

Chapter 336.
Reciprocal Enforcement of Custody Orders Act 1978.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 336.

Reciprocal Enforcement of Custody Orders Act 1978.

ARRANGEMENT OF SECTIONS.

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 - “the Court”
 - “declared country”
 - “the Registrar”
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3. Procedure for registration of foreign custody orders.
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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Reciprocal Enforcement of Custody Orders Act 1978,

Being an Act to provide for the enforcement in Papua New Guinea of custody orders made in foreign countries which accord reciprocal treatment to custody orders made in Papua New Guinea, and for related purposes.

1. INTERPRETATION.

In this Act, unless the contrary intention appears—

“**the Court**” means the National Court;

“**declared country**” means a foreign country declared under Section 2;

“**the Registrar**” means the Registrar of the National Court;

“**the Secretary**” means the Secretary for Justice;

“**this Act**” includes the regulations.

2. POWER TO EXTEND ACT TO FOREIGN COUNTRIES GIVING RECIPROCAL TREATMENT.

Where the Minister is satisfied that, in the event of the benefits conferred by this Act being extended to custody orders made in a court of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of custody orders made in the Court, he may, by notice in the National Gazette declare—

(a) a foreign country to be a declared country for the purposes of this Act; and

(b) that a custody order of a declared country may be registered in Papua New Guinea.

3. PROCEDURE FOR REGISTRATION OF FOREIGN CUSTODY ORDERS.

(1) Where the Secretary receives—

- (a) a certified copy of a foreign custody order from a declared country; and
- (b) a certificate signed by an officer of a court or other authority in that declared country relating to the order and containing a statement that the order is, at the date of the certificate, enforceable in that country,

the Secretary shall, if it appears to him—

- (c) that there are reasonable grounds for believing that the child who is the subject of the order, a parent of that child or a person having the right of custody of, or access to, that child, is present in or proceeding to Papua New Guinea; and
- (d) that the order, if it had been made in Papua New Guinea, would be in accordance with Section 37 (*protection of the law*) of the *Constitution*,

send the documents to the Registrar.

(2) When the Registrar receives from the Secretary the documents referred to in Subsection (1), he shall—

- (a) register the order by filing in the Court a certified copy of the order and the certificate relating to the order; and
- (b) note the fact and the date of the registration of the certified copy.

(3) Where a foreign custody order is registered in the Court under this section, the order has the same force and effect as if it were an order made by the Court.

(4) This Act does not preclude the Court from receiving evidence of a custody order made by a court of a foreign country, whether or not that country is a declared country, with respect to the custody of, or access to, a child.

4. EXERCISE OF JURISDICTION BY COURT.

(1) Where a foreign custody order is registered under Section 3, the Court shall not exercise jurisdiction in proceedings for the custody of, or access to, the child the subject of the order unless—

- (a) every person having rights of custody or access in relation to that child consents to the exercise of jurisdiction by the Court in the proceedings; or
- (b) the Court is satisfied that there are substantial grounds for believing that the welfare of the child will be adversely affected if the Court does not exercise jurisdiction in the proceedings.

(2) Where a foreign custody order is registered under Section 3, and the Court exercises jurisdiction in proceedings for the custody of, or access to a child the subject of a foreign custody order, the Court shall not make an order with respect to the

custody of, or access to that child unless the person who instituted the proceedings satisfies the Court—

- (a) that the welfare of the child is likely to be adversely affected if the order is not made; or
- (b) that there has been such a change in the circumstances of the child that the order ought to be made.

(3) Where a foreign custody order is registered under Section 3 and the Court, exercising jurisdiction in respect of the custody of, or access to the child the subject of the order, substantially varies the order, the Registrar shall promptly forward to the Court or to the appropriate authority in the declared country—

- (a) three certified copies of the order of the Court and the reasons for the order; and
- (b) a copy of the depositions; and
- (c) such further material as the Court directs.

5. TRANSMISSION OF ORDERS TO A FOREIGN COUNTRY.

(1) Where—

- (a) an order is made by the Court with respect to the custody of, or access to a child, and that order is in force; and
- (b) that order may be enforced in a declared country; and
- (c) a person having rights of custody or access in relation to that child so requests in writing,

the Registrar shall send to the Secretary—

- (d) three certified copies of the order; and
- (e) such other information and material (if any) that the Registrar possesses for ascertaining the identity and whereabouts of the child and any other person who is subject to the order; and
- (f) a written request that the order be made enforceable in that declared country.

(2) On receipt of the documents referred to in Subsection (1)(d), (e) and (f), the Secretary shall send them to the appropriate authority in that declared country with a written request that the order be made enforceable in that country.

6. ORDER MADE IN DECLARED COUNTRY TREATED AS FOREIGN CUSTODY ORDER.

(1) Where a court in a declared country makes an order under provisions corresponding to Section 4(1) and (2), the Court may treat that order as being a foreign custody order and may apply to it the provisions of those subsections.

(2) Where the Court exercises jurisdiction under Subsection (1), the Registrar shall promptly forward to the Court in the declared country—

- (a) three certified copies of the further order of the Court and the reasons for the order; and
- (b) a copy of the depositions; and
- (c) such further material as the Court directs.

(3) This section does not prevent a person having rights of custody or access in relation to a child the subject of a custody order from—

- (a) obtaining certified copies of the order; or
- (b) applying to a court in a foreign country (whether or not it is a declared country) for registration and enforcement of the order in that country.

7. REGULATIONS.

The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act and, in particular, for or in relation to—

- (a) prescribing forms to be used for the purposes of this Act; and
- (b) prescribing the practice and procedure of the Court in proceedings under this Act.

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