

## **DOMESTIC PROTECTION BILL**

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### **EXPLANATORY NOTE**

THIS Bill is a revised version of the draft Domestic Protection Bill circulated by the Statutes Revision Committee pursuant to a resolution of the House of Representatives passed on 13 May 1982.

This Bill incorporates changes recommended by that Committee following its consideration of the submissions that it received following the public circulation of its draft.

Hon. Mr McLay

## DOMESTIC PROTECTION

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### A BILL INTITULED

**An Act to mitigate the effects of domestic violence and to confer protection from molestation in the domestic sphere**

No. 114—1

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

**1. Short Title and commencement**—(1) This Act may be cited as the Domestic Protection Act 1982. 5

(2) This Act shall come into force on the 1st day of March 1983.

**2. Interpretation**—In this Act, unless the context otherwise requires,—

“Child of the family” means— 10

(a) A child of a husband and wife; and includes a child (whether or not a child of the husband or wife) who is or has been a member of the family of the husband and wife:

(b) A child of a man and a woman who are or have 15 been living together in the same household:

(c) Where a man and a woman are or have been living together in the same household (whether or not they are or have been married to each other), a child (whether or not a child of the man and the woman or 20 either of them) who is or has been a member of that household:

“Court” means a Family Court or a District Court; and

“Judge” has a corresponding meaning:

“Dwellinghouse” includes any flat or town house, 25 whether or not occupied pursuant to a licence to occupy within the meaning of the Companies Amendment Act 1964:

“*Ex parte* application” means an application made without notice to the respondent to the application: 30

“Household residence” means—

(a) In relation to a man and a woman who are married to each other, the dwellinghouse that is used habitually or from time to time by the husband and the wife or either of them as the only or principal 35 family residence, together with any land, buildings, or improvements appurtenant to any such dwellinghouse and used wholly or principally for the purposes of the household:

(b) In relation to a man and a woman who have 40 been married to each other but who are no longer married to each other, the dwellinghouse that was last used habitually or from time to time by the man

5 or the woman or either of them, before or after they  
ceased to be married to each other, as the only or  
principal family residence, together with any land,  
buildings, or improvements appurtenant to any such  
dwellinghouse and used wholly or principally for the  
purposes of the household:

10 (c) In relation to a man and a woman who are not  
and never have been married to each other but who  
are living together in the same household, the  
dwellinghouse that is used habitually or from time to  
time by the man and the woman or either of them as  
the only or principal residence of the household,  
together with any land, buildings, or improvements  
appurtenant to any such dwellinghouse and used  
15 wholly or principally for the purposes of the  
household:

20 (d) In relation to a man and a woman who are not  
and never have been married to each other but who,  
having been living together in the same household,  
are no longer living together in the same household,  
the dwellinghouse that was last used habitually or  
from time to time by the man and the woman or  
either of them as the only or principal residence of the  
household, together with any land, buildings, or  
25 improvements appurtenant to any such dwelling-  
house and used wholly or principally for the purposes  
of the household:

30 “Non-molestation order” means an order made under  
section 15 of this Act; and includes an interim order  
made under that section:

“Non-violence order” means an order made under  
section 6 of this Act; and includes an interim order  
made under that section:

35 “Occupation order” means an order made under section  
21 of this Act; and includes an interim order made  
under that section:

“Separation order” means a separation order made  
under Part III of the Family Proceedings Act 1980:

40 “Tenancy order” means an order made under section 26  
of this Act; and includes an interim order made under  
that section:

“Tenant”, in relation to any dwellinghouse, includes any  
person whose tenancy has expired or been

determined, and who is for the time being deemed under or by virtue of any enactment or rule of law to continue to be the tenant of the dwellinghouse; and the term “tenancy” has a corresponding meaning.

Cf. 1976, No. 166, ss. 2 (1), 28 (6)

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**3. Act to bind the Crown**—This Act shall bind the Crown.

#### *Non-violence Orders*

**4. Application for non-violence order**—Where a man and a woman are or have been married to each other or are or 10 have been living together in the same household, either the man or the woman may apply to the Court for an order restraining the other party from using violence against, or causing bodily harm to, the applicant or a child of the family, and from threatening to do so. 15

**5. Ex parte application for non-violence order**—(1) A non-violence order may be made on an *ex parte* application if the Court is satisfied—

- (a) That the delay that would be caused by proceeding on notice would or might entail risk to the personal 20 safety of the applicant or a child of the family; or
- (b) That the delay that would be caused by proceeding on notice would or might entail serious injury or undue hardship.

(2) Any non-violence order made in the first instance on an 25 *ex parte* application shall be an interim order.

(3) Where a non-violence order is made on an *ex parte* application, the respondent may apply immediately for variation or discharge of the order.

**6. Power to make non-violence order**—On hearing an 30 application for a non-violence order, the Court may make the order sought if it is satisfied that the respondent has used violence against, or caused bodily harm to, the applicant or a child of the family, and is likely to do so again.

**7. Effect of non-violence order**—Where a non-violence 35 order is in force, the person against whom it is made shall not use violence against, or cause bodily harm to, the applicant or a child of the family and shall not threaten to do so.

**8. Power to discharge non-violence order**—The Court may, if it thinks fit, on the application of either party, make an order discharging a non-violence order.

**9. Power to arrest for breach of non-violence order**—  
5 Where a non-violence order is in force, any member of the Police may, subject to section 10 of this Act, arrest without warrant any person whom the member of the Police has good cause to suspect of having committed a breach of the order.

**10. Restriction on power of arrest**—(1) No member of  
10 the Police shall arrest any person under section 9 of this Act unless that member of the Police believes that the arrest of that person is reasonably necessary for the protection of the person for whose protection the order was made.

(2) Without limiting the provisions of subsection (1) of this  
15 section, a member of the Police may, in applying that subsection, take into account—

- (a) The seriousness of the act that constituted the alleged breach:
- (b) The time that has elapsed since the alleged breach was  
20 committed:
- (c) The restraining effect on the person liable to be arrested of other persons or circumstances:
- (d) The need for a cooling-off period.

**11. Right of arrested person to make a telephone call**—  
25 Where an arrest is made under section 9 of this Act—

- (a) The arrested person shall be entitled to talk on the telephone to one person of his choice, not being the applicant or a child of the family; and
- (b) It shall be the duty of the member of the Police who  
30 makes the arrest to ensure that the arrested person is informed, as soon as practicable after the arrest, of the right conferred by paragraph (a) of this section.

**12. Detention of person arrested**—(1) Where a person is arrested under section 9 of this Act, he shall, subject to  
35 subsection (2) of this section, be detained in Police custody for a period of 24 hours.

(2) If, at any time during the period of 24 hours referred to in subsection (1) of this section, the arrested person asks to be brought before a Judge, or a member of the Police considers

that the arrested person should be brought before a Judge, the arrested person shall, as soon as practicable, be brought before a Judge or, if a Judge is not available, before a Justice.

(3) The Judge or Justice may direct either—

- (a) That the arrested person be released forthwith or at any specified time within the period of 24 hours; or 5
- (b) That the arrested person continue to be detained in Police custody until the expiry of the period of 24 hours.

(4) Where, between 11 o'clock at night and 6 o'clock in the 10 following morning, an arrested person makes a request under subsection (2) of this section, or a member of the Police considers that the arrested person should be brought before a Judge, that person shall, unless the contrary is proved, be deemed to have been brought before a Judge as soon as 15 practicable if he is brought before a Judge, or, if a Judge is not available, a Justice, by 11 o'clock on that following morning.

(5) Nothing in this section authorises the arrested person's detention after the expiry of the period of 24 hours.

#### *Non-molestation Orders*

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**13. Application for non-molestation order**—(1) Any person being—

- (a) A party to proceedings for a separation order; or
- (b) A party to a marriage in respect of which a separation order is in force; or 25
- (c) A party to proceedings for an occupation order or a tenancy order; or
- (d) A person in whose favour an occupation order is in force; or
- (e) A person excluded from occupation of premises by an 30 occupation order that is in force; or
- (f) A person in whom the tenancy of a dwellinghouse is vested by a tenancy order that is in force; or
- (g) A person who, as a consequence of a tenancy order that is in force, has ceased to be the tenant of a 35 dwellinghouse—

may apply to the Court for a non-molestation order.

(2) Where—

- (a) A man and a woman who are or have been married to each other are living apart; or 40

(b) A man and a woman, who have been living together in the same household, are no longer living together in the same household,—

either party may apply to the Court for a non-molestation  
5 order.

Cf. 1980, No. 94, s. 176 (1)–(2)

**14. Ex parte application for non-molestation order—**

(1) A non-molestation order may be made on an *ex parte* application if the Court is satisfied—

10 (a) That the delay that would be caused by proceeding on notice would or might entail risk to the personal safety of the applicant or a child of the applicant's family; or

15 (b) That the delay that would be caused by proceeding on notice would or might entail serious injury or undue hardship.

(2) Any non-molestation order made in the first instance on an *ex parte* application shall be an interim order.

20 (3) Where a non-molestation order is made on an *ex parte* application, the respondent may apply immediately for variation or discharge of the order.

Cf. 1980, No. 94, s. 177 (1)

**15. Power to make non-molestation order—**(1) On hearing an application for a non-molestation order, the Court  
25 may, subject to subsection (2) of this section, make the order sought on that application if it is satisfied that the making of the order is necessary for the protection of the applicant or of any child of the applicant's family.

30 (2) Where the application for a non-molestation order is made in proceedings in which a separation order or an occupation order or a tenancy order is sought, the Court shall not make a non-molestation order unless it makes a separation order or an occupation order or a tenancy order in the proceedings.

35 Cf. 1980, No. 94, s. 176 (1)

**16. Effect of non-molestation order—**Where a non-molestation order is in force, the person against whom it was made—

40 (a) Shall not enter or remain on any land or building which is in the occupation of the applicant or in which the applicant or any child of the applicant's family dwells or is present—



(i) Without the consent (express or implied) of the applicant in any case where an occupation order or an order made under section 27 (1) of the Matrimonial Property Act 1976 is in force, in the applicant's favour, in respect of the land or building; 5  
or

(ii) Without the consent (express or implied) of the applicant in any case where a tenancy order or an order under section 28 (1) of the Matrimonial Property Act 1976 is in force, in the applicant's 10  
favour, in respect of the land or building; or

(iii) Without the consent (express or implied) of the applicant in any case where the applicant is in occupation of the land or building and there is a separation order or separation agreement in force 15  
between the parties; or

(iv) In any case, in circumstances which constitute a trespass; and

- (b) Shall not molest the applicant by watching or besetting the applicant's dwellinghouse or place of business, 20  
employment, or residence, or by following or waylaying the applicant in any public place within the meaning of section 2 of the Summary Offences Act 1981, or by making persistent telephone calls to the applicant at the applicant's dwellinghouse or 25  
place of business, employment, or residence; and
- (c) Shall not molest any child of the applicant's family by watching or besetting the child's place of residence or education, or by following or waylaying the child in any such public place, or by making persistent 30  
telephone calls to the child at the child's place of residence or any other place.

Cf. 1980, No. 94, s. 176 (3)

**17. Duration and discharge of non-molestation order**—A non-molestation order shall cease to have any force 35  
or effect if the parties, with the free consent of each, have resumed cohabitation, or if the Court, on the application of either party, orders that it be discharged.

Cf. 1980, No. 94, s. 176 (5)

**18. Offence to contravene non-molestation order**— 40  
Every person commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 3 months, or to a fine not exceeding \$500, who does any act in contravention of a non-molestation order.

Cf. 1980, No. 94, s. 176 (4)

## Occupation Orders

**19. Application for occupation order**—Where a man and a woman are or have been married to each other or are or have been living together in the same household, either the  
5 man or the woman may apply to the Court for an order granting the applicant the right to live in the household residence.

Cf. 1976, No. 166, s. 27 (1); 1980, No. 94, ss. 178 (1), 179 (1)

10 **20. Ex parte application for occupation order**—(1) An occupation order may be made on an *ex parte* application if the Court is satisfied—

(a) That the respondent has used violence against or  
15 caused bodily harm to the applicant or a child of the family; and

(b) That the delay that would be caused by proceeding on notice would or might expose the applicant or a child of the family to physical injury.

(2) Any occupation order made in the first instance on an  
20 *ex parte* application shall be an interim order.

(3) On making an occupation order on an *ex parte* application, the Court shall at the same time make an interim non-molestation order unless it considers that there are special reasons why such an order should not be made.

25 (4) Where an occupation order is made on an *ex parte* application while the applicant and the respondent (whether or not they are or have been married to each other) are living together in the same household, that occupation order shall expire—

30 (a) On its discharge by the Court; or

(b) On the discharge of an interim non-molestation order made in conjunction with it; or

(c) If no such non-molestation order has been made and if  
35 the occupation order has not sooner been discharged by the Court, at the close of the seventh day after the date of the making of the occupation order.

(5) Where an occupation order is made on an *ex parte* application, the respondent may apply immediately for  
40 variation or discharge of the order.

Cf. 1980, No. 94, ss. 178 (2)–(5), 179

**21. Power to make occupation order**—(1) On hearing an application for an occupation order, the Court may, notwithstanding anything in the Matrimonial Property Act 1976, but subject to subsection (2) of this section, make an order granting to the applicant, for such period or periods and on such terms and subject to such conditions as the Court thinks fit, the right personally to occupy the household residence or any other premises forming part of the household residence. 5

(2) The Court may make an order under subsection (1) of this section only if the Court is satisfied that such an order—

- (a) Is necessary for the protection of the applicant; or
- (b) Is in the best interests of a child of the family.

Cf. 1976, No. 166, s. 27 (1); 1980, No. 94, ss. 178 (1), 179 (1) 15

**22. Effect of occupation order**—(1) The person in whose favour an occupation order is made shall be entitled, to the exclusion of the other person, personally to occupy the household residence or the other premises to which the order relates. 20

(2) An occupation order shall be enforceable as if it were an order for the recovery of land made pursuant to section 31 (1) (d) of the District Courts Act 1947.

Cf. 1976, No. 166, s. 27 (2), (4); 1980, No. 94, ss. 178 (1), 179 (1) 25

**23. Power to vary or discharge occupation order**—On the application of either party or of the personal representative of either party, the Court may, if it thinks fit, make an order—

- (a) Extending or reducing any period specified by the Court pursuant to section 21 (1) of this Act; or 30
- (b) Varying or discharging any terms and conditions imposed by the Court pursuant to section 21 (1) of this Act; or
- (c) Discharging the occupation order. 35

Cf. 1976, No. 166, s. 33 (2)

#### *Tenancy Orders*

**24. Application for tenancy order**—Where a man and a woman are or have been married to each other or are or have been living together in the same household, either the man or 40

the woman may apply to the Court for an order vesting in the applicant the tenancy of any dwellinghouse, being a dwellinghouse within the meaning of the Tenancy Act 1955—

- 5 (a) Of which at the time of the making of the order under section 26 of this Act the other party is either the sole tenant or a tenant holding jointly or in common with the applicant; and
- (b) In which the applicant or the other party resides at the time of the making of the order under section 26 of this Act.
- 10

Cf. 1976, No. 166, s. 28 (1); 1980, No. 94, ss. 178 (1), 179 (1)

**25. *Ex parte* application for tenancy order—**(1) A tenancy order may be made on an *ex parte* application if the Court is satisfied—

15

- (a) That the respondent has used violence against or caused bodily harm to the applicant or a child of the family; and
- (b) That the delay that would be caused by proceeding on notice would or might expose the applicant or a child of the family to physical injury.
- 20

(2) Any tenancy order made in the first instance on an *ex parte* application shall be an interim order.

(3) On making a tenancy order on an *ex parte* application, the Court shall at the same time make an interim non-molestation order unless it considers that there are special reasons why such an order should not be made.

25

(4) Where a tenancy order is made on an *ex parte* application while the applicant and the respondent (whether or not they are or have been married to each other) are living together in the same household, that tenancy order shall expire—

30

- (a) On its discharge by the Court; or
- (b) On the discharge of an interim non-molestation order made in conjunction with it; or
- 35 (c) If no such non-molestation order has been made and if the tenancy order has not sooner been discharged by the Court, at the close of the seventh day after the date of the making of the tenancy order.

(5) Where a tenancy order is made on an *ex parte* application, the respondent may apply immediately for variation or discharge of the order.

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Cf. 1980, No. 94, ss. 178 (2)–(5), 179

**26. Power to make tenancy order—**(1) On hearing an application for a tenancy order, the Court may, notwithstanding anything in the Matrimonial Property Act 1976, but subject to subsection (2) of this section, make the order sought. 5

(2) The Court may make an order under subsection (1) of this section only if the Court is satisfied that such an order—

- (a) Is necessary for the protection of the applicant; or
- (b) Is in the best interests of a child of the family.

Cf. 1976, No. 166, s. 28 (1); 1980, No. 94, ss. 178 (1), 10  
179 (1)

**27. Effect of tenancy order—**(1) On the taking effect of a tenancy order, unless the tenancy is sooner lawfully determined, the applicant shall become the tenant of the dwellinghouse upon and subject to the terms and conditions 15 of the tenancy in force at the time of the making of that order, and the other party shall cease to be the tenant.

(2) Every tenancy order shall have effect and may be enforced as if it were an order of the Court for possession of the land granted in favour of the applicant. 20

(3) Nothing in this Act or in any tenancy order limits or affects the operation of any enactment or rule of law for the time being applicable to any tenancy to which section 24 of this Act applies or to the dwellinghouse held under the tenancy, or authorises the Court to vary, except by vesting the 25 tenancy pursuant to this section or revesting the tenancy pursuant to section 28 of this Act, any express or implied term or condition of the tenancy.

Cf. 1976, No. 166, s. 28 (2)–(3); 1980, No. 94, ss. 178 (1), 30  
179 (1)

**28. Power to discharge tenancy order and revest tenancy—**(1) On the application of the other party or his personal representative, the Court may, if it thinks fit, make an order discharging the tenancy order and revesting the tenancy accordingly. 35

(2) On the taking effect of any revesting order made under subsection (1) of this section, unless the tenancy is sooner lawfully determined, the person in whose favour it is made shall become the tenant of the dwellinghouse upon and subject to the terms and conditions of the tenancy in force at 40 the time of the making of the revesting order.

Cf. 1976, No. 166, s. 28 (4)–(5)

*Provisions Relating to Occupation Orders and Tenancy Orders*

- 29. Procedure in relation to occupation orders and tenancy orders**—(1) Before any occupation order (other than an interim occupation order) or any tenancy order
- 5 (other than an interim tenancy order) is made, such notice as the Court directs shall be given to any person having an interest in the property which would be affected by the order, and any such person shall be entitled to appear and to be heard in the matter as a party to the application.
- 10 (2) Where an application is made for an occupation order, the Court may treat that application as an application for a tenancy order or an occupation order or both and may, if it is satisfied—
- (a) That it has jurisdiction to make a tenancy order; and
- 15 (b) That the making of a tenancy order is appropriate; and
- (c) That subsection (1) of this section has been complied with in respect of the making of a tenancy order,—
- make a tenancy order (whether or not it makes an occupation order).
- 20 (3) Where an application is made for a tenancy order, the Court may treat that application as an application for an occupation order or a tenancy order or both and may, if it is satisfied,—
- (a) That it has jurisdiction to make an occupation order;
- 25 and
- (b) That the making of an occupation order is appropriate; and
- and
- (c) That subsection (1) of this section has been complied with in respect of the making of an occupation
- 30 order,—
- make an occupation order (whether or not it makes a tenancy order).

Cf. 1976, No. 166, s. 37

*Procedure*

- 35 **30. Interim orders**—(1) Every interim order made under this Act on an *ex parte* application shall assign a date (which shall be as soon as reasonably practicable thereafter) for a hearing on whether an order should be made in substitution for the interim order.
- 40 (2) The copy of any such interim order served on the respondent shall notify the respondent that unless the

respondent attends on the assigned date to show cause why an order should not be substituted for the interim order, the Court may discharge the interim order and make an order in its place.

(3) At the hearing referred to in subsection (1) of this section the Court may— 5

- (a) Discharge the interim order; or
- (b) Discharge the interim order and make an order in its place; or
- (c) On good cause being shown, adjourn the hearing to a fixed time and place. 10

(4) Where a hearing is adjourned under subsection (3) (c) of this section to another day, the Court shall, at the adjourned hearing, exercise either the power conferred on it by subsection (3) (a) or the power conferred on it by subsection (3) (b) of this section. 15

(5) In this section—

“Interim order” means an interim non-violence order or an interim non-molestation order or an interim occupation order or an interim tenancy order, as the case may be: 20

“Order” means a non-violence order or a non-molestation order or an occupation order or a tenancy order, as the case may be, not being an interim order. 25

Cf. 1980, No. 94, s. 177 (2)–(5)

**31. Conduct of proceedings—**(1) No person shall be present during the hearing of any proceedings under this Act (other than criminal proceedings) except— 30

- (a) Officers of the Court: 30
- (b) Parties to the proceedings and their barristers and solicitors:
- (c) Witnesses:
- (d) Any other person whom the Judge permits to be present. 35

(2) Any witness shall leave the courtroom if asked to do so by the Judge.

(3) Nothing in this section shall limit any other power of the Court to hear proceedings in private or to exclude any person from the Court. 40

Cf. 1980, No. 94, s. 159 (2), (3), (5)

**32. Evidence**—In any proceedings under this Act (other than criminal proceedings), and whether by way of hearing in the first instance or by way of appeal, or otherwise, the Court may receive any evidence that it thinks fit, whether it is  
5 otherwise admissible in a Court of law or not.

Cf. 1976, No. 166, s. 36; 1980, No. 94, s. 164

**33. Standard of proof**—Every question of fact arising in any proceedings under this Act (other than criminal proceedings) shall be decided on a balance of probabilities.

10 Cf. 1980, No. 94, s. 167

**34. Restriction of publication of reports of proceedings**—(1) Subject to subsection (2) of this section, no person shall publish any report of proceedings under this Act (other than criminal proceedings) except with the leave of the Court  
15 which heard the proceedings.

(2) Every person who contravenes subsection (1) of this section commits an offence against this Act and is liable on summary conviction—

(a) In the case of an individual, to imprisonment for a term  
20 not exceeding 3 months, or to a fine not exceeding \$500;

(b) In the case of a body corporate, to a fine not exceeding \$2,500.

(3) Nothing in this section limits—

25 (a) The provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to judicial proceedings; or

(b) The power of any Court to punish any contempt of  
30 Court.

(4) Nothing in this section applies to the publication of any report in any publication that—

(a) Is of a bona fide professional or technical nature; and

35 (b) Is intended for circulation among members of the legal or medical professions, officers of the Public Service, psychologists, advisers in the sphere of marriage counselling, or social welfare workers.

Cf. 1980, No. 94, s. 169 (1), (3), (4), (5)



**35. Orders by consent**—In any proceedings before it under this Act, a Court may make any order under this Act by the consent of all of the parties to the proceedings.

Cf. 1980, No. 94, s. 170

**36. Counselling**—On making an order under this Act, the Court may recommend either party or both of them to participate in counselling of a nature specified by the Court. 5

**37. Appeals**—(1) Where in any proceedings under this Act, a Court has made or has refused to make an order, or has otherwise finally determined or has dismissed the proceedings, a party to the proceedings or any other person prejudicially affected may, within 28 days after the making of the order or decision or within such further time as the Court may allow in accordance with section 73 (1) of the District Courts Act 1947, appeal to the High Court in accordance with the provisions of Part V of that Act (except section 71) and those provisions shall apply accordingly with any necessary modifications. 10 15

(2) The Court appealed from may on the *ex parte* application of the appellant order that security under section 73 (2) of the District Courts Act 1947 shall not be required to be given under that section. 20

(3) A party to any appeal under subsection (1) of this section may, with the leave of the Court of Appeal, appeal to the Court of Appeal against any determination of the High Court on a question of law arising in an appeal under that subsection. 25

(4) On an appeal to the Court of Appeal under this section, the Court of Appeal shall have the same power to adjudicate on the proceedings as the High Court had. 30

(5) The decision of the Court of Appeal on an appeal to that Court under this section, and on an application to it under this section for leave to appeal, shall be final.

(6) Subject to subsections (3) to (5) of this section, the decision of the High Court on an appeal to that Court under subsection (1) of this section shall be final. 35

(7) Except where the Court making the order appealed from otherwise directs, the operation of an order made under this Act shall not be suspended by an appeal under this section, and every order made under this Act may be enforced in the same manner in all respects as if no appeal under this section were pending. 40

Cf. 1980, No. 94, s. 174 (1), (2), (5)–(9)

**38. Rules of Court**—(1) In addition to all other powers conferred by the District Courts Act 1947, the Governor-General may from time to time, by Order in Council, make rules regulating the practice and procedure of Family Courts and District Courts in proceedings under this Act, and providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

(2) In the absence of any rules under this section or in any situation not covered by any such rules, the District Courts Rules 1948 shall apply, with all necessary modifications, to proceedings under this Act.

*Protection of Mortgagee*

**39. Protection of mortgagee**—The rights conferred on any person in respect of any property by any order made under this Act shall be subject to the rights of any person entitled to the benefit of any mortgage, security, charge, or encumbrance affecting that property if it was registered before the order was registered or if the rights of the person entitled to that benefit arise under an instrument executed before the date of the making of the order:

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.

Cf. 1976, No. 166, s. 46

*Saving*

**40. Matrimonial Property Act 1976 not affected**—Nothing in this Act limits or affects the power of the Court to make an order (including an order made on an *ex parte* application) under section 27 or section 28 or section 33 of the Matrimonial Property Act 1976.

*Repeals and Transitional Provisions*

**41. Repeals**—Sections 176 to 179 of the Family Proceedings Act 1980 are hereby repealed.

**42. Transitional provisions**—(1) All applications, appeals, proceedings, and other matters which before the commencement of this Act have been brought or made under or pursuant to any of the provisions of section 174 or of sections 176 to 179 of the Family Proceedings Act 1980 or any

section of the Matrimonial Property Act 1976 applied by any of those provisions, and which have not been determined or completed before the commencement of this Act, shall be determined and completed as if this Act had not been passed.

(2) All orders which originated under or pursuant to any of the provisions of sections 176 to 179 of the Family Proceedings Act 1980 or any section of the Matrimonial Property Act 1976 applied by any of those provisions, and which are subsisting or in force on the commencement of this Act and all orders which, pursuant to subsection (1) of this section, are made after the commencement of this Act under or pursuant to any of those provisions or any section of the Matrimonial Property Act 1976 applied by any of those provisions, shall enure for the purposes of this Act as fully and effectually as if they had originated or been made under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated.

(3) The Acts Interpretation Act 1924 shall apply subject to this section.