

No. , 1976.

A BILL

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.

[MR CLOUGH—3 March, 1976.]

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 (Amendment) Act, 1976". Short title.

2. (1) This section and sections 1, 3, 5 and 10 shall commence on the date of assent to this Act. Commence-
ment.

10 (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.

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

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

20 SCHEDULE 3.—FURTHER AMENDMENTS TO THE MAINTENANCE ACT, 1964.

SCHEDULE 4.—AMENDMENTS TO THE CHILD WELFARE ACT, 1939.

SCHEDULE 5.—AMENDMENT TO THE PRISONS ACT, 1952.

SCHEDULE

Maintenance (Amendment).

SCHEDULE 6.—AMENDMENT TO THE YOUTH AND
COMMUNITY SERVICES ACT, 1973.

SCHEDULE 7.—SAVINGS AND TRANSITIONAL
PROVISIONS.

- 5** 4. The Maintenance Act, 1964, is amended in the manner set forth in Schedules 1 and 2. Amendment of Act No. 74, 1964.
5. The Maintenance Act, 1964, is further amended in the manner set forth in Schedule 3. Further amendment of Act No. 74, 1964.
- 10** 6. The Child Welfare Act, 1939, is amended in the manner set forth in Schedule 4. Amendment of Act No. 17, 1939.
7. The Prisons Act, 1952, is amended in the manner set forth in Schedule 5. Amendment of Act No. 9, 1952.
8. The Youth and Community Services Act, 1973, is amended in the manner set forth in Schedule 6. Amendment of Act No. 90, 1973.
- 15** 9. Schedule 7 has effect. Savings, etc.
- 20** 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. Abolition of imprisonment for contravention of maintenance order.

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.

5 (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.

10 AMENDMENTS TO THE MAINTENANCE ACT, 1964.

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

Omit the matter.

(2) Section 3 (5), (6)—

After section 3 (4), insert :—

15 (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—

20 (a) references therein to the appointed day being construed as references to the day appointed under section 2 (2) of the Maintenance (Amendment) Act, 1976;

25 (b) references therein to section 2 being construed as references to section 4 of the Maintenance (Amendment) Act, 1976.

SCHEDULE

Maintenance (Amendment).

SCHEDULE 1—*continued.*

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

5 (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—

10 After section 8, insert :—

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

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

- 15 (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
- 20 (c) in respect of a child under section 47 (1) of that Act,

20 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.

25 (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, 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 Youth and Community Services.

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SCHEDULE

Maintenance (Amendment).

SCHEDULE 1—*continued.*

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

5 (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.

10 (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
15 Part on complaint or application, as the case may require, made by that person.

(5) The permanent head of the Department of Youth and Community Services may certify in writing that a specified child—

20 (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;

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

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

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

35 and such a certificate is evidence of the matters certified.

SCHEDULE

Maintenance (Amendment).

SCHEDULE 1—*continued.*

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

(4) Section 26 (b)—

5 After “occurs”, insert “,or, where the order was made
under section 8A, if the child sooner ceases to be a
child subject to an order referred to in section 8A
10 (1) (a), (b) or (c) or 8A (3), as the case may be or
sooner ceases to be a child admitted to State control
under section 23 (1) (a) of the Child Welfare Act,
1939”.

(5) Section 27 (1)—

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

(6) Section 27A (1)—

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

15 (7) Section 28A—

After section 28, insert :—

**Voluntary
main-
tenance.**

28A. (1) Where—

- 20 (a) the permanent head of the Department of
Youth and Community Services 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
25 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.

SCHEDULE

Maintenance (Amendment).

SCHEDULE 1—*continued.*

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

5 (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.

(8) (a) Section 35 (3)—

10 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 :—

15 (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—

20 (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 ;

25 (d) a child admitted to State control under section 23 (1) (a) of that Act ;

(e) a child committed to the care of a person under section 82 (c), 83 (1) (b) or 83 (2) (b) of that Act ;
30 or

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

SCHEDULE

Maintenance (Amendment).

SCHEDULE 1—*continued.*

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

- 5 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.
- 10 (c) Section 35 (6)—
Omit the subsection.
- (9) Part III—
Omit the Part.
- (10) Section 105 (6)—
Omit the subsection.
- 15 (11) Section 105 (7)—
Omit the subsection.
- (12) Section 109 (a)—
Omit “the moneys”, insert instead “except as provided in paragraph (a1), the moneys”.
- 20 (13) 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;
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SCHEDULE

Maintenance (Amendment).

SCHEDULE 1—*continued.*

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

(14) Section 109A—

After section 109, insert :—

- 5 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.
- 10

- 15 (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.

(15) Section 117A, 117B—

20 After section 117, insert :—

- 25 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 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 ;
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SCHEDULE

Maintenance (Amendment).

SCHEDULE 1—*continued.*

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

5 (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.

15 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. **Enforcement of order against deceased estate.**

(16) Section 120 (1) (b1)—

After section 120 (1) (b), insert :—

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

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”.

SCHEDULE

Maintenance (Amendment).

SCHEDULE 2—*continued.*

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

(2) Section 113 (5)—

- 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
10 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)”.

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SCHEDULE 3.

Sec. 5.

FURTHER AMENDMENTS TO THE MAINTENANCE ACT, 1964.

(1) Section 7 (1), definition of “Child”—

Omit “illegitimate”, insert instead “ex-nuptial”.

(2) Section 15—

- 20 Omit “illegitimate”, insert instead “ex-nuptial”.

(3) Section 16—

Omit “illegitimate”, insert instead “ex-nuptial”.

SCHEDULE

Maintenance (Amendment).

SCHEDULE 3—*continued.*

FURTHER AMENDMENTS TO THE MAINTENANCE ACT,
1964—*continued.*

- (4) Section 19 (3)—
5 Omit “illegitimate”, insert instead “ex-nuptial”.
- (5) Section 19 (4)—
Omit “illegitimate” wherever occurring, insert instead
“ex-nuptial”.
- (6) Section 20—
10 Omit “illegitimate”, insert instead “ex-nuptial”.
- (7) Section 32—
Omit “illegitimate”, insert instead “ex-nuptial”.
- (8) Section 38 (1)—
Omit “illegitimate”, insert instead “ex-nuptial”.
- 15** (9) Section 40—
Omit “illegitimate”, insert instead “ex-nuptial”.
- (10) Section 105 (5)—
Omit “illegitimate”, insert instead “ex-nuptial”.

Maintenance (Amendment).

SCHEDULE 4.

Sec. 6.

AMENDMENTS TO THE CHILD WELFARE ACT, 1939.

- (1) Section 10A (1)—
5 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”.
- (3) Section 48F (1)—
10 Omit the subsection.
- (4) Part XII—
Omit the Part.
- (5) Section 129—
Omit the section.
- 15 (6) Second Schedule—
Omit the Schedule.

Maintenance (Amendment).

SCHEDULE 5.

Sec. 7.

AMENDMENT TO THE PRISONS ACT, 1952.

Section 21—

- 5 Omit “or of Part XII or Part XVI of the Child Welfare Act, 1939, as amended by subsequent Acts,”.

SCHEDULE 6.

Sec. 8.

AMENDMENT TO THE YOUTH AND COMMUNITY SERVICES ACT, 1973.

Schedule—

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

SCHEDULE 7.

Sec. 9.

SAVINGS AND TRANSITIONAL PROVISIONS.

1. (1) This clause applies to—
- 15 (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
- 20 title he is referred to in the order); and
- (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).

SCHEDULE

Maintenance (Amendment).

SCHEDULE 7—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

(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.

10 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
15 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
20 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).

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1976

MAINTENANCE (AMENDMENT) BILL, 1976

EXPLANATORY NOTE

THE objects of this Bill are—

- (a) to abolish imprisonment as a means of enforcing a maintenance order and to provide for the release of any person who, at the date of assent to the proposed Act is in prison or other custody for failure to comply with such an order (clause 10);
 - (b) to provide for the making of orders under the Maintenance Act, 1964, instead of the Child Welfare Act, 1939, for the maintenance of certain children for whose maintenance provision is not made by the Family Law Act 1975 of the Commonwealth (Schedule 1 (3));
 - (c) to provide for the registration with, and enforcement by, a court of voluntary maintenance offers (Schedule 1 (7));
 - (d) to authorise the making of regulations providing for attachment of earnings in order to facilitate uniformity with the procedures for obtaining the like orders under Commonwealth legislation (Schedule 1 (9) and (16));
 - (e) to authorise clerks of courts to pay direct to the Consolidated Revenue Fund money received by them under certain maintenance orders (Schedules 1 (13) and 7 (1));
 - (f) to confer on a special magistrate the same powers to punish contempt in the face of the court and wilful disobedience of a maintenance order as are conferred by the Family Law Act 1975 of the Commonwealth on courts of summary jurisdiction in respect of the like contempt and disobedience (Schedule 1 (15));
 - (g) to substitute the expression “ex-nuptial” for the expression “illegitimate” (Schedule 3);
 - (h) to make amendments of a minor or consequential character.
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PROOF

No. , 1976.

A BILL

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.

[MR CLOUGH—3 *March*, 1976.]

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, 1976".

2. (1) This section and sections 1, 3, 5 and 10 shall Commence-
commence on the date of assent to this Act. ment.

10 (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.

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

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

20 SCHEDULE 3.—FURTHER AMENDMENTS TO THE MAINTENANCE ACT, 1964.

SCHEDULE 4.—AMENDMENTS TO THE CHILD WELFARE ACT, 1939.

SCHEDULE 5.—AMENDMENT TO THE PRISONS ACT, 1952.

SCHEDULE

Maintenance (Amendment).

SCHEDULE 6.—AMENDMENT TO THE YOUTH AND
COMMUNITY SERVICES ACT, 1973.

SCHEDULE 7.—SAVINGS AND TRANSITIONAL
PROVISIONS.

- 5 4. The Maintenance Act, 1964, is amended in the manner set forth in Schedules 1 and 2. Amendment
of Act No.
74, 1964.
5. The Maintenance Act, 1964, is further amended in the manner set forth in Schedule 3. Further
amendment
of Act No.
74, 1964.
6. The Child Welfare Act, 1939, is amended in the Amendment
of Act No.
17, 1939.
10 manner set forth in Schedule 4.
7. The Prisons Act, 1952, is amended in the manner set forth in Schedule 5. Amendment
of Act No.
9, 1952.
8. The Youth and Community Services Act, 1973, is Amendment
of Act No.
90, 1973.
amended in the manner set forth in Schedule 6.
- 15 9. Schedule 7 has effect. Savings,
etc.
10. (1) On and after the date of assent to this Act a Abolition of
imprison-
ment for
contraven-
tion of
maintenance
order.
20 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 main-
tenance 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.

5 (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.

10 AMENDMENTS TO THE MAINTENANCE ACT, 1964.

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

Omit the matter.

(2) Section 3 (5), (6)—

After section 3 (4), insert :—

15 (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—

20 (a) references therein to the appointed day being construed as references to the day appointed under section 2 (2) of the Maintenance (Amendment) Act, 1976;

25 (b) references therein to section 2 being construed as references to section 4 of the Maintenance (Amendment) Act, 1976.

SCHEDULE

Maintenance (Amendment).

SCHEDULE 1—*continued.*

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

5 (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—

10 After section 8, insert :—

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

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

- 15 (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,

20 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.

25 (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, 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 Youth and Community Services.

SCHEDULE

Maintenance (Amendment).

SCHEDULE 1—*continued.*

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

5 (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.

10 (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.

15 (5) The permanent head of the Department of Youth and Community Services may certify in writing that a specified child—

20 (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;

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

30 (iii) 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 is evidence of the matters certified.

35

SCHEDULE

Maintenance (Amendment).

SCHEDULE 1—*continued.*

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

(4) Section 26 (b)—

5 After “occurs”, insert “, or, where the order was made
under section 8A, if the child sooner ceases to be a
child subject to an order referred to in section 8A
10 (1) (a), (b) or (c) or 8A (3), as the case may be or
sooner ceases to be a child admitted to State control
under section 23 (1) (a) of the Child Welfare Act,
1939”.

(5) Section 27 (1)—

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

(6) Section 27A (1)—

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

15 (7) Section 28A—

After section 28, insert :—

28A. (1) Where—

- 20 (a) the permanent head of the Department of
Youth and Community Services is entitled
to seek an order for maintenance under this
Part;
- 25 (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.

Voluntary
main-
tenance.

Maintenance (Amendment).

SCHEDULE 1—*continued.*

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

5 (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.

(8) (a) Section 35 (3)—

10 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 :—

15 (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—

- 20 (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 ;
- 25 (d) a child admitted to State control under section 23 (1) (a) of that Act ;
- (e) a child committed to the care of a person under section 82 (c), 83 (1) (b) or 83 (2) (b) of that Act ;
- 30 or
- (f) a child in respect of whom monetary assistance is being or has been given, under that Act or any Act repealed by that Act,

SCHEDULE

Maintenance (Amendment).

SCHEDULE 1—*continued.*

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

5 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.

10 (c) Section 35 (6)—
Omit the subsection.

(9) Part III—
Omit the Part.

(10) Section 105 (6)—
Omit the subsection.

15 (11) Section 105 (7)—
Omit the subsection.

(12) Section 109 (a)—
Omit “the moneys”, insert instead “except as provided in paragraph (a1), the moneys”.

20 (13) 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;

25

SCHEDULE

Maintenance (Amendment).

SCHEDULE 1—*continued.*

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

(14) Section 109A—

After section 109, insert :—

5 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 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.

01

10 (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.

01

(15) Section 117A, 117B—

20 After section 117, insert :—

25 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 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;

Court
may
impose
certain
punish-
ments.

02

02

SCHEDULE

Maintenance (Amendment).

SCHEDULE 1—*continued.*

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

5 (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 10 1975 of the Parliament of the Commonwealth for the maintenance of a child of a marriage.

15 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.

Enforcement of order against deceased estate.

(16) Section 120 (1) (b1)—

After section 120 (1) (b), insert :—

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

SCHEDULE 2.

Sec. 4.

25 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”.

SCHEDULE

Maintenance (Amendment).

SCHEDULE 2—*continued.*

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

(2) Section 113 (5)—

- 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
10 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)”.

15

SCHEDULE 3.

Sec. 5.

FURTHER AMENDMENTS TO THE MAINTENANCE ACT, 1964.

(1) Section 7 (1), definition of “Child”—

Omit “illegitimate”, insert instead “ex-nuptial”.

(2) Section 15—

- 20 Omit “illegitimate”, insert instead “ex-nuptial”.

(3) Section 16—

Omit “illegitimate”, insert instead “ex-nuptial”.

SCHEDULE

Maintenance (Amendment).

SCHEDULE 3—*continued.*

FURTHER AMENDMENTS TO THE MAINTENANCE ACT,
1964—*continued.*

- (4) Section 19 (3)—
5 Omit “illegitimate”, insert instead “ex-nuptial”.
- (5) Section 19 (4)—
Omit “illegitimate” wherever occurring, insert instead
“ex-nuptial”.
- (6) Section 20—
10 Omit “illegitimate”, insert instead “ex-nuptial”.
- (7) Section 32—
Omit “illegitimate”, insert instead “ex-nuptial”.
- (8) Section 38 (1)—
Omit “illegitimate”, insert instead “ex-nuptial”.
- 15 (9) Section 40—
Omit “illegitimate”, insert instead “ex-nuptial”.
- (10) Section 105 (5)—
Omit “illegitimate”, insert instead “ex-nuptial”.

SCHEDULE

Maintenance (Amendment).

SCHEDULE 4.

Sec. 6.

AMENDMENTS TO THE CHILD WELFARE ACT, 1939.

(1) Section 10A (1)—

5 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”.

(3) Section 48F (1)—

10 Omit the subsection.

(4) Part XII—

Omit the Part.

(5) Section 129—

Omit the section.

15 (6) Second Schedule—

Omit the Schedule.

SCHEDULE

Maintenance (Amendment).

SCHEDULE 5.

Sec. 7.

AMENDMENT TO THE PRISONS ACT, 1952.

Section 21—

- 5 Omit “or of Part XII or Part XVI of the Child Welfare Act, 1939, as amended by subsequent Acts,”.

SCHEDULE 6.

Sec. 8.

AMENDMENT TO THE YOUTH AND COMMUNITY SERVICES ACT, 1973.

Schedule—

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

SCHEDULE 7.

Sec. 9.

SAVINGS AND TRANSITIONAL PROVISIONS.

- 1. (1) This clause applies to—
 - 15 (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
 - 20 (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).

SCHEDULE

Maintenance (Amendment).

SCHEDULE 7—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

(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.

10 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
15 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
20 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).

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1976