



MAINTENANCE.

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 No. 87 of 1973.
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ANALYSIS.

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AN ACT to amend the *Maintenance Act 1967*.

[19 December 1973.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

- 1**—(1) This Act may be cited as the *Maintenance Act 1973*.
- (2) The *Maintenance Act 1967*, as subsequently amended, is in this Act referred to as the Principal Act.

Short title and
 citation.

Review of
orders.

2 Section thirty-seven of the Principal Act is amended—

- (a) by omitting from subsection (5) the word “A” and substituting therefor the words “Subject to subsection (5A) of this section, a”; and
- (b) by inserting after that subsection the following subsections:—

“(5A) Subsection (5) of this section does not apply where the person by whom or on whose behalf the application is made—

- (a) did not appear at any proceedings referred to in that subsection to which he was a party; and
- (b) was not personally served in this State with notice of those proceedings.

“(5B) Reference in subsection (5A) of this section to notice of proceedings means—

- (a) in the case of proceedings on a complaint, the service of the summons on that complaint; and
- (b) in the case of proceedings on an application to a court, the service of a copy of a notice of intention to make the application in accordance with section one hundred and fifteen.”.

3 After section forty-two of the Principal Act the following Part is inserted:—

“PART IIA.

“REGISTRATION OF MAINTENANCE AGREEMENTS.

“42A In this Part, unless the contrary intention appears—

‘maintenance agreement’ or ‘agreement’ means—

- (a) a written agreement made between the parties to a marriage providing for the periodical payment by either party of sums of money for, or towards the cost of, the maintenance of the other party;
- (b) a written agreement made between any person and a man acknowledging himself to be the father of a child, and providing for the periodical payment by the man of sums of money for, or towards the cost of, the maintenance of the child;

Interpretation.
Cf. No.109 of
1965, (W.A.),
s. 27A.

- (c) a written agreement made between the mother of a child and a man acknowledging himself to be the father of the child, and providing for the periodical payment by the man of sums of money for, or towards the cost of, the maintenance of the mother, where the mother is a person to whom—
- (i) he is not married; and
 - (ii) he has never been married, or to whom he has been married but the marriage was dissolved before the conception of the child; or
- (d) a written agreement made between a person entitled under Part II to apply for a maintenance order in respect of a child and any person against whom that order may be made, and containing a provision for the periodical payment by the last-mentioned person of sums of money for, or towards the cost of, the maintenance of the child;

‘ registered maintenance agreement ’ means a maintenance agreement registered with a clerk of petty sessions pursuant to section forty-two B.

“ 42B—(1) A party to a maintenance agreement, whether it was made before or after the commencement of this Part, may register the agreement with the clerk of petty sessions for a district in accordance with regulations made under this Act.

Registration of maintenance agreements and variations.
Ibid., s. 27B.

“(2) Subject to this Act, a registered maintenance agreement, while it continues in force, has the same force and effect as if it were a maintenance order made under Part II of this Act on the date of its registration under subsection (1) of this section, and references in this Act to such a maintenance order apply, with the necessary modifications, accordingly.

“(3) If a registered maintenance agreement is varied by written agreement between the parties, the variation may be registered in the same manner as the original agreement, which thereafter has effect for the purposes of this section as so varied.

“ 42C—(1) A court shall set aside the registration of a maintenance agreement that has been registered with its clerk, if the court is satisfied that, at the time of registration, the agreement was not in force.

When registration may be set aside or cancelled.
Ibid., s. 27c.

“(2) A court may make an order cancelling the registration of a maintenance agreement that has been registered with its clerk, if the court is satisfied that the agreement is no longer in force.

Agreements to bind the parties.
Ibid., s. 27D.

“42D—(1) According to its tenor, a registered maintenance agreement binds the parties for the payment of maintenance in respect of any person for whose maintenance provision is made in the agreement.

“(2) For the purposes of this Part, it is immaterial whether or not any document in which a maintenance agreement is embodied also provides for the separation of the parties or the custody of any child.

“(3) A provision in a maintenance agreement whereby a person undertakes not to register the agreement under this Act is void.

“(4) While a registered maintenance agreement continues in force, no party to whom money is payable under that agreement is entitled to apply for a maintenance order under Part II of this Act against the party liable under the agreement in relation to the maintenance of any person in respect of whom maintenance is payable under that agreement, except—

- (a) an order by way of enforcement or variation;
- (b) if the person liable under that agreement leaves this State; or
- (c) in respect of the discharge or suspension of that liability.

Agreements by persons under eighteen years.
Ibid., s. 27E.

“42E A maintenance agreement that is entered into by a person under the age of eighteen years is binding, and may, if registered under section forty-two B, be enforced under this Act.

Enforcement against estate of deceased party.
Ibid., s. 27F.

“42F Except in respect of money owing at the date of the death of a person who is liable under a registered maintenance agreement, no proceedings under this Act for the enforcement of the agreement shall be taken after the death of the person, notwithstanding that the agreement continues in force thereafter.

Recovery of arrears on cessation of agreement.
Ibid., s. 27G.

“42G Notwithstanding that a registered maintenance agreement is no longer in force, proceedings may be taken under this Act for the recovery of any money owing at the time when it ceased to be in force.”.

4 Section one hundred and twenty-seven of the Principal Act is ^{Regulations.} amended—

(a) by transposing the word “ and ” at the end of paragraph (d) thereof to the end of paragraph (e); and

(b) by adding at the end thereof the following paragraph:—

“(f) prescribe the manner in which maintenance agreements to which Part IIA applies may be registered for the purposes of that Part.”.