

## DIVORCE AND MATRIMONIAL CAUSES AMENDMENT BILL

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### EXPLANATORY NOTE

THIS Bill amends the Divorce and Matrimonial Causes Act 1928.

*Clause 2* extends the class of cases in which recognition will be given in New Zealand to decrees of divorce or nullity that are made overseas. The provisions in the new subsection (2) and in subparagraphs (iii), (iv), and (v) of paragraph (a) of the new subsection (1) are new; and the provisions in subparagraph (ii) of the said paragraph (a) differ from the corresponding existing provisions. Otherwise the new section follows the existing section.

*Clause 3:* Under section 55 of the Divorce and Matrimonial Causes Act 1928 the Court has power on the application of the petitioner or the respondent, or at its discretion, to hear proceedings in Chambers, if it thinks it proper in the interests of public morals; and it may in any case forbid the publication of any report of the evidence or proceedings. This clause amends that section to enable any party (including a co-respondent) to apply for a Chambers hearing. It also makes it clear that the Court may forbid the publication of any report of the proceedings, and not merely a report of the evidence.

*Clause 4* inserts a new section that applies in any case and restricts the particulars that may be published to the names, addresses, and occupations of parties and witnesses, the grounds of the petition, a concise statement of the charges, defences, and countercharges on which evidence has been given, submissions and decisions on points of law, the summing up of the Judge and the finding of the jury (if any), and the decision of the Court on the case together with the Court's observations. The Court may, however, authorise the publication of other particulars, subject to such conditions relating to any matter to be published as it thinks fit. No prosecution for a breach of the new section is to be commenced without the leave of the Attorney-General. The restrictions do not apply to periodicals of a technical character bona fide intended for circulation among members of the legal or medical professions, psychologists, advisers in the sphere of marriage guidance, or other social welfare workers. The above-mentioned provisions follow section 1 of the Judicial Proceedings (Regulation of Reports) Act 1926 of the United Kingdom. In all other respects the new section is the same as section 7 of the Domestic Proceedings Act 1939, as amended by the Domestic Proceedings Amendment Bill.

*Clause 5* validates provisions in the Matrimonial Causes Rules 1943 for the taking of evidence by affidavit on applications for ancillary relief. Section 48 of the principal Act at present authorises the use of affidavits only with the leave of the Court.

*Hon. Mr Mason*

**DIVORCE AND MATRIMONIAL CAUSES  
AMENDMENT**

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**ANALYSIS**

Title	3. Extending power of Court to hear proceedings in Chambers
1. Short Title	4. Newspaper reports of proceedings
2. Recognition of overseas divorces	5. Section 48 of principal Act amended. Commencement

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**A BILL INTITULED**

**An Act to amend the Divorce and Matrimonial Causes Act  
1928**

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

1. **Short Title**—This Act may be cited as the Divorce and  
Matrimonial Causes Amendment Act 1958, and shall be read  
together with and deemed part of the Divorce and Matri-  
10 monial Causes Act 1928 (hereinafter referred to as the  
principal Act).

2. **Recognition of overseas divorces**—(1) The principal Act,  
as amended by section ten of the Divorce and Matrimonial  
Causes Amendment Act 1953, is hereby further amended by  
15 repealing section twelve A, and substituting the following  
section:

“12A. (1) The validity of any decree or order or legislative enactment for divorce or nullity of marriage made (whether before or after the commencement of this section) by a Court or legislature of any country outside New Zealand shall, by virtue of this section, be recognised in all New Zealand Courts if— 5

“(a) That Court or legislature has exercised jurisdiction—

“(i) In any case, on the basis of the domicile of one or both of the parties to the marriage in that country; or 10

“(ii) In any case, on the basis of the residence of one or both of the parties to the marriage in that country if at the commencement of the proceedings any such party had in fact been resident in that country for a continuous period of not less than two years; or 15

“(iii) In any case, on the basis that one or both of the parties to the marriage are nationals or citizens of that country or of the sovereign State of which that country forms part: 20

“(iv) In any case, on the basis that the wife has been deserted by her husband, or the husband has been deported, and that the husband was immediately before the desertion or deportation domiciled in that country; or 25

“(v) In any case, on the basis that the wife was legally separated from her husband, whether by order of a competent Court or by agreement, and that the husband was at the date of the order or agreement domiciled in that country; or 30

“(vi) In a case of nullity of marriage on the ground of non-consummation owing to incapacity or wilful refusal or on some ground existing at the time of the marriage, on the basis of the celebration of the marriage in that country; or 35

“(b) The decree or order or enactment is recognised as valid in the Courts of a country in which at least one of the parties to the marriage is domiciled or is deemed by the law of that country to be domiciled.

“(2) Nothing in this section shall affect the validity of any decree or order or legislative enactment for divorce or nullity of marriage, or of any dissolution of marriage otherwise than 40

by judicial process, that would be recognised in the Courts of New Zealand apart from this section.”

(2) Section ten of the Divorce and Matrimonial Causes Amendment Act 1953 is hereby consequentially repealed.

5     **3. Extending power of Court to hear proceedings in Chambers**—Section fifty-five of the principal Act is hereby amended as follows:

- (a) By omitting the words “either the petitioner or the respondent”, and substituting the words “any party to any suit or proceeding under this Act”:
- 10     (b) By omitting the words “the evidence or other proceedings therein, either as to the whole or any portion thereof”, and substituting the words “the proceedings or of any part thereof”.

15     **4. Newspaper reports of proceedings**—The principal Act is hereby amended by inserting, after section fifty-five, the following section:

“55A. (1) No particulars in relation to any suit or proceeding under this Act shall be printed or published in any newspaper, except the following particulars, namely:

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- “ (a) The names, addresses, and occupations of the parties and witnesses:
- “ (b) The grounds of the petition, and a concise statement of the charges, defences, and countercharges in support of which evidence has been given:
- 25     “ (c) Submissions on any point of law arising in the course of the proceedings, and the decision of the Court on the submissions:
- “ (d) The summing-up of the Judge and the finding of the jury (if any), and the decision of the Court and any observations made by the Court in giving it:
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“Provided that the Court may in its discretion authorise the publication of any other particulars, subject to such conditions relating to any matter to be published as it thinks fit.

35     “(2) If any particulars are printed or published in any newspaper in contravention of the provisions of this section, every printer, publisher, or editor of the newspaper shall be guilty of an offence and liable on summary conviction,—

“(a) In the case of an individual, to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds, or to both:

“(b) In the case of a body corporate, to a fine not exceeding five hundred pounds. 5

“(3) No prosecution for an offence against this section shall be commenced except with the leave of the Attorney-General.

“(4) Nothing in this section shall be construed to limit the provisions of section fifty-five of this Act or of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to judicial proceedings. 10

“(5) For the purposes of this section, the term ‘newspaper’ means any newspaper within the meaning of the Newspapers and Printers Act 1955, or any periodical publication which is published at intervals not exceeding three months; and every document which at any time accompanies and is distributed together with any newspaper shall be deemed to form part of the newspaper. 15

“Provided that for the purposes of this section the term ‘newspaper’ shall not include any newspaper or periodical publication of a technical character bona fide intended for circulation among members of the legal or medical professions, psychologists, advisers in the sphere of marriage guidance, or other social welfare workers.” 20

Cf. Judicial Proceedings (Regulation of Reports) Act 1926, s. 1 (U.K.) 25

**5. Section 48 of principal Act amended. Commencement—**

(1) Section forty-eight of the principal Act is hereby amended by inserting, after the words “with the leave of the Court”, the words “or where so authorised by rules of Court”. 30

(2) This section shall be deemed to have come into force on the first day of December, nineteen hundred and forty-three (being the date of commencement of the Matrimonial Causes Rules 1943).