

## MARRIED PERSONS AND CHILDREN (SUMMARY RELIEF).

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No. 64 of 1967.

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**AN ACT to amend the Married Persons and Children  
(Summary Relief) Act, 1965.**

[*Assented to 5th December, 1967.*]

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title  
and citation.

1. (1) This Act may be cited as the *Married Persons and Children (Summary Relief) Act Amendment Act, 1967*.

(2) In this Act, the Married Persons and Children (Summary Relief) Act, 1965, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Married Persons and Children (Summary Relief) Act, 1965-1967.

2. Section five of the principal Act is amended <sup>S. 5</sup> amended.  
as to the interpretation, "dependant",—

- (a) by substituting for the word, "sixteen", in line one of paragraph (a), the word, "eighteen"; and
- (b) by adding after the word, "educational", in line four of paragraph (b), the words, "or training".

3. Section seven of the principal Act is amended <sup>S. 7</sup> amended.  
by adding, after subsection (2), the following subsection—

(3) Notwithstanding the provisions of subsection (1) of this section, the court may, for the purpose of hearing an application made under section sixteen, be constituted by a Stipendiary Magistrate.

4. Section eleven of the principal Act is amended, <sup>S. 11</sup> amended.  
as to subsection (1),—

- (a) by deleting the word, "legal", in line one of paragraph (c);
- (b) by substituting for paragraph (d) the following paragraph—

(d) a provision for access to a child of the family; ;

and

- (c) by substituting for the words, "or to any person having the custody of the child", in lines five and six of paragraph (e), the passage, "for disbursement to a person named in the order,".

5. Section fourteen of the principal Act is <sup>S. 14</sup> amended.  
amended—

- (a) by deleting the word, "legal", in line four of subsection (1);

(b) by adding, immediately after the word, "rules", being the last word in subsection (2), the passage, "; and a person shall not bring a complaint under this section where the order sought might be made pursuant to an application under section twenty-one";

(c) by repealing subsection (4) and re-enacting it with amendments, as follows—

(4) On the hearing of a complaint made under subsection (1) of this section, the court may, on cause being shown and having regard to the provisions of section fifteen, make an order containing a provision for the custody of the child and, in that event, may include in the order one or both of the following provisions, namely—

(a) a provision for access to the child; and

(b) a provision for the making of such weekly or periodical payments by a parent or the parents, in respect of the maintenance of the child, to an officer of the court for disbursement to the person having the custody of the child, for the benefit of the child, as the court, having regard to the means of the parent or of the parents, considers reasonable in all the circumstances of the case. ;

and

(d) by adding, after subsection (4), the following subsection—

(5) Where an order is made under this section in respect of a child who is the subject of a provision for custody contained in a prior order, the order made under this section has the effect of varying the prior order. .

6. Section fifteen of the principal Act is amended— S. 15  
amended.

- (a) by deleting the words, “of the family”, in lines two and three of subsection (1);
- (b) by substituting for the word, “marriage”, in line six of paragraph (b) of subsection (1), the word, “proceedings”;
- (c) by substituting for the word, “committed”, in line seven of subsection (3), the word, “granted”; and
- (d) by adding, after subsection (3), the following subsection—

(4) An order shall not be made containing a provision for the custody of a child, and, if made, the provision is of no effect, while—

- (a) the child is a ward, within the meaning of the Child Welfare Act, 1947; or
- (b) there is in force an order of the Supreme Court of this or of any other State or of a Territory of the Commonwealth for the custody or guardianship of the child, whether made under the law of the Commonwealth, of any State or of a Territory of the Commonwealth. .

7. Section sixteen of the principal Act is amended— S. 16  
amended.

- (a) by substituting for the word, “marriage”, in line six of paragraph (a) of subsection (1), the word, “family”;
- (b) by substituting for paragraph (a) of subsection (4) the following paragraph—
  - (a) in any case falling within paragraph (a) of subsection (1) of this section,—
    - (i) the day on which the proceeding is disposed of by the superior court, whether by withdrawal or otherwise;

- (ii) the day on which an application (including an application for the benefit of a child of the family) for maintenance pending the trial of the proceeding is made by either party to the marriage; or
- (iii) the day, being not later than twelve months after the making of the interim order, specified for that purpose in the order or in any order extending the operation of the order; ;

and

- (c) by adding, after subsection (7), the following subsection—

(8) Where an interim order containing a provision for maintenance ceases to be of effect, the provision for maintenance may, notwithstanding that event, be enforced so far as it relates to any period prior to the cessation. .

S. 17  
amended.

8. Section seventeen of the principal Act is amended—

- (a) by adding, immediately after the word, “provide”, in line two of subsection (1), the word, “for”; and
- (b) by substituting for the words, “or to some other person”, in lines nine and ten of subsection (3), the passage, “, for disbursement to a person named in the order,” .

S. 18  
amended.

9. Section eighteen of the principal Act is amended by repealing subsection (8) and re-enacting it with amendments, as follows—

(8) Where an order is made under this section in favour of a woman during her pregnancy, the clerk may, from time to time,

direct the disbursement of moneys paid to an officer of the court pursuant to the order, in such manner as the clerk thinks proper, but so that disbursements aggregating more than half the moneys so paid are not made until the woman is delivered of a child or a stillborn child; and where the clerk is in doubt as to the propriety of, or of the manner of, any disbursement, he may apply to the court for directions and shall comply with any directions then given. .

10. The principal Act is amended by adding, after section eighteen, the following section—

S. 18A  
added.

18A. (1) Where the court makes an order under section eighteen, whether before or after the birth of the child to whom it relates, the court may, upon the application of the complainant, make an order containing a provision for the making of such weekly or periodical payments by the father, by the mother or by each of them, in respect of the maintenance of the child, to an officer of the court, for disbursement to a person named in the order, for the benefit of the child, as the court, having regard to the means of both the father and the mother, considers reasonable in all the circumstances of the case.

Court may  
make order  
for future  
maintenance  
on application  
for pre-  
liminary  
expenses.  
N.S.W. s. 18;  
Vic. s. 13;  
Qsind. s. 17  
and S.A. ss.  
56-57.

(2) An order shall not be made under this section, unless the person or persons against whom the order is sought has or have been given notice of the intention to apply for, or has or have consented to the making of, the order.

(3) An order made under this section does not take effect until three months after the birth of the child to whom it relates or until the production, to the clerk, of a certified copy of the entry in the register of the birth of the child, whichever is the later; and does not take effect, at all, where the child is stillborn or where the child dies or is adopted before it would otherwise take effect.

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(4) When an order made under this section takes effect, the clerk shall, forthwith, send by post to the person or persons against whom the order was made, at his, or each of their, last known place of residence or business, a notice setting out—

- (a) the name of the child or, as the case may be, the fact that the child is unnamed;
- (b) the date and place of the birth of the child; and
- (c) the date on which, and the place at which, the first payment pursuant to the order is required to be made. .

S. 19  
amended.

11. Section nineteen of the principal Act is amended by adding, after the word, "payment", in line five of subsection (3), the passage, "to an officer of the court, for disbursement to a person named in the order,".

S. 19A  
added.

12. The principal Act is amended by adding, after section nineteen, the following section—

Relief in  
respect of  
medical  
expenses.

19A. (1) A person obliged to make payments under an order containing a provision for maintenance or a provision for preliminary expenses is liable to provide for, or to contribute towards, the payment of medical expenses reasonably incurred by, or in respect of, a person for whose benefit the order was made, if the amount payable under the order is not sufficient to enable adequate provision to be made thereout for, or towards, the payment of those expenses.

(2) The person for whose benefit, or a person having the custody or care of a child for whose benefit, an order containing a provision for maintenance or a provision for preliminary expenses has been made under this Division or the Director may apply to the court, by way

of complaint, for an order against the person obliged to make payments under the former order, on the cause of complaint that—

- (a) medical expenses have reasonably been, or are reasonably required to be, incurred in respect of that person or of the child;
- (b) the amount payable under the order is not sufficient to enable adequate provision to be made thereout for, or towards, the payment of the medical expenses; and
- (c) the defendant has not provided for, or contributed towards, the payment of the medical expenses.

(3) On the hearing of a complaint made under subsection (2) of this section, the court may, upon proof of the cause of complaint, make an order for the payment to an officer of the court, for disbursement as provided by subsection (4) of this section, of such medical expenses as the court, having regard to the means of the defendant, considers reasonable in all the circumstances of the case.

(4) The court may, from time to time, of its own motion or on the application of a party to the proceedings or of the Director, give such directions as to the disbursement of moneys paid pursuant to an order made under subsection (3) of this section as it thinks fit, but so that moneys are not disbursed, except to the defendant, before the care or treatment in respect of which medical expenses are to be incurred has been rendered.

(5) Where a complaint might, but for that event, have been made under this section by a person who has died, the complaint may be made by a person who has paid, or is liable to pay, the medical expenses.



(6) An order shall not be made under this section upon a complaint made more than twelve months after the medical expenses have been incurred.

(7) In this section, "medical expenses" means the reasonable cost of medical, surgical, psychiatric, dental, hospital or nursing care or treatment. .

S. 19B  
added.

13. The principal Act is amended by adding, after section nineteen A, added by section twelve of this Act, the following section—

Director may  
apply for  
maintenance  
of wards.

19B. (1) Where, under the provisions of any other Act, a child was, at any time, committed to the care of the Child Welfare Department and no order was then, or has since been, made for the maintenance of the child, the Director may apply, by way of complaint, for an order against a parent or the parents of the child on the cause of complaint that the child was so committed and the parent has not or the parents have not provided, or contributed towards, reasonable maintenance for the child.

(2) On hearing a complaint made under subsection (1) of this section, the court may, upon proof of the cause of complaint, make an order containing a provision for the making of such weekly or periodical payments by the parent or by the parents, in respect of maintenance of the child, to an officer of the court, for disbursement to the Director, as the court having regard to the means of the parent or the parents, considers reasonable in all the circumstances of the case. .

S. 20  
amended.

14. Section twenty of the principal Act is amended by repealing subsection (1) and re-enacting it with amendments, as follows—

(1) Any party to a proceeding in which an order was made containing a provision for maintenance may apply to the court, by way of complaint, for an order suspending the operation of that provision. .

15. Section twenty-one of the principal Act is <sup>S. 21</sup> amended, as to subsection (1),—

- (a) by substituting for the word, “marriage”, where occurring in line one of paragraph (a) and in line two of paragraph (b), the word, “proceedings”, in each case;
- (b) by deleting the word, “legal”, in line two of paragraph (b); and
- (c) by substituting for the word, “committed”, in line three of paragraph (b), the word, “granted”.

16. Section twenty-two of the principal Act is <sup>S. 22</sup> amended by adding, after subsection (3), the following subsection—

(3a) The Director may apply, by way of complaint, to the court for an order discharging a provision contained in an order for the maintenance or custody of, or access to, a child or, where the order contains no other provision, discharging the order; and, upon cause being shown, by fresh evidence, that the provision or order ought to be discharged, the court may discharge the provision or the order, as the case may require. .

17. The principal Act is amended by adding, <sup>S. 24A</sup> after section twenty-four, the following section—

24A. (1) Except as otherwise provided by this Part, the court, in making an order containing a provision for maintenance, may direct that the provision operate from such day prior to the making of the order as it thinks fit; and, where the provision is to operate from a day prior to the making of the order, the court may direct that the amount that has accrued with respect to the period prior to the making of the order be paid in one sum or by instalments, as it thinks fit.

Court  
may make  
provision  
for past  
maintenance.

(2) Where the court, acting pursuant to subsection (1) of this section, has directed an amount to be paid by instalments, if the person against whom the order is made makes default in the payment of any one instalment, proceedings may be taken as if default had been made in the payment of all the instalments then unpaid. .

S. 25  
amended.

18. Section twenty-five of the principal Act is amended by adding, after the word, "proceedings", in line five, the passage, "to an officer of the court, for disbursement to a person or persons named in the order," .

S. 26  
amended.

19. Section twenty-six of the principal Act is amended—

- (a) by adding, after the word, "custody", in line two of subsection (2), the words, "or care"; and
- (b) by deleting the words, "of the family", in line three of subsection (3).

S. 28  
amended.

20. Section twenty-eight of the principal Act is amended by adding, after subsection (5), the following subsections—

(6) Where a person who is entitled to enforce any one or more of the provisions of an order, under this section, elects, by notice in writing to the clerk, not to enforce a provision specified in the notice, then, the clerk shall cause notice of the election to be given to the person or persons liable to make payments under the provision and, without affecting the enforcement of any other provision, the order shall not, without leave of the court first being obtained, be enforced as regards the provision so specified.

(7) Where an order containing a provision for the payment of money is to be enforced, as regards that provision, outside the State, the

Collector, within the meaning of Part V, may, by *ex parte* application, apply to the court for the amendment of the order by the deletion of that part of it that relates to the manner of the enforcement of the provision; and, where the order is required subsequently to be enforced within the State, the Collector may, in like manner, apply for the restoration of the part of the order that was deleted; and, in either case, the court may, if it thinks fit, grant the application. .

21. Section twenty-nine of the principal Act is amended— S. 29  
amended.

- (a) by deleting the words, “of the family”, in lines seven and eight of subsection (1); and
- (b) by substituting for the passage, commencing with the word, “of”, in line two of subsection (2), and ending with the word, “who” in line four of the subsection, the passage, “, a person who” .

22. Section forty-nine of the principal Act is amended,— S. 49  
amended.

- (a) as to the interpretation, “interstate order”, in subsection (1), by substituting for the passage, “that State, under a law of that State”, in lines seven and eight of paragraph (b), the passage, “another Australian State, under the law of an Australian State”; and
- (b) as to the interpretation, “local order”, in subsection (1), by substituting for the words, “the court under the law of the State”, in lines five and six of paragraph (c), the passage, “a court of summary jurisdiction, under a law of an Australian State”.

23. Section fifty-five of the principal Act is amended by adding, after the word, “made”, in line seven, the passage, “or, where the order was made S. 55  
amended.

in a Supreme Court, the Collector for the State in which the order was first registered in a court of summary jurisdiction for enforcement”.

S. 62  
amended.

24. Section sixty-two of the principal Act is amended,—

(a) as to subsection (1),—

(i) by adding, immediately after the word, “order”, in line two of paragraph (a), the words, “according to its terms”; and

(ii) by adding, immediately after the word, “necessary”, in line three of paragraph (b), the words, “to give effect to the terms of the order”; and

(b) by adding, after subsection (3), the following subsection—

(4) Subsection (3) of this section applies to all proceedings taken by the Collector to enforce an order under this Division, including proceedings for the recovery of maintenance in respect of a past period and notwithstanding that the financial position of the persons for whose benefit the order was made has changed since the moneys became due and payable or that the order has, since that time, ceased to have effect. .

S. 67  
amended.

25. Section sixty-seven of the principal Act is amended by adding, after subsection (7), the following subsection—

(8) The Collector shall, as soon as may be practicable after an order is made, under this section, confirming or discharging a provisional order, send to the proper officer of the court that made the provisional order particulars of the order so made. .

26. Section ninety-seven of the principal Act is amended by repealing subsection (2) and re-enacting it, as follows—

S. 97  
amended.

(2) A certificate, purporting to be under the hand of the clerk at the place where payments are required to be made pursuant to an order, certifying—

- (a) the payments, if any, pursuant to the order, that are of record, or that there is no record of a particular payment or of any payments, in the court at that place; or
- (b) that payments pursuant to the order were in arrears in an amount specified on a date specified,

is admissible in evidence and, if admitted, is *prima facie* evidence of the matters so certified; and there is a presumption that the payments that are of record in the court are the only payments made pursuant to the order to which the record refers.

27. The principal Act is amended by adding, after section ninety-nine, the following section—

S. 99A  
added.

99A. (1) Where an order contains a provision for the maintenance of a child who is subsequently committed to the care of the Child Welfare Department, if the Director files in the court a certified copy of the order committing the child, all moneys subsequently becoming due under that provision, while the child remains a ward, shall, on payment or recovery, be disbursed by the clerk to the Director.

Wards of  
the State.

(2) Where a child to whom subsection (1) applies ceases to be a ward, the Director shall give notice to the court of that event.

(3) Where a child is, or becomes, a ward, the Director is, for the purposes of this Act, deemed, while the child remains a ward, to be a party to a proceeding in which an order

containing a provision for the maintenance of that child was made and, for those purposes, has the custody of the child. .

S. 108  
amended.

28. Section one hundred and eight of the principal Act is amended by adding, after subsection (4), the following subsection—

(5) Civil or criminal proceedings shall lie not against a person, by reason, only, of—

- (a) anything done in reliance on an order apparently made, or a document apparently given, in accordance with the requirements of this Act;
- (b) any act, matter or thing done, or commanded to be done, by a person for the purported purpose of carrying out the provisions of this Act; or
- (c) any act, matter or thing omitted to be done,

unless the act, matter or thing was done, commanded to be done, or omitted to be done maliciously or without reasonable and probable cause. .

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