

25 Hearing of petition

- (1) On a petition for a marriage to be declared void or to be annulled it shall be the duty of the court to inquire, so far as it reasonably can, into the facts alleged.
- (2) Where the court is satisfied on the evidence that the petitioner's case has been proved, it shall grant a decree declaring the marriage to be void or a

decree annulling the marriage, as the case may be; and, if the court is not satisfied, it shall dismiss the petition.

26 Application of Sections 13, 16 and 19 to nullify proceedings

- (1) Sections 13, 16 and 19 shall apply *mutatis mutandis* to proceedings for a marriage to be annulled as if for any reference to a petition or a decree of divorce there were substituted a reference to a petition for annulment of a marriage or a decree annulling the marriage.
- (2) Section 19 shall apply *mutatis mutandis* to proceedings for a marriage to be or she declared to be void.

27 Legitimacy of children of annulled marriages

Where a decree of nullity is granted in respect of a voidable marriage, any child who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled shall be deemed to be their legitimate child.

PART 4 — OTHER MATRIMONIAL SUITS

28 Judicial separation

- (1) A petition for judicial separation may be presented to the court by either party to a marriage on the ground that any such fact as is mentioned in Section 9(1)(a) exists.
- (2) The court, when hearing a petition for judicial separation, shall not be concerned to consider whether the marriage has broken down irretrievably, and if it is satisfied on the evidence of any such fact as is mentioned in Section 9(1)(a) it shall, subject to Section 40, grant a decree of judicial separation.
- (3) Where the court grants a decree of judicial separation it shall no longer be obligatory for the petitioner to cohabit with the respondent.
- (4) The court may, on an application by petition of the spouse against whom a decree of judicial separation has been made and on being satisfied that the allegations in the petition are true, rescind the decree at any time on the ground that it was obtained in the absence of the applicant or, if desertion was the ground of the decree, that there was reasonable cause for the alleged desertion.
- (5) Sections 6, 7, 11, 12, 16 and 18 shall apply *mutatis mutandis* to a petition and a decree under this Section as they apply to a petition for divorce and a decree of divorce respectively.

29 Presumption of death and dissolution of marriage

- (1) Any married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may present a petition to the court to have it presumed that the other party is dead and to have the marriage dissolved, and the court may, if satisfied that such reasonable grounds exist, make a decree of presumption of death and dissolution of the marriage.
- (2) In any proceedings under this Section the fact that for a period of 7 years or more the other party to the marriage has been continually absent from the petitioner and the petitioner has no reason to believe that the other party has been living within that time shall be evidence that the other party is dead until the contrary is proved.
- (3) Sections 11(1), 13, 16 and 19 shall apply *mutatis mutandis* to a petition and a decree under this Section as they apply to a petition for divorce and a decree of divorce respectively.
- (4) In determining for the purposes of this Section whether a woman is domiciled in the Republic, her husband shall be treated as having died immediately after the last occasion on which she knew or had reason to believe him to be living.

PART 5 — ANCILLARY RELIEF

30 Interim maintenance orders

- (1) On a petition for divorce, nullity or judicial separation, the court may make such interim orders as it thinks just for the payment of moneys by either party for the maintenance of the other party or the maintenance or education of the children of the marriage pending the determination of the petition.
- (2) Application for an interim order under this Section for the payment of maintenance may be made at any time after the presentation of the petition.

31 Maintenance orders

- (1) On granting a decree of divorce, nullity or judicial separation or at any time thereafter, whether before or after the decree, if it is, granted as a *decree nisi*, becomes absolute, the court may, if it thinks fit, make one or more of the following orders:
 - (a) an order requiring either party to secure to the other party, to the satisfaction of the court, such lump or annual sum for any term not exceeding the life of that other party as the court thinks reasonable having regard to the respective fortunes, if any, ability and conduct of the parties;
 - (b) an order requiring either party to pay to the other party during their joint lives such monthly or weekly sum for the maintenance of that other party as the court, having regard to the matters referred to in paragraph (a), thinks reasonable; or
 - (c) an order requiring either party to pay to the other party such lump sum as the court, having regard to the matters referred to in paragraph (a), thinks reasonable.
- (2) In making an order under subsection (1), the court shall take into account any order, agreement or arrangement made for the care and custody of the children, if any, of the marriage.

32 Commencement of proceedings with respect to maintenance

- (1) Where a petition for divorce, nullity or judicial separation has been presented, proceedings under the foregoing provisions of this Part may be begun, subject to and in accordance with rules of court, at any time after the presentation of the petition; but:
 - (a) no order under Section 31 shall be made unless a *decree nisi* or *decree absolute* has been granted; and
 - (b) no order under Section 31 shall take effect unless the decree is, or has become, absolute.
- (2) Subsection (1) shall have effect notwithstanding anything in the foregoing provisions of this Part but subject to Section 36.

33 Neglect to maintain

- (1) Where:
 - (a) one party to a subsisting marriage has, by reason of the circumstances

of the other party or of a child to whom this subsection applies, an obligation to maintain such other party or child and, having had the means to do so, has wilfully neglected to provide reasonable maintenance for such other party or child; and

- (b) the court would have jurisdiction to entertain proceedings by such other party for judicial separation,

the court may on the application of such other party or, where that other party is unable for any reason to make the application in person, by another person on the other party's behalf order the party in default to make to such other party or to a trustee approved by the court on the other party's behalf such periodical payments as may be just.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

- (2) Subsection (1) applies to any child of the marriage who is under 21 years of age or, being over 20 of age, is unable by reason of any physical or mental condition to maintain himself or herself and to any illegitimate child of both parties to the marriage who is under 21 years of age or, being over 20 years of age, is unable by reason of any physical or mental condition to maintain himself or herself.

[subs (2) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

- (3) Where the court makes an order under subsection (1):
- (a) the order may be enforced in the same manner as an order under Section 31 for the payment of maintenance; and
- (b) the court may, if it thinks fit, order that the party in default shall, to the satisfaction of the court, secure the periodical payments to the other party.

34 Validity of maintenance agreements

- (1) Where a maintenance agreement includes a provision purporting to restrict any right to apply to the court for an order containing financial arrangements, then:
- (a) that provision is void; but
- (b) any other financial arrangements contained in the agreement are not rendered void or unenforceable and, unless they are void, or unenforceable for any other reason and subject to Section 35, are binding on the parties to the agreement.

- (2) In this Section and Section 35:

“maintenance agreement” means any agreement in writing made, whether before or after the commencement of this Act, between the parties to a marriage for the purposes of their living separately, being:

- (a) an agreement containing financial arrangements, whether made during the continuance or after the dissolution or annulment of the marriage or the declaration that it is void; or
- (b) a separation agreement which contains no financial arrangements in a case where no other agreement in writing between the same parties contains such arrangements;

“financial arrangements” means provisions governing the rights and liabilities towards one another when living separately of the parties to a marriage, including a marriage which has been dissolved, annulled or declared to be void, in respect of the making or securing of payments or the

disposition or use of any property, including such rights and liabilities with respect to the maintenance or education of any child, whether or not a child of the marriage; and

“*child of the marriage*” includes any child of both parties to the marriage, whether legitimate or not, and any child adopted by both parties to the marriage.

35 Alteration of agreements by the court during the lives of the parties

- (1) Where a maintenance agreement is for the time being subsisting and the parties to the agreement are for the time being either both domiciled or both ordinarily resident in the Republic and on an application by either party the court is satisfied either:
 - (a) that, by reason of a change in the circumstances in light of which any financial arrangements contained in the agreement were made or, as the case may be, financial arrangements were omitted from it, the agreement should be altered so as to make different, or as the case may be so as to contain, financial arrangements; or
 - (b) that the agreement does not contain proper financial arrangements with respect to any child of the marriage,the court may by order make such alterations in the agreement by varying or revoking any financial arrangements contained in it or by inserting in it financial arrangements for the benefit of one of the parties to the agreement or of a child of the marriage as may appear to the court to be just having regard to all the circumstances or, as the case may be, as may appear to that court to be just in all the circumstances in order to secure that the agreement contains proper financial arrangements with respect to any child of the marriage; and the agreement shall have effect thereafter as if any alteration made by the order had been made by agreement between the parties and for valuable consideration.
- (3) For the avoidance of doubt, it is declared that nothing in this Section or Section 34 affects any power of the court before which any proceedings between the parties to a maintenance agreement are brought under any written law, including a provision of this Act, to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

36 Applications for ancillary relief

- (1) Rules of court may provide, in such cases as may be prescribed by the rules:
 - (a) that all applications for ancillary relief shall be made in the petition or answer; or
 - (b) that applications for ancillary relief which are not so made shall be made only with the leave of the court.
- (2) In subsection (1), “*ancillary relief*” means relief under Section 30 or Section 31.

37 Payment of maintenance to trustees, etc

- (1) Where the court makes an order for payment of maintenance under Section 30, Section 31 or Section 33, it may:
 - (a) direct that the maintenance be paid either to the wife or husband, as the case may be, or to a trustee approved by the court on his or her behalf;
 - (b) impose such terms or restrictions as the court thinks expedient; and
 - (c) from time to time appoint a new trustee if for any reason it appears to the court expedient to do so.
- (2) Where:
 - (a) on hearing a petition for divorce or judicial separation the court is satisfied that the respondent is insane or mentally deficient or impaired;
or
 - (b) a petition for nullity is presented on the ground of either party's insanity or mental deficiency or impairment,
and the court orders payment of maintenance in favour of that party under Section 30 or 31, the court may order the payments to be made to any such person having charge of that party as the court may direct.

[Mentally-disordered Persons Act 1963 changed to Mental Health Act 1963 by amendment Act No 38 of 2020]

38 Variation and discharge of certain orders for relief

- (1) Where the court has made an order under any of Sections 30, 31 and 33, other than an order for the payment of a lump sum, the court shall have power to discharge or vary the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.
- (2) The powers exercisable by the court under this Section in relation to an order shall be exercisable also in relation to any instrument executed in pursuance of the order.
- (3) In exercising the powers conferred by this Section the court shall have regard to all the circumstances of the case, including any increase or decrease in the means of either of the parties to the marriage.

39 Avoidance of transactions intended to prevent relief

- (1) Where proceedings under this Act for financial relief are brought by a person, the court may, on application by that person:
 - (a) if it is satisfied that the other party is, with the intention of defeating the claim for financial relief, about to make any disposition of, or to transfer out of the Republic or otherwise deal with, any property, make such order as it thinks fit for restraining the other party from so doing or otherwise for protecting the claim;
 - (b) if it is satisfied that the other party has, with the intention aforesaid, made a disposition to which this subsection applies and that if the disposition were set aside financial relief or different financial relief would be granted to the applicant, make an order setting aside the disposition and give such consequential directions as it thinks fit for giving effect to the order, including directions requiring the making of any payment or the disposal of any property; or
 - (c) if it is satisfied, in a case where an order under the relevant provision of this Act has been obtained by the applicant against the other party,

that the other party has, with the intention aforesaid, made a disposition to which this subsection applies, make such an order and give such directions as are mentioned in paragraph (b),

an application for the purposes of paragraph (b) shall be made in the proceedings for the financial relief in question.

- (2) Subsection (1)(b) and (c) apply respectively to a disposition made by the other party, whether before or after the commencement of the proceedings for financial relief, within the period of 3 years ending with the date of the application made for the purposes of the paragraph in question, not being a disposition made for valuable consideration, other than marriage, to a person who, at the time of the disposition acted in relation to it in good faith and without notice of any such intention to defeat the claim for financial relief on the part of the other party.
- (3) Where an application is made under this Section with respect to a disposition or other transaction and the court is satisfied:
- (a) in a case falling within subsection (1)(a) or (b), that the disposition or other transaction would, apart from this Section, have the consequence,
- or
- (b) in a case falling within subsection (1)(c), that the disposition has had the consequence,
- of defeating the applicant's claim for financial relief, the disposition shall be presumed, unless the contrary is shown, to have been made by the other party with the intention to defeat the claim.
- (4) In this Section:

'disposition' does not include any provision contained in a will or codicil but, with that exception, includes any conveyance, assurance or gift of property of any description, whether made by an instrument or otherwise;
'financial relief' means relief under any of the relevant provisions of this Act;

'former spouse' means a person whose marriage with the person bringing the proceedings has been, or is by virtue of Section 50 deemed to have been, dissolved, annulled or declared void under this Act;

'property' means any real or personal property, any estate or interest in real or personal property, any money, any negotiable instrument, any debt or other chose in action, or any other right or interest whether in possession or not;

'the other party' means the spouse or former spouse of the person bringing the proceedings; and

'the relevant provisions of this Act' means any of the provisions of Sections 30, 31 and 33,

and any reference to defeating an applicant's claim for financial relief is a reference to preventing financial relief from being granted to the applicant or reducing the amount of any financial relief which might be so granted, or frustrating or impeding the enforcement of any order which might be made at the instance of the applicant under the relevant provisions of this Act.

PART 6 — PROTECTION OF CHILDREN

40 Restrictions on decrees of divorce, nullity and judicial separation affecting children

- (1) Notwithstanding anything in Parts 2, 3 and 4 of this Act but subject to subsection (2), a decree of divorce or annulling a marriage shall not become, or be in the first instance, absolute, nor shall a decree of judicial separation be granted, unless the court is satisfied with respect to every relevant child who is under 16 years of age that:
 - (a) arrangements for the child's care and upbringing have been made and are satisfactory or are the best that can be devised in the circumstances;
or
 - (b) it is impracticable for the party or parties appearing before the court to make any such arrangements,
where the court is so satisfied, its satisfaction shall be endorsed on the record of the proceedings.
- [subs (1) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]
- (2) The court may, if it thinks fit, waive the requirement's of subsection (1) if:
 - (a) it appears that there are circumstances making it desirable that the decree should become absolute or should be granted, as the case may be, without delay; and
 - (b) the court has obtained a satisfactory undertaking from either or both of the parties to bring the question of the arrangements for the children before the court within a specified time,
such waiver shall be endorsed on the record of the proceedings.

41 Maintenance of children affected by matrimonial suits

- (1) Irrespective of whether or not the court makes an order under Section 12 of the *Guardianship of Children Act 1975* for the custody of any child, the court may, subject to subsection (5), make such order as it thinks just for the maintenance or education of such child, being a relevant child:
 - (a) in any proceedings for divorce, nullity or judicial separation, before, by or after the final decree; and
 - (b) where such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal.
- (2) Subject to subsection (5), on granting a decree of divorce or nullity or at any time thereafter, whether before or after the decree is made absolute, the court may make an order requiring either party to secure for the benefit of the relevant children such lump or annual sum as the court thinks reasonable; but the term for which any sum is secured for the benefit of a child in pursuance of this subsection shall not extend beyond the date when the child will attain the age of 21 years, unless there is reason to believe that the child will be unable by reason of any physical or mental condition to maintain himself or herself after attaining that age.

[subs (2) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

- (3) In considering whether any and what order should be made under this Section for requiring any party to make any payment for the maintenance

or education of a child who is a relevant child by virtue of paragraph (b) of the definition of that expression in Section 2 and who is not the party's own child, the court shall have regard:

- (a) to the extent, if any, to which that party had, on or after the acceptance of the child as one of the family, assumed responsibility for the child's maintenance; and
- (b) to the liability of a person other than a party to the marriage to maintain the child.

[subs (3) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

- (4) While the court has power to make an order in any proceedings by virtue of subsection (1)(a), it may exercise that power from time to time, and where the court makes an order by virtue of subsection (1)(b) with respect to a child it may from time to time make a further order with respect to the child's maintenance.

[subs (4) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

- (5) Section 32 shall apply to proceedings and orders under subsection (2) as it applies to such proceedings and orders under Section 32.
- (6) Section 36 shall apply to reliefs under Section 41(1) and (2) and other than relief under Section 41(1)(b), as it applies to ancillary relief within the meaning of the said Section 36.
- (7) Section 39 shall apply to relief under this Section as if for references in that Section to the relevant provisions of this Act there were substituted references to this Section.

PART 7 — MISCELLANEOUS AND GENERAL

42 Enforcement of maintenance orders

- (1) Maintenance orders made under this Act may be enforced by the court:
 - (a) as provided by or under the *Attachment of Earnings and Phosphate Royalties Act 1973* or any other written law;
 - (b) in respect of orders for periodical payments, in the same manner as orders for the payment of allowances made under the *Maintenance Act 1959*; and
 - (c) in respect of orders to secure a lump sum or an annual sum or to pay a lump sum, in the same manner as an order of a like nature or a judgment-debt, as the case may be, is enforceable in the District Court.
- (2) For the purpose of the enforcement of any maintenance order under of subsection (1)(b), the court shall have all the powers and jurisdiction conferred on it by the *Maintenance Act 1959* for the enforcement of orders made.
- (3) For the purposes of the enforcement of any maintenance order under subsection (1)(c), the court shall have all the powers and jurisdiction conferred on the District Court by the *Civil Procedure Act 1972* for the enforcement of orders and of the payment of judgment, debts and the relevant provisions of the *Civil Procedure Rules 1972* shall apply *mutatis mutandis* to such enforcement.
- (4) In this Section, “*maintenance order*” means an order under anyone of Sections 30, 31, 33 and 41 for payment of a lump sum or periodical payments, or for the securing of a lump sum or an annual sum, for the maintenance of a party to the proceedings in which the order is made or of any child of a party to those proceedings.

43 Declarations of legitimacy

- (1) A person who is a Nauruan citizen or a member of the Nauruan Community, or whose right to be a Nauruan citizen or a member of the Nauruan Community depends wholly or in part, on the person’s legitimacy or on the validity of any marriage may, if the person is domiciled or habitually resident in the Republic or claims an interest, vested or contingent, in any real or personal estate situated in the Republic, apply by petition to the court for a decree declaring that the person is the legitimate child of the person’s parents, or that the marriage of the person’s father and mother or of the person’s grandfather and grandmother was a valid marriage or that the person’s own marriage was a valid marriage.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

- (2) A person claiming that the person or the person’s parent or any remoter ancestor became or has become a legitimated person may apply by petition to the court for a decree declaring that the person or the person’s parent or remoter ancestor, as the case may be, became or has become a legitimated person.

[subs (2) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

- (3) In subsection (2), “*legitimated person*” means a person legitimated by the *Legitimation Act 1959*.
- (4) On any application under subsections (1) and (2), the court shall make such decree as it thinks just, and the decree shall be binding on the Republic and all other persons whatsoever, so however that the decree shall not prejudice a person:
 - (a) if it is subsequently proved to have been obtained by fraud or collusion;
or
 - (b) unless that person has been given notice of the application in the manner prescribed by rules of court or made a party to the proceedings or claims through a person so given notice or made a party.
- (5) A copy of every application under this Section and of any affidavit accompanying it shall be delivered to the Secretary for Justice at least 1 month before the application is made, and the Secretary for Justice shall be a respondent on the hearing of the application and a party to any subsequent proceedings relating.
- (6) Where any application is made under this Section, such persons as the court thinks fit shall, subject to rules of court, be given notice of the application in the manner prescribed by rules of court, and any such persons may be permitted to become parties to the proceedings and to oppose the application.
- (7) No proceedings under this Section shall affect any final judgment or decree already pronounced or made by any court of competent jurisdiction.

44 Jurisdiction in matrimonial suits

- (1) The court shall have jurisdiction to entertain petitions in matrimonial suits where:
 - (a) in respect of any petition, both the parties to the marriage are or, if they have died, were at the time of death domiciled in the Republic;
 - (b) in respect of any petition, the petitioner is habitually resident in the Republic and both parties were habitually resident in the Republic at the time of the marriage;
 - (c) in respect of any petition by a wife, she is habitually resident in the Republic and was domiciled or habitually resident in the Republic immediately before her marriage;
 - (d) in respect of a petition for a marriage to be declared void, the marriage was celebrated in the Republic; or
 - (e) in respect of a petition for judicial separation, both parties are ordinarily resident in the Republic.
- (2) In any proceedings in which the court has jurisdiction by virtue of subsection (1) the issues shall be determined in accordance with the law which would be applicable if both parties were domiciled in the Republic at the time of the proceedings.

45 Next friend and guardian ad litem not required in matrimonial suits

- Notwithstanding any provision to the contrary in any other written law or in the common law of England in its application to the Republic, in a matrimonial suit:
- (a) it shall not be obligatory for the petition of a petitioner who is a child to be

- presented by a next friend and such a petitioner may present the petition in person or by the petitioner's legal practitioner; and
- (b) it shall not be obligatory for a *guardian ad litem* to be appointed for a respondent who is a child:

Provided that the court may, at any stage of the proceedings, including the hearing of an application for ancillary relief, require that a petitioner who is a child be represented by a next friend or appoint a *guardian ad litem* for a respondent who is a child and may stay the proceedings until the petitioner can be represented by the next friend or the respondent by the *guardian ad litem*, as the case may be,

and provided further that nothing in this Section shall be taken as preventing the petition of a petitioner who is a child being presented by a next friend on the petitioner's behalf without an order of the court.

[s 45 am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011; Act 18 of 2011 s 3 and Sch[19], opn 3 Nov 2011]

46 Enticement

- (1) The enticement of a party to a subsisting marriage by a person is tortious and shall, subject to the provisions of subsection (5), be actionable at the instance of the other party to that marriage within a period of 3 years after the presentation by that other party of a petition for dissolution of the marriage.
- (2) Proceedings to recover damages for enticement shall be commenced by writ of summons in the Supreme Court or, where the damages claimed are within the pecuniary limit of the jurisdiction of the District Court, in the District Court.
- (3) In proceedings to recover damages for enticement the court hearing those proceedings may direct in what manner any damages awarded are to be paid or applied and may, if it thinks fit, direct that the whole or any part of the damages be settled for the benefit of the children, if any, of the marriage or for the maintenance of either party to the marriage.
- (4) For the purposes of this Section, a person entices a party to a marriage where, knowing that party to be married, the person wilfully seeks to influence that party:
- (a) to behave in such a way by associating with the person that the other party to the marriage cannot reasonably be expected to live with that party; or
- (b) to desert the other party to the marriage.

[subs (4) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

- (5) In deciding the quantum of the damages to be awarded where enticement is proved, the court shall take into account the conduct of the plaintiff as a party to the marriage insofar as it may be relevant to the issue and in particular any specific consent, or implied or apparent consent, given by the plaintiff to the association of the other party to the marriage with the defendant or with any other person.

[subs (5) am Act 8 of 2011 s 12 and Sch 1[93], opn 15 Apr 2011]

- (6) Proceedings to recover damages for enticement may be commenced at any time after a petition for divorce has been presented but, save with the leave of the court in which the proceedings are taken, or of a Judge in the case of the Supreme Court or the Resident Magistrate in the case of the District

Court, the suit shall not be set down for hearing until the marriage has been dissolved by a *decree absolute* and, where pursuant to special leave being granted the suit is heard and determined before the marriage is so dissolved, any award therein of damages shall be conditional upon the marriage being so dissolved.

47 Evidence

- (1) The evidence of a husband or wife shall be admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period and a husband or wife shall be compellable to give evidence of such matters aforesaid in any proceedings, other than criminal proceedings.
- (2) The parties:
 - (a) to any matrimonial suit in which there is an allegation of an improper association by one spouse with another person; and
 - (b) to any suit for damages for enticement, and the husbands and wives of the parties shall be competent to give evidence in the proceedings.

48 Appeals

- (1) An appeal shall lie to the Supreme Court:
 - (a) against the granting of, or the refusal to grant, a *decree nisi* in a suit for:
 - (i) divorce;
 - (ii) annulment of marriage; or
 - (iii) presumption of death and dissolution of marriage;
 - (b) against the granting of, or the refusal to grant, a decree in a suit for:
 - (i) judicial separation; or
 - (ii) a declaration that a marriage is void; and
 - (c) against an order made under, or upon an application made under, any provision of Part 5 or Part 6, other than Section 46, including an interim maintenance order.
- (2) An appeal shall lie under either of subsection (1)(a) and (b) notwithstanding that the appellant consented to the granting of the decree or *decree nisi* but in any such case the only ground of appeal shall be fraud or misrepresentation.
- (3) Unless the Family Court, the Supreme Court or a Judge otherwise orders, an appeal shall not, subject to the provisions of Section 13, result in the stay of proceedings in the suit or of enforcement of any order.
- (4) The provisions of the *Nauru Court of Appeal Act 2018*, shall apply, *mutatis mutandis*, to appeals under this Section.
- (5) No appeal shall lie to a person, court or tribunal against any decree granted or order made, or against the refusal to grant any decree, under any provisions of this Act, other than Section 46, except as provided for in this Section.
- (6) No appeal shall lie to a person, court or tribunal against the Supreme Court's decision of any appeal under this Section.
- (7) The Supreme Court shall have power, upon the application of any party to the proceedings or of its own motion, to sit in private during the whole or any part of the proceedings in any appeal under this Section, but it shall

give its decision and the reasons for it in public, unless it considers that there are good and sufficient grounds for giving them in private, in which case it shall state those grounds in public.

- (8) An application to the Supreme Court to sit in private during the whole or any part of the proceedings in any appeal under this Section shall be heard in private.
- (9) The powers conferred on the Supreme Court by this Section shall be in addition to any other power of the Court to sit in private.
- (10) In this Section, references to a power to sit in private are references to a power to sit in camera or in chambers.

49 Rules

The Chief Justice may make rules of court prescribing all matters and things required or authorised by this Act to be prescribed or provided or which are necessary or convenient to be prescribed or provided for carrying out or giving effect to this Act, and in particular for regulating matters relating to the practice and procedure of the courts, to the duties of the officers and to fees payable to the courts in matrimonial suits.

50 Matrimonial Causes Jurisdiction Ordinance 1910 of Papua to cease to apply

[s 50 omitted by the Law Revision Commission under powers authorised by Act 10 of 2019]

Matrimonial Causes Rules 1974

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Matrimonial Causes Rules 1974

TABLE OF AMENDMENTS

The Matrimonial Causes Rules 1974 were made on 7 November 1974 and commenced 3 October 1977 (r 1).

Amending Legislation	Notified	Date of Commencement
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

IN EXERCISE of the powers conferred on me by Section 49 of the *Matrimonial Causes Act 1973*, I hereby make the following rules of court:

PART 1 — PRELIMINARY

1 Citation and commencement

These Rules may be cited as the *Matrimonial Causes Rules 1974* and came into effect on 3 October 1977.

2 Interpretation

(1) In these Rules:

‘ancillary relief’ has the same meaning as in Section 36 of the Act;

‘defended cause’ means a matrimonial cause which is not an undefended cause;

‘interim maintenance order’ means an order under Section 30 of the Act;

‘maintenance order’ means an order under Section 31 of the Act;

‘notice of intention to defend’ has the meaning assigned to it by rule 10;

‘the Chairperson’ means the Chairperson of the Family Court;

‘the Deputy Registrar’ means the Deputy Registrar of the Family Court;

‘the Rules of Court’ means the Rules of Court set out in the Schedule to the *Civil Procedure Rules 1972*; and

‘undefended cause’ means:

(a) in the case of an application under Section 4, Section 42 or Section 43 of the Act a cause in which the respondent has not given within the time limited notice of intention to defend; or

(b) in any other case:

(i) a cause in which no answer has been filed or any answer filed has been struck out;

(ii) a cause which is proceeding only on the respondent’s answer and in which no reply or answer to the respondent’s answer has been filed or any such reply or answer has been struck out; or

(iii) a cause commenced by a petition complying with the provisions of rule 5(6).

(2) Unless the context otherwise requires, a cause begun by petition shall be treated as pending for the purposes of these Rules notwithstanding that a final decree or order has been made on the petition.

(3) Unless the context otherwise requires, any reference in these Rules to a numbered rule or to the Schedule is a reference to the rule so numbered in these Rules or to the Schedule to these Rules.

(4) In these Rules a form referred to by number means the form so numbered in the Schedule or a form substantially to the like effect with such variations as the circumstances of the particular case may require.

- (5) In these Rules any reference to an Order and rule is a reference to that Order and rule in the Rules of Court.

3 Application of the Rules of Court

Subject to these Rules and to any other written law or the Rules of Court shall apply with such modifications as are necessary to the commencement of matrimonial proceedings and to the practice and procedure in matrimonial proceedings pending in the Family Court and in such application the expression “*Court*” in the Rules of Court shall be deemed to include the Family Court and references to a Judge or Registrar shall be deemed to be respectively references to the Chairperson and the Deputy Registrar.

**PART 2 — COMMENCEMENT, ETC, OF PROCEEDINGS IN
MATRIMONIAL CAUSES**

4 Application under Section 4 of the Act

- (1) An application under Section 4 of the Act for leave to present a petition for divorce before the expiration of 3 years from the date of the marriage shall be made by originating summons in accordance with Form No 1.
- (2) At the time of applying for issue of the originating summons the applicant shall lodge in the Family Court for filing an affidavit by the applicant exhibiting a copy of the proposed petition and stating:
 - (a) the grounds of the application;
 - (b) particulars of the hardship or depravity alleged;
 - (c) whether there has been any previous application under Section 4 of the Act;
 - (d) whether any and if so what attempts at reconciliation have been made;
 - (e) particulars of any circumstances which may assist the Chairperson in determining whether there is a reasonable probability of reconciliation between the parties; and
 - (f) the date of the marriage and the date of birth of each of the parties or if it be the case that he or she has attained the age of 21 years.
- (3) The applicant shall annex to the originating summons a copy of the affidavit lodged in the court under subsection (1) and cause that copy to be served on the respondent with the originating summons.
- (4) Subject to the provisions of rule 8, every originating summons issued under subrule (1) shall be served on the respondent personally or by post together with a copy of the proposed petition.
- (5) Where the respondent to an application under Section 4 of the Act wishes to oppose it, he or she shall lodge Family Court for filing not later than 3 days before the date fixed for the hearing of the originating summons an affidavit stating the grounds of his or her opposition and denying such of the facts alleged by the applicant as he or she does not admit if he or she fails to do so he or she shall not be heard in opposition to the application except with the leave of the Chairperson.
- (6) The application shall be heard by the Chairperson in chambers.

5 Contents of petition

- (1) Every petition other than a petition in a cause in which it is intended that breakdown of marriage should be established in the manner provided by Section 10 of the Act shall contain the information required by Form No 2 as nearly as possible in the order there set out and any further or other information required by such of the following subrules as may be applicable.
- (2) Where the petitioner is aware that proceedings for divorce judicial separation or nullity in respect of his or her marriage have been brought in any other country he or she shall state in his or her petition the nature of those proceedings and of any orders made therein.

- (3) A petition for a decree annulling a marriage under any of Section 22(a), (b), (c), (f) and (g) of the Act shall state:
 - (a) that the petitioner was at the time of the marriage ignorant of the facts alleged;
 - (b) that since the petitioner discovered the existence of the ground to which that paragraph relates marital intercourse has not taken place with his or her consent; and
 - (c) where the petition is under Section 22(f) that the petitioner was not himself or herself suffering from venereal disease in a communicable form at the time of the marriage.
- (4) A petition for a decree of presumption of death and dissolution of marriage shall state the last place at which the parties to the marriage cohabited the circumstances in which the parties ceased to cohabit the date when and the place where the respondent was last seen or heard of and the steps which have been taken to trace the respondent.
- (5) A petitioner who in reliance on Section 12 or Section 13 of the *Civil Evidence Act 1972* intends to adduce evidence that a person:
 - (a) was convicted of an offence by or before a court in the Republic or elsewhere; or
 - (b) was found guilty of adultery in matrimonial proceedings or was adjudged to be the father of a child in affiliation or maintenance proceedings before a court in the Republic, shall include in his or her petition a statement of his or her intention with particulars of:
 - (i) the conviction finding or adjudication and the date thereof;
 - (ii) the court which made the conviction finding or adjudication and in the case of a finding or adjudication the proceedings in which it was made; and
 - (iii) the issue in the proceedings to which the conviction finding or adjudication is relevant.
- (6) A petition in a cause in which it is intended that breakdown of marriage should be established in the manner provided by Section 10 of the Act shall contain the information required by Form No 3.

6 Signing of petition

- (1) Every petition other than a petition to which subrule (2) relates shall be signed by the petitioner's legal practitioner in his or her own name or law practice or by the petitioner if he or she is not represented by a legal practitioner.
- (2) A petition in a cause in which it is intended that breakdown of marriage should be established in the manner provided by Section 10 of the Act shall be signed by both the husband and the wife and also by their respective legal practitioners, if any.

7 Presentation of petition

- (1) Every petition shall be presented by lodging it in the Family Court for filing and shall be accompanied by a sufficient number of copies for the service on all persons required by these Rules to be served.
- (2) Unless otherwise directed on an application made to the Chairperson *ex*

- parte*, a certificate of the marriage to which the cause relates or a copy of such certificate certified as correct by the appropriate authority in the country in which the marriage was celebrated, shall be filed with the petition.
- (3) Where there is before the Family Court a petition which has not been dismissed or otherwise disposed of by a final order, another petition by the same petitioner in respect of the same marriage shall not be presented without leave granted on an application made in the pending proceedings: Provided that no such leave shall be required where it is proposed, after the expiration of a period of 3 years from the date of the marriage to present a petition for divorce alleging such of the facts mentioned in Section 9(1)(a) of the Act as were alleged in a petition for judicial separation presented before the expiration of that period.
 - (4) The petition shall be presented by lodging it for filing, together with any statement or affidavit required by these Rules, in the Family Court with as many copies of the petition and of any statement or affidavit required by these Rules as there are persons to be served with the petition.
 - (5) On the filing of the petition, the Deputy Registrar shall:
 - (a) enter the cause in the books of the court; and
 - (b) except in a suit for divorce commenced by a petition under rule 5(6), every copy of the petition for service, shall accompany a notice:
 - (i) in accordance with Form No 4 or Form No 5 as appropriate with Form No 6 attached to the copy to be served on the respondent;
 - (ii) Form No 7 attached to any copy to be served on any other person; and
 - (iii) shall also annex to the copy of the petition for service on the respondent the copy of any statement or affidavit lodged pursuant to subrule (4).

8 Service of petitions, etc

- (1) Subject to the provisions of this rule, a copy of every petition shall be served personally or by pre-paid registered post on the respondent and on every person on whom a copy is required by Section 6 of the Act to be served.
- (2) Service shall be effected by the Deputy Registrar or by a police officer on his or her behalf but, if service is required to be effected outside the Republic, the cost thereof shall, unless the Chairperson orders otherwise, be payable in the first instance by the petitioner.
- (3) A copy or a petition shall be deemed to be duly served if:
 - (a) an acknowledgement of service in accordance with Form No 6 or Form No 7 is signed by the person to be served or by a legal practitioner on his or her behalf and is returned to the office of the court; and
 - (b) where the form purports to be signed by the respondent his or her signature is proved at the hearing.
- (4) Where a copy of a petition has been sent to a person and no acknowledgement of service has been returned to Family Court, the Chairperson, if satisfied by affidavit or otherwise that the party has

nevertheless received the document may direct that the document shall be deemed to have been duly served on him or her.

- (5) Where a copy of a petition has been served on a person personally and no acknowledgement of service has been returned to the Family Court, service shall be proved by lodging for filing an affidavit of service showing, in the case of the respondent, the server's means of knowledge of the identity of the respondent.
- (6) Where an acknowledgement of service is returned to the Family Court, the Deputy Registrar upon inquiry in respect thereto being made to him or her by the petitioner or his or her legal practitioner shall notify him or her.
- (7) An application for leave to substitute some other mode of service for the modes of service prescribed by subrule (1), or to subsequent notice of the proceedings by advertisements or otherwise, may be made *ex parte* to the Chairperson and shall be supported by an affidavit setting out the grounds on which the application is made, and the form of any advertisement shall be settled by the court.
- (8) Where it appears necessary or expedient to do so, the court may, upon application made *ex parte*, by order dispense with service of a copy of a petition on the respondent or on any other person.
- (9) The provisions of this rule shall apply *mutatis mutandis* to the service of an originating summons issued under rule 4.
- (10) A petition in a cause in which it is intended that breakdown of marriage should be established in the manner provided by Section 10 of the Act shall not be served on a person.

9 Respondent, etc, may be assisted to complete Form No 6, etc

- (1) Where in compliance with a notice in accordance with Form No 4 or Form No 5 the respondent or any other person served with a petition attends at the Family Court and applies in writing for an appointment to attend before the Chairperson, the Deputy Registrar shall make an appointment for him or her to do so within 7 days thereafter and shall give him or her a written statement of the date and time of the appointment.
- (2) When a respondent attends before the Chairperson in accordance with an appointment made under the subrule (1), the Chairperson shall assist him or her to complete Form No 6 and when it has been completed and signed by the respondent, shall cause it to be filed in the office of the court. If the respondent intends to defend the petition or wishes to do any of the things referred to in rule 14(1)(a) and (b), the Chairperson shall, unless he or she is represented by a legal practitioner, inform him or her of the requirements of these Rules relating to answers to petitions and of any steps which the respondent may take to obtain legal aid.
- (3) Where a person other than the respondent attends before the Chairperson in accordance with an appointment made under subrule (1), the Chairperson shall assist him or her to complete Form No 7 and, when it has been completed and signed by that person, shall cause it to be filed in the Family Court. If that person states that he or she wishes to be joined as a party to the proceedings, the Chairperson shall cause an *ex parte* summons to be issued and shall deal with the application forthwith.
- (4) Any notice in accordance with Form No 6 or Form No 7 which the

Chairperson causes to be filed in court under the provisions of this rule shall be deemed, for the purposes of rule 10, to have been returned by the person who signed it and, in the case of a notice of intention to defend, to have reached the office of the court within the time limited for giving such notice.

10 Notice of intention to defend

- (1) In these Rules any reference to a notice of intention to defend is a reference to an acknowledgement of service in Form No 6 containing a statement to the effect that the person by whom or on whose behalf it is signed intends to defend the proceedings to which the acknowledgement relates, and any reference to giving notice of intention to defend is a reference to returning such a notice to the court.
- (2) In relation to a respondent on whom there is served a document requiring or authorising an acknowledgement of service to be returned to the court, references in these Rules to the time limited for giving notice of intention to defend are references to 14 days after service of the document, exclusive of the day of service, or such other time as may be determined under the provisions of rule 47(3)(a).
- (3) Notice of intention to defend a cause begun by petition may be given at any time before the notice of the hearing of the petition is issued notwithstanding that the time limited for giving the notice provided by subrule (2) has expired.
- (4) Subject to subrules (2) and (3), a person may give notice of intention to defend notwithstanding that he or she has already returned to the office of the Court an acknowledgement of service not constituting such a notice.

11 Consent to the grant of a decree

- (1) Where before the hearing of a petition alleging any such fact as is mentioned in Section 9(1)(a)(iii) of the Act, the respondent wishes to indicate to the court that he or she consents to the grant of a decree, he or she shall do so by giving the Deputy Registrar a notice to that effect signed by the respondent personally.
- (2) For the purposes of subrule (1), an acknowledgement of service containing a statement that the respondent consents to the grant of a decree shall be treated as such a notice if the acknowledgement is signed:
 - (a) in the case of a respondent acting in person, by the respondent; or
 - (b) in the case of a respondent represented by a legal practitioner, by the respondent as well as by the legal practitioner.
- (3) The respondent to a petition which alleges any such fact as is mentioned in Section 9(1)(a)(iii) of the Act may give notice to the court either that he or she does not consent to a decree being granted or that he or she withdraws any consent which he or she has already given.
- (4) Where any such notice is given and none of the other facts mentioned in Section 9(1)(a) of the Act is alleged, the proceedings on the petition shall be stayed and the Deputy Registrar shall thereupon give notice of the stay to all parties.

12 Application to be joined as an additional party

- (1) An application by a person on whom a petition has been served to be joined as an additional party to any cause shall be heard by the Chairperson.
- (2) Where a person is joined as a party upon such application, the Deputy Registrar shall forthwith notify the other parties of the joinder and of the address for service of the party newly joined.

PART 3 — PLEADINGS, ETC, AND PREPARATIONS FOR THE HEARING

13 Supplemental petition and amendment of petition

- (1) A supplemental petition may be filed only with leave of the Chairperson.
- (2) A petition may be amended without leave before it is served but only with leave after it has been served.
- (3) Subject to subrule (4), an application for leave under this rule:
 - (a) may, if every opposite party consents in writing to the supplemental petition being filed or the petition being amended, be made *ex parte*; and
 - (b) shall in any other case, be made by summons to be served, unless otherwise directed, on every opposite party.
- (4) The Chairperson may, if he or she thinks fit, require an application for leave to be supported by an affidavit.
- (5) An order granting leave shall:
 - (a) where any party has given notice of intention to defend, fix the time within which the answer shall be filed or amended; or
 - (b) where the order is made after the notice of the hearing of the petition has been issued, provide for a stay of the hearing until a new notice is issued.
- (6) An amendment authorised to be made under this rule shall be made by lodging in the court for filing a copy of the amended petition.
- (7) Rule 6 shall apply to a supplemental or amended petition as it applies to the original petition.
- (8) Unless otherwise directed the petitioner shall lodge in the court the supplemental or amended petition together with a copy of the order if any made under this rule for filing and shall at the same time lodge sufficient copies of the supplemental or amended petition and of the order if any for service on the respondent on every person joined as an additional party and on every person on whom service of a copy is required by reason of his or her being named in the supplemental or amended petition and unless otherwise directed rule 7(5) except paragraph (a) and rule 8 shall apply as they apply in relation to a person required to be served with an original petition.

14 Answer to petition

- (1) Subject to subrules (2) and (3) and to rule 11 the respondent or an additional party who:
 - (a) wishes to defend the petition or to dispute any of the facts is alleged in it;
 - (b) being the respondent wishes to make in the proceedings any charge against the petitioner in respect of which the respondent prays for relief; or
 - (c) being the respondent to a petition to which Section 14(1) of the Act applies, wishes to oppose the grant of a *decree nisi* on the ground mentioned in that subsection,

shall within 21 days after the expiration of the time limited for giving notice of intention to defend or in the case of an additional party after the date on which he or she was joined as such lodge in the office of the court for filing an answer to the petition.

- (2) An answer may be filed at any time before the notice of the hearing date has been issued for the trial of the cause notwithstanding that the time allowed by subrule (1) for filing the answer has expired but it shall not be filed thereafter.
- (3) No answer may be filed in a cause commenced by a petition complying with the provisions of rule 5(6).

15 Reply and subsequent pleadings

- (1) A petitioner may lodge in the office of the court for filing a reply to an answer within 14 days after he or she has received a copy of the answer pursuant to rule 18.
- (2) Where the petitioner does not lodge a reply to an answer he or she shall unless the answer prays for a decree be deemed on making a request for a hearing notice to be issued, to have denied every material allegation of fact made in the answer.
- (3) No pleading subsequent to a reply shall be filed without leave.

16 Contents of answer and subsequent pleadings

- (1) Where an answer reply or subsequent pleading contains more than a simple denial of the facts stated in the petition answer or reply as the case may be the pleading shall set out with sufficient particularity the facts relied on but not the evidence by which they are to be proved and if the pleading is lodged by or on behalf of the husband or wife it shall in relation to those facts, contain the information required in the case of a petition by paragraphs (11) and (12) of Form No 2.
- (2) Unless otherwise directed an answer by a husband or wife who disputes any statement required by paragraphs (6), (7) and (8) of Form No 2 to be included in the petition shall contain full particulars of the facts relied on.
- (3) Paragraph (9) of Form No 2 and so much of that form as requires the petition to conclude with a prayer giving details of the relief claimed shall where appropriate apply with the necessary modifications to a respondent's answer as they apply to a petition:
Provided that it shall not be necessary to include in the answer any claim for costs against the petitioner.
- (4) Rule 5(5) shall apply with the necessary modifications to a pleading other than a petition as it applies to a petition.
- (5) Where a party's pleading includes such a statement as is mentioned in rule 5(5) then if the opposite party:
 - (a) denies the conviction, finding or adjudication to which the statement relates;
 - (b) alleges that the conviction finding or adjudication was erroneous; or
 - (c) denies that the conviction finding or adjudication is relevant to any issue in the proceedings he or she shall make the denial or allegation in his or her pleading.

- (6) Rule 6 shall apply with the necessary modifications to a pleading other than a petition as it applies to a petition.

17 Allegation against third party in answer, etc

- (1) Where in any answer, reply or subsequent pleading, it is alleged that the husband or the wife has had an improper association with a person named who has not been named in any of the previous pleadings a copy of that answer, reply or subsequent pleading shall be served on him or her.
- (2) The provisions of rule 12 shall apply *mutatis mutandis* to an application by a person served with an answer, reply or subsequent pleading in pursuance of subrule (1) to be joined as an additional party.
- (3) Rule 14 shall apply *mutatis mutandis* to an additional party in respect of whom the allegation of improper association is made in a pleading subsequent to the petition.

18 Service of pleadings

A party who lodged for filing an answer, reply or subsequent pleading shall at the same time lodge a copy for service on every opposite party and upon every person on whom it is required by rule 17(1) so to be served and the Deputy Registrar shall annex to every copy for service on such a person a notice in Form No 5 with Form No 7 attached.

19 Supplemental answer and amendment of pleadings

Rule 13 shall apply *mutatis mutandis* to the lodging and filing of a supplemental answer, and the amendment of a pleading or other document not being a petition, as they apply to the lodging and filing of a supplemental petition and the amendment of a petition.

20 Particulars

- (1) A party on whom pleading has been served may in writing request the party whose pleading it is to give particulars or any allegation or other matter pleaded and if that party fails to give the particulars within a reasonable time, the Chairperson may, upon application made by summons by the party requiring them order that the particulars be given.
- (2) The request or order in pursuance of which particulars are given shall be incorporated with the particulars each item of the particulars following immediately after the corresponding item of the request or order.
- (3) A party giving particulars whether in pursuance of an order or otherwise shall at the same time lodge in the court a copy of them for filing.

21 Discovery of documents

Order 21 of the Rules of Court shall apply to a defended cause begun by petition as it applies to an action begun by writ with the following modifications namely that in rule 12(1) of that Order the words from “including” to the end shall be omitted.

22 Discovery by interrogatories

- (1) Order 23 of the Rules of Court shall apply to a defended cause begun by petition as it applies to a cause within the meaning of that Order but with the omission of:
 - (a) rule 2 of that Order; and
 - (b) in rule 6(1) of that Order, the words from “including” to the end.
- (2) A copy of proposed interrogatories shall be lodged for filing at the same time when the summons for an order, under Order 23 of the Rules of Court is issued.

23 Medical examination in annulment proceedings

- (1) In proceedings for annulment of marriage on the ground of inability to consummate the marriage the petitioner shall, subject to subrule (2), apply to the Chairperson to determine whether health practitioners should be appointed to examine the parties.
- (2) An application under subrule (1) shall not be made in an undefended cause:
 - (a) if the husband is the petitioner; or
 - (b) if the wife is the petitioner and:
 - (i) it appears from the petition that she was either a widow or divorced at the time of the marriage in question;
 - (ii) it appears from the petition or otherwise that she has borne a child; or
 - (iii) a statement by the wife that she is not a virgin is filed, unless, in any such case the petitioner is alleging his or her own capacity.
- (3) References in subrules (1) and (2) to the petitioner shall where the cause is proceeding only on the respondent’s answer or where the allegation of incapacity is made only in the respondent’s answer be construed as references to the respondent.
- (4) An application under subrule (1) by the petitioner shall be made:
 - (a) where the respondent has not given notice of intention to defend after the time limited for giving the notice has expired; or
 - (b) where the respondent has given notice of intention to defend, after the expiration of the time allowed for filing his or her answer or, if he or she has lodged an answer for filing, after it has been filed and an application under subrule (1) by the respondent shall be made after he or she has lodged an answer for filing.
- (5) Where the party required to make an application under subrule (1) fails to do so within a reasonable time the other party may, if he or she is prosecuting or defending the cause make an application under that subrule.
- (6) In proceedings for annulment of marriage on the ground that the marriage has not been consummated owing to the wilful refusal or the respondent, either party may apply to the Chairperson for the appointment of health practitioners to examine the parties.
- (7) Where the respondent has not given notice of intention to defend, an application by the petitioner under subrule (1) or subrule (6) may be made *ex parte*.

- (8) Where the Chairperson on hearing an application under subrule (1) or subrule (6) considers it expedient to do so he or she shall appoint a health practitioner or if he or she thinks it necessary 2 health practitioners to examine the parties and report to the court the result of the examination.
- (9) At the hearing of any such proceedings as are referred to in subrule (1) the court may, if it thinks fit, appoint a health practitioner or 2 health practitioners to examine any party who has not been examined or to examine further any party who has been examined.
- (10) The party on whose application an order under subrule (8) is made or who has the conduct of proceedings in which an order under subrule (9) has been made for the examination of the other party, shall serve on the other party notice of the time and place appointed for his or her examination.

24 Conduct of medical examinations

- (1) Every medical examination under rule 23 shall be held in a consulting room at a hospital in the Republic:
Provided that the Chairperson may on the application of a party, direct that the examination of that party shall be held at the courthouse or at such other place as the Chairperson thinks convenient.
- (2) Every party presenting himself or herself for examination shall sign, in the presence of the health practitioner or practitioners, a statement that he or she is the person referred to as the petitioner or respondent, as the case may be, in the order for the examination, and at the conclusion of the examination the health practitioner shall certify on the statement that it was signed in his or her presence by the person who has been examined.
- (3) Every report made in pursuance of rule 23 shall be filed and either party shall be entitled to be supplied with a copy on payment of the prescribed fee.
- (4) In an undefended cause it shall not be necessary for the health practitioner or practitioners to attend and give evidence at the trial unless so directed.
- (5) In a defended cause, if the report made in pursuance of rule 23 is accepted by both parties, notice to that effect shall be given by the parties to the Chairperson and to the health practitioner not less than 7 clear days before the date fixed for the trial; and, where such notice is given, it shall not be necessary for the health practitioner or practitioners to attend and give evidence at the trial.
- (6) Where pursuant to subrule (4) or subrule (5) the evidence of the health practitioner or practitioners is not given at the trial, his or their report shall be treated as information furnished to the court by a court expert and be given such weight as the court thinks fit.

25 Notice of hearing

- (1) On the written request of the petitioner or of any party who is defending a matrimonial cause the Deputy Registrar shall, subject to any directions given to him or her by the Chairperson issue a notice for the hearing of the petition by the court, if he or she is satisfied:
 - (a) that a copy of the petition including any supplemental or amended petition and any subsequent pleading has been duly served on every party required to be served;

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- (b) if no notice of intention to defend has been given by any party entitled to give it that time limited for giving such notice has expired;
 - (c) if no application to be joined as an additional party has been made by a person eligible to be so joined the time limited for making the application has expired;
 - (d) if notice of intention to defend has been given by any party or a person has been joined as an additional party that the time allowed him or her for lodging in answer for filing has expired;
 - (e) if an answer has been filed that the time allowed for filing any subsequent pleading has expired; and
 - (f) in proceeding for annulment of marriage:
 - (i) that any application required by rule 23(1) has been made; and
 - (ii) where an order for the examination of the parties has been made on an application under rule 23 that the notice required by rule 23(10) has been served and that the report of the has been filed, the notice shall state the date, time and place of the hearing and shall be sent by the Deputy Registrar to every party to the cause.
- (2) Except with the consent of all the parties or the leave of the court, the hearing date shall not be fixed for any cause whether defended or undefended earlier than after the expiration of 14 days from the date of the issue of the notice.

PART 4 — THE HEARING OF A MATRIMONIAL CAUSE

26 Evidence generally to be given orally

Subject to the provisions of the *Civil Evidence Act 1972* and of any other written law, any fact required to be proved by the evidence of witnesses at the hearing of a matrimonial cause shall be proved by the examination of the witnesses orally and in open court.

27 Evidence by affidavit, etc

- (1) The court may order:
 - (a) that the affidavit of any witness may be read at the hearing of a matrimonial cause on such conditions as the court thinks reasonable;
 - (b) that the evidence of any particular fact shall be given at the hearing of a matrimonial cause in such manner as may be specified in the order and in particular:
 - (i) by statement on oath of information or belief;
 - (ii) by the production of documents or entries in books;
 - (iii) by copies of documents or entries in books; or
 - (iv) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specified newspaper containing a statement of that fact; and
 - (c) that not more than a specified number of expert witnesses may be called.
- (2) An application to the court for an order under subrule (1) shall:
 - (a) if no notice of intention to defend has been given; or
 - (b) if the petitioner and every party who has given notice of intention to defend consents to the order sought,be made *ex parte* and be supported by an affidavit stating the grounds on which the application is made.
- (3) Where an application is made before the hearing of a matrimonial cause for an order that the affidavit of a witness may be read at the hearing or that evidence of a particular fact may be given at the hearing by affidavit, the proposed affidavit or a draft shall be submitted with the application, and, where the affidavit is sworn before the hearing of the application and sufficiently states the grounds on which the application is made, no other affidavit shall be required under subrule (2).
- (4) The court may on the application of any party to a cause begun by petition, make an order under any of rules 1, 2 and 3 of Order 33 of the Rules of Court for the examination on oath of a person, and rule 9 of Order 32 and rules 1 to 14 of Order 33 of the Rules of Court shall have effect accordingly *mutatis mutandis*.
- (5) On any application made by originating summons, summons or notice of motion evidence may be given by affidavit unless these Rules otherwise provide or the court or, where the application is made to the Chairperson, the Chairperson otherwise directs, but the court or, where the application is made to the Chairperson, the Chairperson may, on the application of any party, order the attendance for cross-examination of the person making any

such affidavit and where after such an order has been made that person does not attend his or her affidavit shall not be used as evidence without the leave of the court or where the application is made to the Chairperson, the Chairperson.

28 Evidence of marriage outside the Republic

- (1) The celebration of a marriage outside the Republic and its validity under the law of the country where it was celebrated may in any matrimonial proceedings in which the existence and validity of the marriage is not disputed be proved by the evidence of one of the parties to the marriage and the production of a document purporting to be:
 - (a) a marriage certificate or similar document issued under the law in force in that country; or
 - (b) a certified copy of an entry in a register of marriages kept under the law in force in that country.
- (2) Where a document produced by virtue of subrule (1) is not in English, it shall unless otherwise directed, be accompanied by a translation certified by a notary public or authenticated by affidavit.

29 Saving for the court's powers

Nothing in rule 27 or rule 28 shall affect the power of the court at the hearing to refuse to admit any evidence if in the interests of justice it thinks fit to do so.

30 Right to be heard on ancillary questions

- (1) The respondent may, without filing an answer be heard on:
 - (a) any question of custody of or access to any child of the family;
 - (b) any question of ancillary relief; or
 - (c) any question of costs.
- (2) The respondent shall be entitled to be heard on any question pursuant to subrule (1) whether or not he or she has returned to the office of the court an acknowledgement of service of the petition stating his or her wish to be heard on that question.

31 Application for rescission of decree nisi

- (1) An application by a respondent under Section 15 of the Act for the rescission of a *decree nisi* of divorce shall be made by a notice to attend before the court on a day and at a time specified in the notice and the notice shall state the grounds of the application.
- (2) The Deputy Registrar shall cause a notice under subrule (1) to be served on the petitioner and such service shall where reasonably possible, be effected not less than 14 days before the day fixed for the hearing of the application.
- (3) The application shall be supported by an affidavit and one copy setting out the allegations on which the applicant relies, the copy of the affidavit shall be served on the petitioner with the notice of the application.

32 Rescission of decree nisi by consent

- (1) Where, after a *decree nisi* has been pronounced but before it has become absolute, a reconciliation has been effected between the petitioner and the respondent spouse, either party may apply for an order rescinding the decree by consent.

- (2) The application shall be made by a notice to attend before the court on a day and at a time specified in the notice, and the Deputy Registrar shall cause the notice to be served on the other spouse.

33 Rescission of decree of judicial separation

- (1) Application for the rescission of a decree of judicial separation shall be made by a petition, which shall set out particulars of the decree and the grounds for rescission relied on by the petitioner.
- (2) The party in whose favour the decree was pronounced may file an answer within 14 days after service of a copy of the petition on him or her.
- (3) Except as provided in subrule (2), all proceedings on the petition shall be carried on in the same manner, so far as practicable as proceedings on a petition for judicial separation.

34 Application under Section 17 of the Act

An application under Section 17 of the Act by the respondent to a petition for divorce for the court to consider the financial position of the respondent after that divorce shall be made by a notice in accordance with Form No 8.

35 Hearing where Section 10 of the Act is utilised

- (1) Where a suit for divorce is commenced by a petition complying with the provisions of rule 5(6), the Deputy Registrar shall send a notice in accordance with Form No 9 to each of the parties.
- (2) Where notices have been sent to the parties to any suit for divorce in accordance with subrule (1) they shall attend before the court as required by that notice and on such other days and at such times as the court directs, where either party is not present in court when any such direction is given the Deputy Registrar shall send him or her a copy of it in writing.
- (3) The court may direct the parties to any suit for divorce to which this rule relates or either of them, to attend at such times and places as it directs for the purpose of discussing with any member or officer of the court or, with the consent of the parties, with any other person the possibility of reconciliation.

36 Application to the court to consider agreement

- (1) On application made by summons after the presentation of a petition, other than a petition complying with the provisions of rule 5(6) for divorce or judicial separation the parties to the marriage or either of them may refer to the court any agreement or arrangement made or proposed to be made between them which relates to, arises out of or is connected with, the proceedings.
- (2) Unless otherwise directed on an application made *ex parte*, every party to the agreement or arrangement, other than the applicant or applicants, shall be made a respondent to the application.
- (3) At the time of the issue of a summons under this rule, there shall be filed an affidavit by the applicant or applicants setting out particulars of the agreement or arrangement in question and the grounds on which the

application is made, and a copy of the affidavit shall accompany the copy of the originating application, notice or summons for service on the other spouse.

- (4) On the hearing of an application under this rule the court may express an opinion should it think it desirable to do so, as to the reasonableness of the agreement or arrangement and may give such directions, if any, in the matter as it thinks fit.
- (5) A respondent to an application under this rule may be heard without filing an affidavit in answer to the application.

PART 5 — ANCILLARY RELIEF

37 **Application by petitioner or respondent for ancillary relief**

- (1) Any application by a petitioner, or by a respondent who files an answer claiming relief for:
 - (a) an interim maintenance order; or
 - (b) a maintenance order.
- (2) Notwithstanding anything in subrule (1), an application for ancillary relief which should have been made in the petition or answer may be made subsequently:
 - (a) with leave of the court, either by notice in Form No 10 or at the trial; or
 - (b) where the parties have agreed upon the terms of the proposed order, without leave by notice in Form No 10.
- (3) An application by a petitioner or respondent spouse for ancillary relief, not being an application which is required to be made in the petition or answer, shall be made by notice in Form No 10.

38 **Application by guardian, etc, for maintenance of children**

In a matrimonial cause any of the following persons, namely:

- (a) the guardian of any relevant child;
- (b) a person who has the custody or the care and control of a relevant child under an order of the Supreme Court or the Family Court;
- (c) a person who has obtained leave to intervene in the cause for the purpose of applying for the custody of a relevant child;
- (d) the Secretary for Justice if appointed the *guardian ad litem* of a relevant child under rule 46; and
- (e) any other person in whose care a relevant child is and who has obtained leave to intervene in the case for the purpose of applying for maintenance for that child,

may apply for an order for ancillary relief as respects that child by notice in Form No 10.

39 **Evidence on application for a variation order**

- (1) An application for a variation order shall be made by a notice to attend before the court on a day and at a time specified in the notice and shall be supported by an affidavit by the applicant setting out full particulars of his or her property and income and the grounds on which the application is made.
- (2) The Deputy Registrar shall cause a notice under subrule (1) to be served on the respondent to the application and such service shall where reasonably possible be effected not less than 14 days before the day fixed for the hearing of the application.
- (3) The respondent to an application for a variation order may file an affidavit in answer save with the leave of the Chairperson every such affidavit shall be filed not less than 2 days before the date fixed for the hearing of the application.

- (4) In this rule, “*variation order*” means an order under Section 38 of the Act for the discharge, variation or suspension of an order made under any of Sections 30, 31 and 33 of the Act, other than an order for the payment of a lump sum.

40 Enforcement of orders for payment of money, etc

Before any process is issued for the enforcement of an order made in matrimonial proceedings for the payment of money to a person an affidavit verifying the amount due under the order and showing how that amount is arrived at shall be lodged in the office of the court for filing.

PART 6 — APPLICATIONS RELATING TO CHILDREN

41 Application for custody, etc, of children

- (1) Where a matrimonial cause has been commenced, application for an order for custody of, or access to any relevant child may be made by summons by:
 - (a) the petitioner or the respondent, if such application has not been made in the petition or answer of that party; or
 - (b) any other person who is the guardian of the child or has the custody or control of the child by virtue of an order of a court.
- (2) It shall not be necessary for any such person as is mentioned in subrule (1)(b) to obtain leave to intervene in the proceedings for the purpose of making an application under that subrule.

42 Removal of child out of the Republic

- (1) Where a matrimonial cause is pending, an application for leave to remove a relevant child permanently out of the Republic shall be made by summons.
- (2) A petitioner may, at any time after filing his or her petition and notwithstanding that it has not been served apply *ex parte* to the Chairperson for an injunction restraining the respondent or any other person from removing any relevant child under the age of 16 years out of the Republic or out of the custody, care or control of a person named in the application.

PART 7 — OTHER APPLICATIONS

43 Application in case of wilful neglect to maintain

- (1) An application under Section 33 of the Act for an order for periodical payments on the ground of wilful neglect to maintain shall be made by originating summons in accordance with Form No 11.
- (2) At the time of applying for issue of the originating summons the applicant shall lodge in the court for filing an affidavit by the applicant containing the information required by Form No 12.
- (3) The applicant shall annex to the originating summons a copy of the affidavit lodged in the court under subrule (2) and case that copy to be served on the respondent with the originating summons.
- (4) The provisions of rule 8 shall apply to the service and proof of service of an originating summons under this rule as though it were a petition.
- (5) Where the respondent to an application under Section 33 of the Act wishes to oppose it, he or she shall lodge in the office of the court for filing not less than 3 days before the date fixed for the hearing of the application an affidavit stating the grounds of his or her opposition and denying such of the facts alleged by the applicant as he or she does not admit together with a copy of the affidavit which the Deputy Registrar shall serve on the applicant, if the respondent fails to lodge an affidavit within the time permitted by this subrule, he or she shall not be heard in opposition to the application except with the leave of the court.
- (6) Subject to the provisions of this rule, these Rules shall, so far as applicable apply *mutatis mutandis* to an application under Section 33 of the Act as if the proceedings were a matrimonial cause and the originating summons were a petition.
- (7) Where the Deputy Registrar does not consider it practicable to fix a day and time for the hearing of an application under Section 33 of the Act at the time when the originating summons is issued, he or she may do so subsequently and in that event he or she shall give written notice of the day and time to all parties.

44 Application for alteration of a maintenance agreement during the lifetime of the parties

- (1) An application under Section 35 of the Act for the alteration of a maintenance agreement shall be made by an originating summons in accordance with Form No 13.
- (2) At the time of applying for issue of the originating summons, the applicant shall lodge in the office of the court for filing an affidavit by the applicant containing the information required by Form No 14.
- (3) The provisions of rule 43(3), (4), (5), (6) and (7) shall apply *mutatis mutandis* to applications under Section 35 of the Act.

PART 8 — DISABILITY

45 **Petition for annulment on ground of mental disease, etc**

- (1) Where a petition for annulment of marriage has been presented on any of the grounds specified in Section 22(a) and (b) of the Act, then, whether or not the respondent gives notice of intention to defend, the petitioner shall not proceed with the cause without the leave of the court.
- (2) The court on hearing an application for leave to proceed with the cause may make it a condition of granting leave that some proper person be appointed to act as *guardian ad litem* of the respondent.

46 **Separate representation of children**

- (1) Where in any matrimonial proceedings it appears to the court that any child ought to be separately represented the court may:
 - (a) of its own motion, appoint the Secretary for Justice if he or she consents; or
 - (b) on the application of any other proper person, appoint that person to be *guardian ad litem* of the child with authority to take part in the proceedings on the child's behalf.
- (2) The applicant for an order under subrule (1)(b) shall, on making the application lodge in the office of the court for filing a certificate by the Secretary for Justice or a legal practitioner certifying that the person named in the certificate as the proposed *guardian ad litem* has no interest in the proceedings adverse to that of the child and that he or she is a proper person to be such guardian.

PART 9 — SERVICE

47 Service out of the Republic

- (1) Any document in matrimonial proceedings may be served out of the Republic without leave either in the manner prescribed by these Rules or by rules 4 and 5 of Order 9 of the Rules of Court.
- (2) Where the document is served in accordance with rules 4 and 5 of Order 9 of the Rules of Court those rules and rule 6 of the said Order 9 shall have effect in relation to service of the document as they have effect in relation to service of a notice of a writ issued out of the Supreme Court except that the official certificate of service referred to in of the said rule 4(5) shall if the document was served personally show the server's means of knowledge of the identity of the person served.
- (3) Where a petition is to be served on a person out of the Republic then:
 - (a) the time within which that person shall give notice of intention to defend shall be determined by the Deputy Registrar having regard to the practice adopted under rule 3(3) of Order 9 of the Rules of Court and the notice in Form No 4 or Form No 5 or the originating summons in Form No 13 shall be amended accordingly; or
 - (b) if the petition is to be served otherwise than in accordance with rules 4 and 5 of Order 9 of the Rules of Court and there is reasonable ground for believing that the person to be served does not understand English the petition shall be accompanied by a translation approved by the Chairperson of the notice in Form No 4 or Form No 5 in the official language of the country in which service is to be effected or if there is more than one official language of that country, in any one of those languages which is appropriate to the place where service is to be effected:

Provided that this subrule shall not apply in relation to a document which is to be served in a country in which the official language or one of the official languages is English.
- (4) Where a document specifying the date of hearing of any proceedings is to be served out of the Republic, the date shall be fixed having regard to the time which would be limited under of the subrule (3)(a) for giving notice of intention to defend if the document were a petition.

48 Sending by post

Where a document is required by these rules to be sent to a person, it shall, unless otherwise directed be sent by pre-paid registered post to:

- (a) if a legal practitioner is acting for that person, the address of the legal practitioner; or
- (b) if that person is not represented by a legal practitioner, the address for service given by him or her or if he or she has not given an address for service his or her last known address.

PART 10 — MISCELLANEOUS

49 Discontinuance of cause before service of petition

Before a petition is served on a person the petitioner may file a notice of discontinuance and the cause shall thereupon stand dismissed.

50 Inspection, etc, of documents

- (1) A party to any matrimonial proceedings, his or her legal practitioner or the Secretary for Justice may have a search made for and may inspect and be provided a copy of any document filed or lodged in the court office in those proceedings.
- (2) Except as provided by subrule (1), no document filed or lodged in the court, other than a decree or order made in open court, shall be open to inspection by a person without the leave of the Chairperson, and no copy of any such document or of an extract from any such document shall be taken by, or issued to a person without such leave.
- (3) Leave granted under subrule (2) may be made conditional on the person to whom it is granted not disclosing to any other person the information obtained by him or her as a result.

51 Revocation and cesser of application of applied rules

[s 51 omitted by the Law Revision Commission under powers authorised by Act 10 of 2019]

SCHEDULE

[Rule 2(4)]

FORMS

List of Forms

1. Originating summons (rule 4(1))
2. Petition (rule 5(1))
3. Petition where breakdown of marriage is to be proved under Section 10 (rule 5(6))
4. Notice of proceedings to respondent (rule 7(5)(b))
5. Notice of proceedings to persons other than respondents (rule 7(5)(b))
6. Acknowledgement of service by respondent (rule 7(5)(b))
7. Acknowledgement of service by person other than respondent (rule 7(5)(b))
8. Application for consideration of financial position of respondent (rule 34)
9. Notice to attend (rule 35)
10. Notice of application for ancillary relief (rule 37)
11. Originating summons in respect of wilful neglect to maintain (rule 43(1))
12. Affidavit in support of application under Section 33 of the Act (rule 43(2))
13. Originating summons for alteration of a maintenance agreement (rule 44(1))
14. Affidavit in support of application under Section 35 of the Act (rule 44(2))

FORM NO 1



REPUBLIC OF NAURU

MATRIMONIAL CAUSES ACT 1973

[Rule 4(1)]

ORIGINATING SUMMONS IN APPLICATION UNDER SECTION 4

In the Family Court of Nauru

M C No

In the matter of a proposed petition for
dissolution of marriage

Between

A. B. , Applicant

and

C. D. , Respondent

To C D of

You are hereby required to attend before the Chairperson of the Family Court at the Court House at Yaren at a m */ p m on day the day of , 20 , for the hearing of an application by A B of for leave to present a petition for dissolution of his * her marriage with you before the expiration of the period of three years from the date of the said marriage. An affidavit by A B as to his or her reasons for making the application and as to other facts alleged by him or her is attached to this summons.

PLEASE NOTE THAT IF YOU DO NOT ATTEND AS REQUIRED THE APPLICATION WILL BE HEARD AND DETERMINED IN YOUR ABSENCE.

PLEASE NOTE ALSO THAT IF YOU WISH TO OPPOSE THE APPLICATION YOU SHALL LODGE IN THE OFFICE OF THE COURT NOT LESS THAN THREE DAYS BEFORE THE DATE FIXED FOR THE HEARING OF THIS APPLICATION, AN AFFIDAVIT STATING THE GROUNDS ON WHICH YOU OPPOSE IT AND DENYING SUCH OF THE FACTS ALLEGED BY THE APPLICANT AS YOU DO NOT ADMIT.

You shall complete and detach the acknowledgement of service and send it so as to reach the court within 8 days after you receive this notice inclusive of the day of receipt. Delay in returning the form may add to the costs which you may have to pay. If you intend to instruct a legal practitioner to act for you, you should at once give him or her all the documents which have been served on you, so that he or she may send the acknowledgement to the court on your behalf.

The applicant's address for service is

FORM NO 2



REPUBLIC OF NAURU

MATRIMONIAL CAUSES ACT 1973

[Rule 5(1)]

PETITION

In the Family Court of Nauru

M C No

In the matter of a petition for dissolution of
marriage (or as the case may be)

Between

A. B. Petitioner
and
C. D. RespondentA B of petitions the court to dissolve his * her marriage to
C D (or as the case may be) and says that:(1) On the day of 20 the petitioner was
lawfully married to (hereinafter called the respondent)
at(2) The petitioner and the respondent have cohabited at (state the last address at which
they have cohabited in Nauru) * The petitioner and the respondent have not cohabited in Nauru(3) The court has jurisdiction to entertain this petition because (state reason for
jurisdiction as in Section 44 of the Act)

(4) The petitioner is a (state occupation) and the respondent is a (state occupation)

(5) The petitioner resides at and the respondent resides at

(6) There is* are no* (state number) * relevant children now living, namely (state the
name of each child and his or her date of birth, or, if it be the case, that he or she is over 18 and
in the case of each minor child over the age of 16, whether he or she is receiving instruction at
an educational establishment or undergoing training for a trade, profession or vocation)(7) (In the case of a husband's petition) No other child now living has been born to the
respondent during the marriage so far as is known to the petitioner* (in the case of a wife's
petition) No other child now living has been born to the petitioner during the marriage +except
(state the name of such child and his or her date of birth or, if it be the case, that he or she is over
18)(8) (Where there is a dispute whether a child is a **relevant child) The petitioner
alleges that is * is not a * relevant child because (give the particulars of the
facts relied on by the petitioner in support of his or her allegation that the child is or (as the case
may be) is not a relevant child)(9) (Where an application is made in the petition for an order for the support of an
infant child of whom the respondent is not a parent) The respondent assumed responsibility for
the maintenance of (state details of infant) to the following extent and for the following time
namely (give details) There is no other person liable to maintain the said child + except

(10) There have been no previous proceedings in any court in the Republic or elsewhere with reference to the marriage + or to any ** relevant children + except (state the nature of the proceedings, the date and effect of any decree or order and, in the case of proceedings with reference to the marriage whether there has been any resumption of cohabitation since the making of the decree of order)

(11) The following * No agreement or arrangement has been made or is proposed to be made between the parties for the support of the respondent * the petitioner + and the said child(ren) + namely (state details)

(12) (In the case of a petition for divorce alleging only any such fact as is mentioned in Section 9(1)(a)(iv) of the Act) The petitioner proposes, if a *decree nisi* is granted to make the following financial provision for the respondent (give details of any proposal not mentioned in paragraph (11)) * The petitioner makes no proposals for financial provision for the respondent in the event of a *decree nisi* being granted

(13) (In the case of a petition for divorce) The said marriage has broken down irretrievably

(14) The respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent * The respondent has deserted the petitioner for a continuous period of at least 2 years immediately preceding the presentation of this petition * The parties to the marriage have lived apart for a continuous period of at least 2 years immediately preceding the presentation of this petition and the respondent consents to a decree being granted * The parties to the marriage have lived apart for a continuous period of at least 5 years immediately preceding the presentation of this petition * (Where the petition is not for divorce or judicial separation, set out the ground on which relied is sought and in any case state with sufficient particularity the facts relied on but not the evidence by which they are to be proved)

The petitioner therefore prays:

- (1) That the said marriage may be dissolved (or as the case may be)
- + (2) That he* she may be granted the custody of (state name(s) of the child(ren))
- + (3) (Where appropriate) That the respondent may be ordered to pay the costs of this suit

(4) That he* she may be granted the following ancillary relief, namely (state particulars of any application for ancillary relief which it is intended to claim)

The names and addresses of the persons who are to be served with this petition are (give particulars stating if any of them is a person under disability)

The petitioner's address for service is (Where the petitioner sues by a legal practitioner the name and address of the legal practitioner, or of the firm of legal practitioner as the case may be, or, where the petitioner sues in person, state his or her place of residence as given in paragraph 4 of the petition or if no place of residence in the Republic is given, the address of a place in the Republic at or to which documents for him or her may be delivered or sent).

DATED this _____ day of _____ 20____

Signed (see Rule 6(1))

* Delete whichever is not applicable

+ Delete if not applicable

** For the meaning of "relevant child", see Section 2 of the Act

FORM NO 3



REPUBLIC OF NAURU

MATRIMONIAL CAUSES ACT 1973

[Rule 5(6)]

**PETITION WHERE BREAKDOWN OF MARRIAGE IS TO BE PROVED UNDER
SECTION 10**

In the Family Court

MC No

In the matter of a petition for dissolution of
marriage

By A B and C D Petitioners

We A B and C D petition the court to dissolve our marriage and state:

1 On the _____ day of _____ 20____ the petitioners were lawfully
married to one another at _____

2 The petitioners have cohabited at (state the last address at which they cohabited in
Nauru) * The petitioners have not cohabited in the Republic

3 The court has jurisdiction to entertain this petition because (state reason for jurisdiction
as in Section 44 of the Act)

4 The petitioner A B is a (state occupation) the petitioner C D is a (state occupation)

5 The petitioner A B resides at _____
and the petitioner C D resides at _____

6 (As paragraph (6) in Form No 2)

7 A B * C D is responsible for the maintenance of (state details of any other infant for
whose maintenance that petitioner is responsible)

8 The following * No agreement or arrangement has been made or is proposed to be made
between the petitioners for the support of either one of them by the other + and the said
child(ren) _____ + namely _____

9 The marriage has irretrievably broken down

10 The petitioners are living apart

The petitioners therefore pray:

(1) That their said marriage may be dissolved

+ (2) That the following order be made for custody of the child(ren), namely (state order
sought) * That the court make such order as it thinks proper for custody of the child(ren)

+ (3) That the said A B * C D may be granted the following ancillary relief namely (state
particulars of any application for ancillary relief which either petitioner intends to claim)

The address of A B (or service is
the address of C D for service is _____

(Where either of the petitioners is represented by a legal practitioner state his or her name and address, or the name and address of his or her firm if any, where either petitioner is not represented, state his or her place of residence as given in paragraph 4 of the petition or, if no place of residence in the Republic is given, the address of a place in the Republic at or to which documents for him or her may be delivered or sent)

DATED this _____ day of _____ 20

Signed (see Rule 6(2))

* Delete whichever is not applicable

+ Delete if not applicable

FORM NO 4



REPUBLIC OF NAURU

MATRIMONIAL CAUSES ACT 1973

[Rule 7 (5)(b)]

NOTICE OF PROCEEDINGS TO RESPONDENT

(Heading as in Form No 2)

TO CD

TAKE NOTICE that a petition for divorce * (as the case may be) has been presented to this court
A sealed copy of it is delivered with this notice

1 You shall complete and detach the acknowledgement of service and send it so as to reach the court within 14 days after you receive this notice, exclusive of the day of receipt. Delay in returning the form may add to the costs

2 If the reply to Question 4 or 6 in the acknowledgement is "Yes", you shall, within 35 days after you receive this notice inclusive of the day of receipt, lodge in the office of the court for filing, an answer to the petition, together with a copy for the petitioner

+ 3 If the reply to Question 5 in the acknowledgement is "Yes" the consequences to you are that:

(a) provided the petitioner establishes the fact that he * she and you have lived apart for 2 years immediately preceding the presentation of the petition and that you consent, a decree will be granted unless, in the case of a petition for divorce, the court is satisfied that the marriage has not broken down irretrievably.

(b) your right to inherit from the petitioner if he or she dies without having made a will ceases on the grant of a decree of judicial separation or on a *decree nisi* of divorce being made absolute

(c) in the case of divorce the making absolute of the decree will and the marriage thereby affecting any right to a pension which depends upon the marriage continuing or upon your being left a widow

(d) apart from the consequences listed above there may be others applicable to you depending on your particular circumstances, about these you should obtain legal advice from a legal practitioner

+ 4 If after consenting you wish to withdraw your consent, you shall immediately inform the court and give notice to the petitioner

FORM NO 5



REPUBLIC OF NAURU

MATRIMONIAL CAUSES ACT 1973

[Rule 7(5)(b)]

NOTICE OF PROCEEDINGS TO PERSONS OTHER THAN RESPONDENTS

TO E F

TAKE NOTICE that a petition for divorce has been presented to this court by A B. A sealed copy of it is delivered with this notice. You are not required to be a party to the proceedings commenced by this petition but you are entitled to apply to the court *ex parte* by summons to be made a party. Unless you are made a party, you will have no right to be heard or to present evidence, in those proceedings (although you may be required by either the petitioner or the respondent to give evidence)

1 You shall complete and detach the acknowledgement of service and send it so as to reach the court within 14 days after you receive this notice, exclusive of the day of receipt

2 If the reply to Question 4 in the acknowledgement is "Yes", a summons will be issued in respect of your application to be joined as a party and you will be advised of the date and time when you shall attend before the Chairperson of the Family Court for the application to be heard

3 If you do not return the acknowledgement of service within the time permitted or if the reply to Question 4 of it is not "Yes", or if you do not give in it an address for service in the Republic you will receive no further notice regarding the proceedings

4 If you intend to instruct a legal practitioner to act for you, you should at once give him or her all the documents which have been served on you, so that he or she may send the acknowledgement to the court on your behalf if you are applying to be made a party but do not attend to instruct a legal practitioner you should give in the acknowledgement an address for service in the Republic so that any documents affecting your interests which are sent to you will in fact reach you. You should also, in that case inform the court of any change of your address

(NOTE: IF YOU DO NOT UNDERSTAND ANY OF THE REQUIREMENTS OF THIS NOTICE YOU SHOULD CALL AT THE COURT HOUSE DURING OFFICE HOURS AS SOON AS POSSIBLE AND I SHALL EXPLAIN THEM TO YOU)

DATED this _____ day of _____ 20____

Deputy Registrar of the Family Court

(Here set out Form No 7)

FORM NO 6



REPUBLIC OF NAURU

MATRIMONIAL CAUSES ACT 1973

[[Rule 7(5)(b)]]

ACKNOWLEDGEMENT OF SERVICE BY RESPONDENT

IF YOU INTEND TO INSTRUCT A LEGAL PRACTITIONER TO ACT FOR YOU, GIVE HIM OR HER THIS FORM IMMEDIATELY

(Heading as in Form No 2)

1 Have you received the originating summons and copy of the supporting affidavit * the petition for divorce * (as the case may be) delivered with this form?

2 On what date and at what address did you receive it?

3 Are you the person named as the respondent in the application */in the petition?

4 Do you intend to defend the case?

+ 5 (In the case of a petition alleging any such fact as is mentioned in Section 9(1)(a)(iii) of the *Matrimonial Causes Act 1973* ie 2 years separation and consent or respondent): Do you consent to a decree being granted?

+ 6 (In the case of a petition asking for divorce and alleging any such fact as is mentioned in Section 9(1)(a)(iv) of the *Matrimonial Causes Act 1973* ie 5 years separation) Do you intend to oppose the grant of a decree on the ground that the divorce will result in grave financial or other hardship to you and that in all the circumstances it would be wrong to dissolve the marriage?

+ 7 In the event of the grant of a *decree nisi* and the court holding that the only fact on which the petitioner was entitled to rely in support of the petition was any such fact as is mentioned in Section 9(1)(a)(iii) or (iv) of the *Matrimonial Causes Act 1973*. (ie either 2 years separation and your consent to the divorce or 5 years separation) do you intend to apply to the court for it to consider your financial position as it will be after the divorce?

+ 8 Even if you do not intend to defend the case do you wish to be heard on the claim(s) in the petition for:

- (a) costs;
- (b) custody of the children;
- (c) periodical payments;
- (d) maintenance pending suit;
- (e) secured periodical payments; or
- (f) a lump sum.

9 Do you wish to make any application on your own account for:

- (a) access to the children;

- (b) custody of the children;
- (c) periodical payments for the children;
- (d) maintenance pending suit;
- (e) periodical payments for yourself;
- (f) a lump sum; or
- (g) secured periodical payments.

(If possible answer YES or NO against each item in Question(s) 8 * and 9. If you are uncertain leave a blank)

DATED this _____ day of _____ 20

Signed

Address for service (Unless you intend to instruct a legal practitioner give your place of residence or, if you do not reside in the Republic, the address of a place in the Republic to which documents may be sent to you. If you subsequently wish to change your address for service, you shall notify the court)

* /(If a legal practitioner is instructed) I am * we are acting for the respondent in this matter

Signed

Address for service

* Delete whichever is not applicable

+ Question to be deleted if not applicable

FORM NO 7



REPUBLIC OF NAURU

MATRIMONIAL CAUSES ACT 1973

*[Rule 7(5)(b)]***ACKNOWLEDGEMENT OF SERVICE BY PERSON OTHER THAN RESPONDENT**

IF YOU INTEND TO INSTRUCT A LEGAL PRACTITIONER TO ACT FOR YOU GIVE HIM OR HER THIS FORM IMMEDIATELY

(Heading as in Form No 2)

1. Have you received the petition for divorce delivered with this form?
2. On what date and at what address did you receive it?
3. Are you the person * /one of the persons against whom an allegation is made in the petition?
4. Do you wish to apply to be joined as a party to the proceedings?

DATED this _____ day of _____ 20____

Signed _____

Address for service (Unless you intend to instruct a legal practitioner give your place of residence or, if you do not reside in the Republic, the address of a place in the Republic to which documents may be sent to you. If you subsequently wish to change your address for service, you shall notify the court)

* / (If a legal practitioner is instructed) I am * we are acting for the respondent in this matter

Signed _____

Address for service _____

* Delete whichever is not applicable

FORM NO 8



REPUBLIC OF NAURU

MATRIMONIAL CAUSES ACT 1973

[Rule 34]

APPLICATION FOR CONSIDERATION OF FINANCIAL POSITION OF RESPONDENT

(Heading as in Form No 2)

TO: A B

TAKE NOTICE that the respondent applies to the court under Section 17 of the *Matrimonial Causes Act 1973* for the court to consider the financial position of the respondent after the divorce

The application will be heard immediately after a *decree nisi* is granted * (If application is made after a *decree nisi* has been granted) Notice will be given to you of the place and time fixed for the hearing of the application * The application will be heard by the court at the Court House at Yaren on day the day of 20 ,
at a m */p m

DATED this day of 20

Signed

Respondent */ legal practitioner for the
Respondent */ legal practitioner for the
Respondent

* Delete whichever is not applicable

FORM NO 9



REPUBLIC OF NAURU
MATRIMONIAL CAUSES ACT 1973

[Rule 35]

NOTICE TO ATTEND

(Heading as in Form No 3)

TO: A B and C D

TAKE NOTICE that your petition for the dissolution of your marriage will be heard by the court at the Court House at Yaren on _____ day, the _____ day of _____ 20____, at _____ a m */ p m and that you are required to attend

DATED this _____ day of _____ 20____

Deputy Registrar of the Family Court

FORM NO 11



REPUBLIC OF NAURU

MATRIMONIAL CAUSES ACT 1973

[Rule 43(1)]

ORIGINATING SUMMONS IN RESPECT OF WILFUL NEGLECT TO MAINTAIN

In the Family Court of Nauru

M C No

In the matter of an application under Section
33 of the *Matrimonial Causes Act 1973*

Between

A. B.

Applicant

and

C. D.

Respondent

To C D of

You are hereby required to attend before the Family Court at the Court House at Yaren at a m */ p m on day the day of , 20 * on a date and at a time which will be notified to you by me in due course for the hearing of an application by A B that you be ordered on the ground of your having wilfully neglected to maintain the said A B * the child(ren) E F * G H whom you have an obligation to maintain * the said A B and the child(ren) E F * and G H whom you have an obligation to maintain to make periodical provision for his * her * their maintenance. An affidavit by A B as to the grounds for making the application is attached to this summons

PLEASE NOTE THAT IF YOU DO NOT ATTEND AS REQUIRED THE APPLICATION WILL BE HEARD AND DETERMINED IN YOUR ABSENCE

PLEASE NOTE ALSO THAT IF YOU WISH TO OPPOSE THE APPLICATION YOU SHALL LODGE IN THE OFFICE OF THE COURT NOT LESS THAN 3 DAYS BEFORE THE DATE FIXED FOR THE HEARING OF THIS APPLICATION. AN AFFIDAVIT STATING THE GROUNDS ON WHICH YOU OPPOSE IT AND DENYING SUCH OF THE FACTS ALLEGED BY THE APPLICANT AS YOU DO NOT ADMIT

You shall complete and detach the acknowledgement of service and send it so as to reach the court within 14 days after you receive this notice inclusive of the day of receipt. Delay in returning the form may add to the costs

If you intend to instruct a legal practitioner to act for you, you should at once give him or her all the documents which have been served on you so that he or she may take the necessary steps on your behalf

The Applicant's address for service is

FORM NO 12



REPUBLIC OF NAURU

MATRIMONIAL CAUSES ACT 1973

[Rule 43(2)]

AFFIDAVIT IN SUPPORT OF APPLICATION UNDER SECTION 33 OF THE ACT

(Heading as in Form No 11)

- I A B of _____ make oath and say:
- 1 I am the wife * husband of C D of _____ (hereinafter called the respondent)
 - 2 The respondent has neglected to provide reasonable maintenance for me * the child(ren) of our family * me and the child(ren) of our family
 - 3 On the _____ day of _____ 20____ I (in the case of an application by a wife) being then (state full name and status before the marriage) * (in the case of an application by a husband) who was then (state respondent's full name and status before marriage) was lawfully married to the respondent at _____
 - 4 There is * are * (state number) child(ren) of the family now living + namely (state the name of each child and his or her date of birth or if it be the case that he or she is 21 or over and in the case of each minor child over the age of 16 whether he or she is or will be or if an order or provision were made would be receiving instruction at an educational establishment or undergoing training for a trade profession or vocational) who is now residing at (state the place) with (state the person)
 - 5 There have been no previous proceedings in any court in the Republic or elsewhere with reference to the marriage * the child(ren) of the family + except (state the nature of the proceedings the date and effect of any decree or order and in the case of proceedings with reference to the marriage whether there has been any resumption of cohabitation since the making of the decree or order)
 - 6 The following are particulars of the wilful neglect by the respondent to provide reasonable maintenance for me * for the said child(ren) (state names) * for me and the said child(ren) (state names) (give particulars of the wilful neglect)
 - 7 The respondent has not made any payments to me by way of maintenance for myself * the said child(ren) * myself and the said child(ren) + except (give particulars)
 - 8 My means are as follows—
 - 9 To the best of my knowledge and belief the respondent's means are as follows—
 - 10 I apply for an order than the respondent do make provision by way of periodical payments for me + and for (state name(s)) of child(ren) in respect of whom such claim is made)
 - 11 I ask that I may be granted the custody of the said (state name(s) of the child(ren))
 - 12 This court has jurisdiction to entertain these proceedings by reason of the fact that the respondent and I are resident in the Republic (or as the case may be)

Sworn by the said A B)
at this)
day of)
20)

Before me

Commissioner for Oaths

* Delete whichever is not applicable

+ Delete if not applicable

FORM NO 13



REPUBLIC OF NAURU

MATRIMONIAL CAUSES ACT 1973

[Rule 44(1)]

ORIGINATING SUMMONS FOR ALTERATION OF A MAINTENANCE AGREEMENT

In the Family Court

M C No

In the matter of an application under Section
35 of the *Matrimonial Causes Act 1973*

Between

A. B.

Applicant

and

C. D.

Respondent

To C D of

You are hereby required to attend before the Family Court at the Court House at Yaren at a m */ p m on day the day of , 20 * on a date and at a time which will be notified to you by me in due course for the hearing of an application by A B that the maintenance agreement made between yourself and A B on the day of 20 be altered by (set out alteration(s)) sought

An affidavit by A B as to reasons for seeking the alteration(s) is attached to this summons

PLEASE NOTE THAT IF YOU DO NOT ATTEND AS REQUIRED THE APPLICATION WILL BE HEARD AND DETERMINED IN YOUR ABSENCE

PLEASE NOTE ALSO THAT IF YOU WISH TO OPPOSE THE APPLICATION YOU SHALL LODGE IN THE OFFICE OF THE COURT NOT LESS THAN 3 DAYS BEFORE THE DATE FIXED FOR THE HEARING OF THIS APPLICATION. AN AFFIDAVIT STATING THE GROUNDS ON WHICH YOU OPPOSE IT AND DENYING SUCH OF THE FACTS ALLEGED BY THE APPLICANT AS YOU DO NOT ADMIT

You shall complete and detach the acknowledgement of service and send it so as to reach the court within 14 days after you receive this notice inclusive of the day of receipt. Delay in returning the form may add to the costs

If you intend to instruct a legal practitioner to act for you, you should at once give him or her all the documents which have been served on you so that he or she may take the necessary steps on your behalf

FORM NO 14



REPUBLIC OF NAURU

MATRIMONIAL CAUSES ACT 1973

[Rule 44(2)]

AFFIDAVIT IN SUPPORT OF APPLICATION UNDER SECTION 35 OF THE ACT

(Heading as in Form No 13)

I A B of

make oath and say:

- 1 I am the wife * husband of C D of _____ (hereinafter called the respondent) and apply for an order altering the maintenance agreement made between me and the respondent on the _____ 20 _____
- 2 I reside at _____, and the respondent resides at _____
We are both domiciled in Nauru (or as the case may be)
- 3 On the _____ day of _____ 20 _____ I was lawfully married to the respondent at _____, in the case of an application by the husband) The respondent was then (state full name and status of wife before marriage)
- 4 There is * are * (state number) child(ren) of the family + namely (state the name of each child now living and his or her date of birth or if it be the case that he or she is 21 or over and in the case of each minor child over the age of 16 whether he or she is or will be or if an order or provision were made would be receiving instruction at an educational establishment or undergoing training for a trade profession or vocation) who is now residing at (state the place) with (state the person) + (state name of any child who has died since the date of the agreement) died on the _____ day of _____ 20 _____
+ The agreement also makes financial arrangements for (give similar particulars of any other child for whom the agreement makes such arrangements)
- 5 There have been no previous proceedings in any court with reference to the agreement or the marriage */to the child(ren) of the family */to the other child(ren) for whom the agreement makes financial arrangements + except (state the nature of the proceedings and the date and effect of any order or decree)
- 6 My means are as follows—
- 7 I ask for the following alteration(s) to be made in the agreement—
- 8 The facts on which I rely to justify the alteration(s) are—

Sworn by the said A B)
at this)
day of)

20)

Before me

Commissioner for Oaths

* Delete whichever is not applicable

+ Delete if not applicable