

# MAINTENANCE

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## Table of Contents

	<i>Page</i>
<b><i>Principal</i></b>	
<b>Maintenance Act 1959</b>	
Table of Provisions .....	1285
Table of Amendments .....	1287
Maintenance Act 1959 .....	1289



# Maintenance Act 1959

## TABLE OF PROVISIONS

*Section*

*Title*

### **PART 1 — PRELIMINARY**

- 1 Short title and commencement
- 2 Parts [*Repealed*]
- 3 Definitions

### **PART 2 — JURISDICTION AND PROCEDURE**

- 4 Power of court to issue summons or warrant
- 5 Hearing and order
- 6 Complaint in respect of ex-nuptial child
- 7 Power to order security for payment of allowance
- 8 Power to attach monies
- 9 Seizure of defendant's goods
- 10 Power to make further orders
- 11 Power to punish disobedience of order
- 12 Warrant may issue in certain cases
- 13 Power of the court to annul or vary order
- 14 Appeals
- 15 One complaint only necessary
- 16 Welfare of child to be primarily regarded

### **PART 3 — PROTECTION ORDER**

- 17 Wife may apply for protection order
- 18 Rescission of order

### **PART 4 — MISCELLANEOUS**

- 19 Wife or husband as witness
- 20 Power to compel defendant to give evidence
- 21 Proof of marriage
- 22 Constructive desertion
- 23 Desertion of child
- 24 Desertion of wife
- 25 Saving of liability in respect of contracts
- 26 Costs
- 27 Application of provisions of Family Court Act 1973
- 28 Exclusion of persons from hearing
- 29 Service of summons



# Maintenance Act 1959

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## TABLE OF AMENDMENTS

The Maintenance Act 1959 No 4 was made and commenced on 30 October 1959.

<b>Amending Legislation</b>	<b>Certified</b>	<b>Date of Commencement</b>
Ordinance Revision Ordinance 1967 No 25		29 December 1967
Adaptation of Laws Order 1969 GN No 188/1969	9 October 1969	31 January 1968
Family Court Act 1973 No 14	1 November 1973	3 October 1973
Statute Law Revision Act 2011 No 8	15 April 2011	15 April 2011
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021



An Act relating to the Maintenance of Wives and Children.

I, the Administrator of the Island of Nauru, in pursuance of the powers conferred by Article 1 of the Agreement dated the second day of July, 1919, between the Government of the United Kingdom, the Government of the Commonwealth of Australia and the Government of New Zealand and adopted by the Republic, hereby make the following Act.

[Long title am Act 8 of 2011 s 12 and Sch 1[92], opn 15 Apr 2011]

## PART 1 — PRELIMINARY

### 1 Short title and commencement

This Act may be cited as the *Maintenance Act 1959* and came into effect on 30 October 1959.

[s 1 subst Act 8 of 2011 s 12 and Sch 1[90], opn 15 Apr 2011]

### 2 Parts

[s 2 rep Act 8 of 2011 s 12 and Sch 1[90], opn 15 Apr 2011]

### 3 Definitions

In this Act:

**‘child’** means a child under the age of 18 years whether born in lawful wedlock or not;

**‘ex-nuptial child’** means a child not born in lawful wedlock;

**‘means of support’** means lawful and sufficient means of support and, in the case of a wife, means lawful and sufficient means of support without having regard to her own earnings; and

**‘the court’** means the Family Court established by Section 3 of the *Family Court Act 1973*.

[def subst Act 14 of 1973 s 30, opn 3 Oct 1973; am Act 8 of 2011 s 12 and Sch 1[92], opn 15 Apr 2011]

[s 3 am Act 8 of 2011 s 12 and Sch 1[91], opn 15 Apr 2011]





## PART 2 — JURISDICTION AND PROCEDURE

### 4 Power of court to issue summons or warrant

- (1) Where:
  - (a) a husband has left his wife without means of support;
  - (b) a father has left his child without means of support; or
  - (c) a husband or father is about to leave the Republic without making adequate provision for the support of his wife or child,the court may, upon complaint on oath being made by the wife or by the mother or the child or by a reputable person on behalf of the wife or child issue a summons requiring the husband or father to appear before it to show cause why he should not support his wife or child or may, where the circumstances seem to the court to require it, issue a warrant for the apprehension of the husband or father.
- (2) Where a warrant has been issued and the court is satisfied that, after inquiry and search, the defendant cannot be found, the court may proceed in the case *ex parte*.

### 5 Hearing and order

- (1) Upon the hearing of a complaint under Section 4, the court shall inquire into the matter of the complaint, and:
  - (a) if it is satisfied that the wife is in fact left without means of support or that the defendant is about to leave the Republic without making adequate provision for her support, may:
    - (i) order the defendant to pay, for the support of the wife, such allowance as it considers reasonable;
    - (ii) commit the legal custody of a child of the marriage to the wife or some other person;
    - (iii) grant the wife, or the defendant, or both, access to the child; and
    - (iv) order the defendant to pay, for the support of the child, such allowance as it considers reasonable; and
  - (b) if it is satisfied that a child of the defendant is in fact left without means of support or that the defendant is about to leave the Republic without making adequate provision for the support of the child, may:
    - (i) order the defendant to pay, for the support of the child, such allowance as it considers reasonable;
    - (ii) commit the legal custody of the child to the mother or another person; and
    - (iii) grant the mother, or the defendant, or both, access to the child.
- (2) An allowance ordered to be paid under subsection (1) is payable weekly, fortnightly or monthly and to such person and in such manner, as the court orders.
- (3) An order for the payment of an allowance under subsection (1) shall not be expressed to come into operation before the date of the making of the complaint or the date of commencement of the period of 3 months immediately preceding the making of the order, whichever is the earlier date.

- (4) An order for the support of a child or an order committing the custody of a child to a person ceases to be in force after the child has attained the age of 18 years or dies, except for the recovery of arrears then due under the order.
- (5) Upon the hearing of a complaint under Section 4, the court may, upon reasonable cause shown for the leaving without support or the departure from the Republic without making adequate provision for support, decline to make an order.
- (6) The court shall not make an order on the application of a wife or a person on her behalf if it is proved that she has committed adultery or is of drunken habits, unless the husband has condoned or connived at the adultery or, by his cruelty, wilful neglect, or misconduct, conduced to the adultery or drunken habits.

## **6 Complaint in respect of ex-nuptial child**

- (1) Where, upon the hearing of a complaint under this Act against a person in respect of the support of an ex-nuptial child, it is alleged in the complaint that the defendant is the father of the child, the court may, subject to this Section, adjudge him to be the father of the child.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[91], opn 15 Apr 2011]

- (2) Corroboration of the evidence of the mother of the ex-nuptial child is not necessary unless and until the defendant has, on his oath denied the allegations contained in the complaint as to the paternity of the child.
- (3) Where the defendant does, on his oath, deny the allegations contained in the complaint, the court shall not make an order against him unless and until the evidence of the mother is corroborated in a material particular.
- (4) Where the defendant is being cross-examined on his giving evidence in denial of the allegations contained in the complaint, the cross-examination shall be confined to the facts, or alleged facts, of the case then before the court.
- (5) A person shall not be adjudged to be the father of an ex-nuptial child, if the court is satisfied that, at the time the child was conceived, the mother was a common prostitute or, about that time, had been having sexual intercourse with a man other than the defendant.
- (6) The court shall not make an order for the support of an ex-nuptial child unless proceedings are commenced within 9 months after the date of the birth of the child, unless the court is satisfied that the defendant has contributed to the support of the child or has acknowledged that he is the father of the child.

## **7 Power to order security for payment of allowance**

- (1) Where an order is made under this Act for the support of a wife or child, the court may from time to time, while the order remains in force, upon notice given in such a manner as the court directs, require the defendant to attend before it at a time and place specified in the notice and to show cause why he should not be ordered to enter into a recognizance with or without sureties, for the due performance of the order for a period not exceeding 12 months.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[91], opn 15 Apr 2011]

- (2) Where the defendant does not immediately enter into the recognizance with the required sureties, if any, the court may commit him to prison for a term not exceeding 12 months or until the recognizance has been entered into, but the court shall discharge the defendant from prison when the recognizance has been entered into with the required sureties notwithstanding the committal for a specified term.
- (3) Where the court is satisfied that a condition of the recognizance has not been complied with, it may *ex parte* adjudge the recognizance to be forfeited.
- (4) A sum of money that a surety becomes liable to pay on the forfeiture of a recognizance is recoverable summarily before the court.
- (5) The court may, where the circumstances appear to require it, issue a warrant directing the apprehension of the defendant and that he be brought before the court for the purpose of this Section, whether notice has been given to the defendant or not.

## 8 Power to attach monies

- (1) Where an order is made under this Act for the support of a wife or child, the court in making the order may, instead of or in addition to any other order for relief under this Act, make an order authorising and directing a person to demand and receive an annuity or other income payable to the husband or father, or monies received or receivable or held by a person in trust, to be paid periodically or by instalments or otherwise to or for the husband or father, or such portion of the annuity, income, or other monies as the court thinks fit, and to appropriate the proceeds towards the support of the wife or child in such manner as the court directs.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[91], opn 15 Apr 2011]

- (2) While an order made under this Act for the support of a wife or child remains in force, a court may from time to time, upon application made by or on behalf of the wife or child, make an order giving the like authority and direction as are referred to in subsection (1).

[subs (2) am Act 8 of 2011 s 12 and Sch 1[91], opn 15 Apr 2011]

- (3) A person, who makes an application referred to in subsection (2) shall give notice of the application to all parties affected by it, in such manner as the court directs.
- (4) A payment made in pursuance of a direction or order under this Section is as valid and effectual as if made to the husband or father or by his authority, and the direction or order protects a person acting in pursuance of it from any action, proceeding, claim or demand arising from the payment and indemnifies him against any liability arising from the payment.

## 9 Seizure of defendant's goods

- (1) Where upon the hearing of a complaint under Section 4 the court is satisfied that the defendant has left his wife or child without means of support it may, in and by its order, authorise and direct a person forthwith to seize and sell the defendant's goods, chattels, or securities, and to demand and receive his rents, or such portion of those goods, chattels, securities, or

rents as it thinks fit, and to appropriate the proceeds towards the payment of the allowance directed to be paid under the order in such manner as it directs.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[91], opn 15 Apr 2011]

- (2) While an order made under Section 5 for the support of a wife or child remains in force, a court may from time to time, upon application made by or on behalf of the wife or child and upon notice given in such manner as the court directs to all parties affected, by its order, give the authority and direction referred to in subsection (1).

[subs (2) am Act 8 of 2011 s 12 and Sch 1[91], opn 15 Apr 2011]

## 10 Power to make further orders

Where an order has been made under this Act for the support of a wife or child, the court may, at any time, either upon notice to the defendant or *ex parte* in a summary way and with or without an application for that purpose, make such further orders as it thinks necessary for better securing the payment and regulating the receipt of the allowance ordered for the support of the wife or child, or for investing and applying the proceeds of the goods, chattels, securities, or rents ordered to be sold or collected, or for ensuring the due appropriating of the allowance to the support of the wife or child.

[s 10 am Act 8 of 2011 s 12 and Sch 1[91], opn 15 Apr 2011]

## 11 Power to punish disobedience of order

- (1) On complaint on oath being made to a court of that a person has contravened or failed to comply with an order made under this Act, the court may summon the person or issue a warrant for the apprehension of the person to answer the complaint.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[91], opn 15 Apr 2011]

- (2) The court may at any time inquire into a complaint under subsection (1), and may enforce compliance with the order by the committal of the person summoned or apprehended to prison for a period of 1 day for every \$0.40 or part of \$0.40 found to be due, including the costs of and incidental to the hearing of the complaint, unless the order is sooner complied with, but a person shall not be imprisoned under this subsection for a period exceeding 12 months.

[subs (2) am No 25 of 1967 s 3 and Schs 1 and 2, opn 29 Dec 1967]

- (3) The court may refuse to enforce an order or may enforce it to such extent as it thinks fit having regard to all the circumstances of the case and, in particular, to the inability of an offender to obtain employment or to comply with the order owing to continued ill health.
- (4) The imprisonment of a person in pursuance of subsection (2) does not discharge any liability of that person to pay the allowance for the support of a wife or child where he has been committed for the non-payment of that allowance under the provisions of that subsection, but during the period of imprisonment any such order is deemed to be suspended.
- (5) A person is not liable to be imprisoned a second time for non-payment of an allowance in respect of which he has been imprisoned in pursuance of subsection (2).
- (6) Where it appears that the amount of arrears of an allowance due under an order made under this Act has been paid since the service of the summons

or the issue of a warrant under this Section, the court may order the person summoned or apprehended to pay the costs of and incidental to the proceedings.

[subs (6) am Act 8 of 2011 s 12 and Sch 1[91], opn 15 Apr 2011]

- (7) Where an order made under this Act contains a provision committing the legal custody of a child to the wife or another person, a person shall not, after service upon him of a copy of the order, contravene or fail to comply with the order.

Penalty: \$200.

[subs (7) am No 25 of 1967 s 3 and Sch 2, opn 29 Dec 1967; Act 8 of 2011 s 12 and Sch 1[91], opn 15 Apr 2011]

- (8) The court may direct that a warrant issued under this Section committing a person to prison shall lie in the office of the court for such time as it thinks proper.

## 12 Warrant may issue in certain cases

The court, on being satisfied by oath that a person is about to leave the Republic, or has left the Republic, to defeat any of the provisions of this Act or an order made under it, may issue a warrant for the apprehension of the person.

[s 12 am Act 8 of 2011 s 12 and Sch 1[91], opn 15 Apr 2011]

## 13 Power of the court to annul or vary order

- (1) The court may from time to time, upon application by or on behalf of a wife or child or the husband or parent and upon notice given, in such manner as the court directs, to all parties affected, annul, vary, suspend or discharge an order made by the court under this Act.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[91], opn 15 Apr 2011]

- (2) Upon the hearing of an application under this Section, the court may take into consideration all the circumstances of the case and the conduct and circumstances of the parties since the date of the order and, if it is satisfied that any evidence relating to the conduct and circumstances of the parties prior to and at the date of the order was not available at the time the order was made, it may admit the evidence.
- (3) An order may be varied, suspended, or discharged as from a date before the making of the application, and may be varied or suspended from time to time.
- (4) Where the court is satisfied that a husband against whom an order for the support of his wife has been made under this Act is supporting his wife, the court shall, upon the application of the husband or wife, discharge the order.

[subs (4) am Act 8 of 2011 s 12 and Sch 1[91], opn 15 Apr 2011]

- (5) Where the court is satisfied that a wife who has obtained an order under this Act for her support has since the date of the order committed adultery, the court shall discharge the order, but the court may, if it thinks fit:
- (a) refuse to discharge the order if in its opinion the adultery was conducted to by the failure of the husband to make such payments as in the opinion of the court he was able to make under the order; and
- (b) in the event of the order being discharged, make an order that the legal custody of the children of the marriage shall continue to be committed

to the wife, and that the husband shall pay, weekly, fortnightly or monthly and to such person and in such manner as the court orders, such allowance as it thinks reasonable for the support of the children.

[subs (5) am Act 8 of 2011 s 12 and Sch 1[91], opn 15 Apr 2011]

- (6) The court may hear an application to vary, suspend or discharge an order notwithstanding that the applicant has contravened or failed to comply with the order, if it is satisfied that there are good and sufficient reasons for the contravention or failure.

## 14 Appeals

- (1) Subject to subsection (2), a person who is aggrieved by an order or variation of an order, or by the dismissal of a complaint or the refusal of an application, under this Act may appeal to the Supreme Court in the manner prescribed for appeals to the Supreme Court from the District Court.

[subs (1) am GN No 188 of 1969 s 3, opn 31 Jan 1968; Act 8 of 2011 s 12 and Sch 1[91], opn 15 Apr 2011]

- (2) An order or variation of an order made by the court has full force and effect pending the determination of an appeal under subsection (1).

[subs (2) am Act 8 of 2011 s 12 and Sch 1[92], opn 15 Apr 2011]

## 15 One complaint only necessary

One complaint may contain the allegation that a father has deserted or left without means of support for more than one child, and the court may make one order in respect of more than one child, but shall specify in the order the amount payable in respect of each child.

## 16 Welfare of child to be primarily regarded

Where, upon the hearing of a complaint, it appears that a father has left his child without means of support, the court shall make such orders as to the custody and support of the child as may appear to it to be just, having regard primarily to the welfare of the child, and an order may be made notwithstanding that the father is willing to receive and maintain the child in his own home or elsewhere.

## PART 3 — PROTECTION ORDER

### 17 **Wife may apply for protection order**

(1) A wife deserted by her husband may, at any time after the desertion, apply *ex parte* to the court for an order to protect any personal property that she may acquire after the desertion against her husband or his creditors or a person claiming under him.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[92], opn 15 Apr 2011]

(2) The court shall make an order under subsection (1) where it is satisfied by affidavit of the fact of the desertion and that it was without reasonable cause.

(3) An order made under subsection (1) shall state the date of the desertion and has the effect of protecting all personal property acquired by the wife at any time after the desertion from any actions, proceedings, claims or demands by her husband and his creditors and all persons claiming under him.

(4) While an order made under subsection (1) continues in force, the wife shall, with respect to all personal property acquired at any time after the desertion, all contracts with respect to that property and all other contracts entered into by her after the making of the order and not relating to real property, be regarded in all respects as a *femme sole*.

(5) Where the husband or any of his creditors or a person claiming under him seizes, takes or holds possession of, property protected by an order made under this Section without the permission of the wife, the wife may sue the husband, creditor or other person for the restoration of the property so seized, taken or held and may, in the event of the property not being restored, recover in the suit a sum equal to twice the value of the property with twice the cost of the suit.

### 18 **Rescission of order**

(1) After the making of an order under Section 17, the husband or any of his creditors or a person claiming under him may at any time, on notice to the wife, apply to the court that the order be rescinded and the court shall rescind the order where it is satisfied by affidavit or oral evidence or both that the wife was not deserted without reasonable cause or that, since the making of the order, she and her husband have cohabited or resided together.

(2) Where an order is rescinded in pursuance of subsection (1), the husband has the same rights and is subject to the same liabilities as if the order had not been made.





## PART 4 — MISCELLANEOUS

### 19 **Wife or husband as witness**

In all proceedings under this Act, the wife or husband, as the case may be, of a person is a competent and compellable witness for or against that person.

[s 19 am Act 8 of 2011 s 12 and Sch 1[91], opn 15 Apr 2011]

### 20 **Power to compel defendant to give evidence**

Upon the hearing of a complaint in which the defendant is charged with having contravened or failed to comply with an order made under this Act, the defendant may be compelled to give evidence and may be summoned as a witness for that purpose.

[s 20 am Act 8 of 2011 s 12 and Sch 1[91], opn 15 Apr 2011]

### 21 **Proof of marriage**

- (1) A woman who complains that she has been deserted by her husband or left by him without means of support shall, upon the hearing, produce evidence satisfactory to the court of her marriage to the defendant.
- (2) The court may rescind an order where it is satisfied that the complainant was not married to the defendant at the date of the making of the order.

### 22 **Constructive desertion**

A wife compelled to leave her husband's residence under reasonable apprehension of danger to her person or under other circumstances that reasonably justify her withdrawal from that residence is, for the purpose of this Act, deemed to have been deserted without reasonable cause.

[s 21 am Act 8 of 2011 s 12 and Sch 1[91], opn 15 Apr 2011]

### 23 **Desertion of child**

The father or mother of a child, being able to maintain the child, shall not wilfully and without lawful or reasonable cause or excuse desert the child or leave it without means of support.

Penalty: imprisonment for 1 year.

### 24 **Desertion of wife**

A husband shall not without lawful or reasonable cause or excuse leave his wife without means of support or leave the Republic without making adequate provision for the support of his wife.

Penalty: imprisonment for 1 year.

### 25 **Saving of liability in respect of contracts**

Nothing in this Act affects the liability of a husband in respect of contracts made by a wife deserted or left without support by her husband without reasonable cause.

[s 25 am Act 8 of 2011 s 12 and Sch 1[91], opn 15 Apr 2011]

## 26 Costs

In an order made under this Act, the Family Court or the Supreme Court may order the payment by such persons, being parties to the proceedings, of such costs as it thinks fit.

[subs (1) am GN No 188 of 1969 s 3, opn 31 Jan 1968; Act 8 of 2011 s 12 and Sch 1[91], [92], opn 15 Apr 2011]

## 27 Application of provisions of Family Court Act 1973

The provisions of the *Family Court Act 1973* not inconsistent with this Act apply as far as they are applicable, and *mutatis mutandis*, to all matters and proceedings under this Act.

[s 27 am Act 8 of 2011 s 12 and Sch 1[91], [92], opn 15 Apr 2011]

## 28 Exclusion of persons from hearing

(1) During the hearing of a matter under this Act before the Family Court or the Supreme Court, the room or other place in which the court sits shall not be open to the public, and persons not directly interested in the matter before the court shall, unless the court otherwise directs, be excluded.

[subs (1) am GN No 188 of 1969 s 3, opn 31 Jan 1968; Act 8 of 2011 s 12 and Sch 1[91], [92], opn 15 Apr 2011]

(2) The court may:

- (a) order a person to leave the court during the examination of a witness; and
- (b) give directions prohibiting or restricting the disclosure of information with respect to the hearing of a matter before the court.

(3) A person shall not disclose information with respect to the hearing of a matter before the court in contravention of a direction given under subsection (2)(b).

Penalty: \$200.

[subs (2) am No 25 of 1967 s 3 and Sch 2, opn 29 Dec 1967]

## 29 Service of summons

(1) A summons under this Act may be served upon the defendant personally or, if he cannot be found, then at his last, or most usual, known place of residence.

[subs (1) am Act 8 of 2011 s 12 and Sch 1[91], opn 15 Apr 2011]

(2) A person serving a summons under this Act may make an affidavit stating the mode and time and place of service and, if personal service has not been effected, that the defendant cannot be found, and the affidavit may be received by the court as proof of the due service of the summons.

[subs (2) am Act 8 of 2011 s 12 and Sch 1[91], opn 15 Apr 2011]