

MAINTENANCE (AMENDMENT) ACT.

New South Wales



ANNO VICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. 31, 1972.

An Act to extend the powers of a children's court with respect to the making of orders for the maintenance or the custody of children; to facilitate the enforcement of certain orders for maintenance made under the Matrimonial Causes Act 1959 of the Commonwealth; for these and other purposes to amend the Maintenance Act, 1964; and for purposes connected therewith. [Assented to, 11th April, 1972.]

BE

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title. **1.** (1) This Act may be cited as the "Maintenance (Amendment) Act, 1972".

(2) The Maintenance Act, 1964, is in this Act referred to as the Principal Act.

Amendment of Act No. 74, 1964. **2.** The Principal Act is amended by inserting next after subsection three of section five the following new subsection :—
(Part I—Preliminary.)

Sec. 5.
(Savings—Maintenance Orders (Facilities for Enforcement) Act.)

(3A) The provisions of subsection three of this section apply to overseas orders made in each of the countries of the United Kingdom and Northern Ireland before the prescribed date applicable to it in the same manner as those provisions would apply if that country had, immediately before the prescribed date applicable to it, been a reciprocating State within the meaning of the amended Act.

3.

*Maintenance (Amendment).***3. The Principal Act is further amended—****No. 31, 1972**Amendment
of Act No.
74, 1964.(Part II—
Maintenance
and Other
Orders.)

- (a) by inserting next after subsection four of section twenty-two the following new subsection :—

Sec. 22.

(Order for
custody of
child where
maintenance
order in
force
against
parent.)

(4A) Notwithstanding the provisions of subsection three of this section, where—

- (a) a complaint under section twelve or thirteen of this Act for the maintenance of a child of the family has been made on behalf of that child against a parent of that child;
- (b) the complainant is a parent of the child and there has been included in the form of complaint a statement that the complainant intends to seek, at the hearing of the complaint, an order committing the legal custody of the child to him; and
- (c) notice of the application and statement referred to in paragraph (b) of this subsection has been included in the summons or warrant issued in the first instance, as the case may be,

the court may, if it makes an order for maintenance upon the complaint referred to in paragraph (a) of this subsection, make in addition an order committing the legal custody of the child to the complainant.

- (b) (i) by inserting in subsection one of section twenty-four after the word “family” the words “or at any time after the making of a complaint under section eleven or fourteen of this Act which

Sec. 24.

(Ex parte
order for
preliminary
maintenance
of child.)

includes

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includes a statement that the complainant intends to apply for an order for the maintenance of a child of the family”;

- (ii) by omitting from the same subsection the words “four dollars” and by inserting in lieu thereof the words “six dollars”;

New sec.
27A.

- (c) by inserting next after section twenty-seven the following new section :—

Orders for
maintenance
of child over
16 years of
age.

27A. (1) Where—

- (a) a complaint is made to a court under section twelve, thirteen, fifteen or sixteen of this Act for the maintenance of a child who has attained the age of sixteen years;
- (b) the child is not a child for whose maintenance an order was, at the time the child attained the age of sixteen years, in force under this Act, the Deserted Wives and Children Act, 1901, or Part XVI of the Child Welfare Act, 1939; and
- (c) it appears to the court that the child is or will be engaged in a course of education or training,

the court may make an order under whichever of those sections is applicable for or towards the maintenance of the child, including the expenses of the course, for such amount and to be in force for such period not exceeding two years from a date to be specified in the order (not being a date earlier than the date on which the order is made) as the court thinks reasonable and as may be specified in the order.

(2)

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(2) A court may, on application, from No. 31, 1972 time to time, by order, extend the period specified in any previous order made as referred to in subsection one of this section for such further period not exceeding two years from the date of expiry of the previous order as may be specified in the order made under this subsection.

(3) An order made as referred to in subsection one, or extended as referred to in subsection two, of this section shall not require payments to be made thereunder after the date on which the child concerned attains the age of twenty-one years.

(4) An application under subsection two of this section shall be heard by the court for the place where the order made as referred to in subsection one of this section was made unless—

- (a) the parties to the application consent to the hearing of the application by a court sitting at another place; or
 - (b) the hearing of the application is adjourned, upon the application of either party, to a court sitting at another place.
- (d) (i) by inserting in subsection six of section Sec. 35. thirty-five after the word “shall” the words “, if the moneys payable under the order referred to in the application are, pursuant to an authority given under section one hundred and twenty-nine of the Child Welfare Act, 1939, required to be paid to the Director of the Child Welfare Department,”; (Court may discharge, suspend or vary order.)
- (ii) by omitting from the same subsection the words “the Director of the Child Welfare Department” and by inserting in lieu thereof the words “that Director”.

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No. 31, 1972 4. The Principal Act is further amended by inserting in subsection one of section forty-two after the word "dollars" the words "or part thereof".

Further amendment of Act No. 74, 1964.

(Part III—
Enforcement of Orders made in New South Wales.)

Sec. 42.
(Imprisonment of defendant for disobedience of order for payment of moneys.)

Further amendment of Act No. 74, 1964.

(Part IV—
Reciprocal Enforcement of Orders.)

5. The Principal Act is further amended—

Sec. 66.
(Interpretation.)

(a) (i) by omitting paragraph (b) of the definition of "Interstate order" in subsection one of section sixty-six and by inserting in lieu thereof the following paragraph : —

(b) made by the Supreme Court of an Australian State (whether under a law of that Australian State or under a law of the Commonwealth) and registered, for the purposes of enforcement, in a court of summary jurisdiction in another Australian State under a law of that other Australian State or under a law of the Commonwealth;

(ii)

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- (ii) by omitting paragraph (b) of the definition of No. 31, 1972
 "New South Wales order" in the same sub-
 section and by inserting in lieu thereof the
 following paragraph :—

(b) made by the Supreme Court of a State
 (whether under a law of that State
 or under a law of the Common-
 wealth) and registered, for the pur-
 poses of enforcement, in New South
 Wales under a law of New South
 Wales or under a law of the Common-
 wealth;

- (iii) by omitting paragraph (a) of the definition of
 "Overseas order" in the same subsection and
 by inserting in lieu thereof the following
 paragraph :—

(a) in the case where in a proclamation
 under subsection one or two of section
 ninety-six of this Act it is declared that
 maintenance orders made in that
 country on or after a date specified in
 the proclamation shall be enforceable
 in New South Wales in accordance
 with the provisions of Division 3 of
 this Part—a maintenance order made
 on or after that date in that country
 by a court of competent jurisdiction;
 and;

- (b) by inserting at the end of section sixty-nine the following new subsection :—

(2) In particular without in any way limiting
 or derogating from the provisions of subsection one
 of this section, no order for costs shall be made by
 any court against the Collector, the Deputy Col-
 lector or an Assistant Collector, or any delegate
 of the Collector, with respect to anything bona fide

done

Sec. 69.
 (Protection
 of
 Collector,
 etc.)

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done by him when purporting to act in accordance with the provisions of this Act or regulations made under this Act.

Sec. 71.
(Enforcement in New South Wales of orders made or registered in other Australian States.)

- (c) by inserting in paragraph (a) of subsection one of section seventy-one after the word "made" the words "or registered";

Sec. 83.
(Registration of overseas orders.)

- (d) by omitting from subsection two of section eighty-three the words "if it appears to him from those documents that the defendant did not appear in the proceedings on which the order was made or consent to the making of the order." and by inserting in lieu thereof the words "unless it appears to him from those documents that the defendant appeared in the proceedings in which his paternity of the child was held to be established, or was duly served with a summons to appear in those proceedings or consented to the making of the order made in those proceedings.".

Further amendment of Act No. 74, 1964.
(Part V—Miscellaneous.)

6. The Principal Act is further amended—

Sec. 105.
(Complaints.)

- (a) by inserting in paragraph (c) of subsection four of section one hundred and five after the word "order" where lastly occurring the words "in respect of each of the persons for whose benefit the order was made";

(b)

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- (b) by inserting at the end of the same section the No. 31, 1972 following new subsections :—

(6) If a warrant for the apprehension of any person is issued under paragraph (b) of subsection two of this section in connection with proceedings under subsection one of section forty-two of this Act for the recovery of arrears consisting only of unpaid costs that person may, at any time after his apprehension pursuant to the warrant, pay those arrears, together with the amount noted on the warrant as costs for the issue and execution of the warrant, to the person in whose custody he then is and, upon his so doing, he shall be released from custody.

(7) A person to whom any moneys are paid as referred to in subsection six of this section shall forthwith transmit those moneys to the clerk of the court in which the proceedings referred to in that subsection were commenced who shall pay them to the person entitled thereto or otherwise dispose of them according to law.

MEAT