

APPENDIX 9

DRAFT LEGISLATION: COMPELLABILITY OF SPOUSES

INDEPENDENT STATE OF PAPUA NEW GUINEA

A BILL

for

AN ACT

entitled

Evidence (Amendment) Act 1991

Being an Act to amend the *Evidence Act* (Chapter 48) to provide for the compellability of spouses to give evidence in certain circumstances,

MADE by the National Parliament to come into operation in connection with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

1. Compliance with Constitutional requirements.

This Act, to the extent that it regulates or restricts a right or freedom referred to in Division III.3C (qualified rights) of the *Constitution*, namely the right to privacy conferred by Section 49 of the *Constitution*, is a law that is made for the purpose of giving effect to the public interest in -

- (a) public safety; and
- (b) public welfare; and
- (c) the protection of children and other persons under disability (whether legal or practical).

2. Spouse of accused as witness (amendment of Section 13).

Section 13 of the Principal Act is amended by inserting after Subsection (3) the following new subsections: -

"(4) Notwithstanding Subsections (1) and (2), the wife or husband of a person charged with an offence of assault against the other, or against a child of either of them, is a competent and compellable witness in any legal proceedings in connection with the offence, and may be called without the consent of the accused.

"(5) Where a person who is a competent and compellable witness under Subsection (4) makes a statement on oath that -

- (a) a genuine reconciliation has been achieved or is imminent; or
- (b) other considerations make it undesirable for the person to be compelled to give evidence,

the Court may excuse the person from giving evidence.

"(6) Where a person is excused from giving evidence under Subsection (5), the Court shall record its reasons in writing."