

## DOMESTIC ACTIONS BILL

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### EXPLANATORY NOTE

THIS Bill gives effect to recommendations made in a report to the Minister of Justice in February 1968 by the Torts and General Law Reform Committee, relating to the abolition of a number of actions which it considered unnecessary, and incompatible with society's present attitude towards the domestic and personal situations out of which they arise.

*Clause 1* gives the Short Title.

#### PART I

##### *Damages for Adultery*

*Clause 2* repeals those sections of the Matrimonial Proceedings Act 1963 which relate to the claiming of damages for adultery. As a result such damages will no longer be able to be claimed. Claims made on petitions already filed are not affected.

##### *Common Law Actions*

*Clause 3* makes it clear that the action for the enticement of a spouse (which will continue to be available to persons whose spouses have been induced to leave them by the enticement of a third party) is available to wives as well as husbands.

*Clause 4* abolishes the actions in tort for damages for enticement of a child, seduction, and harbouring. Once again actions already commenced are not affected.

*Clause 5* abolishes the action for breach of promise of marriage in relation to all agreements to marry but does not affect legal actions which have already been commenced.

##### *Amendments and Repeals*

*Clause 6* provides for consequential amendments and repeals.

#### PART II

##### *Property Disputes Arising out of Agreements to Marry*

*Clause 7* defines terms used in Part II of the Bill, which provides for the determination of property disputes arising out of the breaking of engagements.

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*Clause 8* provides that an application may be made to a Court which will make whatever orders seem appropriate to put the parties in the position they would have occupied had they never been engaged, without taking into account responsibility for breaking the engagement. The clause also covers gifts made by third parties in anticipation of the marriage.

*Clause 9* provides that the Supreme Court and a Magistrate's Court shall each have jurisdiction to deal with an application made under *clause 8*, except where the property concerned is already the subject of proceedings in the Supreme Court which then has sole jurisdiction. Where an application has been made to a Magistrate's Court, a party may apply to the Supreme Court to have it heard there; and the Supreme Court will order the removal of the application unless satisfied that it can more appropriately be dealt with where it is. A minor can be a party to an application made to a Magistrate's Court without a next friend or guardian *ad litem* if he is married or over 18.

*Clause 10* provides that interested parties must be given the right to appear at the hearing of any application under *clause 8*, and sets out the consequences of orders made under that clause.

*Clause 11* protects people who have debts secured against any property in respect of which an order under *clause 8* is made. The clause also provides that unless such property is ordered to be sold an order under *clause 8* in respect of it does not make the debt immediately due.

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Hon. Dr Finlay

**DOMESTIC ACTIONS**

**ANALYSIS**

Title	<i>Amendments and Repeals</i>
1. Short Title	6. Consequential amendments and repeals
<b>PART I</b>	
<i>Damages for Adultery</i>	
2. Abolition of right to claim damages for adultery	<b>PART II</b>
<i>Common Law Actions</i>	
3. Either spouse may bring action for enticement	<i>Property Disputes Arising out of Agreements to Marry</i>
4. Abolition of actions for enticement, seduction, and harbouring	7. Interpretation 8. Property disputes arising out of agreements to marry
5. Action for breach of promise of marriage abolished	9. Concurrent jurisdiction of Supreme Court and Magistrates' Courts 10. Procedure
	11. Rights of mortgagee, etc., not affected

**A BILL INTITULED**

**5 An Act to abolish the actions for damages for adultery, for harbouring of a spouse or child, and for enticement or seduction of a child, and for breach of promise of marriage, and to provide for the settlement of property disputes arising out of the termination of agreements to marry**

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**10 1. Short Title**—This Act may be cited as the Domestic Actions Act 1975.

## PART I

*Damages for Adultery***2. Abolition of right to claim damages for adultery—**

(1) Part V of the Matrimonial Proceedings Act 1963 is hereby repealed. 5

(2) Nothing in this section shall affect any claim for damages made on a petition filed before the commencement of this Act.

*Common Law Actions*

**3. Either spouse may bring action for enticement—**For the 10  
avoidance of doubt it is hereby declared that an action against  
any person on the ground of his having induced the spouse of  
any other person to leave or remain apart from that other  
person may be brought by either a husband or wife.

**4. Abolition of actions for enticement, seduction, and 15  
harbouring—**(1) No person shall be liable in tort—

(a) To a parent for—

(i) Inducing a child of that parent to leave or  
remain apart from that parent; or

(ii) Seducing the child of that parent; or 20

(iii) Harboursing the child of that parent; or

(b) To any other person for—

(i) Seducing the servant of that other person; or

(ii) Harboursing the wife of that other person.

(2) In this section the expression “parent”, in relation to 25  
any child, includes a guardian or person standing in the place  
of a parent to that child.

(3) This section shall have effect in relation to events  
occurring before as well as after the commencement of this  
Act but shall not affect any action commenced before the 30  
commencement of this Act.

**5. Action for breach of promise of marriage abolished—**

(1) No agreement between two persons to marry each other,  
wherever made, shall be a contract or give rise to legal con-  
sequences, and the action for breach of promise of marriage 35  
is hereby abolished.

(2) This section shall have effect in relation to agreements  
made before as well as after the commencement of this Act  
but shall not affect any action commenced before the  
commencement of this Act. 40

**8. Property disputes arising out of agreements to marry—**

(1) Where the termination of an agreement to marry gives rise to any question between the parties to the agreement, or between one or both of the parties to the agreement and a third party, concerning the title to or possession or disposition of any property, any such party may, in the course of any proceedings or on application made for the purpose, apply to the Court for an order under this section. 5

(2) Every application under this section shall be made within 12 months of the date of termination of the agreement or within such longer period as the Court may allow. 10

(3) Subject to subsection (6) of this section, on any such application the Court shall make such orders as it thinks necessary to restore each party to the agreement, and any third party, as closely as practicable to the position that party would have occupied if the agreement had never been made. 15

(4) In determining the orders to be made on any such application, the Court shall not take into account or attempt to ascertain or apportion responsibility for the termination of the agreement. 20

(5) In order to give effect to subsection (3) of this section, but without limiting the general power conferred thereby, the Court may, on any such application, notwithstanding that the legal or equitable interests of all parties in any property may be defined, or that a party may have no legal or equitable interest in any property, make orders for— 25

(a) The sale of all or part of the property and the division or settlement of the proceeds in such shares and upon such terms as it thinks fit;

(b) The partition or division of the property: 30

(c) The vesting of property owned by one or two parties in two or more parties in common in such shares as it thinks fit;

(d) The conversion of joint ownership into ownership in common in such shares as it thinks fit: 35

(e) The payment of sums of money by any party to any other party or parties.

(6) Where any property in dispute is a gift from a third party and the Court is satisfied that the third party does not wish the gift to be returned to him, the Court may make such orders with respect to that property as appear just in all the circumstances, but without taking into account or attempting to ascertain or apportion responsibility for the termination of the agreement. 40

*Amendments and Repeals*

**6. Consequential amendments and repeals**—(1) Sections 21 and 22 of the Evidence Act 1908 are hereby repealed.

5 (2) Section 3 (1) of the Law Reform Act 1936 is hereby amended by repealing the proviso, and substituting the following proviso:

“Provided that this subsection shall not apply to causes of action for defamation or for inducing one spouse to leave or remain apart from the other.”

10 (3) Section 3 (2) of the Law Reform Act 1936 is hereby amended by repealing paragraph (b).

(4) Section 68 of the Matrimonial Proceedings Act 1963 is hereby amended by repealing subsection (2) and the proviso to subsection (1).

15 (5) Section 15 (2) of the Legal Aid Act 1969 is hereby amended by repealing paragraph (d), and substituting the following paragraph:

“(d) Proceedings for the enticement of a spouse:”.

20 (6) Section 11 of the Minors’ Contracts Act 1969 is hereby repealed.

(7) Section 11 (2) of the Illegal Contracts Act 1970 is hereby repealed.

(8) This section shall not affect any action commenced before the commencement of this Act.

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PART II

*Property Disputes Arising out of Agreements to Marry*

**7. Interpretation**—In this Part of this Act, unless the context otherwise requires,—

30 “Agreement to marry” includes an agreement to marry which, immediately before the commencement of this Act, would have been void:

“Court” means a Court having jurisdiction by virtue of section 9 of this Act:

35 “Party to the agreement” includes the legal personal representative of such a party:

“Property” includes real and personal property and any estate or interest in any property real or personal, and any debt, and any thing in action, and any other right or interest.

(7) An order made under this section shall be subject to appeal in the same way as an order made by a Magistrate's Court or the Supreme Court in an action in a Magistrate's Court or in the Supreme Court, respectively, would be.

5 (8) Nothing in this section shall limit or affect the right of any person to bring an action for money had and received.

**9. Concurrent jurisdiction of Supreme Court and Magistrates' Courts—**(1) The Supreme Court and a Magistrate's Court shall each have jurisdiction to make orders pursuant to section 8 of this Act:

10 Provided that a Magistrate's Court shall have no jurisdiction to make any such order in respect of any property where proceedings relating to or affecting the property are pending in the Supreme Court.

15 (2) The Supreme Court, upon application by any party to proceedings pending on an application made under section 8 of this Act in a Magistrate's Court (other than an application made in the course of other proceedings in that Court), shall order the proceedings to be removed into the Supreme Court unless it is satisfied that the proceedings would be more

20 appropriately dealt with in a Magistrate's Court. Where the proceedings have been so removed they shall be continued in the Supreme Court as if they had been properly and duly commenced in that Court.

25 (3) Section 50 of the Magistrates' Courts Act 1975 is hereby amended by adding the following subsection:

30 "(3) Any minor who is or has been married or is above the age of 18 years may make or be a party to an application under section 8 of the Domestic Actions Act 1975 without a next friend or guardian *ad litem*; and orders may be made on the application, and such proceedings may be had and taken to enforce any such order, as if the minor were of full age."

**10. Procedure—**(1) On any application made under section 8 of this Act, such notice as the Court directs shall be given to every person having or appearing to have an interest in the property in question, and any such person shall be entitled to appear and be heard in the matter as a party to the application.

(2) An order made by the Court pursuant to section 8 of this Act that a sum of money be paid to any person shall take effect as a judgment of the Court in favour of that person for that sum and shall be enforceable accordingly, and a sum of money ordered to be paid in respect of any estate or interest in land shall also constitute a charge against that estate or interest, and may be registered under the provisions of the Statutory Land Charges Registration Act 1928. 5

(3) Where any order made pursuant to section 8 of this Act affects the ownership of any estate or interest in land which is registered in the office of the District Land Registrar or the Registrar of Deeds, a copy of the order sealed with the seal of the Court shall, upon application by any party to the application and upon payment of the prescribed fee (if any), be registered by the District Land Registrar or the Registrar of Deeds, as the case may require, and shall thereupon have effect according to its tenor. 10 15

(4) Without limiting the provisions of subsection (2) of this section, where under any order made pursuant to section 8 of this Act a person is or may be liable to pay a sum of money to another person, the Court may direct that it be paid either in one sum or in instalments and either with or without security and otherwise in such manner and subject to such conditions as the Court thinks fit. 20 25

**11. Rights of mortgagee, etc., not affected**—The rights conferred on any person by an order made under section 8 of this Act shall be subject to the rights of the person entitled to the benefit of any mortgage, security, charge, or encumbrance affecting the property in respect of which the order is made if it was registered before the order was registered or if the rights of that person arise under an instrument executed before the date of the making of the order: 30

Provided that, notwithstanding anything in any enactment or in any instrument, no money payable under any such mortgage, security, charge, or encumbrance shall be called up or become due by reason of the making of any such order not being an order directing the sale of any property. 35