

**MAINTENANCE (COMMUNITY WELFARE) AMENDMENT
BILL, 1981**

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Community Welfare Bill, 1981.

The objects of this Bill are—

- (a) to amend the Maintenance Act, 1964, so that the jurisdiction to make orders under that Act may be exercised by a court of petty sessions instead of a Children's Court; and**
 - (b) to make other amendments to that Act consequent upon the enactment of the Community Welfare Act, 1981.**
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**MAINTENANCE (COMMUNITY WELFARE) AMENDMENT
BILL, 1981**

No. , 1981.

A BILL FOR

An Act to amend the Maintenance Act, 1964, so that the jurisdiction to make orders under that Act may be exercised by a court of petty sessions instead of a children's court and to make other amendments of that Act consequent upon the enactment of the Community Welfare Act, 1981.

[MR JACKSON—14 May, 1981.]

Maintenance (Community Welfare) 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:—

5 Short title.

1. This Act may be cited as the "Maintenance (Community Welfare) Amendment Act, 1981".

Commencement.

2. (1) This section and section 1 shall commence on the date of assent
10 to this Act.

(2) Except as provided by subsection (1), this Act shall commence on the day appointed and notified under section 2 (2) of the Community Welfare Act, 1981.

Amendment of Act No. 74, 1964.

15 3. The Maintenance Act, 1964, is amended in the manner set forth in Schedule 1.

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE MAINTENANCE ACT, 1964.

20 (1) Long title—

Omit "the Child Welfare Act, 1939–1961,".

(2) Section 1 (4)—

From the matter relating to Division 1 of Part II, omit "*Children's Courts*", insert instead "*Courts of Petty Sessions*".

Maintenance (Community Welfare) Amendment.

SCHEDULE 1—*continued.*

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

(3) Section 4 (7A)—

After section 4 (7), insert:—

- 5 (7A) This section has effect subject to clause 37 of Schedule 2 to the Miscellaneous Acts (Community Welfare) Repeal and Amendment Act, 1981.

(4) Section 5 (9A)—

After section 5 (9), insert:—

- 10 (9A) This section has effect subject to clause 37 of Schedule 2 to the Miscellaneous Acts (Community Welfare) Repeal and Amendment Act, 1981.

(5) (a) Section 7 (1), definitions of “Court”, “Director”—

Omit the definition of “Court”, insert instead:—

- 15 “Court” means a court of petty sessions held before a stipendiary magistrate.

“Director” means the Director, as defined in section 4 (1) of the Community Welfare Act, 1981.

(b) Section 7 (1), definition of “Special magistrate”—

- 20 Omit the definition.

(6) Part II, Division 1, heading—

Omit “*Children’s Courts*”, insert instead “*Courts of Petty Sessions*”.

(7) (a) Section 8A (1)—

Omit the subsection.

Maintenance (Community Welfare) Amendment.

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

(b) Section 8A (2)—

5 Omit “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 section 48G of that Act”,
10 insert instead “section 80 (1) (c) (i), (iv) or (v) of the
Community Welfare Act, 1981, has been made in respect of a
child, a child is a ward within the meaning of that Act, a person
subject to control within the meaning of that Act, or an intellec-
tually handicapped person under guardianship within the
meaning of Part XI of that Act”.

(c) Section 8A (2)—

15 Omit “permanent head of the Department of the Government
administering that Act”, insert instead “Director”.

(d) Section 8A (3), (4)—

Omit the subsections.

(e) Section 8A (5)—

20 Omit the subsection, insert instead:—

(5) The Director may certify in writing that a specified
child—

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

- 25 (i) a child in respect of whom an order referred
to in section 80 (1) (c) (i), (iv) or (v) of
the Community Welfare Act, 1981, is in
force;
- (ii) a ward within the meaning of that Act;
- 30 (iii) a person subject to control within the meaning
of that Act; or
- (iv) an intellectually handicapped person under
guardianship within the meaning of Part XI
of that Act; and

Maintenance (Community Welfare) Amendment.

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

- 5 (b) was, during a specified period commencing not earlier than 3 months before the date of the certificate, such a child, ward or person,

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

(8) (a) Section 10 (3) (a)—

- 10 Omit the paragraph, insert instead:—

(a) in respect of a child in respect of whom a complaint or application for maintenance is made as referred to in section 8A; or

(b) Section 10 (3) (b)—

- 15 Omit “Child Welfare Act, 1939, as amended by subsequent Acts”, insert instead “Community Welfare Act, 1981”.

(c) Section 10 (3)—

Omit “such a ward”, insert instead “such a child”.

(9) (a) Section 22 (5)—

- 20 Omit “under the Child Welfare Act, 1939, as amended by subsequent Acts”, insert instead “administering the Community Welfare Act, 1981”.

(b) Section 22 (5)—

Omit “, as so amended,”.

25 (10) Section 24 (1)—

Omit “a special magistrate”, insert instead “a stipendiary magistrate”.

Maintenance (Community Welfare) Amendment.

SCHEDULE 1—*continued.*

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

(11) (a) Section 26 (c)—

After “8A” where firstly occurring, insert “(2)”.

5 (b) Section 26 (c)—

Omit:—

ceases to be—

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

10 (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.

15 Insert instead:—

ceases to be a child the subject of an order referred to in section 80 (1) (c) (i), (iv) or (v) of the Community Welfare Act, 1981, a ward within the meaning of that Act, a person subject to control within the meaning of that Act or an intellectually handicapped person under guardianship within the meaning of Part XI of that Act.

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(12) (a) Section 28A (1) (a)—

Omit “permanent head of the Department of the Government administering the Child Welfare Act, 1939,” insert instead “Director”.

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(b) Section 28A (1) (b), (c)—

Omit “that permanent head” wherever occurring, insert instead “the Director”.

Maintenance (Community Welfare) Amendment.

SCHEDULE 1—*continued.*

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

(13) Section 35 (3A)—

Omit the subsection, insert instead:—

- 5 (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—
- 10 (a) a child in respect of whom an order referred to in section
80 (1) (c) (i), (iv) or (v) of the Community Welfare
Act, 1981, is in force;
- (b) a ward within the meaning of that Act;
- (c) a person subject to control within the meaning of that Act;
- (d) an intellectually handicapped person under guardianship
within the meaning of Part XI of that Act; or
- 15 (e) a child in respect of whom monetary assistance is being, or
has been, given under that Act or any Act repealed by that
Act,
- 20 the court may, on application by a person authorised for the purpose
by the Director 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.

(14) (a) Section 38 (1)—

Omit “special magistrate”, insert instead “court”.

(b) Section 38 (2), (3)—

25 Omit “magistrate” wherever occurring, insert instead “court”.

(c) Section 38 (2)—

Omit “he thinks”, insert instead “it thinks”.

Maintenance (Community Welfare) Amendment.

SCHEDULE 1—*continued.*

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

(15) (a) Section 66 (1), definition of "Certified copy"—

5 From paragraph (a), omit "permanent head", insert instead "Director".

(b) Section 66 (1), definition of "New South Wales order"—

Omit "special", insert instead "stipendiary".

(c) Section 66 (1), definition of "Permanent head"—

Omit the definition.

10 (16) Section 69A (1), (4), (5)—

Omit "permanent head" wherever occurring, insert instead "Director".

(17) Section 80 (1)—

15 Omit "permanent head" wherever occurring, insert instead "Director".

(18) Section 81 (5)—

Omit "permanent head", insert instead "Director".

(19) Section 82—

Omit "permanent head", insert instead "Director".

20 (20) (a) Section 83 (1)–(4)—

Omit "permanent head" wherever occurring, insert instead "Director".

Maintenance (Community Welfare) Amendment.

SCHEDULE 1—*continued.*

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

(b) Section 83 (4)—

5 Omit “Metropolitan Children’s Court at Sydney”, insert instead
“prescribed court”.

(c) Section 83 (5)—

 Omit “court”, insert instead “prescribed court”.

(21) Section 84 (1), (2)—

 Omit “permanent head” wherever occurring, insert instead “Director”.

10 (22) (a) Section 86 (1)—

 Omit “Metropolitan Children’s Court at Sydney”, insert instead
“prescribed court”.

(b) Section 86 (2)—

 Omit “court”, insert instead “prescribed court”.

15 (23) Section 87—

 Omit “permanent head” wherever occurring, insert instead
“Director”.

(24) Section 88 (1)—

20 Omit “Metropolitan Children’s Court at Sydney”, insert instead
“prescribed court”.

(25) (a) Section 90 (1), (2)—

 Omit “Metropolitan Children’s Court at Sydney” wherever
occurring, insert instead “prescribed court”.

Maintenance (Community Welfare) Amendment.

SCHEDULE 1—continued.

AMENDMENTS TO THE MAINTENANCE ACT, 1964—continued.

(b) Section 90 (5)—

Omit “The court”, insert instead “The prescribed court”.

5 (26) Section 93 (1)—

Omit “the court”, insert instead “the prescribed court”.

(27) Section 105A—

After section 105, insert:—

Exclusion of persons from hearing of complaints.

10 105A. During the hearing of any complaint under this Act, no person shall be or be permitted to be present in court except any one or more of the following:—

15 (a) the adjudicating magistrate, any officer, as defined in section 4 (1) of the Community Welfare Act, 1981, the officers of the court, and a member of the police force;

(b) the complainant and the defendant, and their respective barristers and solicitors;

(c) the mother, sister or other relative or friend of the complainant, if desired by the complainant;

20 (d) any person while being examined as a witness;

(e) the mother, sister or female friend of any female witness, if desired by the witness while being examined;

(f) any other person permitted by the court to be present.

Maintenance (Community Welfare) Amendment.

SCHEDULE 1—*continued.*

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

(28) Section 108A—

After section 108, insert:—

5 **Publicity.**

108A. The provisions of sections 125 and 126 of the Community Welfare Act, 1981, apply to the hearing of a complaint or application under this Act in the same way as they apply to criminal proceedings.

(29) Section 109 (a1)—

10 Omit “(1) or”.

(30) Section 109A—

Omit “permanent head” wherever occurring, insert instead “Department head”.

(31) Section 113 (7)—

15 Omit the subsection, insert instead:—

(7) The provisions of sections 125 and 126 of the Community Welfare Act, 1981, apply to the hearing of an appeal under this section in the same way as they apply to criminal proceedings.

(32) Section 117A—

20 Omit “special”, insert instead “stipendiary”.

Maintenance (Community Welfare) Amendment.

SCHEDULE 1—*continued.*

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

(33) Schedule Two—

Omit so much as amends Act No. 17, 1939.

5 (34) Schedule Three—

Omit so much as relates to Act No. 17, 1939.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1981

