



**Tuvalu**

**MATRIMONIAL PROCEEDINGS ACT  
1984**

**Act 8 of 1984**





Tuvalu

## MATRIMONIAL PROCEEDINGS ACT 1984

### Arrangement of Sections

#### Section

<b>PART I - PRELIMINARY</b>	<b>5</b>
1 Short title and commencement.....	5
2 Purpose of this Act.....	5
<b>PART II - INTERPRETATION</b>	<b>6</b>
3 Interpretation.....	6
<b>PART III - JURISDICTION</b>	<b>6</b>
4 Ground of jurisdiction.....	6
5 Jurisdiction of island courts .....	6
6 Jurisdiction of Magistrates' Courts.....	7
7 Appeal, review, etc. ....	7
<b>PART III - DIVORCE PROCEEDINGS</b>	<b>7</b>
8 Right to divorce in certain cases .....	7
9 Grounds for divorce .....	8
10 Conciliation, etc. ....	8
11 Grant of divorce .....	8
<b>PART IV - RELATED MATTERS</b>	<b>9</b>
12 Children .....	9
13 Property rights.....	10
14 Other orders .....	10
15 Orders after divorce .....	10

---

**PART V - MISCELLANEOUS** **11**

---

16 Technical rules .....11  
17 Queen's Proctor .....11  
18 Rules of Court .....11  
19 Repeal and transitional .....12

---

**SCHEDULE** **13**

---

CERTIFICATE OF DIVORCE.....13

---

**Supporting Documents**

---

---

**ENDNOTES** **14**

---

Table of Legislation History .....14  
Table of Renumbered Provisions.....14  
Table of Endnote References.....14



Tuvalu

# MATRIMONIAL PROCEEDINGS ACT 1984

Act 8 of 1984

## AN ACT TO MAKE NEW PROVISION FOR DIVORCE, AND FOR RELATED MATTERS

ENACTED BY THE PARLIAMENT OF TUVALU

Commencement [1 January 1985]

### PART I - PRELIMINARY

#### 1 Short title and commencement

This Act may be cited as the Matrimonial Proceedings Act 1984, and shall come into operation on such date as the Minister may, by notice, determine.

#### 2 Purpose of this Act

- (1) The purpose of this Act is to provide for the legal consequences of the final breakdown of a marriage, including divorce, the welfare of children and property rights.
- (2) To minimize the ill-effects of a breakdown, attempts at reconciliation and the lessening (if possible) of the common bitterness resulting from a marriage failure must be given prominence, and if the divorce does go ahead it must be remembered that if there are children what is being broken up is not just a marriage but a family unit, and the children, as members of that unit must be given every care and protection.

- (3) The Act says nothing one way or the other about the moral or religious implications of a marriage failure.

## PART II - INTERPRETATION

### 3 Interpretation

In this Act —

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

“**matrimonial proceedings**” means —

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

## PART III - JURISDICTION

### 4 Ground of jurisdiction

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

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

### 5 Jurisdiction of island courts

- (1) An island court has jurisdiction in matrimonial proceedings only —
- (a) where both parties to the marriage are citizens of Tuvalu; or
  - (b) where —
    - (i) after the commencement of the proceedings, both parties to the marriage consent; and
    - (ii) the court is satisfied that there are no major problems relating to any associated proceedings.

- (2) An island court has no jurisdiction where one of the parties is absent from Tuvalu at the time of the commencement of the proceedings, unless that party consents, in writing, after the commencement of the proceedings.
- (3) A consent for the purposes of Subsection (1) (b) (i) or Subsection (2) cannot be withdrawn for the purposes of the proceedings to which it relates.
- (4) If during any matrimonial proceedings an island court thinks that there will or may be major problems relating to any associated proceedings, the court shall transfer the matrimonial proceedings to the Magistrate's Court.

## **6 Jurisdiction of Magistrates' Courts**

- (1) A Magistrate's Court has jurisdiction in all matrimonial proceedings, except in a case where proceedings have already been properly commenced in an island court.
- (2) If in any matrimonial proceedings before a Magistrate's Court constituted otherwise than by the Senior Magistrate the Court thinks that a question (whether of law or of fact) of special difficulty has arisen or may arise, the Court may transfer the proceedings to a Magistrate's Court constituted by the Senior Magistrate.

## **7 Appeal, review, etc.**

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

# **PART III - DIVORCE PROCEEDINGS**

## **8 Right to divorce in certain cases**

If—

- (a) one party to a marriage has wilfully refused to consummate the marriage; or
  - (b) the marriage has been induced by fraud, duress or mistake,
- the injured party to the marriage is, subject to Part IV, entitled to a divorce.

## 9 Grounds for divorce

- (1) Subject to Section 8, the only ground for divorce is that the marriage has completely broken down.
- (2) Without limiting what may be accepted as evidence that a marriage has broken down, a court may accept as such evidence proof that —
  - (a) the respondent has, since the celebration of the marriage, committed adultery; or
  - (b) the respondent has deserted the applicant without reasonable cause; or
  - (c) the respondent has, since the celebration of the marriage, treated the applicant with cruelty; or
  - (d) the respondent is certified by a medical officer or medical practitioner approved for the purpose of the Mental Treatment Act(Cap. 37, 1978 Edn.) —
    - (i) to be of unsound mind; and
    - (ii) to be unlike to recover; or
  - (e) in the circumstances it would be unreasonable to expect one party to continue in the marriage relationship with the order,

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

## 10 Conciliation, etc.

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

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

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

## 11 Grant of divorce

- (1) Subject to this Act and in particular to Part IV, a court may, upon being satisfied as to any matter referred to in Section 8 (a) or (b) or Section 9 (1), grant a divorce.
- (2) On the grant of a divorce the court shall —



- (a) forward to the Registrar-General a certificate of divorce in the form in the Schedule; and
  - (b) issue to each of the parties, on request, a copy of the certificate.
- (3) On receipt of a certificate of divorce the Registrar-General shall, in such manner as he thinks proper —
- (a) enter the certificate in a Register of Divorces; and
  - (b) annotate any relevant entry in the Register of Marriages accordingly.

## **PART IV - RELATED MATTERS**

### **12 Children**

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

### 13 Property rights

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

### 14 Other orders

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

### 15 Orders after divorce

If —

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

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

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

## PART V - MISCELLANEOUS

### 16 Technical rules

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

### 17 Queen's Proctor

Notwithstanding Section 59 (2) of the Interpretation and General Clauses Act (Cap. 1, 1978 Edn.), there shall be no office of Queen's Proctor, or any similar or analogous office, for Tuvalu.

### 18 Rules of Court

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

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

**19 Repeal and transitional**

- (1) The Native Divorce Act (Cap 21, 1978 Edn.) and the Divorce Act (No. 3 of 1981) are repealed.
- (2) Notwithstanding the repeals effected by Subsection (1), any proceedings under either of the repealed Acts were —
  - (a) commenced before the date of commencement of this Act
  - (b) not determined before that date,may be continued as if this Act had not been enacted, or, if the court directs or permits, may be withdrawn and re-commenced under this Act.

**SCHEDULE**

*(Section 11(2))*

**CERTIFICATE OF DIVORCE**

IN THE SENIOR MAGISTRATE'S COURT/ MAGISTRATE'S COURT/ISLAND COURT

AT..... No.

The marriage of .....

..... and .....

celebrated at..... on .....

is dissolved under the Matrimonial Proceedings Act 1984.

.....

.....

*Senior Magistrate/Magistrate/*

*Seal of the Court*

*Island Magistrate\**

\*Delete as appropriate

**ENDNOTES****Table of Legislation History**

<b>Legislation</b>	<b>Year and No</b>	<b>Commencement</b>

**Table of Renumbered Provisions**

<b>Original</b>	<b>Current</b>

**Table of Endnote References**