

MATRIMONIAL CAUSES (AMENDMENT) ACT.

Act No. 22, 1958.

Elizabeth II,
No. 22, 1958. An Act to amend the law relating to alimony and maintenance; for this purpose to amend the Matrimonial Causes Act 1899, the Deserted Wives and Children Act, 1901, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 16th April, 1958.]

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,
citation and
commence-
ment.

1. (1) This Act may be cited as the “Matrimonial Causes (Amendment) Act, 1958”.

(2) The Matrimonial Causes Act 1899, as amended by subsequent Acts and by this Act, may be cited as the Matrimonial Causes Act, 1899-1958.

(3) The Deserted Wives and Children Act, 1901, as amended by subsequent Acts and by this Act, may be cited as the Deserted Wives and Children Act, 1901-1958.

(4)

(4) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette. No. 22, 1958.

2. The Matrimonial Causes Act 1899, as amended by subsequent Acts, is amended— Amendment of Act No. 14, 1899.

(a) by inserting in section three before the definition of “The Court” the following new definitions:— Sec. 3. (Interpretation.)

“Alimony” includes maintenance.

“Marriage” includes a union which is ostensibly a marriage and which is the subject of judicial proceedings to determine its validity.

(b) by omitting from section five the words “other than proceedings to dissolve any marriage” and by inserting in lieu thereof the words “, other than proceedings to dissolve any marriage or proceedings under Part VIII of this Act,”; Sec. 5. (Court to act on principles of Ecclesiastical Courts.)

(c) by omitting section eight, subsection two of section nine and section ten; Secs. 8, 9 (2) and 10. (Repeal.)

(d) by omitting from subsection two of section twenty-three the words “the payment of permanent alimony the maintenance of children and”; Sec. 23. (Application by respondent.)

(e) by omitting Part VIII and by inserting in lieu thereof the following Part:— Subst. Part VIII.

PART VIII.

ALIMONY.

39. (1) In any proceedings under this Act (other than proceedings for jactitation of marriage), the Court may make such order as it deems just and proper, having regard to the means and conduct of the parties to the marriage and all other relevant circumstances, for the payment of alimony to one party to the marriage by the other party, or for the maintenance of the children the marriage of whose Alimony.
parents

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parents is the subject of the proceedings, including an order in favour of a party against whom a decree in the proceedings is made.

(2) An order for alimony—

- (a) pending the hearing of a petition for restitution of conjugal rights; and
- (b) made before or after the commencement of the Matrimonial Causes (Amendment) Act, 1958,

shall, if a decree is made in favour of the party in whose favour the order was made, but subject to any special terms of the order, continue in force after the time in that behalf limited by the Court for compliance with the decree until varied or revoked:

Provided that in the case of any such order made before the commencement of the Matrimonial Causes (Amendment) Act, 1958, this subsection applies only where the time so limited expires after that commencement.

(3) An order for alimony—

- (a) pending the hearing of a petition for judicial separation; and
- (b) made before or after the commencement of the Matrimonial Causes (Amendment) Act, 1958,

shall, if a decree is made in favour of the person in whose favour the order was made, but subject to any special terms of the order, continue in force after the decree until varied or revoked:

Provided that in the case of any such order made before the commencement of the Matrimonial Causes (Amendment) Act, 1958, this subsection applies only where the decree in the suit is made after that commencement.

(4)

(4) An order for alimony—

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- (a) pending the hearing of a petition for dissolution of marriage; and
- (b) made before or after the commencement of the Matrimonial Causes (Amendment) Act, 1958,

shall, where that order is in force immediately before the decree *nisi* in the suit is made absolute, but subject to any special terms of the order, continue in force after the decree absolute until varied or revoked:

Provided that in the case of any such order made before the commencement of the Matrimonial Causes (Amendment) Act, 1958, this subsection applies only where the decree *nisi* is made absolute after that commencement.

(5) An order for the maintenance of a child—

- (a) pending the hearing of a petition for restitution of conjugal rights, judicial separation, dissolution of marriage or nullity of marriage; and
- (b) made before or after the commencement of the Matrimonial Causes (Amendment) Act, 1958,

shall, subject to any special terms of the order, but in so far only as it relates to the maintenance of the child, continue in force—

- (i) in a case of restitution of conjugal rights—after the time in that behalf limited by the Court for compliance with the decree in the suit until varied or revoked;

(ii)

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- (ii) in any other case—after the final decree or decree absolute in the suit until varied or revoked:

Provided that in the case of any such order made before the commencement of the Matrimonial Causes (Amendment) Act, 1958, this subsection applies only where—

- (i) in a case of restitution of conjugal rights—the time so limited expires after that commencement;
- (ii) in any other case—the final decree or decree absolute is made after that commencement.

Nothing in this subsection affects the operation of subsection two, three or four of this section.

Specific
powers of
Court.

40. (1) The Court, in exercising its powers under this Part of this Act, may—

- (a) order that a gross sum or a weekly, fortnightly, monthly or other periodic sum be paid or secured and order that any security is to be in addition to or wholly or partly in substitution for a periodic payment;
- (b) order that any necessary deed or instrument be executed and that such documents of title be produced or such other things be done as are necessary to enable an order to be effectively carried out or to provide security for the due performance of an order;
- (c) settle and approve any deed or instrument so ordered to be executed;
- (d) order that payments be made direct to a party to the marriage, to a trustee to be appointed or to any public authority for the benefit of a party to the marriage;

(e)

- (e) order that payments of maintenance in respect of a child be made to such person as the Court may specify; No. 22, 1958.
- (f) make a permanent order, an order pending the disposal of the proceedings or an order for a fixed term, for a life or during joint lives;
- (g) impose terms and conditions;
- (h) discharge an order if the party in whose favour the order is made marries again or if there is any other just cause for so doing;
- (i) modify an order under this Part or suspend its operation wholly or in part and either until further order or until a fixed time or the happening of some future event;
- (j) revive an order wholly or in part;
- (k) increase or decrease the amount payable under an order other than an order pursuant to which a gross or periodic sum is secured;
- (l) sanction an agreement for the acceptance of a gross sum or periodic sums in lieu of rights under this Part;
- (m) deal with any two or more matters mentioned in this subsection in the same order;
- (n) include its order under this Part in a decree *nisi*, decree absolute, or final decree, or make any order under this Part on, or at any time before or after, the pronouncement of any such decree.

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(2) Notwithstanding anything contained in this Part—

(a) where no alimony was payable—

(i) in a case of restitution of conjugal rights, immediately before the expiration of the time limited by the Court for compliance with the decree in the proceedings; or

(ii) in any other case, immediately before the pronouncement of the decree absolute or final decree in the proceedings; or

(b) where alimony was so payable but the order therefor was not continued in force by virtue of the operation of subsection two, three or four of section thirty-nine of this Act,

the Court shall not make an order for permanent alimony in respect of the proceedings unless application therefor was or is made before, on, or, having regard to all the circumstances of the case, within a reasonable time after, the pronouncement of the decree absolute or final decree.

(3) The Court may exercise the powers conferred by this Part in relation to an order for alimony or maintenance made before the commencement of the Matrimonial Causes (Amendment) Act, 1958, as well as in relation to an order for alimony or maintenance made after that commencement.

Execution of instruments by order of Court.

cf. Act No. 24, 1901, s. 90.

41. (1) Where any person, directed by an order under this Part to execute any deed or other instrument or make a surrender or transfer, refuses or neglects to do so, the Court may appoint the Chief Clerk in Divorce, or some other person, to execute the deed or instrument

or

or to make the surrender or transfer in his name, and to do all acts necessary to give validity and operation thereto. **No. 22, 1958.**

(2) The execution of the deed or instrument and the surrender or transfer so made by the person so appointed shall in all respects have the same force and validity as if it had been executed or made by the person directed by the order to execute or make it.

(3) The Court shall make such order as may be just touching the payment of the costs of, or attending the execution of, any such deed, transfer, surrender or instrument.

42. This Part applies to proceedings under this Act (other than proceedings for jactitation of marriage) pending at the commencement of the Matrimonial Causes (Amendment) Act, 1958, as well as to proceedings under this Act (other than proceedings for jactitation of marriage) instituted after that commencement. Pending proceedings.

- (f) by omitting from the heading to Part XIII the words "AND MAINTENANCE"; Part XIII. Heading.
- (g) by omitting from subsection one of section sixty the word "maintenance"; Sec. 60. (In suits for separation, nullity or dissolution.)
- (h) by omitting from section sixty-two the word "maintenance"; Sec. 62. (In applications for conjugal rights.)
- (i) (i) by inserting in subsection one of section 90A after the word "monthly" the word ", fortnightly"; Sec. 90A. (Summary proceedings to enforce orders for alimony or maintenance.)
- (ii) by omitting from the same subsection the words "and any sum due under the order is unpaid, any justice, upon complaint on oath

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oath being made by the wife or by any reputable person on behalf of the wife or child that the wife or child is unable through lack of means to have the order enforced by attachment, may” and by inserting in lieu thereof the words “any justice may, upon complaint on oath being made by the wife or by any reputable person on behalf of the wife or child that any sum due under the order is unpaid”;

- (iii) by omitting from subsection two of the same section the words “section ninety-seven of the Child Welfare Act, 1923” and by inserting in lieu thereof the words “section twelve of the Child Welfare Act, 1939”;
- (iv) by omitting from subsection three of the same section the words “and that the wife or child is unable through lack of means to have the order enforced by attachment”;
- (v) by omitting subsection eight of the same section and by inserting in lieu thereof the following subsection:—

(8) In this section “husband” includes a male person against whom the court has made an order for payment in respect of alimony and “wife” includes a female person in whose favour the court has made such an order, and “justice” means justice of the peace.

New sec.
90B.

- (j) by inserting in Part XVIII next after section 90A the following new section:—

Enforce-
ment of
order
by means of
certificate of
amount due
and judg-
ment
thereon.
cf. Act
No. 17,
1901, s. 13A.

90B. (1) This section applies to an order made by the Court before or after the commencement of the Matrimonial Causes (Amendment) Act, 1958, for the payment by any person of alimony or maintenance to any other person.

(2) Notwithstanding anything contained in this or any other Act an order to which this section applies made against a female shall be enforced only in the manner provided in this section.

(3)

(3) Where it is made to appear upon No. 22, 1958.
oath to the registrar or a deputy-registrar in
divorce that default has, before or after the
commencement of the Matrimonial Causes
(Amendment) Act, 1958, been made by a person
against whom an order to which this section
applies has been made in making the payments
directed by the order and that an amount of
more than ten pounds is due thereunder, the
registrar or deputy-registrar may grant a
certificate in the prescribed form stating the
amount due under the order at the date of the
certificate without requiring notice of the
application to be given to that person.

(4) The person entitled to receive the
money ordered to be paid may file or cause to
be filed the certificate in the Supreme Court or
in any District Court having jurisdiction within
the district wherein the person against whom
the order was made resides or wherein any real
property of the last-mentioned person is
situated, and the Prothonotary or the registrar
of the District Court in which the certificate is
so filed, as the case may be, shall enter judgment
for the person so entitled for the amount stated
to be due in the certificate together with the fees
paid therefor and for filing the certificate and
entering the judgment.

The judgment may, subject to subsection five
of this section, be enforced in any manner in
which a final judgment in an action may be
enforced.

(5) (a) On the application of the person
against whom the order was made or his
executor or administrator, the Court, if it deems
it just and proper to do so, may, whether or not
proceedings to enforce the judgment have been
commenced—

(i) order that the judgment shall not be
enforced; or

(ii)

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(ii) order that the judgment be paid at such time or times and by such instalments, if any, as the Court thinks fit,

and, where proceedings to enforce the judgment have been commenced, may—

(iii) set aside or stay execution if execution has issued;

(iv) set aside an order made in those proceedings attaching debts due, owing or accruing to that person and order that any moneys that have already been received by the judgment creditor under the order firstmentioned in this subparagraph or that have been paid into court under the order firstmentioned in this subparagraph but have not been paid to the judgment creditor be paid to the person firstmentioned in this subparagraph or his executor or administrator;

(v) make such other or further order in relation to those proceedings as may be just.

(b) The powers conferred on a Court by this subsection shall not be construed as limiting or affecting any power possessed by the Court apart from this subsection.

(c) In this subsection "Court" means—

(i) where the certificate is filed in the Supreme Court—the Supreme Court in its common law jurisdiction or a Judge of that Court exercising that jurisdiction;

(ii) where the certificate is filed in a District Court—a Judge of that Court.

(6)

(6) Rules of court may prescribe the practice and procedure, to be observed in the Supreme Court and in District Courts, for carrying out or giving effect to this section and, without limiting the generality of the power conferred by the foregoing provisions of this subsection, may prescribe the practice and procedure to be so observed in connection with the filing of certificates and entering up of judgments thereon in pursuance of this section, and the fees to be paid. No. 22, 1958.

- (k) (i) by omitting from section one all matter relating to Part VIII and by inserting in lieu thereof the following matter:— Sec. 1.
(Conse-
quential.)

PART VIII.—ALIMONY—ss. 39-42.

- (ii) by omitting from the matter relating to Part XIII in the same section the words “AND MAINTENANCE”.

3. The Deserted Wives and Children Act, 1901, as amended by subsequent Acts, is amended by inserting in Part II next after section 13B the following new section:— Amendment
of Act No.
17, 1901.
New sec.
13c.

13c. An order made under section seven of this Act shall not be taken to be discharged or cancelled by reason only of the dissolution after the commencement of the Matrimonial Causes (Amendment) Act, 1958, of the marriage between the husband and the wife, and for the purposes of enforcing, varying, suspending or discharging the order a reference in this Act to “husband” includes a reference to the person who before the marriage was dissolved was the husband and a reference in this Act to “wife” includes a reference to the person who before the marriage was dissolved was the wife. Dissolution
of marriage
not to
affect main-
tenance
order.