



ANNO VICESIMO TERTIO

ELIZABETHAE SECUNDAE REGINAE

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No. 27 of 1974

**An Act to amend The Maintenance Act of 1965 in certain particulars**

[ASSENTED TO 24TH APRIL, 1974]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. **Short title and citation.** (1) This Act may be cited as the *Maintenance Act Amendment Act 1974*.

(2) The *Maintenance Act of 1965* is in this Act referred to as the **Principal Act**.

(3) The Principal Act as amended by this Act may be cited as the *Maintenance Act 1965-1974*.

**2. Amendment of s. 7.** Section 7 of the Principal Act is amended by—

(a) in subsection (1)—

(i) omitting the definition “Clerk of the court” and substituting the following definition:—

““Clerk of the court”—A clerk of the court as defined in the *Justices Act 1886-1973*: The term includes the Clerk (Maintenance), Magistrates Courts Office, Brisbane and any person who for the time being occupies, or performs the duties of, that office;”;

(ii) adding to the definition “Court” after the words “sitting alone” the words “or, in the case of a Magistrates Court referred to in an Order in Council under subsection (8), by any two Justices of the Peace;”;

(b) inserting after subsection (7) the following subsection:—

“(8) The Governor in Council may, by Order in Council, declare that, in respect of a Magistrates Court held within a Magistrates Court District specified in that Order in Council, that court may, whenever a Stipendiary Magistrate is not available, or it is not practicable for him to constitute the court, be constituted by two Justices of the Peace.

Where a court is so constituted, and notwithstanding any other provision of this Act, all the powers, duties and authorities conferred or imposed upon a Magistrates Court by or under this Act may and where necessary shall be exercised by that court as so constituted.”.

**3. New s. 15A.** The Principal Act is amended by inserting after section 15 the following section:—

“**15A. Court may make order by consent.** (1) Notwithstanding any jurisdiction otherwise had, a court may, subject to this section, make an order under this Part for the payment of maintenance—

(a) where the defendant states that he has no cause to show why an order should not be made against him;

(b) where he admits the truth of the complaint; and

(c) where both the complainant and the defendant consent to the amount that the defendant is to be ordered to pay and inform the court of that consent.

(2) A court shall not make an order under this section unless the complainant and the defendant adduce, by admissions, either orally or in writing—

(a) in the case of a person for whose benefit the order is to be made, full particulars of the means, reasonable needs and accustomed condition in life of that person;

(b) in the case of a person against whom an order is to be made, full particulars of that person's means, earning capacity and ability to pay maintenance; and

- (c) in either case, any relevant particulars that the court considers necessary or desirable.
- (3) The court may, in its discretion, refuse to make the order for the amount referred to in subsection (1) (c), whereupon:—
- (a) with the consent of the complainant and the defendant, the amount the defendant is to be ordered to pay shall be determined by the court; or
- (b) if the complainant and the defendant do not give the consent specified in paragraph (a), the hearing upon the complaint shall commence *de novo*.

Where the hearing upon a complaint is commenced *de novo* pursuant to paragraph (b), evidence of admissions made for the purpose of obtaining an order by consent under this section shall not be admissible at that hearing.

(4) Upon the hearing of a complaint under this section the complainant and the defendant shall appear before the court in person or be represented before it by counsel or solicitor.

(5) Any oral admission made under this section shall be recorded by the court and if an order is made by consent under this section become part of the record of that consent proceeding.”.

**4. Amendment of s. 23.** Section 23 of the Principal Act is amended by, in subsection (1)—

(a) omitting the words and brackets “(being not more than two pounds per week)”;

(b) omitting the words “until the expiration of three months from the making of the order or until the making or refusal of an order for the maintenance of the child under this Part (whichever first occurs).”;

(c) adding at the end of the subsection the following sentence:—

“An order under this section shall remain in force until the commencement of the hearing of the complaint referred to in this subsection.”.

**5. Amendment of s. 31.** Section 31 of the Principal Act is amended by—

(a) adding at the end of subsection (5) the following proviso:—

“Provided that where under this Act proceedings for enforcement have been instituted in respect of a maintenance order enforceable under this Act, an application for discharge, suspension or variation of that order shall not be made, by or on behalf of the person against whom that order was made, prior to the completion of those proceedings for enforcement.”;

(b) inserting after subsection (5), as amended by this Act, the following subsection:—

“(6) (a) Notwithstanding subsection (3) an order that is in force under this Part may, subject to this subsection, be discharged, suspended or varied by the court where the parties to the application consent to the terms and conditions of a discharge, suspension or, as the case may be, variation and inform the court of that consent.

(b) A court shall not make an order under this subsection unless the parties to the application:—

(i) appear before the court in person or are represented before it by counsel or solicitor; and

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- (ii) adduce, by admissions made orally or in writing, evidence of the facts and circumstances upon which that order is to be based.
  - (c) The court may, in its discretion, refuse to make the order sought by the parties whereupon—
    - (i) the hearing upon the application shall commence *de novo*, and in such case evidence of admissions made for the purpose of obtaining an order by consent under this subsection shall not be admissible at that hearing; or
    - (ii) with the consent of the parties to the application the court may proceed to hear and determine the application.
  - (d) Any oral admission made under this subsection shall be recorded by the court and if an order is made by consent under this subsection become part of the record of that consent proceeding.”.