



## ANALYSIS

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1991-92, No. 36

An Act to recognise the contribution of husband and wife to the marriage partnership and to provide for the just division of matrimonial property between the spouses when their marriage ends while acknowledging the interests of children of the marriage and other interested parties.

(21 April 1992)

**BE IT ENACTED** by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

1. Short Title - This Act may be cited as the Matrimonial Property Act 1991-92
2. Interpretation - (1) In this Act, unless the context otherwise requires, "the Act" means the Matrimonial Property Act 1976 of the General Assembly of New Zealand that came into force in New Zealand on the 1st day of February 1977.  
(2) All terms and phrases used in this Act shall unless the context otherwise requires have the same meaning attributed to those terms and phrases by the Act.

3. Matrimonial Property Act 1976 to be law in the Cook Islands - (1)

The Matrimonial Property Act 1976 of the General Assembly of New Zealand shall be part of the law of the Cook Islands as if that Act were enacted by the Parliament of the Cook Islands subject to sections 4, 5 and 6 of this Act and with the modifications set out herein and in the Schedule to this Act.

- (2) Unless the context shall otherwise require, every reference in the Act -
- (a) to a court shall be read as a reference to the High Court of the Cook Islands;
  - (b) to New Zealand shall be read as a reference to the Cook Islands;
  - (c) to a judge or magistrate shall be read as a reference to a judge of the High Court of the Cook Islands;
  - (d) to an officer shall be read as a reference to the corresponding officer in the Cook Islands;
  - (e) to a provision of the Act that has been altered or omitted by this Act shall be read subject to the alteration or omission with all necessary modifications.

4. Fee simple of native freehold land not to be affected - (1) Subject to subsection (2), the Act shall have no application to an estate in fee simple or to any other freehold interest whether legal or equitable of native freehold land.

(2) Where a Judge is of the opinion that an estate in fee simple or other freehold interest of native freehold land would have been available for division between each spouse under the Act but for subsection (1) of this section, the Judge may make an order affecting any other property (notwithstanding that that other property may be separate property) that in his opinion will compensate a spouse to the extent that that spouse has been prejudiced by that subsection.

5. Customary entitlements not to be affected - The Act shall have no application to the entitlements of a spouse derived by virtue of that spouse holding office as an Ariki or other native chief.

6. Transitional - (1) Where an application to the Court relates to the matrimonial property of any marriage that took place before the commencement of this Act, the Court shall, in dealing with that application, have regard to any agreement entered into before the commencement of this Act by the parties to that marriage and nothing in this Act shall affect the validity of any such agreement which shall have effect as if this Act had not been passed.

(2) Upon the coming into force of this Act, all proceedings before the High Court relating to the division of property as between a husband and wife, shall be deemed to be proceedings commenced under this Act and the provisions of this Act shall apply to those proceedings accordingly.

7. Savings - Nothing in this Act shall affect any final order or determination of the High Court made before the commencement of this Act and relating to the division of property between a husband and wife or between either or both of them and a third party.

## SCHEDULE

(section 3)

Provisions of the Matrimonial  
Property Act 1976Modifications

Section 2	By omitting the definitions of "Court", "Homestead", "Joint family home", "Magistrate's Court" and paragraph (b) of the definition of "Matrimonial home";
Section 4	By omitting paragraph (b) of subsection (5);
Section 6	By omitting that section;
Section 12	By omitting that section;
Section 20	By omitting subsection (8);
Section 22	By omitting that section;
Section 27	By omitting subsection (4);
Section 28	By omitting from subsection (1) the words "being a dwelling house within the meaning of the Tenancy Act 1955;
Section 32	By omitting from subsection (1) the words "whether or not that agreement has been registered under Part VII of the Domestic Proceedings Act 1968;
	By omitting subsection (2)
Section 33	By omitting paragraph (h) of subsection (3);
	By omitting from paragraph (j) of subsection (3) the words "of land, or of any interest in land, including a lease licence or tenancy" and substituting the words "of any interest in land other than the fee simple";
Section 35	By omitting subsection (2);

Section 38	By omitting subsection (4);
Section 39	By omitting that section;
Section 41	By omitting subsection (1) and substituting therefore the following subsection "(1) Where an order made under this Act relates to any estate or interest in land, a copy of the order sealed with the seal of the Court shall be sufficient authority for the Registrar of the Court to execute all papers documents and deeds necessary to give effect to that order and the estate or interest shall thereupon pass without further requirement to the person in whose favour the order was made in accordance with the terms of the order";
	By omitting subsection (3);
Section 42	By omitting that section;
Section 48	By omitting subsection (4);
Section 50	By omitting that section;
Section 53	By omitting that section;
Section 54	By omitting that section;
Section 55	By omitting that section;
Section 56	By omitting that section;
Section 57	By omitting that section;
First Schedule	By omitting that Schedule
Second Schedule	By omitting that Schedule
Third Schedule	By omitting that Schedule

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