

MAINTENANCE (AMENDMENT) ACT, 1977

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. 43, 1977.

An Act to amend the Maintenance Act, 1964, for the purpose of abolishing imprisonment as a means of enforcing a maintenance order and for certain other purposes; and to make consequential amendments to other Acts. [Assented to, 19th April, 1977.]

BE

Maintenance (Amendment).

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:—

1. This Act may be cited as the “Maintenance **Short title.**
(Amendment) Act, 1977”.

2. (1) This section and sections 1, 3 and 10 shall **Commence-**
commence on the date of assent to this Act. **ment.**

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. This Act contains the following Schedules :— **Schedules.**

SCHEDULE 1.—AMENDMENTS TO THE MAINTENANCE ACT, 1964.

SCHEDULE 2.—AMENDMENTS TO THE MAINTENANCE ACT, 1964, BY WAY OF STATUTE LAW REVISION.

SCHEDULE 3.—AMENDMENTS TO THE CHILD WELFARE ACT, 1939.

SCHEDULE 4.—AMENDMENTS TO THE PRISONS ACT, 1952.

SCHEDULE 5.—AMENDMENT TO THE YOUTH AND COMMUNITY SERVICES ACT, 1973.

SCHEDULE 6.—AMENDMENT TO THE CHILDREN (EQUALITY OF STATUS) ACT, 1976.

SCHEDULE

Maintenance (Amendment).

SCHEDULE 7.—SAVINGS AND TRANSITIONAL PROVISIONS.

Amendment of Act No. 74, 1964. **4.** The Maintenance Act, 1964, is amended in the manner set forth in Schedules 1 and 2.

Amendment of Act No. 17, 1939. **5.** The Child Welfare Act, 1939, is amended in the manner set forth in Schedule 3.

Amendment of Act No. 9, 1952. **6.** The Prisons Act, 1952, is amended in the manner set forth in Schedule 4.

Amendment of Act No. 90, 1973. **7.** The Youth and Community Services Act, 1973, is amended in the manner set forth in Schedule 5.

Amendment of Act No. 97, 1976. **8.** The Children (Equality of Status) Act, 1976, is amended in the manner set forth in Schedule 6.

Savings, etc. **9.** Schedule 7 has effect.

Abolition of imprisonment for contravention of maintenance order. **10.** (1) On and after the date of assent to this Act a person shall not be imprisoned or otherwise placed in custody by reason of a contravention of, or a failure to comply with, an order for the payment of money for or towards the maintenance of another person made or deemed to have been made under the Maintenance Act, 1964, or the Child Welfare Act, 1939.

Maintenance (Amendment).

(2) A person who, at the date of assent to this Act, is in prison or other custody as a result of a contravention of, or a failure to comply with, an order referred to in subsection (1) shall be released forthwith.

(3) The release from prison or other custody under subsection (1) of a person who was in that prison or other custody by reason of a failure to pay money does not release that person from any liability to pay that money.

SCHEDULE 1.

Sec. 4.

AMENDMENTS TO THE MAINTENANCE ACT, 1964.

(1) (a) Section 1 (4), matter relating to Part III—

Omit the matter.

(b) Section 1 (4)—

After the matter relating to Part III, insert :—

PART IIIA.—ENFORCEMENT OF CUSTODY
AND ACCESS ORDERS—s. 65.

(2) Section 3 (5), (6)—

After section 3 (4), insert :—

(5) Subsections (1), (2) and (3) apply to an order made under Part XII of the Child Welfare Act, 1939 (including an order referred to in section 48F (1) of that Act), in the same way as they apply to an order made under Part XVI of that Act, subject to—

(a) references therein to the appointed day being construed as references to the day appointed and notified under section 2 (2) of the Maintenance (Amendment) Act, 1977; and

SCHEDULE

*Maintenance (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE MAINTENANCE ACT, 1964—*contd.*

- (b) references therein to section 2 being construed as references to section 4 of the Maintenance (Amendment) Act, 1977.

(6) For the purposes of subsection (5) an order made under Part II and varied under section 129 (2) of the Child Welfare Act, 1939, and an order made under the Deserted Wives and Children Act, 1901, and so varied, shall be deemed to have been an order made under Part XII of the Child Welfare Act, 1939.

(3) Section 8A—

After section 8, insert :—

8A. (1) Where an order is sought from, and made by, a court under the Child Welfare Act, 1939—

- (a) committing a child to the care of the Minister to be dealt with as a ward admitted to State control;
- (b) committing a child to an institution pursuant to Part XIV of that Act; or
- (c) in respect of a child under section 47 (1) of that Act,

an order may also be sought from, and made by, the court under and subject to this Part for the maintenance of that child as if a complaint or application, as the case may require, had been made under subsection (2) on behalf of that child.

(2) Where an order referred to in subsection (1) (a), (b) or (c) has been made in respect of a child, or a child has been admitted to State control under section 23 (1) (a) of the Child Welfare Act, 1939, or the care of a child has been arranged under

SCHEDULE

Maintenance orders subsequent to certain orders under Child Welfare Act, 1939.

Maintenance (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE MAINTENANCE ACT, 1964—*contd.*

section 48G of that Act and no order for the maintenance of that child is in force, such an order for maintenance may be made under and subject to this Part on complaint or application, as the case may require, made by the permanent head of the Department of the Government administering that Act.

(3) Where a court makes an order committing a child under section 82 (c), 83 (1) (b) or 83 (2) (b) of the Child Welfare Act, 1939, to the care of a person, the court may, under and subject to this Part, also make an order for the maintenance of the child.

(4) Where an order committing a child under section 82 (c), 83 (1) (b) or 83 (2) (b) of the Child Welfare Act, 1939, to the care of a person has been made and no order for the maintenance of the child is in force, such an order for maintenance may be made under and subject to this Part on complaint or application, as the case may require, made by that person.

(5) The permanent head of the Department of the Government administering the Child Welfare Act, 1939, may certify in writing that a specified child—

(a) is, at the date of the certificate—

- (i) a child in respect of whom an order referred to in subsection (1) (a), (b) or (c) is in force;
- (ii) a child admitted to State control under section 23 (1) (a) of the Child Welfare Act, 1939;

SCHEDULE

Maintenance (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE MAINTENANCE ACT, 1964—*contd.*

(iii) a child whose care has been arranged under section 48G of that Act; or

(iv) a child in respect of whom an order under section 82 (c), 83 (1) (b) or 83 (2) (b) of that Act is in force; and

(b) was, during a specified period commencing not earlier than three months before the date of the certificate, such a child,

and such a certificate purporting to be signed by that permanent head is, without proof of his office or signature, evidence of the matters certified.

(4) (a) Section 19 (1) (a)—

Omit “sixteen”, insert instead “18”.

(b) Section 19 (3)—

Omit “sixteen”, insert instead “18”.

(5) (a) Section 26 (a)—

Omit “sixteen years; and”, insert instead “18 years;”.

(b) Section 26 (b)—

Omit “maintenance or”.

(c) Section 26 (b)—

Omit “occurs.”, insert instead “occurs; and”.

SCHEDULE

Maintenance (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE MAINTENANCE ACT, 1964—*contd.*

(d) Section 26 (c)—

After section 26 (b), insert :—

(c) an order for the maintenance of a child ceases to have effect when the child attains the age of 18 years, dies or is adopted or the person against whom the order was made dies, whichever first occurs or, where the order was made under section 8A, if the child sooner ceases to be—

(i) a child subject to an order referred to in section 8A (1) (a), (b) or (c) or 8A (3);

(ii) a child admitted to State control under section 23 (1) (a) of the Child Welfare Act, 1939; or

(iii) a child whose care has been arranged under section 48G of that Act,

as the case may be.

(6) (a) Section 27 (1)—

Omit “sixteen”, insert instead “18”.

(b) Section 27 (1)—

Omit “Part XVI”, insert instead “Part XII or XVI”.

(c) Section 27 (2)—

Omit “sixteen” wherever occurring, insert instead “18”.

SCHEDULE

Maintenance (Amendment).

 SCHEDULE 1—*continued.*

 AMENDMENTS TO THE MAINTENANCE ACT, 1964—*contd.*

(7) (a) Section 27A (1)—

Omit “sixteen” wherever occurring, insert instead “18”.

(b) Section 27A (1) (b)—

Omit “Part XVI”, insert instead “Part XII or XVI”.

(8) Section 28A—

After section 28, insert :—

28A. (1) Where—

**Voluntary
main-
tenance.**

(a) the permanent head of the Department of the Government administering the Child Welfare Act, 1939, is entitled to seek an order for maintenance under this Part;

(b) in response to a request by that permanent head, a person against whom the order may be made makes an offer in the prescribed form to pay that maintenance; and

(c) that permanent head gives that person, either personally or by post, written notice that he accepts the offer,

the offer may be registered with a court.

(2) An offer registered under subsection (1) has effect as if it were an order made under this Part, in the terms of the offer, for the maintenance to which it relates.

SCHEDULE

Maintenance (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE MAINTENANCE ACT, 1964—*contd.*

(9) (a) Section 35 (3)—

Omit “or varied”, insert instead “or, except in the case of an order referred to in subsection (3A), varied”.

(b) Section 35 (3A)—

After section 35 (3), insert :—

(3A) Where an order (including a varied order) is in force under this Part for the maintenance of a child and that child becomes or is—

- (a) a child committed to the care of the Minister to be dealt with as a ward admitted to State control ;
- (b) a child committed to an institution pursuant to Part XIV of the Child Welfare Act, 1939 ;
- (c) a child the subject of an order under section 47 (1) of that Act ;
- (d) a child admitted to State control under section 23 (1) (a) of that Act ;
- (e) a child whose care has been arranged under section 48G of that Act ;
- (f) a child committed to the care of a person under section 82 (c), 83 (1) (b) or 83 (2) (b) of that Act ;
or

SCHEDULE

Maintenance (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE MAINTENANCE ACT, 1964—*contd.*

- (g) a child in respect of whom monetary assistance is being or has been given, under that Act or any Act repealed by that Act,

the court may, on application by a person authorised for the purpose by the Minister and upon notice being given to such persons and in such manner as the court directs, vary the order in so far as it relates to the receipt or disbursement of money payable under the order.

- (c) Section 35 (6)—

Omit the subsection.

- (10) Part III—

Omit the Part, section 65 excepted.

- (11) Section 65, heading—

As heading to the section, insert :—

**PART IIIA.—ENFORCEMENT OF CUSTODY AND
ACCESS ORDERS.**

- (12) (a) Section 105 (6)—

Omit the subsection.

- (b) Section 105 (7)—

Omit the subsection.

- (13) Section 109 (a)—

Omit “the moneys”, insert instead “except as provided in paragraph (a1), the moneys”.

SCHEDULE

Maintenance (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE MAINTENANCE ACT, 1964—*contd.*

(14) Section 109 (a1)—

After section 109 (a), insert :—

- (a1) in the case of an order made by virtue of section 8A (1) or (2), the moneys be paid to the clerk of the court for payment by him into the Consolidated Revenue Fund ;

(15) Section 109A—

After section 109, insert :—

109A. (1) Where the regulations provide for the enforcement of an order by deductions from earnings, those provisions have effect in relation to deductions from earnings falling to be paid by the Crown or a Minister of the Crown or a statutory authority representing the Crown or out of the Consolidated Revenue Fund and those earnings shall be treated as falling to be paid by the permanent head or principal officer of the department, office or other body concerned.

Payments
by Crown,
etc.

(2) Section 114 (3), and any provision of the regulations that imposes a penalty for an offence against regulations referred to in subsection (1), do not apply to or in respect of a permanent head or principal officer so referred to.

(16) Sections 117A, 117B—

After section 117, insert :—

- 117A. A court consisting of a special magistrate—
- (a) has the same powers to punish contempt in the face of the court when exercising its jurisdiction under Part II as a court of

Court
may
impose
certain
punish-
ments.

SCHEDULE

Maintenance (Amendment).

 SCHEDULE 1—*continued.*

 AMENDMENTS TO THE MAINTENANCE ACT, 1964—*contd.*

summary jurisdiction has to punish contempt in the face of the court when exercising its jurisdiction under the Family Law Act 1975 of the Parliament of the Commonwealth to make an order for the maintenance of a child of a marriage; and

- (b) has the same powers to punish contempt constituted by wilful disobedience of an order for maintenance under Part II as a court of summary jurisdiction has to punish contempt constituted by wilful disobedience of an order made under the Family Law Act 1975 of the Parliament of the Commonwealth for the maintenance of a child of a marriage.

Enforce-
ment
of order
against
deceased
estate.

117B. Where a person against whom an order has been made under this Act has died, the order may, by leave of a court and on such terms and conditions as the court thinks fit, be enforced, in respect of liabilities that arose under the order before the death of that person, against the estate of that person.

(17) Section 120 (1) (b1)—

After section 120 (1) (b), insert :—

- (b1) the enforcement of orders made under this Act and the manner in which they may be enforced;

SCHEDULE

Maintenance (Amendment).

SCHEDULE 2.

Sec. 4.

AMENDMENTS TO THE MAINTENANCE ACT, 1964, BY WAY
OF STATUTE LAW REVISION.

(1) Section 113 (5)—

Omit "a court of quarter sessions", insert instead "the District Court of New South Wales".

(2) Section 113 (5)—

Omit "at the court of quarter sessions first held after a period of one month after the birth has elapsed, or at any court of quarter sessions succeeding that first held court and to which the hearing is postponed, but no such appeal shall be heard before the holding of that first held court", insert instead "not earlier than one month after the birth of the child".

(3) Section 115 (3) (a)—

Omit "paragraph (a) of section 106", insert instead "section 109 (a) or (a1)".

SCHEDULE 3.

Sec. 5.

AMENDMENTS TO THE CHILD WELFARE ACT, 1939.

(1) Section 10A (1)—

After "regulations", insert "or any other Act or regulation".

(2) Section 27A (7)—

Omit "Part XII of this Act or any other", insert instead "any".

SCHEDULE

Maintenance (Amendment).

SCHEDULE 3—continued.**AMENDMENTS TO THE CHILD WELFARE ACT, 1939—contd.**

- (3) Section 48F (1)—
Omit the subsection.
- (4) Part XII—
Omit the Part.
- (5) Section 129—
Omit the section.
- (6) Second Schedule—
Omit the Schedule.

Sec. 6.

SCHEDULE 4.**AMENDMENTS TO THE PRISONS ACT, 1952.**

- (1) Section 4, definition of “convicted prisoner”—
Omit paragraph (d).
- (2) Section 20 (4)—
Omit the subsection.
- (3) Section 21—
Omit the section.

SCHEDULE

Maintenance (Amendment).

SCHEDULE 5.

Sec. 7.

AMENDMENT TO THE YOUTH AND COMMUNITY SERVICES
ACT, 1973.

Schedule—

Omit so much of the Schedule as relates to section 35 (6)
of the Maintenance Act, 1964.

SCHEDULE 6.

Sec. 8.

AMENDMENT TO THE CHILDREN (EQUALITY OF STATUS)
ACT, 1976.

Schedule 1—

Omit so much of the Schedule as relates to sections
58, 59 and 60 of the Child Welfare Act, 1939.

SCHEDULE 7.

Sec. 9.

SAVINGS AND TRANSITIONAL PROVISIONS.

1. (1) This clause applies to—
 - (a) an order made under the Maintenance Act, 1964, directing the payment of money to the Minister administering the Child Welfare Act, 1939, or to the permanent head of the Department of Youth and Community Services (by whatever name or title he is referred to in the order); and

SCHEDULE

Maintenance (Amendment).

SCHEDULE 7—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

- (b) an order made under Part XII of the Child Welfare Act, 1939,

that was in force immediately before the day appointed and notified under section 2 (2).

(2) On and from the day appointed and notified under section 2 (2), an order to which this clause applies shall be deemed to have been varied to provide that all money due and payable under the order shall be due and payable to the clerk of the court that made the order and shall, when received by him, be paid by him into the Consolidated Revenue Fund.

2. On and from the day appointed and notified under section 2 (2), an authority given before that day under section 129 of the Child Welfare Act, 1939, continues to have effect as if that section and the Second Schedule to that Act had not been repealed but had been amended to provide for the payment into the Consolidated Revenue Fund of the money to which the authority relates.

3. Notwithstanding the repeal by this Act of Division 2 of Part III of the Maintenance Act, 1964, that Division continues to apply as if it had not been repealed to and in respect of an attachment of earnings order made under that Division and in force immediately before the day appointed and notified under section 2 (2).
